

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

A & H IMPLEMENT COMPANY,)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(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 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 PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

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 5th of October, 2011.

Respectfully submitted,
A & H IMPLEMENT, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

A & H IMPLEMENT COMPANY,)	
Petitioner,)	
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v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, A & H IMPLEMENT COMPANY, to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/40 & 5/57.8(i), and hereby appeals the LUST decision issued on September 1, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected a budget submittal, stating further as follows:

1. The subject facility is located at 202 Cumberland Road, Altamont, Effingham County, Illinois, assigned LPC number 0490055020.
2. In 2004, a release was reported from the facility, which was assigned IEMA incident numbers 20040191 and 20040819.
3. After removing some of the tanks, removing free product and conducting a site investigation, A & H Implement Company, through its consultants, submitted a corrective action plan and budget on December 22, 2006, which entailed collection of site-specific soil samples to complete a Tier 2 analysis. Sufficient information had been obtained during site investigation for a Tier 1 analysis.
4. Said corrective action plan and budget was approved on February 22, 2007.
5. On February 15, 2007, the Board published new TACO regulations in the R06-10

rulemaking, which when published were made effective February 23, 2007. In pertinent part, the TACO regulations substantially modified the Tier 1 soil remediation objectives.

6. On March 30, 2009, an amended correction plan and budget was submitted to the Agency in order to define the extent of contamination subject to the new Tier 1 soil remediation objectives.

7. On July 20, 2009, the Agency denied the amended submittal, stating that “the extent of soil and groundwater contamination has already been defined to Tier 1 objectives.” This reason was incorrect and the Agency would later retract it, but as will be explained herein, it was the costs associated with this erroneous decision that the Agency currently seeks to deny reimbursement for.

8. On September 9, 2009, A & H Implement Company, through its consultants, submitted additional information in support of retracting its July 20, 2009, denial.

9. On December 17, 2009, the Agency denied the September 9, 2009, submittal for the same reasons.

10. On March 15, 2011, A & H Implement Company, through its consultants, submitted a new corrective action plan and budget, proposing additional investigation because the extent of contamination is still not defined to Tier 1 site remediation objectives.

11. Thereafter, Mohammed Rahman, the project reviewer advised Petitioner’s consultant that the Agency’s previous denials had been mistaken and that while he had no problem approving the costs in the budget, it would help him conduct the review if the costs were broken out between those costs to perform the plan to investigate the extent of contamination to Tier 1 site remediation objectives from those costs incurred in preparing the previous submittals

to the Agency seeking approval of such a plan and budget.

12. On June 8, 2011, in response to Rahman's representations and in reliance thereon, A & H Implement Company submitted revised pages from the March 15, 2011 corrective action plan and budget, containing only costs to determine the extent of soil and groundwater contamination pursuant to Tier 1 objectives.

13. On June 10, 2011, in response to Rahman's representations and in reliance thereon, A & H Implement Company submitted a budget containing the costs associated with preparation of the plans and budgets improvidently denied by the Agency. A true and correct copy of the same is attached hereto as Exhibit A.

14. On June 9, 2011, the Agency approved the corrective action plan and budget submitted on March 15, 2011, as supplemented by the June 8, 2011, materials. In doing so, the Agency conceded that its July 20, 2009 and December 17, 2009 denials were erroneous and that the extent of soil and groundwater contamination needed to be investigated pursuant to Tier 1 objectives.

15. On September 1, 2011, the Agency issued a letter characterizing the June 10, 2011 letter that had been requested by Raham as a request to reconsider its July 20, 2009 and December 17, 2009 decisions. The letter, a true and correct copy of which is attached hereto as Exhibit B, appears to be premised on the idea that the Agency is not authorized to reconsider its previous decisions.

16. In summary, the Agency erroneously precluded this project from moving forward because it claimed soil and groundwater contamination has already been defined to Tier 1 objectives. When it realized its mistake, a new plan and budget to define the extent of

contamination was approved, but only after contriving an artifice to avoid paying the costs associated with preparing multiple erroneously denied plans and budgets.

