

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

SIMONS AUTO SERVICE CENTER,	)	
Petitioner,	)	
v.	)	PCB No. 09-
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Ninety Day Extension)
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

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

Carolyn S. Hesse  
Barnes & Thornburg, LLP  
One North Wacker Drive,  
Suite 4400  
Chicago, IL 60606-2833

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

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Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: December 1, 2008

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on December 1, 2008, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, with the Board via electronic filing and by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

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

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

Carolyn S. Hesse  
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One North Wacker Drive,  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

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SIMONS AUTO SERVICE CENTER,	)	
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ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,	)	
Respondent.	)	

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

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, 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 March 1, 2009, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 21, 2008, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On November 25, 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 join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. (Exhibit B) Tracking information from the Certified Mail number on the final decision indicates the final decision was received on October 25, 2008. (Exhibit C)

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,  
Respondent

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Melanie A. Jarvis  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: December 1, 2008

**BARNES & THORNBURG LLP**

Suite 4400  
One North Wacker Drive  
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(312) 214-8301  
chesse@btlaw.com

www.btlaw.com

November 25, 2008

**VIA FACSIMILE & FEDERAL EXPRESS & E-MAIL**

Mr. William Ingersoll  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Re: LPC #1630525018 - St. Clair County  
Fairview Heights / Simons Auto Service Center  
10085 Lincoln Trail  
Leaking UST Incident No. 20071485  
Claim No. 54576  
Leaking UST Fiscal File

Dear Bill:

On October 21, 2008, the Agency issued a letter with respect to the above referenced LUST Incident. The letter was delivered on October 25, 2008. Copies of the letter and USPS Track and Confirm receipt are attached.

CW<sup>3</sup>M believes that, based upon additional information provided to the Agency and upon communications with you and others at the Agency and for other reasons, that we will be able to resolve the issues raised in the IEPA letter. However, we believe that we will not be able to resolve these issues by the deadline for filing an appeal of these issues to the Illinois Pollution Control Board. Thus, this is a request for a 90 day extension pursuant to the Illinois Environmental Protection Act, Section 40(a)(1) and 35 IAC 105.406 to allow us the needed time to continue these discussions and to try to resolve the issues.

Mr. William Ingersoll  
November 25, 2008  
Page 2

Earlier today we discussed this request for a time extension and agreed to such a time extension. If for any reason the Agency will not seek the 90 day extension, please notify me upon receipt of this letter, so that I may file the appropriate appeal to the Board. If you have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

**BARNES & THORNBURG**



Carolyn S. Hesse

CSH/jmr  
Enclosures

cc: William Sinnott  
Carol L. Rowe  
Jeff Weinhoff

510407v1



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

**OCT 21 2008**

CERTIFIED MAIL #

7007 0220 0000 0150 7076

Simons Service Auto Service Center  
Attention: Robert Simons  
CW<sup>3</sup>M Company Inc.  
PO Box 571  
Carlinville, Illinois 62626

Re:    LPC #1630525018 - St. Clair County  
      Fairview Heights/Simons Auto Service Center  
      10085 Lincoln Trail  
      Leaking UST Incident No. 20071485  
      Claim No. 54576  
      Leaking UST FISCAL FILE

Dear Mr. Simons:

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 27, 2008 and was received by the Agency on June 27, 2008. The application for payment covers the period from November 1, 2007 to May 31, 2008. The amount requested is \$36,734.36.

The deductible amount to be assessed on this claim is \$15,000.00, 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 \$9,248.78 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) 967-7760    •    DES PLAINES - 8511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 585 South State, Elgin, IL 60120 - (847) 506-3131    •    PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF AIR - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5402    •    CHAMPAIGN - 2125 South First Street, Champaign, IL 61821 - (217) 270-5400  
SPRINGFIELD - 4500 S. Sixth Street, Springfield, IL 62766 - (217) 786-6891    •    COLLINSVILLE - 2009 Main Street, Collinsville, IL 62234 - (618) 346-2120  
MADISON - 2309 N. Main Street, Madison, IL 62257 - (618) 993-7200

Page 2

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 Theresa Sitton or Brian Bauer of my staff at 217/782-6762.

Sincerely,



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

EWR:TS:bjh\08753.doc

cc: CW<sup>3</sup>M Company Inc.  
LCU File  
Theresa Sitton



Attachment A  
Technical Deductions

Re: LPC # 1630525018 - St. Clair County  
Fairview Heights Simon Auto Service  
10085 Lincoln Trail  
Leaking UST Incident No. 20071485  
Claim No. 54576  
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. \$105.00, deduction for costs for FP disposal, 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.

The invoice from Safety Kleen Systems was for \$75.00, the amount requested was \$180.00.

2. \$11,978.93 for costs that lack supporting documentation and justification. Pursuant to 35 Ill. Adm. Code 734.605(b)(9) and 734.630(cc), application for payments must include an accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. In addition, reasonableness of costs cannot be determined without documentation. Pursuant to 734.630(ee), costs incurred during early action that are unreasonable are ineligible.

\*\$ 1,270.48 Direct Push Drilling.

\*\$ 7,991.77 Excavation, Transportation, and Disposal.

\*\$ 2,716.68 Backfill.

\$10,708.45 of the costs in #1 above were submitted per bidding. In order for the bids to be reviewed pursuant to 35 Ill. Adm. Code 734.855, a breakdown of what is included in the bid and what specific costs exceed the Subpart H rates must be provided. Justification must be provided to document why the bids were necessary and why the Subpart H rates could not be met for this project.

In addition, the amount (\$10,708.45 ) submitted for reimbursement exceeds the lowest rates that were submitted in the lowest bid by \$3,541.42. The lowest bid for ET&D was \$101.78 per cubic yard and backfill was \$31.03 per cubic yard however the request for reimbursement requested \$150.70 per cubic yard ET&D and \$47.63 per cubic yard for backfill. Pursuant to 35 Ill. Adm. Code 734.630(cc) these cost lack supporting documentation.

4. \$401.65, deduction for costs for concrete replacement, 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.

The invoices from Metro Concrete total \$614.75, the amount requested was \$1,016.40.

:bb\



## Track & Confirm

### Search Results

Label/Receipt Number: 7007 0220 0000 0150 7076  
Status: **Delivered**

Your item was delivered at 10:30 AM on October 25, 2008 in  
CARLINVILLE, IL 62626.

### Track & Confirm

Enter Label/Receipt Number.

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### Notification Options

#### Track & Confirm by email

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No FEAR Act EEO Data

FOIA



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