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NOV 08 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

MORGAN SOUTHERN COMPANY,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

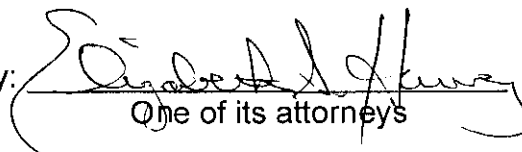
PCB 06-17
(UST Fund Appeal)

NOTICE OF FILING

To: John J. Kim
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on this 8th day of November 2005, the following were filed with the Illinois Pollution Control Board: **Petitioner's Appearance and Appeal of IEPA Reimbursement Denial**, which are attached and herewith served upon you.

MORGAN SOUTHERN CORPORATION

By: 
One of its attorneys

Dated: November 8, 2005

Elizabeth S. Harvey
John P. Arranz
Swanson, Martin & Bell, LLP
One IBM Plaza, Suite 3300
330 North Wabash Avenue
Chicago, Illinois 60611
312/321-9100

CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of Petitioner's Appearance and Appeal of IEPA Reimbursement Denial to the IEPA Division of Legal Counsel via U.S. Mail at One IBM Plaza, Chicago, IL 60611 on or before 5:00 p.m. on November 8, 2005.


Jeanette M. Podlin

- [x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

NOV 08 2005

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ILLINOIS POLLUTION CONTROL BOARD

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Pollution Control Board

MORGAN SOUTHERN COMPANY,

Petitioner,

VS.


ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,


Respondent.

PCB 06-17
(UST Fund Appeal)

APPEARANCE

We hereby enter our appearances on behalf of petitioner MORGAN SOUTHERN COMPANY.


Elizabeth S. Harvey


John P. Arranz

Elizabeth S. Harvey
John P. Arranz
Swanson, Martin & Bell, LLP
One IBM Plaza, Suite 3300
330 North Wabash Avenue
Chicago, Illinois 60611
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BEFORE THE
ILLINOIS POLLUTION CONTROL BOARDSTATE OF ILLINOIS
Pollution Control Board

MORGAN SOUTHERN COMPANY,)	
)	
Petitioner,)	
)	
vs.)	PCB 06-17
)	(UST Fund Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

APPEAL OF IEPA REIMBURSEMENT DENIAL

Petitioner, MORGAN SOUTHERN COMPANY ("Morgan"), by its attorneys Swanson, Martin & Bell, LLP, hereby appeals from respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's decision denying reimbursement of some of Morgan's requested reimbursement from the Leaking Underground Storage Tank (LUST) Fund. This appeal is filed pursuant to Sections 40 and 57.8(i) of the Environmental Protection Act (415 ILCS 5/40 and 5/57.8(i)), and Subpart D of Part 105 of the Board's procedural rules (35 Ill.Adm.Code 105.Subpart D).

1. On June 30, 2005, the Agency issued its final reimbursement decision to Morgan. (See Exhibit A.) That decision was received by Morgan on or about July 6, 2005.

2. On August 11, 2005, the Agency filed a request for a ninety-day extension of the time to appeal. On August 18, 2005, the Board granted that extension. The extension expires on November 8, 2005. This appeal is therefore timely filed.

3. This appeal involves Morgan's application for reimbursement from the LUST Fund. Morgan requested reimbursement of \$109,059.10 from the Fund. (That request is subject to satisfying a \$10,000 deductible.) On June 30, 2005, the Agency denied reimbursement of \$100,742.61 of the requested amount.

4. The Agency denied reimbursement of \$78,873.99 in costs, as being beyond the time period for early action activities. (See Exhibit A, Attachment A "Accounting Deductions," paragraphs 3 and 9.)

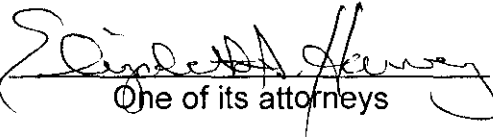
5. The amounts denied as being outside the time period for early action activities is indeed reimbursable. Morgan notified the Illinois Emergency Management Agency (IEMA) of the release on February 14, 2003, triggering the 52-day early action period. The early action period thus ended on April 7, 2003. However, the weather during that period was unfavorable for remediation work. The average temperature for the 52-day period was approximately 39.5 degrees Fahrenheit. For substantial portions of the 52-day period, there were large amounts of snow on the ground, making remediation impossible. Even after the snow melted, rain made remediation work extremely difficult. In short, weather prevented completion of early action activities within the 52-day period.

6. Because weather prevented the completion of early action activities within the 52-day period, those costs should be reimbursed.