17. The Agency's decision denying the budget submitted is in error for the following reasons: (a) the June 10, 2011, submittal was not a request for reconsideration, it was a breakdown of costs performed at the solicitation of the Agency; (b) the June 10, 2011, submittal was premised on new information, namely that the Agency had agreed that its prior position was incorrect; (c) the Agency's treatment of the June 10, 2011 submittal is irredeemably inconsistent with its treatment of the June 8, 2011 submittal; (d) since the June 10, 2011, included a new owner/operator and engineer certification, at most it should be considered a new submission; (e) even assuming *in arguendo* that reconsideration was requested, the Agency is not precluded from reconsidering its decisions, so long as it does not prejudice protected interests, and (f) the Petitioner was denied fundamental fairness by the Agency making representations to induce the owner/operator into bifurcating the budget for contrived purposes.

18. This appeal is filed thirty-four days from the day the Agency issued its decision on September 1, 2011 and therefore is timely.

WHEREFORE, Petitioner, A & H Implement Company, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the budget at issue, (e) the Board award payment of attorney's fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

A & H IMPLEMENT COMPANY

Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 N. Old Capitol Plaza, Ste. 325
Springfield, IL 62701
Telephone: 217/528-2517
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER



CSD ENVIRONMENTAL SERVICES, INC.

June 10, 2011

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Attn: Mr. Mohammed Rahman

Re: LPC #0490055020 – Effingham County
Altamont / A & H Implement
202 West Cumberland
Leaking UST Incident No. 20040191 & 20040819
Leaking UST Technical File

Mr. Rahman:

In accordance with our previous discussions, the attached budget contains costs associated with preparation of the Corrective Action Plan (CAP) and Budget dated March 30, 2009, as well as those associated with the revised submittal received by the Agency on September 9, 2009. These costs were incurred in order to receive approval to perform additional investigation work to define the extent of contamination. The Agency erroneously denied both submittals, and you and I have since agreed that additional work is necessary to define the extent of contamination.

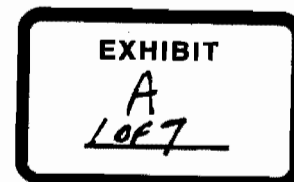
The attached costs were originally included in the budget submitted on March 15, 2011. At your request, they have been broken out into a separate budget submittal. Costs associated with proposed work were submitted to you via e-mail on June 8, 2011. Should you have any questions please contact me at 217-522-4085 or via email at sthorpe@cscdeniro.com. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Shane A. Thorpe".

Shane A. Thorpe
Sr. Project Manager

attachment



Owner/Operator and Licensed Professional Engineer/Geologist Budget Certification Form

I hereby certify that I intend to seek payment from the UST Fund for costs incurred while performing corrective action activities for Leaking UST incident 20040191, 20040819. I further certify that the costs set forth in this budget are for necessary activities and are reasonable and accurate to the best of my knowledge and belief. I also certify that the costs included in this budget are not for corrective action in excess of the minimum requirements of 415 ILCS 5/57, no costs are included in this budget that are not described in the corrective action plan, and no costs exceed Subpart H: Maximum Payment Amounts, Appendix D Sample Handling and Analysis amounts, and Appendix E Personnel Titles and Rates of 35 Ill. Adm. Code 732 or 734. I further certify that costs ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606 or 734.630 are not included in the budget proposal or amendment. Such ineligible costs include but are not limited to:

- Costs associated with ineligible tanks.
- Costs associated with site restoration (e.g., pump islands, canopies).
- Costs associated with utility replacement (e.g., sewers, electrical, telephone, etc.).
- Costs incurred prior to IEMA notification.
- Costs associated with planned tank pulls.
- Legal fees or costs.
- Costs incurred prior to July 28, 1989.
- Costs associated with installation of new USTs or the repair of existing USTs.

Owner/Operator: A & H Implement

Authorized Representative: Jerry Hoffmeister Title: Owner

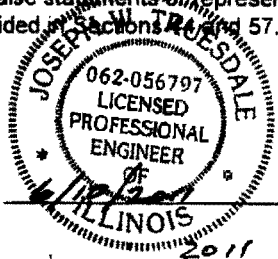
Signature: Jerry Hoffmeister Date: 6-1-11

Subscribed and sworn to before me the 1st day of June, 2011

Carole R. Roper Seal: 

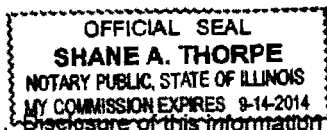
(Notary Public)

