

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

JAN 26 2004

STATE OF ILLINOIS  
Pollution Control Board

CIRCLE C, INC.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

PCB 04- 131  
(UST Appeal)

NOTICE OF FILING

TO: John Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**PLEASE TAKE NOTICE** that on January 26, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of an Appearance and Petition for Review of Illinois Environmental Protection Agency Decision.

Dated: January 26, 2004

Respectfully submitted,

Circle C, Inc.

By:

Carolyn S. Hesse  
One of Its Attorneys


Carolyn S. Hesse  
**Barnes & Thornburg**  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313  
200080v1

**CERTIFICATE OF SERVICE**

I, on oath state that I have served the attached Appearance and Petition for Review of Illinois Environmental Protection Agency Decision by placing a copy in an envelope addressed to:

John Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 26<sup>th</sup> Day of January, 2004.

  
Carolyn S. Hesse

JAN 26 2004

**STATE OF ILLINOIS**  
**Pollution Control Board**

PCB 04- 131  
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PCB 04- 131  
(UST Appeal)

**VERIFIED PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY DECISIONS**

Circle C., Inc., by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Circle C, Inc. ("Circle C"), is the owner of property located at 910 South State Street, Jerseyville, Jersey County, Illinois. The site was a gasoline service station that had underground storage tanks (UST's) on the property, which stored gasoline and diesel fuel.
2. LUST Incident Number 20020754 was obtained following a site investigation. The site has also been assigned LPC #0830255054-Jersey County.
3. On March 6, 2003, the Agency received Circle C's request for reimbursement of costs from the Illinois Underground Storage Tank Fund. On April 23, 2003, the Agency issued a letter stating that the application

for payment was incomplete. Circle C subsequently provided the additional information requested.

4. On August 20, 2003, the Agency received Circle C's complete application for payment of the claim in the amount of \$111,213.32 (the "Request"). The application for payment covers the period from May 1, 2002 to October 31, 2002.
5. The Agency denied certain costs in the Request in a letter dated December 24, 2003 (the "Letter"), a copy of which is attached hereto as Exhibit A.
6. On December 26, 2003, Petitioner received the Letter from which this appeal is being taken. Thus, this appeal is timely filed.
7. The site was determined to have a leaking underground storage tank site and, therefore, is eligible for reimbursement under the UST Fund in 2002. The remediation of the leaking underground storage tank and reimbursement payments are covered under 35 Ill. Admin. Code Part 732.

**Count I**  
**Approval By Operation of Law**

8. Petitioner repeats and realleges the allegations of paragraph 1 through 7 as if fully set forth herein.
9. Paragraph 35 Ill. Admin. Code 732.602(e) provides in part as follows:

Following a review [of an application for payment], the Agency shall have the authority to approve, deny or require modification of applications for payment or portions thereof. The Agency shall notify the owner or operator in writing of its final action on any such application for payment. Except as provided in Subsection (f) of this Section, if the

Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law.

10. Between August 20, 2003, when the Agency received the request and December 24, 2003, the date of the Letter, there are 126 days. *See* Exhibit A.
11. The exception provided in 35 Ill. Admin. Code 732.602 subsection (f) does not apply. This exception allows a time extension for an Agency decision if the owner or operator waives the right to a final decision within 120 days after the submittal of a complete application for payment. The owner or operator did not waive its right to a final decision. *See* Affidavit of William T. Sinnott.
12. Circle C's Request is deemed approved by operation of law, and Circle C is owed the full amount of the Request, \$111,213.32, minus any applicable deductible that was not previously satisfied.

WHEREFORE, Circle C respectfully requests that the Board enter an order requiring the Agency to reimburse Circle C for the full amount of its reimbursement request, minus the appropriate deductible, and for Circle C's attorneys' fees and costs in bringing this appeal.

