

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APR 15 2013

STATE OF ILLINOIS
Pollution Control Board

ABP PROPERTIES, LLC,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 13- 59
(LUST Appeal – Ninety Day
Extension)



ORIGINAL

NOTICE

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

William D. Ingersoll
Brown, Hay & Stephens, LLP
P.O. Box 2459
Springfield, Illinois 62705

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
Deputy General Counsel

Dated: April 10, 2013
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABP PROPERTIES, LLC,)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 13- 59
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**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, Deputy General 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 July 16, 2013, 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:

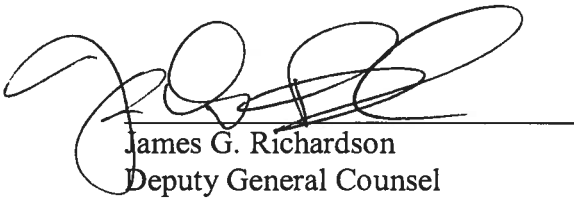
1. On March 11, 2013, the Illinois EPA issued a final decision to the Petitioner.
2. On April 2, 2013, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on or about March 13, 2013.

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
Deputy General Counsel

Dated: April 10, 2013

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) 782-3397
PAT QUINN, GOVERNOR JOHN J. KIM, DIRECTOR

217/524-3300

MAR 11 2013

CERTIFIED MAIL #

7012 0470 0001 3006 5398

ABP Properties LLC
Attn: CWM Company, Inc.
PO Box 571
Carlinville, IL. 62626

Re: LPC #0290105028 -- Coles County
Charleston / Marathon #7092
734 18th Street
Incident-Claim No.: 20120616 -- 62395
Queue Date: November 16, 2012
Leaking UST Fiscal File

Dear Dr. Bhardwaj:

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 November 14, 2012 and was received by the Illinois EPA on November 16, 2012. The application for payment covers the period from June 18, 2012 to August 31, 2012. The amount requested is \$100,640.02.

On November 16, 2012, 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.

The deductible amount for this site is \$5,000.00. 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.

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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 Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



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

HAA:CSE 

ATTACHMENT

c: Leaking UST Claims Unit
Cathy Elston

Attachment A
Accounting Deductions

Re: LPC #0290105028 -- Coles County
Charleston / Marathon #7092
734 18th Street
Incident-Claim No.: 20120616 -- 62395
Queue Date: November 16, 2012
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. The early action costs submitted in this claim 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).

The costs submitted in this claim have not been approved in a free product removal, site investigation, or corrective action budget. The Illinois EPA is unable to approve billings for free product removal conducted more the 45 days after the confirmation of the presence of free product, site investigation or corrective action activities without an approved budget pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(f).

None of the costs incurred from June 18, 2012 to August 31, 2012 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 deductions, a deduction of \$100,640.02 was made.

Lust incident number 20120616 has been determined by the Agency as a re-reporting of lust incident number 961632, not a new incident. The Agency has determined that incident number 20120616 is "non-lust"

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

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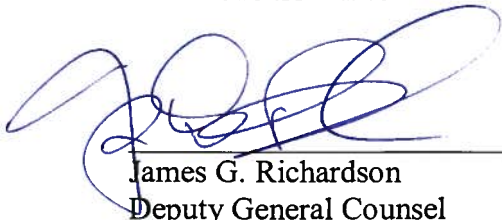
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 10, 2013 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

William D. Ingersoll
Brown, Hay & Stephens, LLP
P.O. Box 2459
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