WHEREFORE, petitioner MORGAN SOUTHERN COMPANY asks the Board to enter an order finding that the costs denied in paragraphs 3 and 9 of Attachment A of the Agency's June 30, 2005, decision must be reimbursed, and for such other relief as the Board deems appropriate.

Respectfully submitted,

MORGAN SOUTHERN CORPORATION

By: 
One of its attorneys

Dated: November 8, 2005

Elizabeth S. Harvey
John P. Arranz
Swanson, Martin & Bell, LLP
One IBM Plaza, Suite 3300
330 North Wabash Avenue
Chicago, Illinois 60611
312/321-9100

Exhibit A



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. BLACOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8653 0002

JUN 30 2005

Double Corporation of Illinois
Attn: David Morgan
1500 Cedar Grove Road
Conley, GA 30288

Re: LPC #0310395025 -- Cook County
Calumet City/Morgan Southern Company
1579 Valencia Court
LUST Incident No. 20030203
LUST FISCAL FILE

Dear Mr. Morgan:

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, 2005 and was received by the Agency on May 26, 2005. The application for payment covers the period from February 14, 2003 to April 22, 2005. The amount requested is \$109,059.10.

The deductible amount to be assessed on this claim is \$10,000.00. The amount being applied to the deductible from this claim is \$8,316.49, leaving a balance of \$1,683.51 still to be met. In addition to the deductible, 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 June 7, 2005, 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 cannot be prepared for submission to the Comptroller's office 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.

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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 482-7780
ELGIN - 595 South State, Elgin, IL 60123 - (847) 606-1111
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 643-5461
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 278-5800
MARIETTA - 2309 W. Main Street, Marietta, IL 60016 - (847) 294-4000
CHAMPAIGN - 125 South First Street, Champaign, IL 61820 - (217) 278-5800
COLLINGSVILLE - 09 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARIETTA - 5181 993-7200

EXHIBIT

A

Page 2

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:

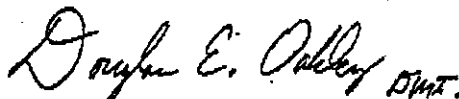
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 or Mike Thorsen of Tom Henninger's staff at 217/782-6762.

Sincerely,



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

DEO:NM:mel051871

Attachment

cc: Professional Service Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #0310395025 -- Cook County,
Calumet City/Morgan Southern Company
1579 Valencia Court
LUST Incident No. 20030203
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. \$825.00, deduction for costs associated with the compaction and density testing of backfill material (35 Ill. Adm. Code 732.606(w)). Additionally, this cost is not a corrective action cost. "Corrective action" means an activity associated with compliance with the provisions of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)).

None of the costs incurred from April 28, 2003 to May 2, 2003 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release. The costs in question were not incurred within the time allowed for such reimbursement. (35 Ill. Adm. Code 732.202(g))

- A. 4 hours @\$55.00 (\$220.00) for Timothy Gardner and 11 hours @ \$55.00 (\$605.00) for Brian Byrne are being deducted from the psi personnel costs. These costs are past the 52 day time period for Early Action, and costs for compaction are ineligible.

2. \$742.35, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

- A. The psi personnel hours for Debra Sandrik are being reduced. There are 18.5 hours requested on the Personnel Summary, but there are only 11.10 hours documented on the back-up as being claimed. 7.4 hours @ \$45.00 are being deducted (\$333.00).

Page 2

- B. There was no receipt provided for Site Registration requested under Field Purchases. Handling charges can be considered only on costs with accompanying receipts/invoices. The related Handling Charges are being deducted (\$9.35).
 - C. There was no invoice submitted from U.S. Biosystems for the amount of this deduction (\$400.00).
3. None of the costs incurred from April 8, 2003 to January 7, 2005 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release. The costs in question were not incurred within the time allowed for such reimbursement. (35 Ill. Adm. Code 732.202(g))
- A. There are psi Personnel Costs past 52 days from IEMA (\$5,876.00).
 - B. There are RW Collins Personnel Costs incurred past 52 days (\$5,692.50).
 - C. Equipment usage after 52 days is denied (\$12,477.50).
 - D. Proctor Analysis, requested under Stock Items is past 52 days (\$150.00).
 - E. The IDOT permit, requested under Field Purchases, is past 52 days (\$31.00).
 - F. There are subcontractor costs past 52 days (\$49,070.90).
4. \$15,548.17, deduction for costs for corrective action or indemnification that were incurred prior to the owner or operator providing notification of the release to the Illinois Emergency Management Agency (IEMA, formerly IESDA) (Section 57.8(k) of the Act and 35 Ill. Adm. Code 732.606(n)).
- A. There are psi Personnel hours prior to IEMA (\$1,662.50).
 - B. There are RW Collins Personnel hours incurred prior to IEMA (\$1,782.50).
 - C. There is Equipment usage that is prior to IEMA. In addition, the costs incurred on February 13, 2003 would be associated with the tank pull (\$8,285.00).
 - D. There are Subcontractor costs prior to IEMA. In addition, the Lincoln Paving Company invoice, the Material Services Corporation invoice with a ship date of February 13, 2003, and the RS Used Oil Services invoice with a job date of February 13, 2003 include costs associated with a planned tank pull, the Administrative Order and/or the two ineligible oil tanks (\$3,818.17).
5. \$3,426.00, deduction for costs for the removal, disposal, or abandonment of an underground storage tank that was removed or abandoned, or permitted for removal or abandonment, by the Office of the State Fire Marshal before the owner or operator provided notice to the Illinois Emergency Management Agency of a release of petroleum (Section 57.8(j) of the Act and 35 Ill. Adm. Code 732.606(k)).

