

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

JAN 04 2010

STATE OF ILLINOIS
Pollution Control Board

WHEELING PARK DISTRICT,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 10- 49
(LUST Appeal – Ninety Day
Extension)

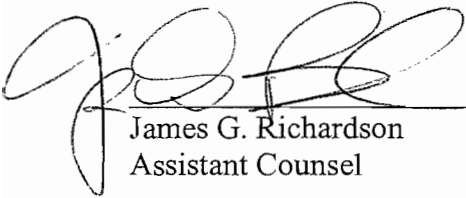
NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Edward J. Cooney
E. Cooney Associates, Inc.
359 Webster Avenue
Elmhurst, Illinois 60126

PLEASE TAKE NOTICE that I have today caused to be filed a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


James G. Richardson
Assistant Counsel

Dated: December 30, 2009
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

WHEELING PARK DISTRICT,)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 10- 49
(LUST Appeal – Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to April 8, 2010, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

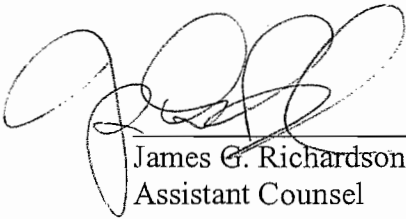
1. On November 18, 2009, the Illinois EPA issued a final decision to the Petitioner.
2. On December 21, 2009, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on December 4, 2009.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
Assistant Counsel

Dated: December 30, 2009

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

THIS FILING IS SUBMITTED ON RECYCLED PAPER



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 18 2009

CERTIFIED MAIL #

7008 1830 0001 4720 0203

Wheeling Park District
Attention: Jan Buchs
333 W. Dundee Road
Wheeling, Illinois 60090

Re: LPC 0314977581 -- Cook County
Wheeling/Wheeling Park District
255 West Dundee Road
Incident-Claim No.: 20071624 -- 57166
Queue Date: August 7, 2009
Leaking UST Fiscal File

Dear Ms. Buchs:

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 August 6, 2009 and was received by the Illinois EPA on August 7, 2009. The application for payment covers the period from December 13, 2007 to February 21, 2008. The amount requested is \$97,685.80.

On August 7, 2009, the Illinois EPA received your 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.

A portion of the deductible, \$4,992.04, was withheld from your payment, leaving a balance of \$5,007.96 to be met from future submittals. 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

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

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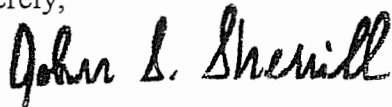
deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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 Niki Weller of my staff or Brian Bauer of the technical section 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::NW

ATTACHMENT

c: E. Cooney Associates, Inc.
Leaking UST Claims Unit
Niki Weller
Brian Bauer

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
Technical and Accounting Deductions

Re: LPC 0314977581 -- Cook County
Wheeling/Wheeling Park District
255 West Dundee Road
Incident-Claim No.: 20071624 -- 57166
Queue Date: August 7, 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. \$82,192.00

Deduction for costs for Remediation and Disposal, 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.

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 February 11, 2008 to February 21, 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. \$52,922.52, No invoices were provided from the landfill with dates, cubic yards/tons excepted by the landfill with amount paid per cubic yard/ton. If the

trucking was provided by different companies an invoice must be provided from all companies with dates and cubic yards/tons and amount paid per cubic yard/ton.

- b. Please explain who did the excavating, if Robinette did the excavating please highlight the costs requested. The Excavation, Transportation and Disposal costs must be separated.

In addition the excavation, transportation and disposal costs are over the four feet allowed for removal during early action.

- c. \$23,989.48, No invoices were provided for the purchase of the backfill. Invoices must be provided with dates, cubic yards/tons purchased with the amount paid per cubic yard/ton. If the hauling was done by different companies an invoice must be provided from all companies with dates, cubic yards/tons and amount paid per cubic yard/ton.

In addition the backfill costs are over the four feet allowed as early action costs and the backfill costs exceed the early action time frame of 45 days + 14 from the notification of the Illinois Emergency Management Agency.

- d. \$5,280.00 No invoices were provided from Van Hoesen Industries, with the total number gallons disposed of with the amount paid per gallon and the total amount paid to Van Hoesen.

2. None of the costs incurred from February 11, 2008 to February 21, 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.

Based upon the above deduction, a deduction of \$2,497.50 was made from the Personnel costs. Note: Backfill costs were deducted for the same reason above (listed in item #1).

3. \$1,703.02, deduction for costs for personnel, analytical and remediation materials, 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) Pursuant to 35 Ill. Adm. Code 734.850(b) personnel costs must be based on the work performed, regardless of the title performing the work.

\$786.52 Personnel costs reduced to Sr. Project Manager.
\$526.50 Analytical costs (less 25% discount for Arsenic)
\$390.00 Remediation Materials Geo-Fabric for backfill placement below water table

4. \$787.50, deduction for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 734.640.

A deduction is being made in the amount of \$787.50 (less 25% discount) from the Analytical costs. The PNA costs (\$1,050.00 less 25 % discount) are not associated with an eligible tank.

5. \$1,282.64

Deduction for costs for analytical, 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).

Deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The BETX soil with MTBE EPA 8260 rate has been reduced to \$89.99 per analysis. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Rush charges are not eligible therefore, the BETX soil with MTBE EPA 8260 rate has been reduced from \$180.00 to the subpart H rate \$89.99. (Note: less 25% discount)

6. \$600.00

Deduction for costs for air monitoring (residential & work zone), 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).

Deduction for costs for air monitoring (residential & work zone), 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.

7. \$3,631.10, deduction for costs for security fencing, Project Admin, and landfill profile, 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.

Deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with fencing, project admin and landfill profile are included in the excavation, transportation and disposal rate, for which a maximum rate of \$60.35 per cubic yard applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Invoices with dates were not provided for security fencing and the cost is also part of the excavation, transportation and disposal subpart H rate. Please explain the use.

Please explain the Project Admin cost. No explanation, no dates provided. The cost is also part of the excavation, transportation and disposal subpart H rate.

Landfill Profile cost, no invoice from the landfill. The cost is also part of the excavation, transportation and disposal subpart H rate.

An accounting of all costs must be provided, including but not limited to, invoices, receipts, and supporting documentation showing the dates and description of the work performed. Invoices need to be provided for all subcontractors performing the work.

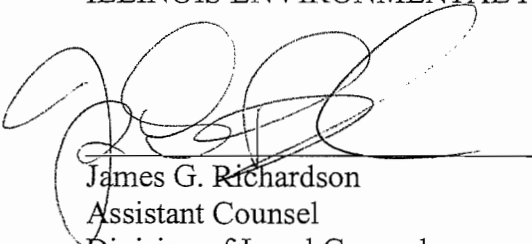
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 30, 2009 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Edward J. Cooney
E. Cooney Associates, Inc.
359 Webster Avenue
Elmhurst, Illinois 60126

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