

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
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DEC 24 2009
STATE OF ILLINOIS
Pollution Control Board

SMOOT OIL COMPANY, INC.,)
Petitioner,)
v.) PCB 1045
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk
Illinois Pollution Control Board
100 West Randolph Street
State of Illinois Building, Suite 11-500
Chicago, IL 60601

Bill Ingersoll
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

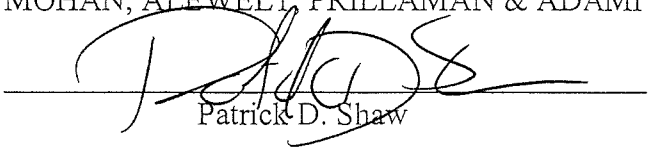
PLEASE TAKE NOTICE that on December 21, 2009, we sent to the Clerk of the Illinois Pollution Control Board the original and nine (9) copies each, via U.S. Mail, of a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, for filing in the above-entitled cause, copies of which are attached hereto.

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 21st day of December, 2009.

Respectfully submitted,
SMOOT OIL COMPANY, INC., 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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SMOOT OIL COMPANY, INC.)
 Petitioner,)
 v.)
) PCB 10-45
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

PETITION FOR REVIEW OF THE AGENCY LUST DECISION

NOW COMES Petitioner, SMOOT OIL COMPANY, INC., 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 4, 2009, by Respondent Illinois Environmental Protection Agency (“IEPA”), payment of \$44,003.11, in support thereof states as follows:

1. Smoot Oil Company, Inc. was the owner or operator of underground storage tanks located in Mt. Vernon, County of Jefferson, Illinois. The site has been assigned LPC# 081030019.
2. In 1999, a release was reported from the site and Incident No. 992294 was assigned to it.
3. In 2000, the site was classified as high priority.
4. From 2001 to 2004, several high priority corrective action plans were submitted to the IEPA for approval until a plan and budget was approved in May of 2004.
5. On July of 2007, the IEPA conducted a review of the record of the clean-up at the site and informed Smoot Oil Company, Inc. that it appears that the approved corrective action plan is not affecting the levels of contaminants in the soil and groundwater and “recommends you consider an alternative approach to address the remaining contamination and requires

submittal of a revised plan.” The letter indicated that a revised corrective action plan could be submitted within 90 days of the letter. There were no appeal rights identified in the letter.

6. Upon receipt of the letter, Smoot Oil Company’s consultants contacted the assigned project manager to discuss the issue with him.

7. Within 90 days of the IEPA’s letter, the consultants wrote a response, indicating that the problems with the speed of the clean-up do not stem from clean-up methodology, but to difficulties with a property owner not allowing necessary access to his property. In short, the property owner was denying access, while the property owner’s attorney/daughter insisted that access was or would be provided and clean-up of the property was legally obligatory. Smoot Oil Company stated that it would “continue to work towards securing access to physically conduct the w[or]k required at the site.”

8. The IEPA never responded to the letter in writing. However, the IEPA project manager called to seek permission or assistance in order to talk to the property owner. By reason and belief, the IEPA project manager communicated with the property owner and the nature of the problem was confirmed. The IEPA project manager and the consultant further discussed the matter and it was the consultant’s understanding that it should continue to seek access to the property in order to remediate the site under the approved corrective action plan.

9. Subsequently, access to the property was granted and work under the approved corrective action plan was conducted. In 2008, the IEPA reimbursed \$401,237.91 for corrective action work. In 2009, the IEPA reimbursed \$57,016.63 for corrective action work.

10. On July 30, 2009, Smoot Oil Company applied for payment of \$44,003.11 for work conducted under the approved corrective action plan.

11. On November 4, 2009, the IEPA denied the application for payment for the reason that the costs were “incurred after the Illinois EPA notified the owner or operator . . . that a revised corrective action plan was required.” A true and correct copy of said letter is attached hereto as Exhibit A.

11. The letter was received on November 16, 2009. A true and correct copy of the track and confirm information is attached hereto as Exhibit B.

12. The IEPA denial of the application for payment is erroneous because a formal decision to require a revised corrective action plan had not previously been made. The Agency further agreed to the course of conduct herein to continue to press for access to complete the approved corrective action plan. Moreover, there is no basis to revise the approved corrective action plan, where as here, the difficulties with the course of remediation do not stem from technical deficiencies with the plan, but to legal issues pertaining to site access.


WHEREFORE, Smoot Oil Company requests that the reductions from the Agency be reversed, that the Agency be directed to pay Smoot Oil Company \$44,003.11, 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,

SMOOT OIL COMPANY, 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
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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

217/782-6762

NOV 04 2009

CERTIFIED MAIL #

7008 1830 0001 4720 0975

Smoot Oil Company
ATTN: Charles Keller
c/o CW3M Company Inc.
PO Box 571
Carlinville IL 62626

Re: LPC 0810300019 -- Jefferson County
Mt. Vernon—Smoot Oil Company
1225 South 10th Street
Incident-Claim No.: 992294 -- 57163
Queue Date: August 5, 2009
Leaking UST Fiscal File

Dear Mr. Keller:

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) in effect prior to June 24, 2002 and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.Subpart F.

This information is dated July 30, 2009 and was received by the Illinois EPA on August 5, 2009. The application for payment covers the period from March 1, 2009 to June 30, 2009. The amount requested is \$44,003.11.

On August 5, 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 for this claim is \$10,000.00, which was previously withheld from your payment(s). 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

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)

Marion • 2309 W. Main St., Sulte 116, Marion, IL 62959 • (618)

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EXHIBIT

A

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Page 2

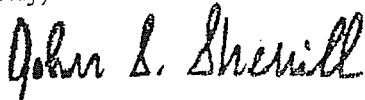
eligible owner or operator.

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 Theresa Sitton of my staff at 217/782-6762.

Sincerely,

A handwritten signature in black ink that reads "John L. Sherrill". The signature is written in a cursive style with a large initial "J".

John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:TAS

ATTACHMENT Attachment A
Appeal Rights

c: Theresa Sitton
Leaking UST Claims Unit

ATTACHMENT A
ACCOUNTING Deductions

Re: LPC 0810300019 -- Jefferson County
Mt. Vernon—Smoot Oil Company
1225 South 10th Street
Incident-Claim No.: 992294 -- 57163
Queue Date: August 5, 2009
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$44,003.11, deduction for costs associated with a corrective action plan incurred after the Illinois EPA notified the owner or operator, pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 732.405(f), that a revised corrective action plan was required. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(n) of the Act and 35 Ill. Adm. Code 732.606(oo). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not corrective action costs.

The letter was sent July 5, 2007.

TAS

Appeal Rights

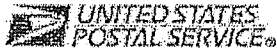
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be 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



Track & Confirm

Search Results

Label/Receipt Number: 7008 1830 0001 4720 0975

Service(s): **Certified Mail™**

Status: **Delivered**

Your item was delivered at 9:56 AM on November 16, 2009 in CARLINVILLE, IL 62626.

Track & Confirm

Enter Label/Receipt Number.

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Detailed Results:

- **Delivered, November 16, 2009, 9:56 am, CARLINVILLE, IL 62626**
- **Notice Left, November 05, 2009, 8:04 am, CARLINVILLE, IL 62626**
- **Arrival at Unit, November 05, 2009, 8:02 am, CARLINVILLE, IL 62626**

Notification Options

Track & Confirm by email

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