

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

CITY OF TAYLORVILLE/TAYLORVILLE,)
MUNICIPAL AIRPORT,)
Petitioner,)
vs.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 12-57
(UST Appeal)

RECEIVED
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DEC 06 2011
STATE OF ILLINOIS
Pollution Control Board

ORIGINAL

AMENDED APPEAL

NOW COMES the CITY OF TAYLORVILLE, ILLINOIS/TAYLORVILLE, MUNICIPAL AIRPORT, by and through its attorneys, David R. Fines, P.C., and for its AMENDED APPEAL states as follows:

1. On October 21, 2011, the CITY OF TAYLORVILLE timely filed a Petition asking the Board to review a September 14, 2011, Determination of the Illinois Environmental Protection Agency. The Agency's Determination concerns TAYLORVILLE'S leaking underground storage tanks site located at the Taylorville Municipal Airport in Christian County, Illinois.

2. On November 3, 2011, the Illinois Pollution Control Board entered an Order granting the CITY OF TAYLORVILLE leave to file an Amended Petition for Review accompanied by the appearance of an attorney. The Amended Petition for Review was to be filed or postmarked on or before December 2, 2011. This Amended Appeal has been postmarked on or before December 2, 2011.

3. This Appeal applies to the early action pay voucher for the Taylorville Municipal Airport, Incident # H2010-1302, LPC #021 060 5089. Nothing in this Amended Appeal should be construed to limit the CITY OF TAYLORVILLE'S Appeal as to the issues set forth herein.

4. The site in question consisted of two underground fuel tanks (a 5,000 gallon tank containing aviator gasoline, and a 10,000 gallon tank containing Jet Fuel A). The initial exploratory samples were taken on November 17, 2010, and analyzed for the indicator contaminants for aviator gasoline and Jet Fuel A, as specified by 35 IAC 734-405 (hereinafter referred to as "indicator contaminants"). The samples were analyzed

on November 30, 2010, and showed significant contamination for benzene (indicative of aviator gasoline contamination) and dibenzo (a,h) anthracene (indicative of Jet Fuel A contamination). See Amended 45 Day Report Section B, Section D.1, Section D.3, Section D.7.a, Section E.3, Appendix E3 – Tables 1 and 2, and Appendix E7.a for further information.

5. Upon sample analysis, the site was reported to the Illinois Emergency Management Agency (IEMA), and the site was assigned an incident number. The Office of the State Fire Marshal (OSFM) determined that the site was eligible for LUST fund reimbursement, and the OSFM assigned a deductible of \$5,000.00 for the site (See Amended 45 Day Report Appendix E9, OSFM Eligibility and Deductible paperwork). As winter weather became problematic, and because the remediation project was awaiting Federal Aviation Administration approval, the Illinois Environmental Protection Agency (IEPA) granted an extension to early action (See Amended 45 Day Report Appendix H, Extended early Action Approval).

6. Tank removal and other early action remedial activity commenced the week of March 14, 2011. Various issues presented themselves during the tank removal and remedial activities. Upon tank removal, which was accomplished on March 16, 2011, the site presented extraordinary challenges which necessitated an overage of cubic yardage during extended early action for the site. Immediately upon removal, a large amount of sand sloughed off into the hole, mixing with the contaminated soil. The slough off extended well beyond the four (4) feet limit of the south and east end of the tank excavation, and also extended beyond the four (4) feet limit of the west end of the tank excavation. The hole also filled with water. Sixty-three hundred (6,300) gallons of water were pumped out of the whole on March 17, 2011. As the hole refilled with water overnight, the water was proven to be groundwater. Including the water from March 17, 2011, a total of 14,800 gallons of groundwater was pumped from the site. A sheen was observed on the groundwater.

7. The groundwater issue worsened the event of sand sloughing off into the hole. As the same mixed with the contaminated material, and the excavation became grossly misshapen by the slough-off, it became impossible to distinguish the physical limits of the excavation, and all of the material in the hole became mixed together and contaminated. The material was hauled away to the landfill as contaminated material.

In order to prevent this large source of contaminated material to remain in contact with groundwater, hauling it away was the most effective way to protect the environment. See Amended 45 Day Report Sections C.3, C.4, C.7, E.10, E.12, and Appendix E12.

