

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JOHN D. HUFFMAN, dba Huffman's Service,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 09-28
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, John D. Huffman, dba Huffman's Service ("Huffman"), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals that portion of the LUST decision issued September 12, 2008, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency failed and refused to approve the payment of \$73,198.89 for costs, and in support thereof states as follows:

**A. BACKGROUND**

1. Huffman is the owner of the underground petroleum storage tanks at the service station located at Front and Russell Streets in Tamms, Alexander County, Illinois, LPC #0030105005, Incident #2007-1118.

2. On December 31, 2007, the Agency received from Huffman his request for reimbursement for \$84,259.69, for the billing period of August 1, 2007 through November 30, 2007, together with all required engineered certifications, owner/operator billing certifications, and related Agency forms duly completed, and all required supporting documentation and justification, as required by applicable law.

3. All line-item sums requested for reimbursement were within the Agency's previously-approved format for early action costs.

4. The amounts requested for reimbursement were certified by Huffman, on the Agency's own forms, as being correct and reasonable and submitted in accordance with applicable laws, as follows:

- The attached application for payment and all documents submitted with it were prepared

under the supervision of the licensed professional engineer or licensed professional geologist and the owner and/or operator who signatures are set forth below and in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information provided. The information in the attached application for payment is, to the best of my knowledge and belief, true, and complete.

- The costs for remediating the above-listed incident are correct, are reasonable, and if applicable, were determined in accordance with Subpart H: Maximum Payment Amounts, Appendix D. sample Handling and Analysis amounts, and Appendix E Personnel Titles and Rates of 35 Ill. Adm. Code 732 or 734.

5. Nevertheless, on September 12, 2008, which was beyond the 120-day time limit for the Agency to notify Huffman of its final action on the Subject Application for Payment, the Agency prepared its letter notifying Huffman that it was refusing to approve for payment \$73,198.89 of said costs, the sole and entire reason for the rejection appearing in the Agency's final decision attached hereto as Exhibit A.

**B. DATE ON WHICH THE AGENCY'S FINAL DECISION WAS SERVED**

The Agency's final decision was dated September 12, 2008 and served on September 19, 2008, making October 24, 2008, the deadline for the filing of this appeal, or alternatively, the date for filing the request for 90-day extension of appeal, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(1), October 24, 2008. On October 23, 2008, the Agency did, in fact, file such a request for 90-day extension of the appeal period, which request has since been granted, extending to December 18, 2008, the deadline for filing an appeal. This appeal is timely filed.

**C. GROUNDS FOR APPEAL**

1. The majority of the \$73,198.89 costs rejected by the Agency were \$49,700.00 of costs for remediation and disposal, which the Agency wrongfully rejected for reasons nowhere found in applicable statutes, regulations, or even on the Agency's own forms. Specifically, the Board's Regulations require that bids submitted in accordance with 35 Ill. Adm. Code 734.855 be submitted on a form prescribed by the Agency, and Huffman did that, but in its rejection letter the Agency, for the first time, demanded that the information requested on its own form was not enough, and that more was needed, including, "a breakdown of what is included in the bid and what specific costs exceed the Subpart H rates," together with

“justification ... to document why the bids were necessary and why the Subpart H rates could not be met for this project.”

2. None of these after-the fact requests for further information appear anywhere in the Regulations or in the form prepared by the Agency itself, which form was fully completed by each of the bidders and by Huffman, as well as by Huffman’s consulting engineer, and none of which were deemed incomplete or otherwise objected to by the Agency at any time until after the work was completed and after the request for reimbursement was submitted.

3. Indeed, at no time during the Agency’s consideration of Huffman’s request for reimbursement did the Agency request any further or additional information concerning any particular item of remediation and disposal.

4. As to the remaining \$23,498.89 in wrongfully rejected costs, the Agency mistakenly believes that they were unaccompanied by “invoices, receipts and supporting documentation showing the dates and descriptions of the work performed.” In fact, all such supporting documentation is attached to the application for reimbursement.

5. To the extent that the Agency ascertained, during the pendency of the subject request for reimbursement, that either the facts or conclusions presented by Huffman were inaccurate or incomplete, the Agency had a duty to disclose such information in writing during the Agency’s statutory review period, but it failed to do so, and failed to request additional or clarifying information concerning its purported reasons for denial.

6. In rejecting \$73,198.89 for costs of reimbursement for this remediation work, the Agency acted arbitrarily and contrary to the certified facts presented, contrary to its own prior interpretations of applicable laws and policies, contrary to its own established customs and practices, and contrary to the law.

7. In addition, because the Agency failed to notify Huffman of its final action on the subject application for payment, within 120 days after the receipt of a complete application for payment, Huffman may deem the application for payment of \$84,259.69 approved by operation of law (35 Ill Adm. Code

732.602(d)).

**D. REQUESTED RELIEF**

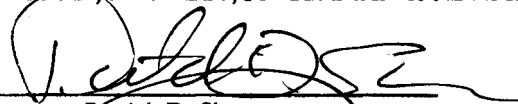
WHEREFORE, Petitioner, John D. Huffman, dba Huffman's Service, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board rule that Huffman may deem the Application for payment approved by operation of law or, alternatively: (d) the Board find that Huffman's application for LUST reimbursement contained all information and documentation necessary to support the \$73,198.89 for costs rejected by the Agency, and, accordingly; (e) the Board direct the Agency to restore the \$73,198.89 in costs rejected and to prepare a voucher for \$74,259.69, and to submit that voucher to the Comptroller's Office for payment as funds become available, based upon the date the Agency received the subject application for payment; (f) the Board grant Huffman his attorney's fees; and (g) the Board grant Huffman such other and further relief as it just.

Respectfully submitted,

JOHN D. HUFFMAN, dba Huffman's Service,  
Petitioner

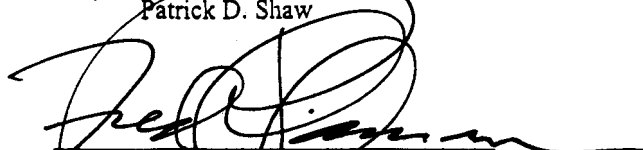
By his attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:



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THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

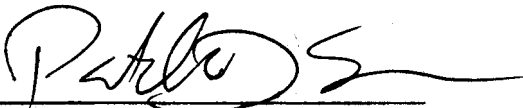
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	)	
Respondent.	)	

NOTICE OF FILING

To: Clerk	Melanie A. Jarvis, Assistant Counsel
Illinois Pollution Control Board	Special Assistant Attorney General
James R. Thompson Center	Division of Legal Counsel
100 West Randolph Street	Environmental Protection Agency
Suite 11-500	1021 North Grand Avenue East
Chicago, IL 60601	P.O. Box 19276
	Springfield, IL 62794-9276

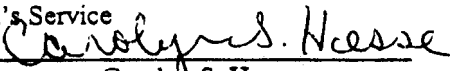
PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the Petition for Review a copy of which is enclosed herewith and hereby served upon you on the 16 day of December, 2008.

JOHN D. HUFFMAN dba Huffman's Service,  
Petitioner

By:   
Patrick D. Shaw  
One of his Attorneys

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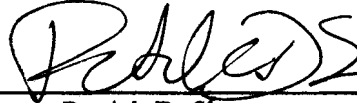
By:   
Carolyn S. Hesse

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby, certify that I caused copies of the foregoing document to served by placement in the United State Post Office Mail Box at Springfield, Illinois, before 6:00 p.m. on December 16, 2008, in sealed envelopes with proper first-class postage affixed, addressed to:

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
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Chicago, IL 60601

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