In addition, I certify under penalty of law that all activities that are the subject of this plan, budget, or report were conducted under my supervision or were conducted under the supervision of another Licensed Professional Engineer or Licensed Professional Geologist and reviewed by me; that this plan, budget, or report and all attachments were prepared under my supervision; that, to the best of my knowledge and belief, the work described in the plan, budget, or report has been completed in accordance with the Environmental Protection Act [415 ILCS 5], 35 Ill. Adm. Code 732 or 734, and generally accepted standards and practices of my profession; and that the information presented is accurate and complete. I am aware there are significant penalties for submitting false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 24 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

L.P.E./L.P.G.: JOSEPH TRUESCALE L.P.E./L.P.G. Seal: 

L.P.E./L.P.G. Signature: Joseph TrueScale Date: 6/1/2011

Subscribed and sworn to before me the 10th day of JUNE, 2011

Shane A. Thorpe Seal: 

(Notary Public)

The Illinois EPA is authorized to require this information under 415 ILCS 5/1. Disclosure of this information is required. Failure to do so may result in the delay or denial of any budget or payment requested hereunder.

EXHIBIT
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General Information for the Budget and Billing Forms

LPC #: 0490055020 County: Effingham

City: Altamont Site Name: A & H Implement

Site Address: 202 W. Cumberland Rd.

IEMA Incident No.: 20040191 20040819

IEMA Notification Date.: 02/18/2004 06/08/2004

Date this form was prepared: 5/23/2011

This form is being submitted as a (check one):

- Budget Proposal
- Budget Amendment (Budget amendments must include only the costs over the previous budget.)
- Billing Package

Please provide the name(s) and date(s) of report(s) documenting the costs requested:

Name(s): _____

Date(s): _____

This package is being submitted for the site activities indicated below :

35 III. Adm. Code 734:

- Early Action
- Free Product Removal after Early Action
- Site Investigation Stage 1: Stage 2: Stage 3:
- Corrective Action

35 III. Adm. Code 732:

- Early Action
- Free Product Removal after Early Action
- Site Classification
- Low Priority Corrective Action
- High Priority Corrective Action

35 III. Adm. Code 731:

- Site Investigation
- Corrective Action

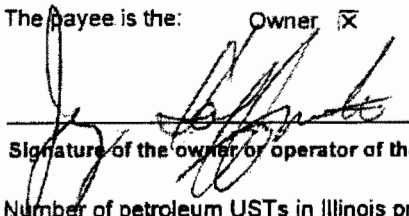


General Information for the Budget and Billing Forms

The following address will be used as the mailing address for checks and any final determination letters regarding payment from the Fund.

Pay to the order of: A & H Implement
 Send in care of: CSD Environmental Services, Inc.
 Address: P.O. Box 20912
 City: Springfield State: Il. Zip: 62708-0912

The payee is the: Owner Operator (Check one or both.)


 Signature of the owner or operator of the UST(s) (required)

If you have a change of address, click here to print off a W-9 Form.

Number of petroleum USTs in Illinois presently owned or operated by the owner or operator; any subsidiary, parent or joint stock company of the owner or operator; and any company owned by any parent, subsidiary or joint stock company of the owner or operator:

Fewer than 101: 101 or more:

Number of USTs at the site: 3 (Number of USTs includes USTs presently at the site and USTs that have been removed.)

Number of incidents reported to IEMA for this site: 2

Incident Numbers assigned to the site due to releases from USTs: 20040191 20040819

Please list all tanks that have ever been located at the site and tanks that are presently located at the site.

Product Stored in UST	Size (gallons)	Did UST have a release?	Incident No.	Type of Release Tank Leak / Overfill / Piping Leak
Gasoline	4,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	See Above	Tank Leak
Gasoline	4,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	See Above	Tank Leak
Diesel	2,000	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	See Above	Tank Leak
		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		
		Yes <input type="checkbox"/> No <input type="checkbox"/>		

EXHIBIT
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Budget Summary

Choose the applicable regulation: 734 732

734	Free Product	Stage 1 Site Investigation	Stage 2 Site Investigation	Stage 3 Site Investigation	Corrective Action
Drilling and Monitoring Well Costs Form	\$	\$	\$	\$	\$
Analytical Costs Form	\$	\$	\$	\$	\$
Remediation and Disposal Costs Form	\$	\$	\$	\$	\$
UST Removal and Abandonment Costs Form	\$	\$	\$	\$	\$
Paving, Demolition, and Well Abandonment Costs Form	\$	\$	\$	\$	\$
Consulting Personnel Costs Form	\$	\$	\$	\$	\$ 15,619.46
Consultant's Materials Costs Form	\$	\$	\$	\$	\$
Handling Charges Form	Handling charges will be determined at the time a billing package is submitted to the Illinois EPA. The amount of allowable handling charges will be determined in accordance with the Handling Charges Form.				
Total	\$	\$	\$	\$	\$ 15,619.46

