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JUL 18 1995
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an)
Illinois corporation,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 96- 10
(UST -- Appeal)

NOTICE OF FILING

TO: Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

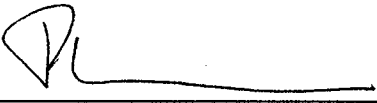
Illinois Environmental Protection Agency
Attn: Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

PLEASE TAKE NOTICE that on July 18, 1995, we filed with the Clerk of the Illinois Pollution Control Board, the appropriate filing fee (\$ 75) and Vogue Tyre and Rubber Company's Petition for Review of IEPA Final Decision, a copy of which is hereby served upon you. Pursuant to 35 Ill. Admin. Code § 101.103(d), this filing is submitted on recycled paper.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

Dated: July 18, 1995

By:  _____
One of its Attorneys

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400

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APPEARANCE

I hereby file my appearance in this proceeding on behalf of Vogue Tyre & Rubber Company.

Dated: July 18, 1995

Edward J. Copeland
Edward J. Copeland

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
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Peter C. Warman

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PETITION FOR REVIEW OF IEPA FINAL DECISION

Vogue Tyre & Rubber Company ("Vogue Tyre"), by its attorneys, pursuant to 415 ILCS § 5/57.8(i) hereby petitions the Illinois Pollution Control Board (the "Board") for a hearing to contest a final decision by the Illinois Environmental Protection Agency ("IEPA"). IEPA has "denied" various reports submitted to it by Vogue Tyre and has declined to issue a no further remediation letter. Vogue Tyre's reports concern remediation of contamination from underground storage tanks ("USTs") formerly used to store gasoline at a facility which until recently was owned by Vogue Tyre. Vogue Tyre requests the Board to reverse IEPA's final decision and to require IEPA to approve Vogue Tyre's reports.

In support of its Petition, Vogue Tyre states as follows:

1. Until July 7, 1995, Vogue Tyre owned the facility at 4801 Golf Road in Skokie, Illinois. The facility, which is located in Cook County, has been assigned number 2-021982 by the Office of the Illinois State Fire Marshall ("OSFM"). At various times, a total of four USTs have been located at the facility and registered with OSFM. One UST was a

8,300 gallon gasoline UST, another UST was a 560 gallon used oil UST, and two USTs were 10,000 gallon gasoline USTs.

2. In 1993, Vogue Tyre reported releases from the 8,300 and 560 gallon USTs located at the facility. These releases were assigned Incident No. 93-1858 by the Illinois Emergency Management Agency ("IEMA"). On May 6, 1993 the 560 gallon used oil UST was removed from the facility. On August 26, 1993 the 8,300 gallon gasoline UST was also removed. Vogue Tyre sought, and received, reimbursement from the UST Fund for the corrective action in 1993. In approving the eligibility of the 1993 corrective action, OSFM indicated, on January 4, 1994, that Vogue Tyre "may be eligible to seek payment of corrective action costs associated with [the two 10,000 gallon gasoline] tanks if it is determined that there has been a release from one or more of these tanks." A true and correct copy of the January 4, 1994 determination letter is attached hereto as Exhibit A and incorporated herein by reference.

3. On December 7, 1994, Vogue Tyre reported releases of gasoline from the two 10,000 gallon gasoline USTs on the facility to IEMA. IEMA assigned Incident No. 94-2751 to these releases. On February 23, 1995, after this notification to the IEMA and in compliance with 415 ILCS § 5/57.7(e)(1), Vogue Tyre commenced corrective action. This corrective action is substantially completed, although some final corrective action is ongoing at the time of filing of this Petition.

4. During corrective action it became apparent that a certain amount of the gasoline contamination resulted from the 8,300 gallon UST that was removed in 1993. Although much of the contamination was located in the area where the 10,000 gallon

gasoline USTs were located, the 8,300 gallon UST had connected underground product lines which extended into the contaminated area. In addition, some gasoline contamination (which was separate from the other contamination) was located on the opposite side of the facility from the 10,000 gallon USTs. This contamination could not have resulted from the 10,000 gallon USTs and must have resulted from the 8,300 gallon UST. As mentioned above, corrective action in regard to the 8,300 gallon UST has already been determined to be subject to reimbursement by the UST Fund.

5. As a result of the determination that some contamination resulted from the 8,300 gallon UST (and thus related to Incident No. 93-1858), Vogue Tyre submitted various reports to IEPA under both the 94-2751 and 93-1858 incident numbers. On April 3, 1995, IEPA received Vogue Tyre's 20-Day Report, 45-Day Report, Site Classification Completion Report, and Corrective Action Plan. IEPA received Vogue Tyre's Corrective Action Completion Report on May 2, 1995. On May 19, 1995, IEPA received Vogue Tyre's Site Classification Work Plan and Budget.

