

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CANCER TREATMENT CENTERS OF AMERICA, INC.,)	
)	
Petitioner,)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	PCB 2010 -
)	
Respondent)	
)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Cancer Treatment Centers of America, Inc. ("**Cancer Treatment Centers**"), by its attorney, S. Keith Collins, pursuant to Sections 40, 57.7(a)(1)(B), 57.8 of the Illinois Environmental Protection Act, 415 ILCS 5/40, 57.7(a)(1)(B), 5/57.8, 5/57.8(i) and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, Section 732.305(b)1 and (c), and Section 732.602 (including, by way of description and not limitation, subparts (a), (b) and (h) thereof), and hereby appeals the LUST decision issued on October 9, 2009, by Respondent Illinois Environmental Protection Agency ("**Agency**"), in which the Agency denied in its entirety Cancer Treatment Center of America, Inc.'s application for payment from the Underground Storage Tank Fund, and in support of this Petition states:

1. The property located at 2414 North Sheridan Road, Zion, Illinois ("**Site**"), LPC 0972005128, Incident-Claim No. 20080025 – 56991 has at all times relevant to this Petition been owned by Northeast Illinois Medical Property, LLP, a limited liability partnership, and leased to Cancer Treatment Centers.

2. Based on environmental investigation and testing, soil contamination was discovered at the Site and reported by telephone to the Illinois Emergency Management Agency (“**IEMA**”) on or about January 7, 2008 (IEMA Incident No. 08-0025).

3. Although records regarding the Site showed that it had previously been used as a service station, investigation and testing indicated that the contamination remained from fuel tanks that had been previously removed. At that time, nothing disclosed or indicated the existence of the remaining and later discovered 2,000 gallon underground storage tank (“**UST**”).

4. In order to construct a facility to house patients and caregivers of its Midwestern Regional Medical Center, Cancer Treatment Centers elected to take early action in accordance with 415 ILCS 5/57.6.

5. The UST was discovered during the environmental remediation of the soil contamination. A permit was requested and both a permit and an amended permit for removal were approved and issued by the Office of the Illinois State Fire Marshal (“**OSFM**”) on or about June 3, 2008. Copies of the permit and amended permit are attached as Exhibit A to this Petition.

5. On June 25, 2009, while Sue Dwyer from the OSFM was present, the UST was removed.

6. While they were both at the Site on June 25, 2009, Alison Rosenberg, the Project Coordinator with Benchmark Environmental Services (“**Benchmark**”), asked Sue Dwyer if a separate additional filing number should be obtained for the UST. Dwyer from OSFM replied, that: no, it was not

necessary, and that the UST could be associated with the existing January 8, 2008 incident (or words to that effect).

7. The Petitioner proceeded in accordance with, and relied upon, that information, and did not request a new number.

8. The OFSM issued a Certificate of Removal for the LUST on July 8, 2008. A copy of that Certificate is attached as Exhibit B.

9. On or about August 28, 2008, the OFSM approved the Petitioner's Reimbursement Eligibility and Deductibility Application, finding the Petitioner "...eligible to seek payment of costs in excess of \$100,000..." from the Underground Storage Tank Fund. A copy of that OSFM determination letter is attached as Exhibit C.

10. Nevertheless, on October 9, 2009, the Agency prepared a letter ("**Agency Denial**"), denying Petitioner any payment from the Underground Storage Tank Fund.

11. The Agency Denial reasoned in effect that:

(a) the costs would not be paid because they were incurred more than fifty-nine (59) days after the January 8, 2008 IEMA report, despite the fact that the tank was discovered more than fifty-nine (59) days after January 8, 2008;

(b) the Agency considered the costs as "...not site investigation or corrective action costs...";

(c) the Agency decided the Benchmark invoices were "...not detailed enough..." but characterized the payment request as

including amounts for removal of “fill material” more than four (4) feet from the UST; and

(d) the Agency did not consider the costs “reasonable”.

12. Both the UST’s discovery, and its prompt removal, occurred more than fifty-nine (59) days after the January 8, 2008 report to the IEMA.

13. The Agency Denial is primarily based on the Agency’s attempt to treat the claim as barred simply because the UST was not removed before its existence was even discovered – that timing anomaly (the “Catch-22”) existed only because the Petitioner relied on the OSFM’s statement in the field that there was no need to create a new incident number.