EXHIBIT
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Consulting Personnel Costs Form

Employee Name	Personnel Title	Hours	Rate* (\$)	Total Cost
Remediation Category	Task			
	Senior Project Manager	50.00	109.05	\$5,452.50
HPExtent-Plan	Preparation and completion of CAP (dated 3/30/09).			
	Senior Draftperson/CAD	12.00	65.43	\$785.16
HPExtent-Plan	Drafting of maps and cross-sections.			
	Senior Project Manager	8.00	109.05	\$872.40
HPExtent-Plan	Data analysis, exposure route evaluation, evaluate effect of xylenes SRO revisions, design inv.			
	Senior Admin. Assistant	4.00	49.07	\$196.28
HPExtent-Plan	Typing, Copying, Binding and Mailing to IEPA & Client.			
	Senior Prof. Engineer	8.00	141.76	\$1,134.08
HPExtent-Plan	Project oversight, review of data and proposed investigation, direct/supervise CAP prep.			
	Senior Project Manager	16.00	109.05	\$1,744.80
HPExtent-Budget	Preparation of Budget (dated 3/30/09).			
	Senior Accl. Technician	4.00	59.98	\$239.92
HPExtent-Budget	Budget assembly			
	Senior Prof. Engineer	8.00	141.76	\$1,134.08
HPExtent-Budget	P.E. Oversight, Review & Certification of CAP & Budget			
	Senior Project Manager	8.00	109.05	\$872.40
HPExtent-Plan	Design subsurface cross-sections for draftsman preparation			

EXHIBIT

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Employee Name	Personnel Title	Hours	Rate* (\$)	Total Cost
Remediation Category	Task			
	Scientist III	4.00	79.42	\$317.68
TACO 2 or 3	Prepare Agency-prescribed SSL forms			
	Senior Project Manager	8.00	111.23	\$889.84
HPEXtent-Plan	Review IEPA letter dated 7-20-09, prepare response and revise budget			
	Senior Prof. Engineer	2.00	144.60	\$289.20
HPEXtent-Budget	Review and certify revised budget			
	Senior Admin. Assistant	2.00	50.05	\$100.10
HPEXtent-Budget	Copy, bind, scan, submit and distribute response to IEPA letter dated 7-20-09 and revised budget			
	Senior Acct. Technician	16.00	62.40	\$998.40
HPEXtent-Pay	Prepare reimbursement application			
	Senior Prof. Engineer	3.00	147.49	\$442.47
HPEXtent-Pay	Review & certify reimbursement			
	Senior Admin. Assistant	3.00	50.05	\$150.15
HPEXtent-Pay	Copy, bind, scan and distribute reimbursement application			

*Refer to the applicable Maximum Payment Amounts document.

Total of Consulting Personnel Costs	\$15,619.48
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EXHIBIT
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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

SEP 01 2011

CERTIFIED MAIL #

7009 3410 0002 3748 0525

A & H Implement Company
Attention: Jerry Hoffmeister
202 West Cumberland Road
Altamont, Illinois 62411

Re: LPC#0490555020 -- Effingham County
Altamont/A & H Implement Company
202 West Cumberland Road
Leaking UST Incident No.: 2004-0191 and 2004-0819
Leaking UST Fiscal File

Dear Mr. Hoffmeister:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your request to reconsider an Illinois EPA decision on Corrective Action Plan Budget (budget) 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 request for reconsideration is dated June 10, 2011 and was received by the Illinois EPA on June 13, 2011.

In accordance with Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) the Illinois EPA issued a final decision on July 20, 2009 and December 17, 2009 regarding costs associated with Corrective Action Budget for reconsideration. Further, in accordance with Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), the Illinois EPA's action to reject or modify any plan, budget, or report was subject to appeal to the Illinois Pollution Control Board within 35 days of receipt of the Illinois EPA's final action. No appeal was filed with the Illinois Pollution Control Board.

If you have any questions or require further assistance, please contact Mohammed Zillur Rahman of my staff at (217) 782-9848.

Sincerely,

Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Cc: CSD Environmental Services, Inc.
BOL File

EXHIBIT
B