

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

SEP 10 2007

STATE OF ILLINOIS
Pollution Control Board

BIG TONY'S LOUNGE,)	
)	
Petitioner,)	
)	
v.)	PCB No. 07-142
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO:	Melanie Jarvis	Carol Webb
	Illinois Environmental Protection Agency	Hearing Officer
	1021 North Grand Avenue East	Illinois Pollution Control Board
	P.O. Box 19276	1021 North Grand Avenue East
	Springfield, Illinois 62794-9276	P.O. Box 19274
		Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that on September 10, 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 10, 2007

Respectfully submitted,

Big Tony's Lounge

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
417628v1


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 10th Day of September, 2007.



Carolyn S. Hesse

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STATE OF ILLINOIS
Pollution Control Board

BIG TONY'S LOUNGE,)
)
Petitioner,)
)
v.) PCB No. 07-142
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Big Tony's Lounge, 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. Big Tony's Lounge ("Petitioner"), is the owner of property located on Route 51 North, Cairo, Alexander County, Illinois. The site had underground storage tanks (USTs) on the property, which stored gasoline.
2. LUST Incident Number 20020881 was obtained. The site has also been assigned LPC #0030055049-Alexander County.
3. On March 21, 2007, the Agency received a Corrective Action Plan Budget (the "Budget") dated March 21, 2007.
4. By letter dated May 10, 2007, the Agency rejected the proposed Budget. (*Exhibit 1.*) Petitioner is appealing the Agency's decisions in the Letter dated May 10, 2007.

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

5. On June 14, 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 21, 2007, the Board extended the appeal period until September 11, 2007. Accordingly, this appeal is timely filed.
6. The Agency's denial of the proposed budget as stated in Item 2 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.
7. Even though the parties have had discussions and believe that they may still be able to resolve the issues raised in the Letter, such resolution will not be reached by the deadline for filing this appeal. Accordingly, Petitioner is filing this appeal of the Letter.

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

Respectfully submitted,

Big Tony's Lounge

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
417545v1



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

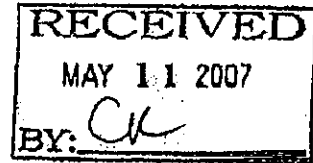
217782-6762

CERTIFIED MAIL

MAY 10 2007

7004 2510 0001 8616 3163

Mr. Robert Thompson
R. R. # 1, Box 333
Cairo, IL 62914



Re: LPC #0030055049 -- Alexander County
Cairo/ Big Tony's Lounge
Rt. 51 North
LUST Incident No. 20020881
LUST Technical File

Dear Mr. Thompson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated March 21, 2007, was received by the Illinois EPA on March 21, 2007. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code):

The budget is rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), 734.510(a) and 734.510(b)):

1. The budget includes costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.
2. The budget includes corrective action costs for Excavation, Transportation, Disposal and Backfill that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

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

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A detailed time and materials cost breakdown is required from each bidder to demonstrate they are qualified and able to perform the work being bid pursuant to 35 Ill. Adm. Code Section 734.855(a). This information should include a time and materials breakdown of all subcontractors costs as well.

3. The budget includes costs requested that are based on mathematical errors. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(bb). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Based on a April 17, 2007 telephone conversation between Dave Myers of the Illinois EPA and Jeff Wienhoff of CW3M, postage associated with distribution of a reimbursement claim should have been \$5.00 rather than \$8500.00.

4. The budget includes site investigation or corrective action costs for latex gloves that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

Costs associated with disposable latex gloves (\$12.00) appear twice under Consultant's Material Costs.

Pursuant to Sections 57.7(b) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, a budget must be submitted within 30 days of the date of this letter to:

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

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

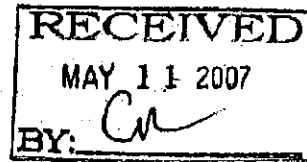
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If you have any questions or need further assistance, please contact Dave Myers at 217/785-7491.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land



TAH:dm:C:\amCAPBUdden.doc

c: CW3MCompany, Inc.
BOL File

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) 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 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, IL 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
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544