### **Count II**

13. Petitioner, Circle C repeats and realleges the allegations of Paragraphs 1 through 7 as if fully set forth herein.

14. Attachment A to the Agency's Letter denying reimbursement, Exhibit A, states:

Description of Deductions

\$47,786.32, deduction for early action activities costs which are unreasonable as submitted, (Section 57.7(c)(4)(C) of the Act and 35 Ill. Admin. Code 732.606(ii)).

15. The Letter provides no further explanation of the Agency's reasons or bases for denial that could aid petitioner in setting forth its grounds of appeal in this Count II.
16. The Letter does not provide any information regarding why or even which costs or early action activities the Agency concluded were unreasonable.
17. The Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce the Petitioner's right to reimbursement under the UST Fund.
18. Paragraph 35 Ill. Admin. Code 732.602(e) provides, in part, as follows:

If the Agency denies payment for an application for payment or for a portion thereof or requires modification, the written notification shall contain the following information as applicable:

1. An explanation of the specific type of information, if any, that the Agency needs to complete the full review;
2. An explanation of the Sections of the Act or regulations that may be violated if the application for payment is approved; and
3. A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved.

19. The Agency has violated Subparagraph 35 Ill. Admin. Code 732.602(e)(1) because the Agency's letter does not provide an explanation of the specific type of information the Agency needs to complete its review.
20. The Agency has violated Subparagraph 35 Ill. Admin. Code 732.602(e)(3) because the Agency's letter does not contain a statement of specific reasons why the cited Sections of the Act or regulations may be violated if the application for payment is approved nor does the letter even identify which of the costs submitted for reimbursement were considered unreasonable.
21. Circle C's Request is deemed approved by operation of law because the Agency did not comply with 35 Ill. Admin. Code 732.602(e)(1) and (3) within 120 days of receiving a complete application for reimbursement.

WHEREFORE, Circle C respectfully requests that the Board enter an order requiring the Agency to reimburse Circle C for the full amount of its reimbursement request, minus the appropriate deductible, and for Circle C's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

**Circle C, Inc.**

By: Carolyn S. Hesse  
One of Its Attorneys

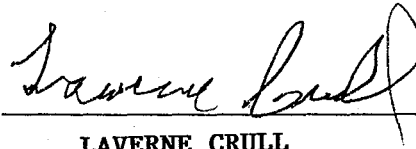
Carolyn S. Hesse, Esq.  
Barnes & Thornburg  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313  
200063v1



## VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

DATED: JANUARY 22, 2004

A handwritten signature in cursive script, appearing to read "Laverne Crull", is written over a horizontal line.

LAVERNE CRULL

CIRCLE C, INC.,

Petitioner,

V.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

PCB 04-\_\_\_\_\_  
(UST Appeal)

## CHDS01 EHA1M 200743v1



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

DEC 24 2003

DEC 26 2003

Circle C, Inc.  
Attention: Laverne Crull  
Post Office Box 571  
Carlinville, IL 62626

*WTS*

Re: LPC #0830255054 -- Jersey County  
Jerseyville/Circle "C" Corporation  
910 South State Street  
LUST Incident No. 20020754  
LUST FISCAL FILE

Dear Mr. Crull:

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 March 4, 2003 and was received by the Agency on March 6, 2003. The application for payment covers the period from May 1, 2002 to October 31, 2002. The amount requested is \$111,213.32.

The deductible amount to be assessed on this claim is \$15,000.00, which is being deducted from this payment. In addition to the deductible, there are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On August 20, 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 \$48,427.00 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(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However,

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5462  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 27  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 340-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

**EXHIBIT**

DEC 26 2003

Page 2

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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 Steve Jones of Hernando Albarracin's staff at 217/782-6762.

Sincerely,

*Douglas E. Oakley*

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

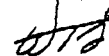
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Attachment

cc: CW3M

Attachment A  
Technical Deductions

DEC 26 2003



Re: LPC #0830255054 -- Jersey County  
Jerseyville/Circle C Inc.  
910 South State Street  
LUST Incident No. 20020754  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$47,786.32, deduction for early action activities costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(ii))

57  
SJC Circle C 20020754 EA cost rev Nov 03.doc