

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

DEC 21 2009

STATE OF ILLINOIS
Pollution Control Board

SCATES SERVICE STATION,)	
Petitioner,)	
v.)	PCB <u>10-44</u>
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE


To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on December 18, 2009, we sent to the Clerk of the Illinois Pollution Control Board the original and nine (9) copies each, via U.S. Mail, of a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, for filing in the above-entitled cause, copies of which are attached hereto.

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 counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 18th day of December, 2009.

Respectfully submitted,
SCATES SERVICE STATION, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: 
Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517
Facsimile: 217/528-2553

THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE POLLUTION CONTROL BOARD
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STATE OF ILLINOIS
Pollution Control Board

SCATES SERVICE STATION,)
 Petitioner,)
 v.)
) PCB 10-44
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

PETITION FOR REVIEW OF THE AGENCY LUST DECISION

NOW COMES Petitioner, SCATES SERVICE STATION, pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act and hereby appeals that portion of the LUST Decision issued on November 13, 2009, by Respondent Illinois Environmental Protection Agency ("IEPA"), payment of \$9,935.28, in support thereof states as follows:

1. Scales Service Station was the owner or operator of underground storage tanks located in Shawneetown, County of Gallatin, Illinois. The site has been assigned LPC# 0590355017.
2. In 2008 a release was reported from the site and Incident No. 20081700 was assigned to it.
3. Subsequently early action activities were performed on the site and on July 17, 2009, an application for payment for early action costs was submitted to the IEPA in the amount of \$108,230.70.
4. On November 13, 2009, the IEPA issued a decision approving payment of \$88,269.51, denying payment for some costs, and subjecting the payment to a \$10,000 deductible. A true and correct copy of the IEPA decision is attached hereto.
5. The IEPA's decision is erroneous, to the extent it denied \$9,935.28 for costs

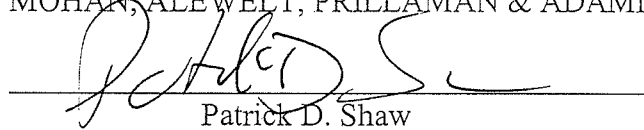
lacking supporting documentation and justification. The decision is unjustified since prior to rendering its final decision, the IEPA did not request additional information or revise its payment application forms to identify additional information above and beyond that which was provided in the voluminous submissions of Scates Service Station's consultants.

WHEREFORE, Scates Service Station requests that the reductions from the Agency be reversed, that the Agency be directed to pay Scates Service Station \$9,935.28, that the attorney fees paid by undersigned counsel be reimbursed, and for such other and further relief as the Board deems meet and just.

Respectfully submitted,
SCATES SERVICE STATION, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:


Patrick D. Shaw

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1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517
Facsimile: 217/528-2553

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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

RECEIVED
NOV 16 2009

BY: _____

217/782-6762

CERTIFIED MAIL #

NOV 13 2009

7007 2560 0003 2090 2223

Scates, Charles A.
Attention: Charles A. Scates c/o CW3M Company, Inc.
P.O. Box 571
Carlinville, Illinois 62626

Re: LPC 0590355017 -- Gallatin County
Shawneetown/Scates Service Station
384 West Posey
Incident-Claim No.: 20081700 -- 57112
Queue Date: July 17, 2009
Leaking UST Fiscal File

Dear Mr. Scates:

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 July 17, 2009 and was received by the Illinois EPA on July 17, 2009. The application for payment covers the period from December 1, 2008 to June 30, 2009. The amount requested is \$108,230.70.

On July 17, 2009 the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$88,269.51 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA 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 Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$10,000.00 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

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 Mail 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

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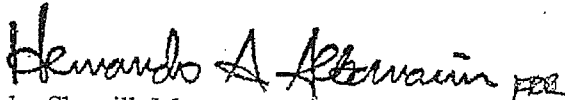
Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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.

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,



John Sherrill, Manager
Financial Management Unit
Bureau of Land


JS, DMT

Attachment A
Appeal Rights

cc: CW3M Company, Inc.
Leaking UST Claims Unit
Doug Tolan

Attachment A
Accounting Deductions

Re: LPC 0590355017 -- Gallatin County
Shawneetown/Scates Service Station
384 West Posey
Incident-Claim No.: 20081700 - 57112
Queue Date: July 17, 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. \$25.91, deduction for early action costs for handling charges and excessive documentation that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).
 - a) Handling charges for hotel costs are unreasonable = \$23.71
 - b) Excessive analytical data is unreasonable; 22 copies x \$0.10/copy = \$2.20

dmt

Attachment A
Technical Deductions

Re: LPC # 0590355017 – Gallatin County
Shawneetown / Scates Service Station
384 West Posey
Leaking UST Incident No. 20081700
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. | \$9,935.28 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.

*\$ 6,423.29 Excavation, Transportation, and Disposal.
*\$ 3,511.99 Backfill. |

The above costs 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 this case the UST removal appears to be an intricate part of the remediation however, the UST removal portion of the project was not bid.

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