

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

MAY 09 2005

STATE OF ILLINOIS  
Pollution Control Board

RED ROOSTER CORPORATION )  
(f/k/a CLARK RETAIL ENTERPRISES, )  
INC.) (CLARK OIL #2086), )  
 )  
Petitioner, ) PCB No. 05-126  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

**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 purported "final decision" by the Respondent, Illinois Environmental Protection Agency ("Agency"), dated December 30, 2004, purporting to deny in part 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 a final decision regarding the June 25, 2004, application for payment, a true and correct copy of which is attached hereto as Exhibit A. 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." The December 6, 2004 letter stated that, of the total \$216,430.10 sought by Petitioner, the Agency would authorize reimbursement of \$158,209.70.

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, of the Agency's December 6, 2004 letter. 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. On April 14, 2005, Petitioner filed a timely petition for review of the December 6, 2004 letter; that petition is currently pending before this Board as case number PCB 05-125.

7. On December 30, 2004, the Agency issued the purported “final decision” which is the subject of this petition for review, a true and correct copy of which is attached hereto as Exhibit B. The December 30, 2004 letter concerns the same information and request for reimbursement that was the subject of the Agency’s final action of December 6, 2004.

8. Among other things, the December 30, 2004 “final action” letter stated: “This letter rescinds the Agency letter of 12/6/04.” The December 30, 2004 letter also stated that, of the total \$216,430.10 sought by Petitioner, the Agency would authorize reimbursement of \$120,693.26, which is \$37,516.44 less than was authorized for reimbursement by the December 6, 2004 letter.

9. 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, of the Agency’s December 30, 2004 letter. 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 May 9, 2005.

10. Petitioner is seeking review of the Agency’s December 30, 2004 letter purporting to rescind and modify, or reconsider, its earlier final decision. The Agency’s stated basis for its denial of reimbursement and reconsideration 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 30, 2004, final decision is arbitrary and capricious, and without statutory authority, and is void and of no effect;
2. Reverse the Agency's decision denying certain corrective action costs as set forth above;
3. Remand the 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 its undersigned attorney,

By:   
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
tel: (217)523-2753  
fax: (217)523-4366  
hedingerlaw@cityscape.net



# 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 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

EXHIBIT

tabbles  
          A          

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) 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 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 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:

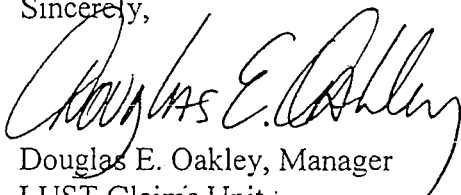
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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: LPC #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.      \$28,485.00, 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.

HAC:JD\020052&910437

Attachment <sup>b</sup>  
Technical Deductions

*ALUMINUM*

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

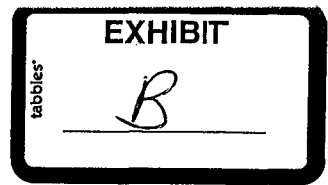
1.      \$55.65, deduction for an adjustment in costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).  
  
         EMT Invoice #1839 – Mathis-Kelley
  
2.      \$5.25, deduction for costs which are not for Corrective Action activities (Section 22.18(e)(1)(C) and 22.18b(a)(3) of the Environmental Protection Act).  
  
         EMT Invoice #22 – FOIA request

DEO:DLG:bjh\04316.doc





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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217/782-6762

DEC 30 2004

JAN 04 2005

Clark Retail Enterprises, Inc.  
Attn: Jeanne Sobeck  
3003 Butterfield Road, Suite 300  
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JAN 04 2005

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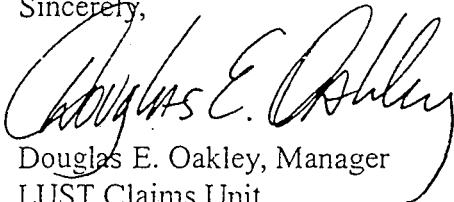
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Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

This letter rescinds the Agency letter of 12/6/04.

If you have any questions, please contact Bill Richards 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:WWR:bjh\04316.doc

Attachment

cc: Environmental Management & Technologies

Attachment A  
Accounting Deductions

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Peoria/Clark Oil #2086  
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              EMT Invoice #22 – FOIA request
3.            \$37,516.44, deduction for corrective action costs which exceed the annual aggregate of allowable costs incurred limit for this site (Section 22.18b(b) of the Environmental Protection Act).  
  
              Costs for the year 2001 exceed the annual aggregate allowable limit.

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Attachment A  
Technical Deductions

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Peoria/Clark Retail Enterprises, Inc.  
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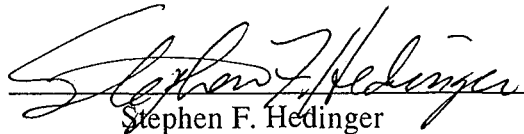
**NOTICE OF FILING AND PROOF OF SERVICE**

The undersigned certifies that an original and nine copies of the foregoing Petition for Review of LUST Fund Reimbursement Decision, and of this Notice of Filing and Proof of Service, were served upon the Clerk of the Illinois Pollution Control Board, and one copy to each of the following parties of record in this cause by enclosing same in an envelope addressed to:

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

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

with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on 6 May, 2005.

  
Stephen F. Hedinger

Hedinger Law Office  
2601 South Fifth Street  
Springfield, IL 62703  
(217) 523-2753 phone  
(217) 523-4366 fax  
This document prepared on recycled paper