6. On June 15, 1995, by letter sent via telecopier, IEPA "denied" Vogue Tyre's reports, declaring that Incident No. 94-2751 is "not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731." In the June 15 letter, IEPA further declared that the decision was IEPA's "final decision" for the purposes of appeal. A true and correct copy of the IEPA Final Decision Letter is attached hereto as Exhibit B and incorporated herein by reference. In a telephone conversation on July 19, 1995, Bur Filson of IEPA indicated that Vogue Tyre's reports were "denied" because the contamination at issue was associated with tanks removed in the mid-1980s.

7. IEPA's final decision is wrong. A certain amount of the release of gasoline at the facility resulted from the 8,300 gallon gasoline UST that was removed in 1993. The release was duly reported, and corrective action in regard to that UST has already determined to be reimbursable by the UST Fund. Thus, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 8,300 gallon UST should be reimbursable. Moreover, because the two 10,000 gallon USTs were properly registered on May 6, 1986 (prior to their removal), a February 7, 1993 OSFM administrative order indicating that the two 10,000 gallon USTs "[are] not or [are] no longer registrable" because of their removal date has no application because the two USTs had already been registered prior to that date. Therefore, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 10,000 gallon USTs should also be reimbursable.

8. This is Vogue Tyre's second appeal to the Board relating to the facility. With respect to Incident No. 94-2751, Vogue Tyre submitted to OSFM an Eligibility and Deductibility Application dated December 27 and 28, 1994. In the application, Vogue Tyre indicated that all USTs at the facility had experienced releases. In a February 1, 1995 letter, OSFM responded to the application by citing 415 ILCS § 5/57.9 and 430 ILCS § 15/4 and noting that the two 10,000 gallon USTs were ineligible because they were removed prior to September 24, 1987. On March 6, 1995, Vogue Tyre appealed OSFM's February 1 determination, and that appeal was assigned No. 95-78.

9. Since making its proper notifications to IEMA, Vogue Tyre has undergone substantial corrective action. This corrective action is consistent with the remediation

purposes of both the Illinois Environmental Protection Act and the Illinois Gasoline Storage Act, and Vogue Tyre's corrective action costs should be reimbursed by the UST Fund.

10. Therefore, the main issue before the Board is whether IEPA erred in denying Vogue Tyre's reports. Since it has already been determined that corrective action in regard to the 8,300 gallon UST is reimbursable, one sub-issue is what costs of the recent corrective action related to that UST. A second sub-issue is whether IEPA erred in denying Vogue Tyre's reports because the two 10,000 gallon USTs were removed in the mid-1980s.

11. Vogue Tyre requests a hearing before the Board in Chicago, and requests that the Board:

- (i) determine that IEPA's final decision of June 15, 1995 was erroneous and order IEPA to approve the various reports submitted by Vogue Tyre to IEPA; and
- (ii) order IEPA to (a) acknowledge that all of Vogue Tyre's corrective action is eligible for reimbursement from the UST Fund, and (b) begin processing Vogue Tyre's reports so that Vogue Tyre can be reimbursed for the costs of its corrective action.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

By: 

One of its Attorneys

Dated: July 18, 1995

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400

Exhibit A



Office of the Illinois
State Fire Marshal

General Office
217-785-0969

Divisions

ARSON INVESTIGATION
217-782-6855

BOILER and PRESSURE
VESSEL SAFETY
217-782-2696

FIRE PREVENTION
217-785-4714

MANAGEMENT SERVICES
217-782-9889

INFIRS
217-785-1016

PERSONNEL
217-785-1009

PERSONNEL STANDARDS
and EDUCATION
217-782-4542

PETROLEUM and
CHEMICAL SAFETY
217-785-5878

PUBLIC INFORMATION
217-785-1021

CERTIFIED MAIL - RECEIPT REQUESTED # P 435 173 603

January 4, 1994

Jerry Vestweber
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, IL 60077

In re:

Facility No. 2--021982
IEMA Incident No. 93-1858
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, COOK CO., IL

Dear Mr. Vestweber:

The Reimbursement Eligibility and Deductibility Application, received on 12-21-93 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek corrective action costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank #3 - 8,300 gallon gasoline
Tank #4 - 560 gallon used oil

The Illinois Environmental Protection Agency will send you a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government;
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law;
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.10 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision (35 Illinois Administrative Code 105.102(a) (2)).