8. An additional issue which contributed to the extraordinary material removed is the fact that the site has both tank and piping leaks. The piping run of approximately 140 feet, is longer than typical, and contributed additional material which needed to be removed.

9. The fill material is high for extended early action because the material which was hauled away needed to be replaced.

10. The regulations state that for a 5,000 gallon tank and a 10,000 gallon tank combined, no more than 441 total cubic yards may be removed during early action, and no more than 531 total cubic yards may be filled (35 IAC 734 Appendix C). The CITY OF TAYLORVILLE requests that, due to the extraordinary issues of the site, that a total of 734.98 cubic yards removed, with the 1.05 bulking factor, and 821.16 yards be allowed for fill under extended early action.

11. Above ground structures, such as fencing, had to be demolished to do the work. The CITY OF TAYLORVILLE also requests that \$9,947.46 for demolished above ground structures be reimbursed under early action.

WHEREFORE, for all the above reasons, the CITY OF TAYLORVILLE, ILLINOIS/TAYLORVILLE, MUNICIPAL AIRPORT, asks this Honorable BOARD for the following relief:

A. That due to extraordinary issues of the site, a total of 734.98 cubic yards removed, with the 1.05 bulking factor, and 821.16 yards be allowed for fill under extended early action; and

B. That this Board allow reimbursement to the CITY OF TAYLORVILLE the sum of Nine Thousand Nine Hundred Forty-seven and 46/100 Dollars (\$9,947.46) for reimbursement of above ground structures that had to be demolished including, but not limited to, fencing; and

C. That this Board award the CITY OF TAYLORVILLE such other and further relief as it deems equitable and just.

Respectfully submitted,

The CITY OF TAYLORVILLE,
ILLINOIS, a Municipal Corporation, by
And through its Attorney,
DAVID R. FINES

BY: 

DAVID R. FINES

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true (735 ILCS 1/109).

Dated: 12/11/11

By: 

DAVID R. FINES

David R. Fines
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David R. Fines, P.C.
Attorneys for Petitioner
402 East Market Street
Taylorville, Illinois 62568
Phone: (217) 824-8883
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CERTIFICATE OF SERVICE

Now comes DAVID R. FINES of the law firm of DAVID R. FINES, P.C., of Taylorville, Illinois, and hereby certifies that he caused to be served upon the following named persons, a copy of the **AMENDED APPEAL**, which this certificate of service is attached, said service being made by depositing a copy of the same in the United States Post Office Box in envelopes plainly addressed to them with postage prepaid, this 1st day of December, 2011.

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STATE OF ILLINOIS
Pollution Control Board

TO:

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

ORIGINAL

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276

By: 
DAVID R. FINES

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PROTECTION AGENCY,)
Respondent.)

PCB No. 12-57
(UST Appeal)

ORIGINAL

ENTRY OF APPEARANCE

NOW COMES David R. Fines of the law firm of David R. Fines, P.C., and enters his appearance and that of the Petitioner, CITY OF TAYLORVILLE/TAYLORVILLE, MUNICIPAL AIRPORT, in the above-captioned cause.

CITY OF TAYLORVILLE/
TAYLORVILLE, MUNICIPAL
AIRPORT, Petitioner, by and through
Its Attorneys, DAVID R. FINES, P.C.

BY: 
DAVID R. FINES

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CERTIFICATE OF SERVICE

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TO:

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
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ORIGINAL

By: 

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DAVID R. FINES
MICHELLE M. COADY
JARRED J. RAHAR

ORIGINAL

December 1, 2011

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

**Re: City of Taylorville/Taylorville, Municipal Airport vs. Illinois
Environmental Protection Agency, Case No. PCB No. 12-57
(UST Appeal)**

Dear Mr. Therriault:

Pursuant to my telephone conversation with you on December 1, 2011, I enclose an original and ten copies of the City of Taylorville's Amended Appeal along with an original and ten copies of my Entry of Appearance. I would ask that the original and nine copies of both the Amended Appeal and Entry of Appearance be filed with the tenth copy being file-stamped and returned to me in the self-addressed, stamped envelope.

Should you have any questions, please do not hesitate to call. Otherwise, I thank you for your attention to this matter.

Very truly yours,
DAVID R. FINES, P.C.



DAVID R. FINES

DRF/sd
Enclosures
cc: Emailed to Jon Mericle @ jmericle@kamsolns.com