

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WILLINGHAM FARMS,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 07-121

RECEIVED
CLERK'S OFFICE

SEP 07 2007

STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Melanie Jarvis
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that on September 7, 2007, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copies of a Petition for Review of Illinois Environmental Protection Agency Decision.

Dated: September 7, 2007

Respectfully submitted,

Willingham Farms

By:

Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
417351v1

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

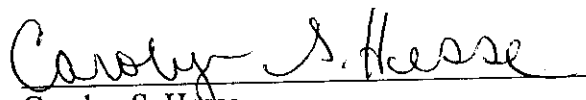
CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decision by placing a copy in an envelope addressed to:

Melanie Jarvis
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 7th Day of September, 2007.


Carolyn S. Hesse

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

**RECEIVED
CLERK'S OFFICE**

SEP 07 2007

**STATE OF ILLINOIS
Pollution Control Board**

WILLINGHAM FARMS,)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-121
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISION**

Willingham Farms, by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Willingham Farms ("Petitioner"), was the owner of tanks located at 5713 Shawnee College Road, Ullin, Pulaski County, Illinois. One gasoline, one diesel fuel and one used oil underground storage tanks (UST's) were located on the property.
2. LUST Incident Number 2004-0141 was obtained. The site has also been assigned LPC#1530355008-Pulaski County.
3. On December 16, 2005, Petitioner sent to the Agency a Site Investigation Completion Report (SICR). *Exhibit 1.*
4. By letter dated March 14, 2006, the Agency approved the SICR.

Exhibit 2.

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

5. On January 4, 2007 and March 19, 2007, the Agency received from Petitioner's consultant the Corrective Action Plan and Budget dated January 4, 2007 and March 19, 2007 ("Proposed CAP and Budget"). *Exhibits 3 and 4*, respectively.
6. On May 2, 2007, the Agency sent a letter (the "Letter") to Petitioner rejecting the Proposed CAP and Budget. (*Exhibit 5*.) Petitioner is appealing the Agency's decisions in the Letter.
7. On June 4, 2007, a joint notice to extend the 35-day appeal period was filed with the Board to allow the parties additional time to try to resolve the issues and, on June 7, 2007, the Board extended the appeal period until September 7, 2007. Accordingly, this appeal is timely filed.
8. On July 30, 2007, the consultant for Petitioner, CW³M, submitted to the Agency a report entitled "Corrective Action Plan and Budget -- Additional Information" to respond to issues the Agency raised in the Letter. *Exhibit 6*.
9. On August 27, 2007, Melanie Jarvis, attorney for IEPA, forwarded to Carolyn Hesse, attorney for Petitioner, an e-mail that raised additional issues and repeated issues that had been raised previously. *Exhibit 7*.
10. On August 30, 2007, the attorney for Petitioner sent a letter to the Agency responding to the issues raised in the August 27, 2007 e-mail. *Exhibit 8*.
11. The Agency's rejection of the Proposed Budget is directly related to the Agency's rejection of the Proposed CAP and Petitioner appeals the

Agency's denial of the Proposed CAP and Budget as set forth in the May 2, 2007 Letter and subsequent correspondence.

12. Because the parties have not resolved the issues raised in the denial Letter or in the subsequent correspondence, the issues in this appeal include the issues raised in the Letter as those issues may have been modified during the time extension to file this appeal and any additional issues raised by Agency denials during the time extension for filing this appeal. See E&L Trucking Co. v. IEPA, PCB 02-101 (Mar. 7, 2002).
13. In the Letter and subsequent correspondence from the Agency, the Agency uses as bases for its decisions certain requirements of the regulations at Part 734. However, those regulations were not in effect when work that the Agency rejected was performed and accordingly do not apply to the early action or site investigation work at this site. Pursuant to Section 734.100(a)(1), site investigation activities conducted before Part 734 was promulgated do not need to be conducted in strict accordance with the requirements of Part 734.
14. The Agency's denial of the proposed Budget as stated in item 2 on page 3 of the Letter exceeds the Agency's authority under Part 734 because the Agency requires the submission of information that is not required to be submitted under the applicable regulations.
15. The Agency's interpretation of the data from soil samples collected during the installation of monitoring wells, as indicated in Exhibit 7, is not in

accordance with generally accepted professional engineering practices and principles of professional geologists.

16. Furthermore, the Letter and subsequent correspondence from the Agency require revisions to the site investigation that the Agency approved previously.
17. Because IEPA previously reviewed and approved the SICR, IEPA violated its statutory authority by re-reviewing information it had previously approved, and IEPA may not re-review and deny items that IEPA previously approved.

The Supreme Court has held that an administrative agency has no inherent authority to amend or change a decision and may undertake a reconsideration of a decision only where authorized by a statute.

* * *

[N]o such authority to modify or reconsider its decisions has been granted by statute to the Agency, and no such procedures have been provided by rule.

(*See Reichold Chem. v. PCB*, 204 Ill. App. 3d 674, 561 N.E.2d 1333, 1345, 149 Ill. Dec. 647 (3d Dist. 1990).

WHEREFORE, Willingham Farms respectfully requests that the Board enter an order requiring the Agency to approve the Corrective Action Plan and Budget and for Willingham Farms attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

Willingham Farms

By: Carolyn S Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg
One North Wacker Drive - Suite 4400
Chicago, Illinois 60606
(312) 357-1313
417284v1