

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BUGAIESKI OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To:	Clerk
Illinois Pollution Control Board	Melanie A. Jarvis, Assistant Counsel
100 W. Randolph, Ste. 11-500	Division of Legal Counsel
Chicago, IL 60601	Environmental Protection Agency
	1021 North Grand Avenue East
	PO Box 19276
	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a Petition for Review of Agency LUST Decision, a copy of which is herewith served upon the Illinois Environmental Protection Agency.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the Illinois Environmental Protection Agency by enclosing same in an envelope addressed to Melanie A. Jarvis, Assistant Counsel, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mailbox in Springfield, Illinois on the \_\_\_\_\_ day of January, 2009.

Respectfully submitted,  
BUGAIESKI OIL COMPANY, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: \_\_\_\_\_  
Fred C. Prillaman

Fred C. Prillaman  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
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Springfield, IL 62701-1323  
Telephone: 217/528-2517  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BUGAIESKI OIL COMPANY,	)	
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Petitioner,	)	
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	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
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**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, Bugaieski Oil Company ("Bugaieski"), 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 December 22, 2008, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency failed and refused to approve the payment of \$38,716.25 in requested costs, and in support thereof states as follows:

**A. BACKGROUND**

1. Bugaieski is the owner of the underground petroleum storage tanks at the service station located at Route 184 and Route 14 in Mulkeytown, Franklin County, Illinois, LPC #0558995018, Incident-Claim #20071408 -- 54158.

2. On April 11, 2008, the Agency received from Bugaieski its request for reimbursement for \$62,415.90, for the billing period of October 1, 2007 through March 31, 2008, together with all required engineer's 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 Bugaieski, 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 December 22, 2008, the Agency prepared its letter notifying Bugaieski that it was refusing to approve for payment \$38,716.25 of said costs, the sole and entire reasons 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 (Exhibit A hereto) was dated December 22, 2008 and, on information and belief, was served on December 23, 2008, making January 27, 2009, the deadline for the filing of this appeal, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/40(a)(1). This appeal is timely filed.

**C. CONFIRMATION OF APPROVAL OF \$8,699.65 FOR PAYMENT**

Bugaieski is not appealing the \$8,699.65 approved payment, and hereby confirms that the Agency will, in fact, prepare a voucher in that amount for submission to the Comptroller's Office for payment, as funds become available based upon the date the Illinois EPA received the application for payment.

**D. GROUNDS FOR APPEALING THE \$38,716.25 IN REJECTED COSTS**

1. The majority of the \$38,716.25 costs rejected by the Agency were costs submitted per bidding, which the Agency wrongfully rejected for reasons nowhere found in applicable statutes,

regulations, or even on the Agency's own forms. Specifically, the Agency rejected \$35,285.77 of the costs for four (4) reasons, none of which are reasons for rejection provided in applicable statutes, regulations, or even on the Agency's own forms, to-wit:

a. Per the Agency, "in order for the bids to be reviewed, . . . a breakdown of what is included in the bid . . . must be provided." This is legally incorrect. No statutes or regulations, nor even the Agency's own forms, require such "breakdowns" to be provided, either for purposes of "reviewing" the bids or, pertinent to this appeal, for reimbursement of costs.

b. Per the Agency, "in order for the bids to be reviewed, . . . a breakdown of what . . . specific costs exceed the Subpart H rates must be provided." This is equally incorrect, as a matter of law. No statutes or regulations, nor even the Agency's own forms, require such "breakdowns" to be provided, either for purposes of "reviewing" the bids or, pertinent to this appeal, for reimbursement of costs.

c. Per the Agency, "in order for the bids to be reviewed, . . . justification must be provided to document why the bids were necessary." The Agency is legally incorrect on this argument, as well, since no statutes or regulations, nor even the Agency's own forms, require such "justification" to be provided, either for purposes of "reviewing" the bids or, pertinent to this appeal, for reimbursement of cost.

d. Per the Agency, "in order for the bids to be reviewed, . . . justification must be provided to document . . . why the Subpart H rates could not be met for this project." This reason for rejection is equally flawed; no statutes or regulations, nor even the Agency's own forms, require such "justification" to be provided, either for purposes of "reviewing" the bids or, pertinent to this appeal, for reimbursement of cost.

2. If such "breakdowns" and/or "justifications" were required (which they were not; indeed, neither of these terms appear anywhere in the regulations), they would have been furnished by

Bugaieski on the Agency's own forms, in response to the Agency's request to furnish same.

