

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
FEB 17 2009  
STATE OF ILLINOIS  
Pollution Control Board

S&D REALTY, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB 09-33
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
Respondent.	)	

PETITION FOR REVIEW

NOW COMES Petitioner, S&D Realty, Inc. (hereinafter "Petitioner"), by and through its attorneys, the Law Offices of Cohen & Hussien, P.C., and pursuant to §§ 57.8(i) and 40 of the Environmental Protection Act (415 ILCS 5/57.8(i), 415 ILCS 5/40), hereby submits this Petition for Review of the Illinois Environmental Protection Agency (hereinafter "Agency") decision that denied reimbursement for the costs of the tank removal and for costs which lack supporting documentation. Pursuant to § 57.8(l) of the Environmental Protection Act, the Petitioner further requests the Illinois Pollution Control Board to order the Agency to pay Petitioner's legal costs for seeking payment in this appeal. In support of this Petition, the Petitioner states as follows:

1. On June 13, 2008, the Petitioner submitted to the Agency an application for payment from the Underground Storage Tank Fund for Leaking UST incident number 20050020 pursuant to § 57.8(a) of the Illinois Environmental Protection Act, and 35 Ill. Adm. Code 732, Subpart F. The Agency received the application 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.
2. By letter dated October 10, 2008, the Agency made a final decision on the Petitioner's application. The Agency denied Petitioner reimbursement in the amount of \$13,340.08 "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, pursuant to § 57.8(k) of the Environmental Protection Act and 35 Ill. Adm. Code 734.630(k).” A copy of said letter is attached hereto, made a part hereof, and marked as Exhibit 1.

3. The Agency also denied reimbursement in the amount of \$98,760.00 “for costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc).”
4. The Agency identified two costs which lacked supporting documentation. First, “Remediation and disposal costs do not have backup invoices for backfill costs, overburden costs, permit costs, in the amount of \$46,960.00.” Second, “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.”
5. On October 14, 2008, Petitioner received said letter from the Agency.
6. On November 18, 2008, Petitioner made a written request to the Agency for an extension of time by which to file a petition for review and asked the Agency to join in requesting that the Illinois Pollution Control Board extend the thirty-five day period for filing a petition by ninety days.
7. On November 20, 2008, the Illinois Pollution Control Board received the Agency’s request to extend the appeals period for ninety days, until February 16, 2009.
8. On December 4, 2008, the Illinois Pollution Control Board granted the Agency’s request to extend the appeals period for ninety days, until February 16, 2009.
9. Petitioner is now seeking review of the Agency’s October 10, 2008, determination

that denied Plaintiff reimbursement of \$13,340.08 for tank removal costs and \$98,760.00 for costs which lack supporting documentation.

10. The Agency's contention that the Petitioner's costs of \$13,340.08 for tank removal costs are not eligible for reimbursement is erroneous, arbitrary, and capricious, because the costs for tank removal are eligible for reimbursement.
11. The Agency's contention that the Petitioner's costs of \$98,760.00 which lack supporting documentation is erroneous, arbitrary, and capricious, because Petitioner provided adequate documentation.

WHEREFORE, for the foregoing reasons, Petitioner, S&D Realty Inc., respectfully petitions the Illinois Pollution Control Board to reverse the Agency's decision to deny reimbursement in the amounts of \$13,340.08 and \$98,760.00 and to order the Agency to pay the Petitioner's legal costs for this appeal.

February 12, 2009

S&D Realty Inc.

By: Michael A. Alf  
One of its Attorneys

Law Offices of Cohen and Hussien, P.C.  
Attorney Number: 39565  
Attorneys for Petitioner  
6901 W. 111<sup>th</sup> Street  
Worth, Illinois 60482  
(708) 361-3030



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 - 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

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.     | <p>\$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).</p> <p>Costs for tank removal costs are not eligible for reimbursement.</p>   |
| 2.     | <p>\$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.</p> <p>Remediation and disposal costs do not have backup invoices for backfill costs, overburden costs, permit costs in the amount of \$46,960.00.</p> <p>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.</p> |

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certifies that on February 12, 2009, I served true and correct copies of Petitioner's Petition for Review by first class mail of the United States Postal Service upon the persons as follows:

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

James G. Richardson  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

February 12, 2009

S&D Realty Inc.

By: Michael Abel  
One of its Attorneys

Law Offices of Cohen and Hussien, P.C.  
Attorney Number: 39565  
Attorneys for Petitioner  
6901 W. 111<sup>th</sup> Street  
Worth, Illinois 60482  
(708) 361-3030