

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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STATE OF ILLINOIS
Pollution Control Board

FREEDOM OIL COMPANY,)
)
 Petitioner,)
)
 vs.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

10-46
PCB No. 09-
(UST Appeal – Petition for Review and
Hearing/Appeal)

PETITION FOR REVIEW AND HEARING/APEAL

NOW COMES Freedom Oil Company, by its attorneys, Elias, Meginnes, Riffle & Seghetti, P.C., and as and for its Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency's final decision with respect to the modification of the budget for a High Priority Corrective Action Plan for a certain leaking underground storage tank (LUST) site, (which denied, in part, requested budget increases) states as follows:

BACKGROUND

1. Freedom Oil Company retained Midwest Environmental Consulting & Remediation Services, Inc. (Midwest) to remediate the property located at 712 El Dorado Road, Bloomington, Illinois, LPC #1130205400, LUST Incident No. 20080880-57567 (the Property).

2. The Property was the site of early action activities to include UST removal, contaminated backfill removal/disposal and pavement replacement, all within IEPA approved guidelines. The final report of early action activities detailed the work performed. No work was performed outside the early action guidelines (four (4) foot rule) and was within acceptable IEPA LUST Fund reimbursement requirements.

3. By letter dated April 21, 2009, Midwest submitted a reimbursement request, seeking payment of the additional amount of \$84,652.35, which was the amount reasonably and necessarily expended to complete the work on the project. A true and correct copy of that submittal is attached hereto as Exhibit A.

4. By letter dated April 21, 2009, the IEPA approved part of the previously submitted Budget Amendment, but rejected the remainder thereof. Specifically, of the \$84,652.35 requested, \$55,057.50 was approved, and \$19,594.85 was rejected. A true and accurate copy of the November 23, 2009 letter and attachments is attached hereto as Exhibit B. That letter was designated as a final and appealable order.

ARGUMENT

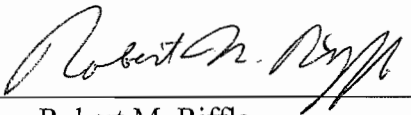
The IEPA rejected, in part, the Budget based upon the landfill bill tonnage amount. The IEPA adjusted all of the reimbursement amounts based upon a calculation of a single bill in the request. Freedom Oil Company (and Midwest) disagree with these determinations, and affirmatively states that the reimbursement amounts expended were reasonably, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on Exhibit B were actually and legitimately expended and performed. Additionally, the scope of the additional work performed was within the guidelines pre-approved by the IEPA.

CONCLUSION

For all of the foregoing reasons, Freedom Oil Company respectfully requests a hearing in this matter, which will provide it the opportunity to establish the propriety of the costs, and that the Final Decision be reversed or modified by increasing and accepting the budget as proposed in Exhibit B, thereby allowing additional reimbursement in the amount of \$19,594.85.

Respectfully submitted,

Freedom Oil Company, Petitioner

By: 
Robert M. Riffle
Its Attorney

ROBERT M. RIFFLE
Elias, Meghinnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000
609-858

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

FREEDOM OIL COMPANY,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 10-46
ILLINOIS ENVIRONMENTAL)	(UST Appeal – Petition for Review and
PROTECTION AGENCY,)	Hearing/Appeal)
)	
Respondent.)	

CERTIFICATE OF SERVICE

The undersigned certifies that on December 30, 2009, a copy of the Petition for Review and Hearing/Appeal was served upon the party listed below by enclosing a true copy of same and depositing it in the United States Mail at 5:00 p.m. on said date:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276



Robert M. Riffle
Elias, Meginnis, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000

609-922

Midwest Environmental Consulting & Remediation Services Inc.