However, the Board's Regulations are very clear on this point: bids submitted in accordance with 35 Ill. Adm. Code 734.855 shall include only the degree of specificity required on the form itself, as prescribed by the Agency. The Agency's forms did not ask for this so-called "breakdown" or "justification" information. Bugaieski did exactly what the Agency, in its forms, required, yet in its rejection letter the Agency, for the first time, demanded that the information requested on its own forms was not enough, and that more was needed. This is a fundamentally unfair reason to deny reimbursement, akin to rejecting bids on a public project that fail to conform to the specifications first published after the bidding is closed.

3. 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 Bugaieski, as well as by Bugaieski's consulting engineer. The Agency does not complain that the form itself is incomplete.

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

5. As to the remaining \$3, 430.48 in wrongfully rejected costs, the Agency mistakenly believes

that they lacked supporting documentation. Specifically, \$2,160.00 were deducted for costs for liquid disposal, yet all required information and supporting documentation necessary to reimburse for this cost, was, in fact, submitted with the application, and is part of this record. Moreover, the \$1,270.48 expense cost for direct push drilling was likewise supported with all required documentation, showing the dates and descriptions of the work performed, necessary for reimbursement.

6. To the extent that the Agency ascertained, during the pendency of the subject request for reimbursement, that either the facts or conclusions presented by Bugaieski 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.

7. In rejecting \$38,716.25 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.

**E. REQUESTED RELIEF**

WHEREFORE, Petitioner, Bugaieski, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find that Bugaieski's application for LUST reimbursement contained all information and documentation necessary to support the \$38,716.25 for costs rejected by the Agency, and, accordingly; (d) the Board direct the Agency to restore the \$38,716.25 in costs rejected and to prepare an additional voucher in this amount and submit it to the Comptroller's Office for payment as funds become available, based upon the date the Agency received the subject application for payment; (e) the Board grant Bugaieski its attorney's fees; and (f) the Board grant Bugaieski such other and further relief as is just.

Respectfully submitted,

BUGAIESKI OIL COMPANY,  
Petitioner ,

By its attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: \_\_\_\_\_  
Patrick D. Shaw

By: \_\_\_\_\_  
Fred C. Prillaman

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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) 782-2829  
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

DEC 22 2008

CERTIFIED MAIL #

7004 2510 0001 8618 2317

Bugaieski Oil Company  
CW3M Company, Inc.  
P.O. Box 571  
Carlinville, Illinois 62626

Re:    LPC #0558995018 -- Franklin County  
      Mulkeytown / Bugaieski Oil Company  
      Route 184 and Route 14  
      Incident-Claim No.: 20071408 -- 54158  
      Queue Date: April 11, 2008  
      Leaking UST Fiscal File

Dear Ms. Nolan:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code 734.Subpart F. This application for payment is dated April 11, 2008 and was received by the Illinois EPA on April 11, 2008. It covers the period from October 1, 2007 to March 31, 2008. The amount requested is \$62,415.90.

As a result of the Illinois EPA's review of the application for payment, a voucher for \$8,699.65 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received the application for payment. Subsequent applications for payment that have been or are submitted will be processed based upon the date of receipt by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application for payment.

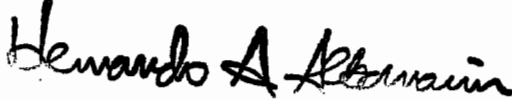
The deductible amount of \$15,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

Listed in attachment A are the costs which are not approved for payment and the reasons the costs are not approved.

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

If you have any questions or require further assistance, please contact Brian Bauer of my staff at 217/782-3335.

Sincerely,

A handwritten signature in black ink that reads "Hernando A. Albarracin". The signature is written in a cursive style with a large initial 'H'.

Hernando A. Albarracin, Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAA:BB

Attachment: Attachment A

---

c: Brian Bauer  
Leaking UST Claims Unit



Attachment A  
Deductions

Re: LPC #0558995018 -- Franklin County  
Mulkeytown / Bugaieski Oil Company  
Route 184 and Route 14  
Incident-Claim No.: 20071408 -- 54158  
Queue Date: April 11, 2008  
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. \$2,160.00, deduction for costs for liquid 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 Hensons Septic Service was not submitted.

2. \$36,556.25 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.

\*\$ 26,678.86 Excavation, Transportation, and Disposal.

\*\$ 8,606.91 Backfill.

\$35,285.77 of the costs 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.

### 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 57.8(i) 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 request for 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

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, IL 60601  
312/814-3620