

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

RECEIVED
CLERK'S OFFICE

DEC 02 2005

STATE OF ILLINOIS
Pollution Control Board

E & L TRUCKING COMPANY,)	
Petitioner,)	
v.)	PCB No. 06-50
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

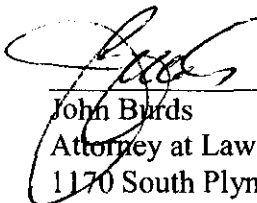
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

John Kim
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that pursuant to the Illinois Pollution Control Board's November 3, 2005, Order, I have today filed with the office of the Clerk of the Pollution Control Board an AMENDED PETITION FOR REVIEW on behalf of E & L TRUCKING COMPANY, a copy of which is herewith served upon you.

Respectfully submitted on behalf of Petitioner,

E & L TRUCKING COMPANY,



John Burds
Attorney at Law
1170 South Plymouth Court - Suite 2NE
Chicago, IL 60605
Phone: (312) 341-0037
Facsimile: (312) 341-9394

Dated: December 2, 2005

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E & L TRUCKING COMPANY'S
AMENDED PETITION FOR REVIEW

NOW COMES the Petitioner, E & L TRUCKING COMPANY, by and through its attorney, John Burds pursuant to the November 3rd, 2005 Order of the ILLINOIS POLLUTION CONTROL BOARD ("Board") and herein submits E & L Trucking Company's Amended Petition for Review petitioning the Board for review of Repondent's, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S ("Agency"), final determination dated September 14, 2005, denying E & L Trucking Company's application for payment from the Underground Storage Tank Fund ("UST Fund"). In support thereof and pursuant to the Board's Order of November 3rd, 2005, requiring that E & L Trucking Company file an amended petition on or before December 3, 2005, Petitioner, E & L Trucking states as follows:

Material Facts

1. On October 20, 2004, E & L Trucking submitted High Priority Corrective Action Plan and Budget totaling \$45, 087.99, for corrective action activities.
2. On December 2, 2004, the Agency allegedly received E & L Trucking Company's application for reimbursement dated May 17, 2005.
3. By correspondence dated December 23, 2004, the Agency approved the High Priority Corrective Plan and Budget which included all costs submitted within the application for reimbursement submitted by E & L Trucking dated May 17, 2005.

4. On May 19, 2005 the Agency allegedly received E & L Trucking Company's application for reimbursement.
5. By correspondence dated September 14, 2005, the Agency issued a final determination "[f]or purposes of appeal . . .," indicating that the application for reimbursement is incomplete.

Service

1. As provided within its initial Petition for Review, E & L Trucking, acknowledged therein that by correspondence dated September 14, 2005, the Agency issued a final determination "[f]or purposes of appeal . . .," indicating that the application for reimbursement is incomplete.
2. By filing its initial Petition for Review on October 11, 2005 (well within the 35 days after the date of service of the Agency's final decision) and within its Response to the Agency's Motion to Dismiss Petition E & L Trucking Company has previously acknowledged receipt of the Agency's final determination dated September 14, 2005 and delivered via certified mailing, Certified Mail # 7004 2510 0001 8646 1184.
3. Pursuant to 735 ILCS 5/3-103, the method of service of the decision shall be as provided in the Act governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision at his or her last known residence or place of business.
4. Pursuant to Board rules 105.404 and 101.304(c) Time of Service. In the case of personal service, service is deemed complete on the date personal delivery was effectuated. In the

case of facsimile transmission, service is deemed complete on the date of a complete and proper transmittal (facsimile filings are only allowed in accordance with Section 101.302(d) of this Part). In the case of service by registered or *certified mail*, or by messenger service, service is deemed complete on the date specified on the registered or certified mail receipt or the messenger service receipt. In the case of service by U.S. Mail, service is presumed complete four days after mailing.

5. Per the Track & Confirm mechanism of the United States Postal Service the document with Certified Mail # 7004 2510 0001 8646 1184 was delivered at 1:28 pm on September 16, 2005 in Orland Park, IL 60462.
6. Herein and pursuant to the Board's Order of November 3rd, 2005 and Sections 105.408(b) and Illinois Supreme Court Rule 12(c), E & L Trucking acknowledges service and receipt of the Agency's final determination dated September 14, 2005, on or about September 16, 2005.