14. The purpose of the fifty-nine (59) day timing provision, where applicable, is to financially incentivize prompt removal. In this situation prompt removal in fact occurred. Nonetheless, the Agency seeks to penalize the Petitioner for acting in accordance with the OSFM’s suggestion, using the Catch-22 as an “I gotcha”.

15. The Agency should be estopped from denying the Petitioner’s application based on the technical fifty-nine (59) day Catch-22. Moreover, what happened with OSFM present in the field during the course of the remediation and after the UST was discovered should not be used to second guess what happened with the OSFM in the field or to prevent payment based on the I gotcha.

16. Petitioner acted in accordance with the OSFM’s on-site direction in the field and deference should be given to the OSFM’s direction to the Petitioner.

17. Deference should also be given to OSFM's involvement with the remediation in the field and its final determination of eligibility and deductibility, all of which occurred over a year prior to the Agency Denial.

18. The Agency Denial also concluded that the costs and expenses incurred were (a) unreasonable, (b) not for investigation or remediation, and (c) insufficient in detail.

19. The Agency Denial further objected that the Petitioner included the cost of soil contamination removal that extended more than four foot (4') beyond the UST, apparently characterizing that soil contamination as "fill material", also denying the application because the Petitioner included in the payment application the costs and expenses incurred to remove the contaminated soil.

20. A copy of the Agency's October 9, 2009 letter, including Attachment A thereto, is attached as Exhibit D.

18. This Petition for Review is being filed within thirty-five (35) day of service of the Agency Denial letter.

19. The grounds for this appeal are that the Agency erred, in that:

- (a) the Agency should defer to the information provided by the OSFM and Petitioner's reasonable reliance on that information;
- (b) the Agency should be equitably estopped under the facts of this matter from denying payment based on the discovery of the UST and its prompt removal having both occurred more than fifty-nine (59) days after the original IEMA incident report;

(c) because OSFM's staff were at the Site during the remediation and UST removal, and OSFM was in a better position to evaluate the remediation, its scope, payment eligibility and deductibility than the Agency;

(d) OSFM's prior determination of Eligibility was an appropriate and final determination, which should not be disturbed or undone by the later Agency Denial;

(e) the Agency, and its decision, should defer to the OSFM's earlier written final determination of Eligibility;

(f) the Agency's response to the request for payment conflicts with the OSFM's Eligibility and Deductibility determination and the direction OSFM gave to the Petitioner

(g) the Agency's conclusions were inconsistent, contending that the detail submitted was insufficient, and then concluded, based on the details submitted, that (i) payment should also be denied because the payment amount sought included charges relating to removal of contamination apparently characterized in the Agency Denial as more than four feet (4') of "fill material", (ii) the work was not for investigation or corrective action costs, and (iv) that the charges were unreasonable;

(h) the Agency's response to the request for payment conflicts with the OSFM's Eligibility and Deductibility determination and the direction OSFM gave to the Petitioner; and

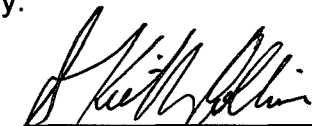
(i) the denial is inconsistent with the Fund's purposes, inequitable, and by its circular logic, attempts to impose an impractical and unreasonable I gotcha, Catch-22 after the fact on the Petitioner who promptly and appropriately proceeded with early action and remediated the site contamination.

20. Based on the foregoing, the Petitioner asks that the Board find that the Agency erred, and direct the approval of the payment sought forthwith.

WHEREFORE, Petitioner, Cancer Treatment Centers of America, Inc., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in denying the requested payment; (d) the Board approve the requested payment and direct that such payment be made; and (e) the Board grant Cancer Treatment Centers such other and further relief as it deems just and proper.

