

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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FEB 20 2004

STATE OF ILLINOIS
Pollution Control Board

ROBERT AND TONY THOMPSON,)
)
 Petitioner,)
)
 v.) PCB 04-85
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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 February 20, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy Petition for Review of Illinois Environmental Protection Agency Decisions.

Dated: February 20, 2004

Respectfully submitted,

Robert and Tony Thompson

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
206394v1

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decisions 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 20th Day of February, 2004.


Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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Pollution Control Board

ROBERT AND TONY THOMPSON,)
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Petitioner,)
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v.) PCB 04--85
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Robert and Tony Thompson, by their 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. Robert and Tony Thompson ("Thompson") are the owners of property located at 4th and Jefferson, Cairo, Alexander County, Illinois. The site had underground storage tanks (USTs) on the property, which stored gasoline.
2. LUST Incident Number 20020882 was obtained following a site investigation and LPC #0030055050 was assigned.
3. On September 18, 2003, the Agency received Thompson's complete request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from June 1, 2002 to November 30, 2002 in the amount of \$30,711.89.

4. The Agency denied certain costs in the Request in a letter dated October 17, 2003, a copy of which is attached hereto as Exhibit A.
5. Thompson is appealing this October 17, 2003 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that the costs were reasonable.
6. Thompson disagrees with the Agency's decision and believes that the costs submitted for reimbursement are reasonable corrective action costs and are the types of costs that are eligible for reimbursement under the Act and implementing regulations.
7. The Agency's letter denying reimbursement, Exhibit A, provides no further explanation of the Agency's reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner's right to reimbursement under the UST Fund.
8. On December 1, 2003, the parties timely filed a joint notice to extend the appeal deadline. On December 4, 2003, the Board filed an order extending the appeal deadline until February 20, 2003, a copy of which is attached hereto as Exhibit B. Pursuant to the Board's December 4, 2003 order, this appeal is timely filed.

WHEREFORE, Robert and Tony Thompson respectfully requests that the Board enter an order that will provide that they be reimbursed from the UST Fund for their submitted costs and for their attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Robert and Tony Thompson

By: Carolyn S. Hesse
One of Their Attorneys

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

206341v1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

2021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

OCT 18 2003
[Handwritten initials]

OCT 17 2003

Mr. Robert Thompson
c/o CW3M Company
Post Office Box 571
Carlinville, Illinois 62626

Re: LPC #0030055050 -- Alexander County
Cairo/Robert & Tony Thompson
4th & Jefferson
LUST Incident No. 20020882
LUST FISCAL FILE

Dear Mr. Thompson:

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 April 17, 2003 and was received by the Agency on September 18, 2003. The application for payment covers the period from June 1, 2002 to November 30, 2002. The amount requested is \$30,711.89.

The deductible amount to be assessed on this claim is \$10,000.00, 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 September 18, 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 \$19,426.64 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

ROCKFORD - 2302 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 60120 - (847) 608-3131 • PEORIA - 5215 N. University St., Peoria, IL 61614 - (309) 693-5461
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 270-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62782 - (618) 326-5120

MAIL

A

EXHIBIT

A

OCT 18 2003

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 Catherine S. Elston of my staff at 217/782-6762.

Sincerely,

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

DEO:CSE:ct\038410.doc

Attachment

cc: CW3M Company

Attachment A
Accounting Deductions

OCT 18 2003
WTS

Re: LPC #0030055050 -- Alexander County
Cairo/Robert & Tony Thompson
4th & Jefferson
LUST Incident No. 20020882
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

- Rate for per diem is not reasonable - July 1-31, 2002 - \$6.00
- Rate for per diem is not reasonable - October 1-31, 2002 - \$26.00
- Rate for mileage is not reasonable - July 1-31, 2002 - \$5.10
- Rate for mileage is not reasonable - October 1-31, 2002 - \$26.40
- Rate for Field Supervisor/Coordinator is not reasonable - October 1-31, 2002 - \$88.00
- Rate for Trackhoe is not reasonable - October 1-31, 2002 - \$33.75
- Mobilization/Demobilization for backhoe and trackloader is not reasonable - \$1,100.00

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BARNES & THORNBURG

Carolyn S. Hesse
(312) 214-8301
Email: chesse@btlaw.com

Suite 4400
One North Wacker Drive
Chicago, Illinois 60606-2809 U.S.A.
(312) 357-1313
Fax (312) 759-5646

www.btlaw.com

November 19, 2003

VIA FACSIMILE & FEDERAL EXPRESS

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

RECEIVED
Division of Legal Counsel
NOV 20 2003
Environmental Protection
Agency

Re: LPC #0030055050 -- Alexander
Cairo / Robert and Tony Thompson
4th and Jefferson
LUST Incident #20020882
LUST FISCAL FILE

Dear John:

On October 17, 2003, the Agency issued a letter with respect to the above referenced LUST Incident regarding the payment, in part, of costs for which reimbursement was requested.

The letter was received on October 18, 2003. The amount requested for reimbursement was \$30,711.89.

The letters were received by CW3M on behalf of Mr. Robert Thompson. Mr. Thompson's facility is located in Alexander County, Illinois. A copy of the letter is attached. CW3M believes that, based upon discussions with the Illinois Environmental Protection Agency and for other reasons, that we will be able to resolve the issues raised in the IEPA letters. However, we believe that we will not be able to resolve these issues by the deadline for filing an appeal of these issues to the Illinois Pollution Control Board. Thus, this is a request for a 90 day extension pursuant to the Illinois Environmental Protection Act, Section 40(a)(1) and 35 IAC 105.406 to allow us the needed time to continue these discussions and to try to resolve the issues.

On November 18, 2003, we discussed this request for a time extension and agreed to such a time extension. If for any reason the Agency will not seek the 90 day extension, please notify

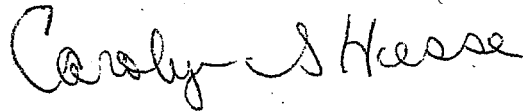
B

Mr. John Kim
November 19, 2003
Page 2

me no later than the close of business on November 20, 2003, so that I may file the appropriate appeals to the Board. If you have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

BARNES & THORNBURG



Carolyn S. Hesse

CSH/jmr
Enclosure

cc: William Sinnott
Carol L. Rowe

183606v1

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 21, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Carolyn S. Hesse
Barnes & Thornburg
One North Wacker Drive
Suite 4400
Chicago, IL 60606-2809

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

ROBERT & TONY THOMPSON,)	
Petitioners,)	
v.)	PCB No. 04-
ILLINOIS ENVIRONMENTAL)	(LUST – Ninety Day Extension)
PROTECTION AGENCY,)	
Respondent.)	

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to February 20, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 17, 2003, the Illinois EPA issued a final decision to the Petitioners.
(Exhibit A)

2. On November 19, 2003, the Petitioners made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioners represented that the final decision was received on October 18, 2003. (Exhibit B)

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 21, 2003



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217/782-6762

OCT 18 2003
JTB

OCT 17 2003

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c/o CW3M Company
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OCT 18 2003

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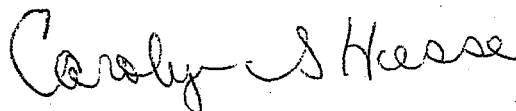
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Mr. John Kim
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Page 2

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
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