Grounds for Appeal

1. The September 14, 2005, Agency final determination acknowledges receipt of E & L Trucking Company's application for payment covering the period from March 24, 2000 to January 21, 2005 and that the amount requested is \$45,087.99.
2. The application for payment submitted by E & L Trucking and allegedly received by the Agency on May 19, 2005 is reasonable and consistent with the Act and regulations at 35 Ill. Admin Code 732.
3. The requirements for a complete application for payment itemized within 35 Ill. Admin Code 732.601(b) were fulfilled within the application for reimbursement submitted by E & L Trucking and allegedly received by the Agency on May 19, 2005.

4. The work for which payment is sought was performed and/or competed pursuant to an approved High Priority Corrective Plan and Budget approved by the Agency on December 23, 2004.
5. The Agency's final determination indicates that the application for payment is incomplete pursuant to Attachment A. Attachment A provides two ground as the basis of the denial finding it incomplete and includes comments that are contradictory to information previously provided by the Agency and internally inconsistent with previous correspondence issued by the Agency to E & L Trucking Company for the identical costs.
4. The first basis provides that the Agency cannot determine which costs within the application are being submitted for reimbursement and identifies \$12,580.59 as previously approved costs.
5. The complete application allegedly received by the Agency on May 19, 2005, clearly demonstrates that all costs submitted therein are being submitted for reimbursement pursuant to the approved High Priority Corrective Plan and Budget dated December 23, 2004 and further that none of the cost previously approved and applied toward the applicable deductible or paid are being sought for reimbursement.
6. The second basis for the Agency denial and incompleteness finding provides that the certain costs totaling \$2,768.00 lacked supporting documentation.
7. The application for reimbursement allegedly received by the Agency on May 19, 2005 was complete and adequate supporting documentation was provided therein, and the Agency's refusal to approve payment by claiming lack of supporting documentation

exceeded the Agency's authority and is a violation of the Environmental Protection Act ("Act") and the regulations at 35 Ill. Adm. Code 732.

8. The Agency does not identify the basis of non-payment, of the remainder of the costs submitted for reimbursement totaling no less than \$29,739.40.
9. Section 57.8 (a)(1) of the Act provides that, ". . . , the Agency shall make a payment determination within 120 days of receipt of the application." This same provision states that, "[i]f the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application."
10. The Agency did not make a payment determination within 120 days related to the outstanding amounts totaling no less than \$29,739.40 and by operation of law these amounts should be deemed approved and payable to E & L Trucking Company.
11. The Agency's denial of certain costs as lacking supporting documentation also demonstrates that the Agency has and/or intends to perform a full review of the application for reimbursement submitted by E & L Trucking which is in violation of 35 Ill. Admin. Code 732.602(b).
12. 35 Ill. Admin. Code 732.602(b) provides the circumstances in which the Agency may conduct a full review of any application for payment. None of the listed circumstances provided within 35 Ill. Admin. Code 732.602(b) exist.
13. Pursuant to 35 Ill. Admin. Code 732.602(c) the Agency may require the owner or operator to submit to a full accounting (i.e. invoices) supporting all claims only when conducting a full review of any application for payment. Thus the Agency final determination issued on September 14, 2005 is both arbitrary and capricious and exceeds

its statutory and regulatory authority to conduct a full review of the application for reimbursement submitted by E & L Trucking Company and that it allegedly received on May 19, 2005.

Prayer for Relief

WHEREFORE, the Petitioner, E & L TRUCKING COMPANY, hereby respectfully requests that the Board enter an order:

That the Agency violated the Act and regulations and require the Agency to comply with the Act and Regulations;


That the Agency approve the application for reimbursement submitted by E & L Trucking and allegedly received by the Agency on May 19, 2005;

That E & L Trucking is owed by operation of law the full amount of the requested payment, but no less than those cost never reviewed by the Agency equaling no less than \$29,739.40;

For E & L Trucking Company's attorneys' fees and costs in bringing this appeal.

Respectfully submitted on behalf of the Petitioner,

E & L TRUCKING COMPANY,



John Burds
Attorney at Law
1170 South Plymouth Court - Suite 2NE
Chicago, IL 60605
Phone: (312) 341-0037
Facsimile: (312) 341-9394

Dated: December 2, 2005

This filing submitted on recycled paper.