CANCER TREATMENT CENTERS OF AMERICA, INC.,
Petitioner

By:



S. Keith Collins, its attorney

S. Keith Collins
1033 Skokie Boulevard – Suite 250
Northbrook, Illinois 60062
Telephone: 847/831-2178
Facsimile: 847/919-4616
Email: keith@collinslawyer.com

Exhibit A

**[June 3, 2008 OSFM Permit and Amended Permit are included as the two (2)
pages that immediately follow.]**



OFFICE OF THE ILLINOIS STATE FIRE MARSHAL
 Division of Technical Services
 1035 Stevenson Drive
 Springfield, Illinois 62703-4259
 (217)524-7605

FOR OFFICE USE ONLY

Facility # 2-044052
 Permit # 00888-2008REM
 Request Rec'd 06/03/2008
 Amended Date
 Approval Date 6/3/2008 JC
 Permit Expires 12/3/2008

Permit for REMOVAL of Underground Storage Tank(s) and Piping for Petroleum and Hazardous Substances.

Permission to remove underground storage tank(s) or piping is hereby granted. Such removal shall not commence until the contractor the pennit was issued to or an employee of that contractor (this does not include a subcontractor) shall establish a date certain to perform the UST activity by contacting the Office of the State Fire Marshal, Division of Petroleum and Chemical Safety, by telephone at the Springfield office between 8:30 a.m. and 12:00 p.m., at which time a mutually agreed upon date and time for the UST activity shall be scheduled. **THIS PERMIT IS VALID FOR SIX MONTHS FROM THE APPROVAL DATE.**

<p>(1) OWNER OF TANKS - Corporation, partnership, or other business entity:</p> <p>Cancer Treatment Centers of America 2610 Sheridan Road Zion, IL 60099</p> <p>Contact:</p>	<p>(2) FACILITY - name and address where tanks are located:</p> <p>Vacant Land 2414 N. Sheridan Road Zion, Lake Co., IL</p> <p>Contact:</p>
---	--

(3) REMOVAL OF TANKS:

- (a) *Number and size of tanks being removed:* (TK # 1) - 2,000 gallons
 (b) *Product stored in each tank:* (TK # 1) - Diesel Fuel
 (c) *Reason of tanks being removed:*
 (d) *If tank(s) is leaking, indicate IEMA incident number:*
 (e) *Date each tank was last used:* (TK # 1) - 12/31/1973

- (4) The owner must notify this Office when completion of tank removal has occurred, on the Notification for Underground Storage Tank Form This form can be obtained at www.state.il.us/osfm or by calling (217)785-1020. After removal is completed, the owner/operator shall perform a site assessment by measuring for the presence of a release where contamination is most likely to be present at the UST site. This is in accordance with the Illinois Administrative Code 170.640 (a) regulations and 40 CFR Part 280.72 (a) Federal Register Requirement.

(5) SPECIAL CONTINGENCIES:

<p>(6) PERSON, FIRM OR COMPANY PERFORMING WORK:</p>	
<p>Tsarpalas Enterprises, Inc. 17494 West Hickory Lane Grayslake, IL 60030</p>	<p>Contact Person: Steve A Tsarpalas Phone: (847) 816-8828 Contractor Registration # IL-297 Exp. 05/10/2010</p>

Sincerely,

Jim Coffey

cc: Storage Tank Safety Specialist -
 Fire Department -
 Office Coordinator -
 Division File
 (Rev. - 6/07)



OFFICE OF THE ILLINOIS STATE FIRE MARSHAL
 Division of Technical Services
 1035 Stevenson Drive
 Springfield, Illinois 62703-4259
 (217)524-7605
Amended

FOR OFFICE USE ONLY

Facility # 2-044052
 Permit # 00888-2008REM
 Request Rec'd 06/03/2008
 Amended Date 06/11/2008
 Approval Date 6/3/2008 JC
 Permit Expires 12/3/2008

Permit for REMOVAL of Underground Storage Tank(s) and Piping for Petroleum and Hazardous Substances.

Permission to remove underground storage tank(s) or piping is hereby granted. Such removal shall not commence until the contractor the permit was issued to or an employee of that contractor (this does not include a subcontractor) shall establish a date certain to perform the UST activity by contacting the Office of the State Fire Marshal, Division of Petroleum and Chemical Safety, by telephone at the Springfield office between 8:30 a.m. and 12:00 p.m., at which time a mutually agreed upon date and time for the UST activity shall be scheduled. **THIS PERMIT IS VALID FOR SIX MONTHS FROM THE APPROVAL DATE.**