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

The following tanks are also listed for this site:

Tank #1 - 10,000 gallon gasoline
Tank #2 - 10,000 gallon empty

Your application indicates that there has not been a release from these tanks. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact Kim Harms at (217)785-1020 or (217)785-5878 between 3:00 - 4:00 p.m.

Sincerely,



James I. McCaslin
Director
Division of Petroleum and Chemical Safety

JIM:KH:bc

cc: IEPA
Facility File

#5664

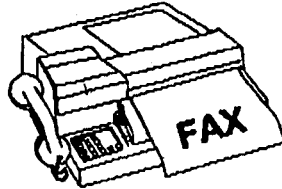
Exhibit B



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

P.O.Box 19276
2200 Churchill Road
Springfield, IL. 62794-9276

LEAKING UNDERGROUND STORAGE TANK SECTION



DATE: 6-15-95

TIME: _____

PLEASE DELIVER THESE 3 PAGES,
INCLUDING THIS COVER PAGE TO:

NAME: EDWARD COPELAND

FIRM or LOCATION: _____

COMPANY PHONE NUMBER: _____

FAX NUMBER: 312-565-8300

FROM: Bill Wilson

MEMO: _____

OFFICE PHONE NUMBER: 217-782-6761

IF YOU DID NOT RECEIVE ALL OF THE PAGES OR PAGES ARE ILLEGIBLE,
PLEASE CONTACT US AT ONE OF THE FOLLOWING NUMBERS AS SOON AS POSSIBLE.

OUR TELECOPIER NUMBER IS (217) 524-4193
OPERATOR'S PHONE NUMBER IS (217) 524-4648

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EPA OFFICE USE ONLY

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State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director

2200 Churchill Road, Springfield, IL 62794-9276

217/782-6761

Vogue Tyre & Rubber Company
Attn: Garry Goyak
4801 West Golf Road
Skokie, IL 60077

Re: LPC# 0312885218 -- Cook
Skokie/Vogue Tyre & Rubber Co.
4801 W. Golf Road
LUST Incident #942751
LUST Tech File

Dear Mr. Goyak:

The Illinois Environmental Protection Agency is in receipt of the following reports: 20-Day Report, 45-Day Report, Site Classification Completion Report, and the Corrective Action Plan dated March 27, 1995 and received April 3, 1995; the Corrective Action Completion Report dated April 26, 1995 and received May 2, 1995; and the Site Classification Work Plan and Budget dated May 16, 1995 and received May 19, 1995.

Based on the information currently in the Agency's possession, the Agency deems this incident not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731. No technical review of the above documents has been performed in accordance with 35 IAC, Section(s) 732.202, 732.307, 732.309, 732.400, 732.402, 732.403, 732.404 and the Illinois Environmental Protection Act, Section(s) 57.6 and 57.7. Therefore, the Agency is notifying the owner or operator that the following reports are being denied: 20-Day Report, 45-Day Report, Site Classification Completion Report, Corrective Action Plan, Corrective Action Completion Report, and Site Classification Work Plan and Budget.

However, the Agency did conduct a review of the information submitted to determine site remediation adequacy. The Agency has concluded that further remedial activities should be performed, and recommends the following to ensure that the Groundwater Standards/Objectives are not exceeded and the remaining soil contamination is addressed:

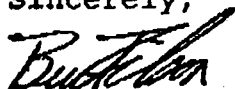
Letter to Garry Goyak
Page 2

1. Reinstallation of a groundwater monitoring well in the area of MW-2 which was destroyed during excavation activities;
2. Installation of a groundwater monitoring well in the alley in close proximity to borings B-13-16;
3. Quarterly monitoring of all monitoring wells for one year; and
4. Installation of a passive vent system in the area of the southeast corner of the building in the vicinity of the impacted soils remaining along the southern property boundary.

For purposes of appeal, this constitutes the Agency's final decision regarding the above matters. Please see Appendix 1 for an owner or operator's appeal rights.

If you have any questions please contact Tara Lambert of my staff at 217/782-6761.

Sincerely,



Bur Filson, Manager
Northern Unit
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

BF:TL:psk

Appendices: 1

Appendix 1

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(1) and Section 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision may, within 35 days after the notification of the final Agency decision, petition for a hearing before the Board; however, the 35-day period may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the 35-day initial appeal period.

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
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, Peter C. Warman, one of the attorneys for Vogue Tyre & Rubber Company,
certify that I caused a copy of the foregoing **Petition for Review of IEPA Final Decision** to
be served by messenger delivery before the hour of 4:30 p.m. to

Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

and by United States Mail, first class postage prepaid, to

Illinois Environmental Protection Agency
Attn: Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

on this 18th day of July, 1995.