Deduction for costs incurred for the removal, disposal, or abandonment of the underground storage tank(s) which were not removed in accordance with Office of the State Fire Marshal regulations. (Section 57.5(b) of the Act and 35 Ill. Adm. Code 732.606(i))

Page 3

Deduction for costs for the removal of underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. (Section 57.9(a) of the Act and 35 Ill. Adm. Code 732.608(a)(1))

Deduction for costs for corrective action or indemnification that were incurred prior to the owner or operator providing notification of the release to the Illinois Emergency Management Agency (IEMA; formerly IBSDA) (Section 57.8(k) of the Act and 35 Ill. Adm. Code 732.606(n)).

- A. RW Collins Personnel Costs incurred on February 13, 2003 (the day of the tank pull) are denied. This site had a planned tank pull, an Administrative Order issued from OSFM, and there were two oil tanks pulled that are not eligible. In addition, these costs are prior to IEMA (\$3,200.00).
- B. The permits from the City of Calumet City and from IDOT that are associated with the tank pull are denied (\$226.00).

- 6. \$68.98, deduction for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund (Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 732.608).

The following deductions are denying 5.21% of the costs indicated for being associated with the two ineligible oil tanks. The total tank volume was 21,100 gallons. The total tank volume of the ineligible tanks is 1,100 gallons. $1,100 / 21,100 = 5.21\%$ of the total tank volume associated with the ineligible tanks.

- A. This deduction is from the RW Collins personnel hours incurred on February 14, 2003 (\$31.26).
- B. This deduction is from the Equipment Costs incurred on February 14, 2003. (\$23.45).
- C. This deduction is from the Material Service Corporation invoice dated February 17, 2003 with a ship date of February 14, 2003 (\$14.27).

- 7. \$1,140.00, deduction for costs incurred for additional remediation after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. (35 Ill. Adm. Code 732.606(kk))

None of the costs incurred from January 25, 2005 to April 15, 2005 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release. The costs in question were not incurred within the time allowed for such reimbursement. (35 Ill. Adm. Code 732.202(g))

- A. There are psi Personnel Costs past NFR and past 52 days from IEMA.

Page 4

8. \$40.00, deduction for costs incurred for additional remediation after receipt of a No Further Remediation Letter for the occurrence for which the No Further Remediation Letter was received. (35 Ill. Adm. Code 732.606(kk))

A. The truck usage, billed under Stock Items, is past NFR.

9. \$4,576.09, adjustment in the handling charges due to the deduction(s) of ineligible costs (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607).

A. The Handling Charges associated with the deductions from Field Purchases are denied (\$30.80).

B. The Handling Charges associated with the deductions from Subcontractors are denied (\$4,545.29).

10. \$.02, deduction for costs due to a mathematical error. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(ff))

This deduction is from the total of the line items on the Summary Sheet for All Charges. The line items total \$109,059.12, but only \$109,059.10 is requested.

11. \$.10, 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))

This deduction is from the total amount requested on the Summary Sheet for All Charges. The amount certified on the Payment Certification form is \$109,059.00.

NM:me\051872

Attachment A
Technical Deductions

Re: LPC #0310395025 -- Cook County
Calumet City/Morgan Southern, Inc.
1579 Valencia Court
LUST Incident No. 20030203
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

\$78.00, deduction for costs submitted after the issuance of a No Further Remediation (NFR) Letter. Pursuant to 35 Ill. Adm. Code 732.305(d) or 732.405(d), any plan or budget shall be submitted to the Illinois EPA for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of 35 Ill. Adm. Code 732 prior to the issuance of an NFR Letter.

MRT:mrt\