<p>(1) OWNER OF TANKS - Corporation, partnership, or other business entity:</p> <p>Cancer Treatment Centers of America 2610 Sheridan Road Zion, IL 60099</p> <p>Contact:</p>	<p>(2) FACILITY - name and address where tanks are located:</p> <p>Vacant Land 2414 North Sheridan Road Zion, Lake Co., IL</p> <p>Contact:</p>
---	---

(3) REMOVAL OF TANKS:

- (a) *Number and size of tanks being removed:* (TK # 1) - 2,000 gallons
 (b) *Product stored in each tank:* (TK # 1) - Diesel Fuel
 (c) *Reason of tanks being removed:*
 (d) *If tank(s) is leaking, indicate IEMA incident number:*
 (e) *Date each tank was last used:* (TK # 1) - 03/10/1977

- (4) The owner must notify this Office when completion of tank removal has occurred, on the Notification for Underground Storage Tank Form This form can be obtained at www.state.il.us/osfm or by calling (217)785-1020. After removal is completed, the owner/operator shall perform a site assessment by measuring for the presence of a release where contamination is most likely to be present at the UST site. This is in accordance with the Illinois Administrative Code 170.640 (a) regulations and 40 CFR Part 280.72 (a) Federal Register Requirement.

- (5) **SPECIAL CONTINGENCIES:** Tank was originally permitted as a pre-74 tank.

<p>(6) PERSON, FIRM OR COMPANY PERFORMING WORK:</p> <p>Tsarpalas Enterprises, Inc. 17494 West Hickory Lane Grayslake, IL 60030</p>	<p>Contact Person: Steve A Tsarpalas Phone: (847) 816-8828 Contractor Registration # IL-297 Exp. 05/10/2010</p>
---	---

Sincerely,

Daniel Starks

cc: Storage Tank Safety Specialist -
 Fire Department -
 Office Coordinator -
 Division File
 (Rev. - 6/07)

Exhibit B

[July 8, 2008 OSFM Certificate of Removal begins on the following page.]



Office of the Illinois
State Fire Marshal

"Partnering With the Fire Service to Protect Illinois"

CERTIFICATE OF REMOVAL

July 8, 2008

Cancer Treatment Centers of America
26210 Sheridan Rd
Zion, IL 60099

In Re: Facility No. 2-044052
Vacant land
2414 N Sheridan Rd
Zion, Lake Co

This certificate confirms that on 06-25-2008, the tank(s) listed below were removed.

Tank ID #	Capacity	Substance
1	2000	Diesel

Sincerely,

A handwritten signature in black ink that reads "Shelly Bradley" with a subscript "2" at the end.

Shelly Bradley
Division Manager
Division of Petroleum and Chemical Safety

Exhibit C

**[August 28, 2008 OSFM Determination and Deductibility Determination
begins on the following page.]**



Office of the Illinois
State Fire Marshal

"Partnering With the Fire Service to Protect Illinois"

CERTIFIED MAIL - RECEIPT REQUESTED #7007 3020 0002 3210 9646

August 28, 2008

Cancer Treatment Centers of America
2610 Sheridan Road
Zion, IL 60099

In Re: Facility No. 2-044052
IEMA Incident No. 08-0025
Vacant Land
2414 North Sheridan Road
Zion, Lake Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on August 25, 2008 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$100,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 1 2,000 gallon Diesel Fuel

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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

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

If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,



Deanne Lock
Administrative Assistant
Division of Petroleum and Chemical Safety

cc: IEPA
Facility File

Exhibit D

[October 9, 2009 Agency Denial begins on the following page.]

***** PCB 2010-033 *****



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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

OCT 09 2009

CERTIFIED MAIL #

7008 1830 0001 4719 0580

Cancer Treatment Centers of America
Attention: Michael White
2610 Sheridan Road
Zion, Illinois 60099

Re: LPC 0972005128 – Lake County
Zion/Cancer Treatment Center
2414 North Sheridan Road
Incident-Claim No.: 20080025 -- 56991
Queue Date: July 6, 2009
Leaking UST Fiscal File

Dear Mr. White:

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 (35 Ill. Adm. Code) 734, Subpart F.

This information is dated June 16, 2009 and was received by the Illinois EPA on July 6, 2009. The application for payment covers the period from May 6, 2008 to June 30, 2008. The amount requested is \$354,395.09.

