

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 20 2008

STATE OF ILLINOIS
Pollution Control Board

S&D REALTY, INC.,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 09- 33
(LUST Appeal – Ninety Day
Extension)


NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Sana'a Hussien
Law Offices of Cohen & Hussien
6901 West 111th Street
Worth, Illinois 60482

PLEASE TAKE NOTICE that I have today caused to be filed a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


James G. Richardson
Assistant Counsel

Dated: November 18, 2008
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 09- 33
(LUST Appeal – Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to February 16, 2009, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

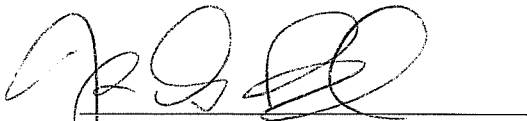
1. On October 10, 2008, the Illinois EPA issued a final decision to the Petitioner.
2. On November 18, 2008, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on October 14, 2008.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
Assistant Counsel

Dated: November 18, 2008

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

THIS FILING IS 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 #

7007 3020 0002 3213 2101

OCT 10 2008

S & D Realty
Attention: Samer Khatib
3935 South Archer Avenue
Chicago, Illinois 60632

Re: LPC #0316575053 -- Cook County
Chicago/Mobil Gas & Mini Mart
3935 South Archer Avenue
Leaking UST Incident No. 20050020
Claim No. 54597
Leaking UST FISCAL FILE

Dear Mr. Khatib:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST 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 June 13, 2008 and was received by the Agency on June 27, 2008. The application for payment covers the period from January 8, 2005 to April 18, 2005. The amount requested is \$153,801.58.

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 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 27, 2008, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$38,240.00 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 application 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,

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 - 8415 N. University St., Peoria, IL 61614 - (309) 691-5463
BUREAU OF LANDS - 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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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 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 request for an extension, please contact:

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

For information regarding the filing of an appeal, please contact:

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

If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217/782-6762.

Sincerely,



E. William Radlinski, Manager
Planning and Reporting Section
Bureau of Land

EWR:CSE:bjh\08851.doc

Attachment

cc: Laicon, Inc.
LCU File
Cathy Elston

Attachment A
Accounting Deductions

Re: LPC # 0316575053 -- Cook County
Chicago/Mobil Gas & Mini Mart
3935 South Archer Avenue
Leaking UST Incident No. 20050020
Claim No. 54597
Leaking UST Fiscal File

Citations in this attachment 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).

Item # Description of Deductions

1. \$13,340.08, deduction for costs for removal, disposal, or abandonment of UST if the tank 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 Illinois Emergency Management Agency of a release of petroleum. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(k) of the Act and 35 Ill. Adm. Code 734.630(k).

Costs for tank removal costs are not eligible for reimbursement.

2. \$98,760.00, deduction for costs which 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.

Remediation and disposal costs do not have backup invoices for backfill costs, overburden costs, permit costs in the amount of \$46,960.00.

Paving and demolition costs do not have backup invoices for concrete removal and replacement, and the dismantling and reassembling of gasoline pumps in the amount of \$51,800.00.

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**Notice to Owners or Operators of Leaking Underground Storage Tank Sites and to
Consultants Submitting Requests on Behalf of Owners or Operators for Payment
From the Illinois Underground Storage Tank Fund**

Section 57.8 of the Environmental Protection Act states:

"..... An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days."

35 Ill. Adm. Code 732.601 e) and 734.605 e) state:

"Applications for partial or final payment may be submitted no more frequently than once every 90 days."

Effective August 1, 2008, any request for payment covered under these above provisions that is received by the Agency less than 90 days from the receipt of a previous request for payment at the same site, will be automatically rejected and the owner or operator will be notified of such rejection. Any rejected request for payment must be resubmitted, as a complete package, to the Agency by the owner or operator in accordance with the above stated legislative and regulatory provisions.

Any request for partial or final payment, that contains information which addresses previously denied costs, will be deemed a new request subject to the legislative and regulatory provisions stated above. Such a request may be submitted as part of another request or by itself.

All requests for payments must be either mailed or delivered to the Agency.

(rev. 7/16/08)

Attachment A

Re: LPC # 0316575053 -- Cook County
Chicago/Samer Khabit
3935 S. Archer Ave.
Leaking UST Incident No. 20041421 and 20050020
Leaking UST Technical File

SECTION 1

As a result of Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

| | |
|-------------|--|
| \$0.00 | Drilling and Monitoring Well Costs |
| \$0.00 | Analytical Costs |
| \$57,383.05 | Remediation and Disposal Costs |
| \$10,005.06 | UST Removal and Abandonment Costs |
| \$6,957.77 | Paving, Demolition, and Well Abandonment Costs |
| \$12,720.00 | Consulting Personnel Costs |
| \$0.00 | Consultant's Materials Costs |

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.8(f) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

1. The overburden removal and replacement rate has been reduced to \$6.88 per cubic yard. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
2. The free product removal and disposal rate has been reduced to \$0.72 per gallon. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

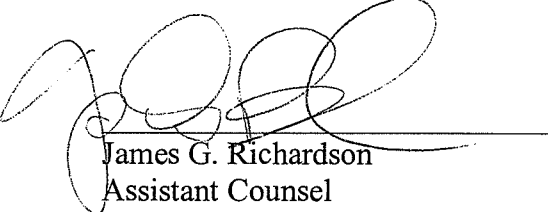
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 18, 2008 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Sana'a Hussien
Law Offices of Cohen & Hussien
6901 West 111th Street
Worth, Illinois 60482

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