



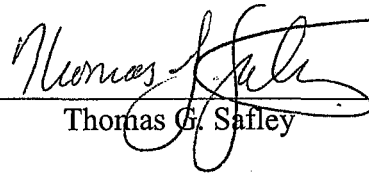
**CERTIFICATE OF SERVICE**

I, Thomas G. Safley, the undersigned, certify that I have served the attached  
PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION, ENTRY  
OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF  
THOMAS G. SAFLEY, and ENTRY OF APPEARANCE OF KENT E. MOHR, JR.,  
upon:

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

John J. Kim, Esq.  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield,  
Illinois, on April 14, 2005.

  
Thomas G. Safley

HODW:001/Fil/NOF-COS - Petition for Review Red Rooster

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD APR 19 2005

STATE OF ILLINOIS  
Pollution Control Board

RED ROOSTER CORPORATION f/k/a )  
CLARK RETAIL ENTERPRISES, INC. )  
(CLARK OIL #2086) )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB No. 05-125  
(UST – Petition for Review)

**PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION**

Petitioner, RED ROOSTER CORPORATION f/k/a CLARK RETAIL ENTERPRISES, INC. (“Petitioner”), pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/40 and 5/57.8(i)), and Subpart D of 35 Ill. Admin. Code Part 105, hereby requests review of the final decision by the Respondent, Illinois Environmental Protection Agency (“Agency”), denying Petitioner’s request for reimbursement of certain corrective action costs incurred in response to two releases of petroleum from underground storage tanks (“USTs”). In support of this Petition, the Petitioner states as follows:

1. Petitioner is a former operator of certain property located at 4805 North War Memorial Drive in Peoria, Illinois, hereinafter referred to as “the site.”
2. Petitioner formerly operated the USTs located at the site.
3. The Illinois Emergency Management Agency was notified of two releases from the above-described USTs, in accordance with applicable requirements. Thereafter, Petitioner performed corrective action in response to these releases, in accordance with applicable statutory and regulatory requirements.

4. On June 25, 2002, Petitioner submitted an application for payment to the Agency for corrective action costs incurred in response to releases from the above-described USTs, in accordance with the applicable requirements.

5. On December 6, 2004, the Agency issued its final decision regarding the June 25, 2004, application for payment. The Agency's December 6, 2004, determination stated that certain costs included in the application for payment were not eligible for payment from the Leaking Underground Storage Tank Fund ("LUST Fund"), because they lacked supporting technical documentation, and further stated that this decision constituted "the Agency's final action with regard to the above invoices." (See Exhibit A attached.)

6. On January 13, 2005, the Agency and Petitioner provided the Illinois Pollution Control Board ("Board") with a joint Request for Ninety Day Extension of Appeal Period, pursuant to Section 40(a)(1) of the Act (415 ILCS 5/40(a)(1)) and 35 Ill. Admin. Code Section 105.208. On January 20, 2005, the Board issued an Order granting the extension request and extended the time for filing an appeal of the Agency's December 6, 2004, final determination until April 14, 2005.

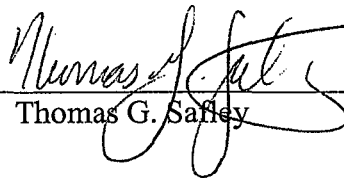
7. Petitioner is seeking review of the Agency's denial of reimbursement of certain corrective action costs incurred by Petitioner in response to releases of petroleum from USTs at the site as described in Exhibit A. The Agency's stated basis for its denial of reimbursement of these costs is arbitrary, capricious, and without statutory authority. Furthermore, the Agency is bound on review by the reasons given in its December 6, 2004, denial letter regarding access to the LUST Fund.

WHEREFORE, for the above and foregoing reasons, Petitioner, RED ROOSTER CORPORATION f/k/a CLARK RETAIL ENTERPRISES, INC., respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that the Agency's December 6, 2004, final decision is arbitrary and capricious, and without statutory authority;
2. Reverse the Agency's decision denying certain corrective action costs as set forth above;
3. Remand this matter to the Agency with instructions to issue payment of Petitioner's corrective action costs as provided for by the Act, but not inconsistent with the Board's Order, within 30 days of its entry;
4. Award Petitioner reasonable attorney's fees and expenses incurred in bringing this action; and
5. Award such further relief as deemed just and equitable in these premises.

Respectfully submitted,

RED ROOSTER CORPORATION f/k/a  
CLARK RETAIL ENTERPRISES, INC.  
Petitioner,

By:   
Thomas G. Safley

Dated: April 14, 2005

Edward W. Dwyer  
Thomas G. Safley  
Kent E. Mohr, Jr.  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900  
HODW:001/Fil/Petition for Review - Red Rooster (Clark #2086)



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 60607, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

DEC 06 2004

Clark Retail Enterprises, Inc.  
Attn: Jeanne Sobeck  
3003 Butterfield Road, Suite 300  
Oak Brook, Illinois 60523

DEC 10 2004  
*received*  
DEC 10 2004

Re: LPC #1430655103 - Peoria County  
Peoria/Clark Oil #2086  
4805 North War Memorial Drive  
LUST Incident #910437  
LUST FISCAL FILE

Dear Ms. Sobeck:

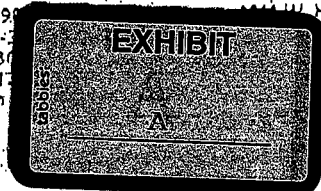
The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from November 1, 2000 to July 31, 2003. The amount requested was \$216,430.10.