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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8646 1184

SEP 14 2005

E & L Trucking
Attn: Tim Fay
14332 Maycliff Drive
Orland Park, IL 60462

Re: LPC #0310035175 -- Cook County
Alsip/E & L Trucking Company
12625 Hamlin Court
LUST Incident No. 20000517
LUST FISCAL FILE

Dear Mr. Fay:

The Illinois Environmental Protection Agency has reviewed the application for payment that was submitted for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act). This information was dated May 5, 2005 and was received by the Agency on May 19, 2005. The application for payment covers the period from March 24, 2000 to January 21, 2005. The amount requested is \$45,087.99.

The Agency has determined that your application for payment is incomplete pursuant to Attachment A. Because your application for payment is incomplete, it is being returned with this letter and Attachments. In order to comply with the requirements of Title XVI, you must address the issue(s) set forth in the Items cited in Attachment A.

In accordance with Section 57.8(a)(1) of the Act, the Agency has 120 days from the date of receipt of a complete application for payment to make a payment determination. Because your application for payment was not complete, the 120-day clock has stopped. Upon receipt of a complete application for payment, the Agency will begin the 120-day time period again.

All future correspondence must be submitted to:

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

PRINTED ON RECYCLED PAPER

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

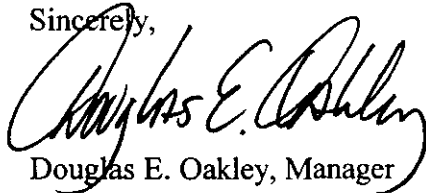
Please include the Re: block at the beginning of this letter on all future payment request submittals.

To ensure timely processing of your application for payment, please provide the missing items within 30 days of the date of this letter.

For purposes of appeal, this letter constitutes the Agency's final decision regarding the above matters.

Should you have any questions or require further assistance, do not hesitate to contact Catherine S. Elston of my staff at 217/782-6762.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas E. Oakley", is written over the typed name.

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

DEO:CSE:me\051152.doc

Attachment

cc: Dearborn Environmental Corp

ATTACHMENT A

Re: LPC 0310035175 - Cook County
Alsip/E & L Trucking Company
12625 Hamlin Company
LUST Incident No. 200004517
LUST TECH FILE

1. We are unable to determine which costs on the invoices are being submitted for reimbursement. When the claim is resubmitted please highlight which portion of the costs you are seeking reimbursement. As the claim is now we cannot determine which invoices are being submitted for partial payment and which invoices are being submitted for payment in full.

According to our records the following costs have been paid:

GeoResolution Services invoice #043003 - \$5,843.92
GeoResolution Services invoice #051601 - \$4,631.50
R.W. Collins invoice #10211 - \$2,105.17
Total - \$12,580.59
Costs applied to deductible - \$10,000.00
Payment received - \$2,580.59

2. The billing(s) submitted includes costs that lack supporting documentation. A corrective action plan billing(s) for a site classified as high priority must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan. (Section 57.7(c)(1)(B) of the Act) Since there is no supporting documentation of costs, the Agency cannot determine if the minimum requirements have been exceeded. Therefore, these costs exceed the minimum requirements necessary to comply with Title XVI. (Section 57.5(a) of the Act)

Dearborn Environmental invoice #161-7-04 \$400.00.

Please provide backup documentation for the reproduction and shipping of documents.

GeoResolution invoice #071701 \$558.00.

Please provide backup documentation for drafting costs of \$180.00.

Please provide backup documentation for the laboratory analysis. The invoice states the amount of \$1,900.00 for analysis but the backup invoice EMT #005592-IN has the total amount of \$1,582.00 for a difference of \$318.00.

Please provide backup documentation for the misc. expenses of \$60.00.

GeoResolution invoice #081101 \$1,810.00.

Please provide backup documentation for the subcontractor costs of \$800.00.

Please provide backup documentation for the laboratory analysis costs of \$900.00

Please provide backup documentation for the misc. expenses of \$110.00.

CSE:me\051153.doc

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 2, 2005, I served true and correct copies of the E & L TRUCKING COMPANY'S, AMENDED PETITION FOR REVIEW upon the following named persons by personally delivering them to the address as set for below on the 2nd day of December, 2005:


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

and upon the following named persons by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Chicago, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Kim
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276

Respectfully Submitted on behalf of Petitioner,

E&L TRUCKING COMPANY,



John Burds
Attorney at Law
1170 South Plymouth Court - Suite 2NE
Chicago, IL 60605
Phone: (312) 341-0037
Facsimile: (312) 341-9394