On July 6, 2009, the Illinois EPA received your complete application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$100,000.00 to be assessed cannot be deducted from this claim. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

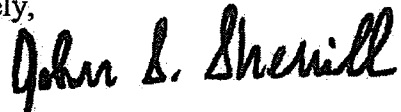
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

Page 2

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 Doug Tolan of my staff at 217/782-6762.

Sincerely,

Handwritten signature of John L. Sherrill in black ink.

John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS: DMT

Attachment A
Appeal Rights

cc: Benchmark Environmental Services, Inc.
Leaking UST Claims Unit
Doug Tolan

Attachment A
Accounting Deductions

Re: LPC 0972005128 -- Lake County
Zion/Cancer Treatment Center
2414 North Sheridan Road
Incident-Claim No.: 20080025 -- 56991
Queue Date: July 6, 2009
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. \$354,395.09, None of the costs incurred from May 6, 2008 to June 30, 2009 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

- MORE DETAILED BREAKDOWN OF THE ABOVE ADJUSTMENT -

1. \$28,357.42, None of the costs incurred from May 6, 2008 to June 30, 2009 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.
 - a) Tank pull costs (6/25/2008) = \$2,100.00
 - b) Costs within the 4 ft. rule – 1 2,000 gal. tank = 112 cy of contaminated backfill excavation, transport & disposal and 124 cy of clean backfill procurement, transport & placement = \$9,479.00 (112cy x \$60/cy = \$6,720.00; 124cy x \$22.25/cy = \$2,759.00; \$6,720.00 + \$2,759.00 = \$9,479.00).
 - c) Oversight – Consultant personnel costs = \$10,778.42
 - d) Oversight – Consultant materials costs = \$6,000.00

2. \$302,659.75, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734.Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734.Appendix C during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

None of the costs incurred from May 6, 2008 to June 30, 2008 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

- a) Contaminated backfill excavation, transport & disposal and clean backfill procurement, transport & placement.

3. \$11,954.06, deduction for costs for early action, 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.

None of the costs incurred from May 6, 2008 to June 30, 2008 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

- a) Analysis costs – No invoices = \$11,346.06
b) Contaminated water transport & disposal = \$608.00
c) All subcontractor invoices are necessary in order to justify the actual costs, these include landfill disposal invoices, contaminated & clean backfill transport invoices and invoices for procurement of clean backfill.

d) Benchmark Environmental Services, Inc. – Invoices #08292 & #08333 – the dates, hours and hourly rates are not detailed enough in order to determine personnel oversight in regards to costs within the 4 ft. rule & costs more than 59 days after the IEMA date.

4. \$11,423.86, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

Deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630 (ii). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

None of the costs incurred from May 6, 2008 to June 30, 2008 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

a) Handling charge adjustment

dmt

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 57.7(c)(4) 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 filing of an appeal, please contact:

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

For information regarding the filing of 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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CANCER TREATMENT CENTERS OF AMERICA, INC.,)	
)	
)	
Petitioner,)	
v.)	
)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	PCB 2010 -
)	
)	
Respondent)	


NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Clerk	Illinois Environmental Protection Agency
Illinois Pollution Control Board	Division of Legal Counsel
State of Illinois Center	1021 North Grand Avenue East
100 West Randolph, Suite 11-500	Post Office Box 19276
Chicago, Illinois 60601	Springfield, Illinois 62794-8276
312/814-3620	217/782-5544

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[n], **ENTRY OF APPEARANCE**, a copy of which is herewith served upon the Clerk of the Illinois Pollution Control Board and upon the Division of Legal Counsel of the Illinois Environmental Protection Agency.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing and Proof of Service, together with a copy of the document described above, were today served upon the persons and entities identified above by enclosing same in envelopes addressed to such persons and entities, with postage fully prepaid, by depositing said envelopes in a local U.S. Post Office Mailbox on November 12, 2009.

Respectfully submitted,
CANCER TREATMENT CENTERS OF AMERICA, INC., Petitioner

By: 
S. Keith Collins, its attorney

S. Keith Collins
1033 Skokie Boulevard – Suite 250
Northbrook, Illinois 60062
Telephone: 847/831-2178
Facsimile: 847/919-4616
Email: keith@collinslawyer.com