

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN - 5 2004

STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

SWIF-T FOOD MART, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION )  
 AGENCY, )  
 )  
 Respondent. )

PCB 04-112  
(UST appeal)

**PETITION FOR REVIEW**

NOW COMES Petitioner, SWIF-T FOOD MART, through its undersigned attorney, and pursuant to Section 40(a)(1) of the Environmental Protection Act, 415 ILCS 5/40(a)(1), and Section 105 Subpart D of this Board's procedural regulations, 35 Ill. Adm. Code 105.400-105.412, hereby seeks review of the final decision of Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA) dated December 1, 2003 (a true and correct copy of which is attached hereto, and incorporated herein, as Exhibit A), deducting \$40,130.46 from Petitioner's LUST reimbursement application. In support of this Petition, Petitioner states as follows:

1. Petitioner is owner/operator of a facility located at 1100 Belvidere Road, Waukegan, Lake County, Illinois, at which leaking underground storage tanks were located, and remediation has taken place.

2. Petitioner's LUST Reimbursement Package was dated June 30, 2003 and received by the IEPA on October 27, 2003. The LUST Reimbursement Package was for work performed between December 1, 1995 and November 20, 2001, requesting \$41,922.46 in reimbursement from the LUST Fund. The IEPA's final decision letter, issued December 1, 2003, granted less than that amount.

3. The IEPA's final decision letter deducted \$39,948.00 for costs associated with concrete and/or asphalt replacement by a subcontractor, Peter J. Hartmann Company, for lack of supporting documentation, on the basis that there was no supporting documentation of costs and that the IEPA is unable to determine if those costs were unreasonable because it is unclear whether additional remediation will be required until after a No Further Remediation Letter is issued. This determination is in error as a matter of law and fact.

4. The IEPA's final decision letter also deducted \$5,552.45 for costs associated with the purchase of backfill material by a subcontractor, Meyer Material Company, for lack of supporting documentation, on the basis that the copies of the checks submitted are not sufficient information. The IEPA also added that Petitioner should submit detailed invoices from Meyer Material Company for the purchase of backfill material. This determination is in error as a matter of law and fact.

5. The IEPA's final decision letter also deducted \$630.01 in handling charges for the costs that the IEPA determined to be ineligible. This determination is in error as a matter of law and fact.

6. Accordingly, the IEPA's final decision letter in total resulted in erroneous reimbursement determinations in the amount of \$40,130.46, which Petitioner seeks in this LUST Fund reimbursement appeal.

WHEREFORE, Petitioner, SWIF-T FOOD MART, requests that this Board reverse the IEPA's denial of \$40,130.46 in LUST Fund reimbursement, and award to Petitioner that amount in additional LUST Fund reimbursement, and award to Petitioner such other and further relief as may be within this Board's jurisdiction and authority.

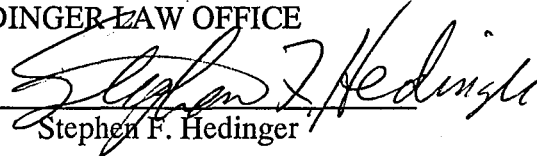
Respectfully submitted,

SWIF-T FOOD MART,  
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

By

A handwritten signature in black ink, appearing to read "Stephen F. Hedinger", is written over a horizontal line. The signature is cursive and somewhat stylized.

Stephen F. Hedinger

Hedinger Law Office  
2601 S. Fifth St.  
Springfield, IL 62703  
(217) 523-2753 phone  
(217) 523-4366 fax

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SWIF-T FOOD MART, )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )

Respondent. )

PCB \_\_\_\_\_  
(UST appeal)

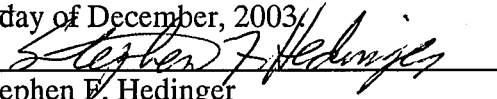
**NOTICE OF FILING AND PROOF OF SERVICE**

To: Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center  
Suite 11-500  
Chicago, IL 60601-3218

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Ave. East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on the 31st day of December, 2003, we sent via U.S. first class mail to the Clerk of the Pollution Control Board the original and nine copies of the PETITION FOR REVIEW for filing in the above entitled cause.

