

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SWEARINGIN AMOCO,)
)
Petitioner,)
)
v.) PCB 04 -15 Y
) UST Fund Appeal
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

RECEIVED
CLERK'S OFFICE

MAR 09 2004

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: John Kim Carol Sudman
Special Assistant Attorney General Hearing Officer
Illinois Environmental Protection Agency Illinois Pollution Control Board
1021 North Grand Avenue East 1021 North Grand Avenue East
P.O. Box 19276 P.O. Box 19274
Springfield, Illinois 62794-9276 Springfield, Illinois 62794-9274

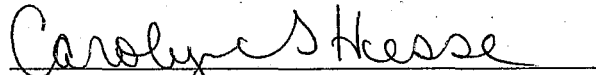
PLEASE TAKE NOTICE that on March 9, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decision.

Dated: March 9, 2004

Respectfully submitted,

Swearingin Amoco

By:


One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
208833v1


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

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 9th Day of March, 2004.


Carolyn S. Hesse

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

SWEARINGIN AMOCO,)	
)	
Petitioner,)	
)	
v.)	PCB 04- 152
)	UST Fund Appeal
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**RECEIVED
CLERKS OFFICE**

MAR 09 2004

STATE OF ILLINOIS
Pollution Control Board

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

Swearingin Amoco 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. Swearingin Services, Inc. does business as Swearingin Amoco ("Swearingin") and is the owner of property located at 503 South State Street, Jerseyville, Jersey County, Illinois. The site is a gasoline service station known as Swearingin Amoco that has underground storage tanks (USTs) on the property, which store gasoline and diesel fuel.
2. LUST Incident Number 830255015 was obtained following a site investigation.
3. On March 4, 2003, the Agency received Swearingin's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from July 1, 1996 to August 31, 1996, in the amount of \$33,933.52.
4. The Agency denied certain costs in the Request in a letter dated February 3, 2004, a copy of which is attached hereto as Exhibit A.

5. Swearingin is appealing this February 3, 2004 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that certain costs were reasonable.
6. Swearingin disagrees with the Agency's decision and believes that the costs submitted for reimbursement are corrective action costs, are reasonable 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.

WHEREFORE, Swearingin Services, Inc., d/b/a Swearingin Amoco respectfully requests that the Board enter an order that will provide that it be reimbursed from the UST Fund for its submitted costs and for its attorneys fees and costs in bringing this appeal.

Respectfully submitted,

Swearingin Amoco

By: Carolyn S Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
208795v1



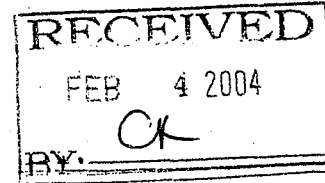
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 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

FEB 03 2004



Swearingin Services, Inc.
Attn: Ronald Swearingin
P.O. Box 571
Carlinville, Illinois 62626

Re: LPC #0830255015 -- Jersey County
 Jerseyville/Swearingin Service
 503 South State Street
 LUST Incident #901084
 LUST FISCAL FILE

Dear Mr. Swearingin:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from July 1, 1996 to August 31, 1996. The amount requested was \$33,933.52.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated December 17, 1990. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On March 4, 2003, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$28,702.02 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 claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

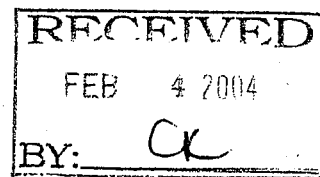
This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the

EXHIBIT
A

owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator 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, please contact Bambi Redpath of my staff or Karl Kaiser of the technical staff at 217/782-6762.

Sincerely,

A handwritten signature in cursive script that reads "Douglas E. Oakley". There are some initials or marks at the end of the signature.

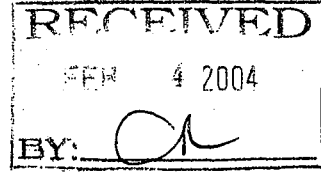
Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:BR:m\0433610.doc

Attachment

cc: CW3M

Attachment A
Technical Deductions



Re: LPC #0830255015 -- Jersey County
Jerseyville/Swearingin Service
503 South State Street
LUST Incident No. 901084
LUST FISCAL FILE

Item # Description of Deductions

1. \$2,204.00, deduction in excessive groundwater treatment system costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

2. \$3,027.50, deduction in excessive groundwater treatment system operation and maintenance costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

KEK

March 3, 2003

Mr. Doug Oakley, Manager
LUST Claims Unit, Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

**RE: LPC #0830255015—Jersey County
Jerseyville/Swearingin Services, Inc.
503 South State Street
LUST Incident #90-1084
LUST FISCAL FILE**

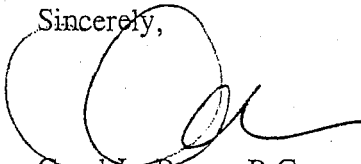
Dear Mr. Oakley:

Enclosed, please find two copies of a reimbursement request previously submitted on October 31, 1996 for the above referenced site. This request covers the time period of July 1, 1996 through August 31, 1996. While doing research into the status of previously submitted reimbursement requests for Swearingin Services, it was brought to our attention that although this request had been submitted to the Illinois Environmental Protection Agency (IEPA), it was not listed on the LUST database. After a subsequent discussion with Mr. Karl Kaiser, we confirmed that this reimbursement request could not be located.

Therefore, on behalf of Swearingin Services, Inc., we respectfully request review of this reimbursement request. The original forms were included with the original request.

Should you have any questions or need additional information, please contact our office at your earliest convenience. We may be reached at (217) 522-8001. Thank you for your assistance.

Sincerely,



Carol L. Rowe, P.G.
Senior Environmental Geologist

Enclosure

xc: Mr. Ron Swearingin, *Swearingin Services, Inc.*
Mr. William T. Sinnott, *CW³M Company, Inc.*

Epacor45.doc