22200 Illinois Route 9 · P.O. Box 614
Tremont, IL 61568-0614
Phone: (309) 925-5551 · Fax: (309) 925-5606

April 21, 2009

Illinois Environmental Protection Agency
Division of Remediation Management
Remedial Projects Accounting and Procurement Unit
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

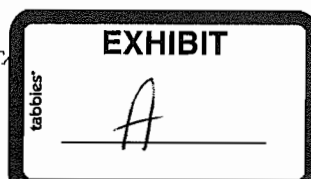
RE: LPC #1130205400 -- McLean County
Freedom Oil Company
712 El Dorado Road
Bloomington, Illinois 61701
Incident #20080880
LUST Fiscal File

Dear Sirs:

Please find enclosed the early action reimbursement request for the subject site. Attached are the following listed invoices and corresponding documentation:

- 1) Invoice #5532 dated 6/27/08 for **\$1,004.50** from Midwest Environmental Consulting & Remediation Service, Inc. (MECRS).
- 2) Invoice #5529.87 dated 8/5/08 for **\$2,600.94** from MECRS.
- 3) Invoice #5562 dated 9/12/08 for **\$23,805.42** from MECRS along with the corresponding subcontractor invoices.
- 4) Invoice #5607 dated 10/16/08 for **\$57,241.49** from MECRS along with the corresponding subcontractor invoices.

The total amount being requested for this reimbursement submittal is **\$84,652.35**.



Please feel free to contact our office with any comments or questions.

Sincerely,

Midwest Environmental Consulting & Remediation Services, Inc.

A handwritten signature in cursive script that reads "Gaye Lynn Green".

Gaye Lynn Green
Reimbursement Manager

AJF
Job No. 08-45
Enclosures
cc: Mr. Gene Adams



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

CERTIFIED MAIL #

7008 1830 0001 4720 6090

Freedom Oil Company
Attn: Mr. Gene Adams
814 West Chestnut Street
Bloomington, IL 61701

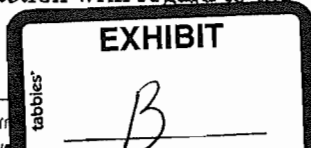
Re: LPC 1130205400 -- McLean County
Bloomington/Freedom Oil
712 El Dorado Road
Incident-Claim No.: 20080880 -- 57567
Queue Date: May 4, 2009
Leaking UST FISCAL FILE

Dear Mr. Adams:

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 February 23, 2009 and was received by the Illinois EPA on May 4, 2009. The application for payment covers the period from June 23, 2008 to October 4, 2008. The amount requested is \$84,652.35.

On May 4, 2009, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$55,057.50 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.



Page 2

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 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 Susan Brock of my staff at 217/782-6762.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:SB

Attachments

Copy: Midwest Environmental Consulting & Remediation Services, Inc.
Leaking UST Claims Unit
Mindy Weller
Brian Bauer
Susan Brock

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

Attachment A
Accounting Deductions
Re-Review Request

Re: LPC 1130205400 -- McLean County
Bloomington/Freedom Oil
712 El Dorado Road
Incident-Claim No.: 20080880 -- 57567
Queue Date: May 4, 2009
Leaking UST FISCAL FILE

Re-Review Request

This re-review is based upon conversations and e-mails between Brian Bauer (IEPA) and Al Green from Midwest Environmental Consulting and Remediation Services, Inc. An invoice was provided for asphalt replacement by Rowe Construction Co. The 45-day report was submitted with Stage 1 and 2 documents. The original queue date is to remain.

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. \$10,754.35, deduction for costs for Remediation and Disposal 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.

Excavation, transportation and disposal cubic yards reduced from 560 to 447 cubic yards (\$7,024.84). The landfill invoice indicates only 447 cubic yards were disposed.

Backfilling cubic yards reduced from 670 to 499 cubic yards (\$3,729.51).

2. \$2,574.80, deduction for costs for Asphalt Replacement, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

Asphalt replacement reduced from 1,711 square feet to 945 square feet.

3. \$6,265.70, 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.

- (a) Affidavit for TMI not dated by Notary Public.
- (b) No proof of payment provided for subcontractors.

\$19,594.85 Total Accounting Deductions

sb