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 request that are not being reimbursed. 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 June 29, 2004, 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 \$158,209.70 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 998-3300  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3300  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3300  
MARION - 2309 W. Main



HARRISON ST., DEER PLAINES, IL 60015 - (847) 294-4000  
ST., PEORIA, IL 61614 - (309) 693-5463  
SOUTH FIRST STREET, CHAMPAIGN, IL 61820 - (217) 278-5800  
MALL STREET, COLLINGSVILLE, IL 62234 - (618) 346-5120  
993-7200

Page 2

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 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:

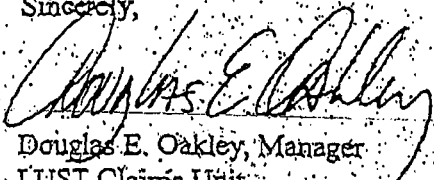
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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 Diana Gobelman of my staff or Jason Donnelly of the LUST Section technical staff at 217/782-6762.

Sincerely,



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

DEO:DLG:bjh\04316.doc

Attachment

cc: Environmental Management & Technologies

Attachment A  
Technical Deductions.

Re: LFC #1430655103 -- Peoria County  
Peoria/Clark Retail Enterprises, Inc.  
4805 North War Memorial Dr.  
LUST Incident No. 910437 & 20020052  
LUST FISCAL FILE

Item #      Description of Deductions

- 1.      \$28,435.00, deduction for sewer lining costs (Invoice #11989) that lack supporting technical documentation as the owner or operator failed to demonstrate that the costs are for corrective action performed in accordance with the plans approved by the Agency (Section 22.18b(d)(4)(F) of the Environmental Protection Act).

The Illinois EPA is requesting additional information to demonstrate lining of the sewers was necessary as part of corrective action.

- 2.      \$700.00, deduction for floor repair costs (Invoice #638-434) that lack supporting technical documentation as the owner or operator failed to demonstrate that the costs are for corrective action performed in accordance with the plans approved by the Agency (Section 22.18b(d)(4)(F) of the Environmental Protection Act).

- 3.      \$18,974.50, deduction for costs that lack supporting technical documentation as the owner or operator failed to demonstrate that the costs are for corrective action performed in accordance with the plans approved by the Agency (Section 22.18b(d)(4)(F) of the Environmental Protection Act).

The Illinois EPA is requesting a breakdown of costs for removing the old sewer versus installing a new sewer.

HACID 020052&910437



Attachment A  
Technical Deductions

*ALLIANT*

Re: LPC #1430655103 -- Peoria County  
Peoria/Clark Oil #2086  
4805 North War Memorial Drive  
LUST Incident No. 910437  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$55.65, deduction for an adjustment in costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

EMT Invoice #1839 - Mathis-Kelley

2.      \$5.25, deduction for costs which are not for Corrective Action activities (Section 22.18(e)(1)(C) and 22.18b(a)(3) of the Environmental Protection Act).

EMT Invoice #22 - FOIA request

DEO:DLG:bjh04316.doc

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

RED ROOSTER CORPORATION f/k/a )  
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Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB No. 05-125  
(UST – Petition for Review)

ENTRY OF APPEARANCE OF EDWARD W. DWYER

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER  
ZEMAN, and hereby enters his appearance on behalf of Petitioner, RED ROOSTER  
CORPORATION f/k/a CLARK RETAIL ENTERPRISES, INC., in the above-captioned  
matter.

Respectfully submitted,

RED ROOSTER CORPORATION f/k/a  
CLARK RETAIL ENTERPRISES, INC.,  
Petitioner,

By: Edward W. Dwyer (Signature)  
Edward W. Dwyer

Dated: April 14, 2005

Edward W. Dwyer  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

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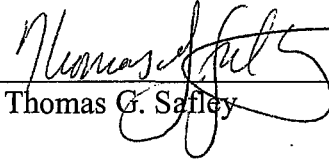
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**ENTRY OF APPEARANCE OF THOMAS G. SAFLEY**

NOW COMES Thomas G. Safley, of the law firm of HODGE DWYER ZEMAN,  
and hereby enters his appearance on behalf of Petitioner, RED ROOSTER  
CORPORATION f/k/a CLARK RETAIL ENTERPRISES, INC., in the above-captioned  
matter.

Respectfully submitted,

RED ROOSTER CORPORATION f/k/a  
CLARK RETAIL ENTERPRISES, INC.,  
Petitioner,

By:   
Thomas G. Safley

Dated: April 14, 2005

Thomas G. Safley  
HODGE DWYER ZEMAN  
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Post Office Box 5776  
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HODW:001/Fil/EOA - TGS Petition for Review Red Rooster

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD APR 19 2005

STATE OF ILLINOIS  
Pollution Control Board

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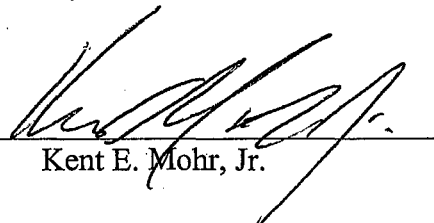
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(UST – Petition for Review)

**ENTRY OF APPEARANCE OF KENT E. MOHR, JR.**

NOW COMES Kent E. Mohr, Jr., of the law firm of HODGE DWYER ZEMAN,  
and hereby enters his appearance on behalf of Petitioner, RED ROOSTER  
CORPORATION f/k/a CLARK RETAIL ENTERPRISES, INC., in the above-captioned  
matter.

Respectfully submitted,

RED ROOSTER CORPORATION f/k/a  
CLARK RETAIL ENTERPRISES, INC.,  
Petitioner,

By:   
Kent E. Mohr, Jr.

Dated: April 14, 2005

Kent E. Mohr, Jr.  
HODGE DWYER ZEMAN  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

HODW:001/Fil/EOA-KEM Petition for Review Red Rooster

