

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MARIBETH, INC.,)	
)	
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	Legal Division
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 20th of January, 2012.

Respectfully submitted,
MARIBETH, 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

MARIBETH, INC.)	
)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MARIBETH, INC., pursuant 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 December 15, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected an application for payment, stating further as follows:

1. The subject facility is located at Route 13 & Russel Street in Marion, County of Williamson, Illinois, and has been LPC number 0490055020.
2. In 2006, a release was reported from the facility, which was assigned IEMA incident number 20060816.
3. Thereafter, the incident was cleaned-up and a corrective action completion report was submitted indicating that remediation objectives have been met. A No Further Remediation Letter was recorded on September 20, 2011.
4. During the course of corrective action, the Agency approved several applications for payment, totaling just over \$120,000, after withholding \$10,000 for the deductible.
5. On August 17, 2011, Petitioner submitted an application for payment, dated August 16, 2011, which was received by the Illinois EPA on August 17, 2011.
6. At all relevant times, the Act provided::

If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of the law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application.

(415 ILCS 5/57.8(a)(1))

7. At all relevant times, the Board's Procedural Rules provided in relevant part:
[I]f the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law.

(35 Ill. Admin. Code § 734.610(d))

8 One-hundred-twenty days from August 17, 2011, is December 15, 2011.

9 On December 16, 2011, the Agency notified the owner or operator of its final action by belatedly placing its decision in the U.S. mail. A true and correct copy of that decision, including the envelope is attached hereto as Exhibit A.

10 The tracking information for the envelope indicates that the envelope was processed through the United States Postal Service facility in Springfield, IL 62703 at 4:45 a.m. on December 17, 2011. A true and correct copy of a printout of that information is attached hereto as Exhibit B.

11. None of the potential exceptions to the timeliness requirement applies. First, there was no waiver of the deadline submitted by the owner or operator. Second, the Agency determination states that it received a "complete application for payment." (Ex. A)

12. In the alternative, notice of the Agency's final action was not completed until December 23, 2011, when the certified mailing was received. (35 Ill. Admin. Code § 101.300(c))

13. As a further alternative, the denial letter fails to identify any law or regulation that would be violated if the application for payment were approved. It appears that the Agency has sought to assess a second deductible, but the provision cited in the denial letter expressly states: "Only one deductible shall apply per underground storage tank site." (415 ILCS 5/57.8(a)(4))

18. This appeal is filed less than thirty-five days from the day the Agency decision letter was received (December 23, 2011) and therefore is timely (twenty-eight days).

WHEREFORE, Petitioner, Maribeth, 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 application for payment 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.

MARIBETH, INC.

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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

217/782-6762

CERTIFIED MAIL #

DEC 15 2011

7010 2780 0002 1195 8151

Maribeth, Inc.
c/o CW³M Company, Inc.
P.O. Box 571
Carlinville, IL 62626

Re: LPC 1990550012—Williamson County
Marion/ Maribeth, Inc.
Route 13 & Russel Street
Incident-Claim No.: 20060816—60560
Queue Date: August 17, 2011
Leaking UST Fiscal File

Dear Sir or Madam:

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 16, 2011 and was received by the Illinois EPA on August 17, 2011. The application for payment covers the period from October 1, 2010 to August 31, 2011. The amount requested is \$8,709.73.

On August 17, 2011, 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.

A portion of the deductible for incidents #890667 and #950696, \$8,121.58, was withheld from your payment, leaving a balance of \$51,878.42 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 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.

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)276-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309)693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 11-300, Chicago, IL 60601 (312)814-6026

PLEASE PRINT ON RECYCLED PAPER

EXHIBIT

A

PG 1 OF 5

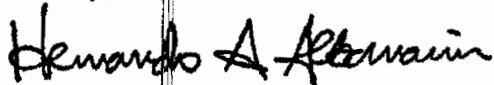
Page 2

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 Brad Dilbaitis of my staff at (217) 785-8378 or at Bradley.Dilbaitis@illinois.gov.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BD 

Attachment: Attachment A
Appeal Rights

c: Leaking UST Claims Unit

A pg 2 of 5

Attachment A
Accounting Deductions

Re: LPC 1990550012—Williamson County
Marion/ Maribeth, Inc.
Route 13 & Russel Street
Incident-Claim No.: 20060816—60560
Queue Date: August 17, 2011
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

\$588.15, deduction for Consulting Personnel Costs that exceed those contained in a budget or amended budget approved by the Illinois EPA. The hourly rates included in the application for payment exceed the hourly rates approved in the budget and, as such, are ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).

The applicable maximum payment amounts are the amounts in effect on the date the Illinois EPA received the budget in which the costs were proposed. The following deductions were made for each submitted personnel title:

1. \$213.57 for a Scientist I
2. \$74.99 for a Scientist II
3. \$15.96 for an Engineer I
4. \$22.70 for an Engineer III
5. \$170.59 for a Senior Project Manager
6. \$24.60 for a Senior Professional Engineer
7. \$6.00 for a Professional Geologist
8. \$40.63 for a Draftsperson/ CAD I
9. \$11.76 for a Draftsperson/ CAD II
10. \$7.35 for a Draftsperson/ CAD IV

BD

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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276
SPRINGFIELD, ILLINOIS 62794-9276

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A pg 5 of 5

Maribeth, Inc.
c/o CW³M COMPANY, INC.
P.O. Box 571

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~~62702-571~~ Carlinville, IL 62630

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