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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DEC 02 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS AYERS OIL CO.,)	
)	
Petitioner,)	
)	
v.)	PCB 05-48
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

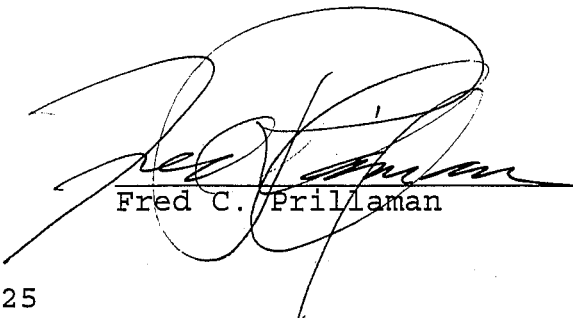
NOTICE OF FILING AND PROOF OF SERVICE

TO: Renee Cipriano, Director
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on December 1, 2004, we sent to the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via FedEx, of Petition for Review of Underground Storage Tank Fund Reimbursement Determination, for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the Respondent by enclosing same in envelopes addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a United States Post Office Mail Box at Springfield, Illinois, with postage fully prepaid, on the 1ST of December, 2004, and that courtesy copies of same were sent on same date, by U.S. Mail, postage fully prepaid, to the attorney of record for Respondent, to-wit:

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



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

THIS FILING SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
Pollution Control Board

PCB 05-48
(UST Appeal)

PETITION FOR REVIEW OF
UNDERGROUND STORAGE TANK FUND REIMBURSEMENT DETERMINATION

NOW COMES Petitioner, ILLINOIS AYERS OIL CO., by its undersigned attorneys, and pursuant to 415 ILCS 5/40 and 57.7, and 35 Ill. Adm. Code 105.204, hereby petitions the Pollution Control Board for review of the final determination of Respondent, Illinois Environmental Protection Agency ("Agency"), with respect to the Agency's July 28, 2004, deductions from the Petitioner's reimbursement request for Early Action/Free Product Recovery activities under the Illinois Underground Storage Tank Fund ("UST Fund"). In support, Petitioner states:

1. Petitioner is the owner of a gasoline service station located at 310 State Street, Beardstown, Cass County, Illinois. This facility has been designated LPC #01701547 by the Agency.

2. Petitioner notified the Illinois Emergency Management Agency ("IEMA") of a release of petroleum from an underground storage tank ("UST") at the facility, to which IEMA assigned Incident No. 20002020.

3. On or about May 24, 2004, Petitioner filed an application for reimbursement for corrective action costs incurred to remediate the petroleum release.

4. On or about July 28, 2004, the Agency rendered its final determination on Petitioner's request for reimbursement. A true and correct copy of the subject Agency decision is attached hereto and made part hereof as Exhibit A.

5. On September 3, 2004, Petitioner and the Agency jointly filed for a 90-day extension of the time for appeal, which was granted by the Board on September 16, 2004.

6. Petitioner prays that the Board reverse the Agency's final determination with respect to the disallowed costs, and restore the cuts.

7. The Agency's rejection of such costs is contrary to the Board's decision in Illinois Ayers Oil Co. v. IEPA, PCB 03-214 (April 1, 2004), which involved this very budget.

8. Petitioner reserves the right to present additional grounds for reversal of the Agency's final reimbursement determination with respect to the disallowed costs, as they may appear during the course of this appeal.

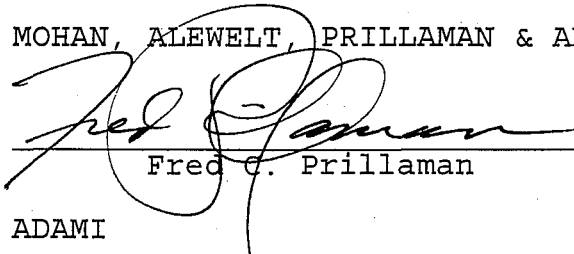
WHEREFORE, Petitioner respectfully requests that this Board grant a hearing in this matter and reverse the Agency's July 28, 2004, deductions from the Petitioner's reimbursement request and remand this matter to the Agency with instructions to approve the request as submitted, and grant such other relief as the Board deems appropriate, including legal costs for seeking payment under Title XVI of the Illinois Environmental Protection Act, pursuant to 415 ILCS 5/57/8(d), plus the costs of this action.

Respectfully submitted,

ILLINOIS AYERS OIL CO., Petitioner

By MOHAN, ALEWELT, PRILLAMAN & ADAMI

By



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza
Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

C:\MAPA\CDAVIS\Illinois Ayers Oil\Ayers III\Petition for Review III.wpd sew 12/1/04



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 RENE E. CIPRIANO, DIRECTOR

217/782-6762

JK 28 2004

Illinois Ayers Oil Company
Attention: Carl Adams, Jr.
P.O. Box 772
Quincy, Illinois 62301

Re: LPC #0170155047 -- Cass County
Beardstown/Illinois Ayers Oil Company (Ayerco #7)
310 State Street
LUST Incident No. 20002020
LUST FISCAL FILE

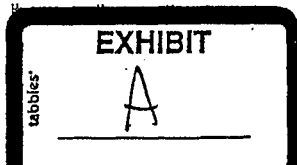
Dear Mr. Adams:

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 May 24, 2004 and was received by the Agency on June 1, 2004. The application for payment covers the period from October 4, 2001 to May 20, 2004. The amount requested is \$31,474.98.

The deductible amount for this claim is \$10,000.00. The total amount of the claim received on June 20, 2001 for \$2,328.40 was applied to the deductible. The balance of \$7,671.60 was taken from the claim received on February 11, 2002 for \$21,602.74, thus fulfilling the deductible amount. 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 July 16, 2004, 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 \$18,446.64 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.

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) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINGSVILLE - 2009 Mall Street, Collingsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200



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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, 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:

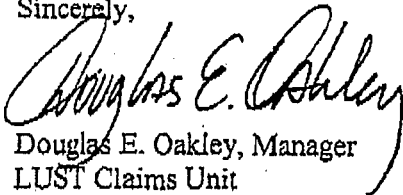
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Nancy Moore of my staff at 217/782-6762.

Sincerely,



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

DEO:NM:bjh\041585.doc

Attachment

cc: CSD Environmental Services, Inc.

Attachment A
Accounting Deductions

Re: LPC #0170155047 -- Cass County
Beardstown/Illinois Ayers Oil Company (Ayerco #7)
310 State Street
LUST Incident No. 20002020
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. \$12,127.34, deduction for costs associated with High Priority site activities. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts. (Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(f))
 - a. The amount requested for Investigation Costs (\$8,103.72) exceeds the amount approved for this line item in the High Priority budget with an approval date of March 28, 2003 (\$3,647.88). The difference of \$4,455.84 is being deducted.
 - b. The amount requested for Personnel Costs (\$21,735.50) exceeds the amount approved for this line item in the High Priority budget (\$14,064.00). The difference of \$7,671.50 is being deducted.
2. \$901.00, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh))
 - a. CSD Environmental Services has a direct or indirect financial interest in Heartland Drilling & Remediation. Since both companies are owned by the same entity, it is the Agency's position that handling charges are not warranted.

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