The undersigned certifies that a true and correct copy of the PETITION FOR REVIEW was served upon each of the above-identified individuals via U.S. mail, by enclosing the same in envelopes properly addressed, with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mail box, on the 31st day of December, 2003.

  
Stephen F. Hedinger

Hedinger Law Office  
2601 S. Fifth St.  
Springfield, IL 62703  
(217) 523-2753 phone  
(217) 523-4366 fax

THIS FILING IS SUBMITTED ON RECYCLED PAPER



1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276  
JAMES R. THOMPSON CENTER, 100 WEST RANOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #  
7002315000002251805

DEC 01 2003

Swift-T Food Mart  
Attn: Isam Saed  
314 S. Lewis Avenue  
Waukegan, Illinois 60085

Re: LPC #0971905268 -- Lake County  
Waukegan/Swif-T Food Mart  
1100 Belvidere Rd.  
LUST Incident No. 960723  
LUST FISCAL FILE

Dear Mr. Saed:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated June 30, 2003 and was received by the Agency on October 27, 2003. The application for payment covers the period from December 1, 1995 to November 20, 2001. The amount requested is \$41,922.46.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated September 6, 2001. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On October 27, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$1,792.00 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(j) and Section 40 of the Act by filing a

ROCKFORD - 4103 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (247) 294-4000  
EGLIN - 595 South State, Elgin, IL 60120 - (847) 618-1131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-3463  
BUREAU OF LANDS - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-3463 • CHAMPAIGN - 2123 South First Street, Champaign, IL 61820 - (217) 278-3200  
SPRINGFIELD - 4501 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLEMANVILLE - 2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

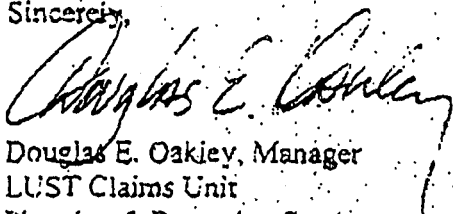
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

If you have any questions or require further assistance, please contact Lieura Hackman of my staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:LH:m1s\03116.doc

Attachment

bcc: Division File  
LCU File  
Lieura Hackman

Attachment A  
Accounting Deductions

Re: LPC #0971905268 -- Lake County  
Waukegan/Swif-T Food Mart  
1100 Belvidere Rd.  
LUST Incident No: 960723  
LUST Fiscal File

Citations in this attachment are from and the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$5,552.45, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Please submit detailed invoice/invoices from Meyer Material Co. for the purchases of backfill material. The copies of checks submitted with this claim are not sufficient documentation.

2. \$33,948.00

Deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Deduction for costs associated with concrete and/or asphalt replacement. The Illinois EPA will only reimburse concrete and/or asphalt replacement once for this occurrence. Until the above-referenced site has received a No Further Remediation Letter, the Illinois EPA cannot determine if these costs are unreasonable or if they are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act, since at this time it is unclear whether additional remediation may be required. (Sections 57.5(a) and 57.7(c)(4)(C) of the Act; 35 Ill. Adm. Code 732.505(c) and 732.606(o))

Once the above-referenced site has received a No Further Remediation Letter, a resubmission with additional information of the costs associated with concrete and/or

asphalt replacement (as well as any supporting documentation) may be submitted to the Illinois EPA.

Please submit detailed invoice/invoices from Peter J. Hartmann Co. that total to \$33,948.00. The letters of proposals are not sufficient documentation for this request.

Also, please, do not resubmit the request for concrete replacement until you have received the No Further Action letter from the Agency.

3. \$630.01, adjustment in the handling charges due to the deductions of the ineligible costs (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607).

The eligible amount of this claim is \$1,600.00 (for the removing the canopy and loading steel and pans). The handling charges in the amount of \$192.00 is being paid on the eligible \$1,600.00