

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

NOV 12 2013

STATE OF ILLINOIS  
Pollution Control Board

EJP WHEATON, LLC, )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
Respondent. )

PCB 14- 36  
(LUST Appeal – Ninety Day  
Extension)



ORIGINAL

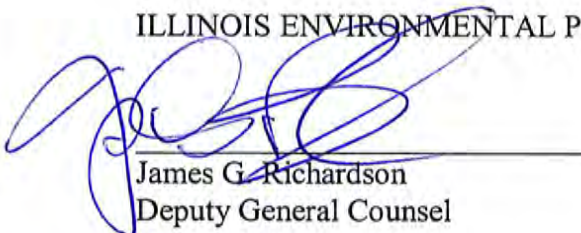
NOTICE

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

David L. Rieser  
Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606

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: November 6, 2013  
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**

**RECEIVED**  
CLERK'S OFFICE

NOV 12 2013

STATE OF ILLINOIS  
Pollution Control Board

EJP WHEATON, LLC, )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 14-36  
(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, 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 February 9, 2014, 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 October 4, 2013, the Illinois EPA issued a final decision to the Petitioner.
2. On October 31, 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. According to United States Postal Service tracking information, a notice that the Illinois EPA’s

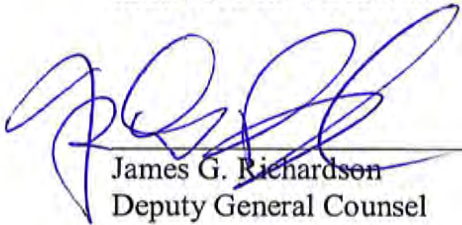
final decision sent by certified mail was available for receipt was left with the Petitioner on or about October 7, 2013.

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: November 6, 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) 782-2829  
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

217/524-3300

OCT 04 2013

CERTIFIED MAIL #

7011 1150 0001 0863 2420

EJP Wheaton LLC  
Attn: David L. Husman  
1200 North Ashland Avenue, Suite 600  
Chicago, IL. 60622

Re: \LPC #0431055066 – Du Page County  
Wheaton / Hocker Oil Company, Inc.  
2185 West Roosevelt Road  
Incident-Claim No.: 910276 -- 63351  
Queue Date: July 8, 2013  
Leaking UST Fiscal File

Dear Mr. Husman:

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 June 20, 2013 and was received by the Illinois EPA on July 8, 2013. The application for payment covers the period from May 1, 2009 to June 20, 2013. The amount requested is \$204,986.85.

On July 8, 2013, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$26,845.10 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete 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 claim is \$15,000.00, which was previously withheld from your payment(s). 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

Page 2

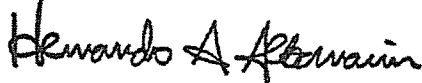
accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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 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: Pioneer Environmental Services, LLC ✓  
Leaking UST Claims Unit  
Cathy Elston

Attachment A  
Accounting Deductions

Re: LPC #0431055066 – Du Page County  
Wheaton / Hocker Oil Company, Inc.  
2185 West Roosevelt Road  
Incident-Claim No.: 910276 – 63351  
Queue Date: July 8, 2013  
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. \$1,284.50, deduction for costs for analytical, 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.

The corrective action costs for analytical are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The analytical costs were billed at the maximum subpart H rate but the STAT Analysis invoices were billed at a lower rate.

2. \$128,671.20, deduction for costs for the excavation, transportation and disposal of the contaminated soil, 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.

The corrective action costs for the excavation, transportation and disposal of the contaminated soil are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The claim submittal is missing the weight tickets from the Community Landfill which would have the exact weights received at the landfill. The invoice submitted lists each load as 15 cubic yards. A request was made for the documentation but could not be provided by either the owner, their contractor, or the consultant.

3. \$45,146.70, deduction for costs for backfill, 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.

The corrective action costs for backfill are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

An invoice with the exact weights was not provided for the backfill costs. A request was made for the documentation but it could not be provided by either the owner, their contractor or the consultant.

4. \$2,434.50, deduction for costs for groundwater removal 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.

The corrective action costs for groundwater removal and disposal are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The groundwater removal and disposal costs were billed at the maximum subpart H rate but the Van Hoesen Industries invoices were billed at a lower rate.

5. \$604.85, deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630 (ii). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Proof of payment in the form of cancelled checks, lien waivers or affidavits were not provided for the STAT Analysis invoices and the Van Hoesen invoices.

cse



## 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

RECEIVED  
CLERK'S OFFICE

NOV 12 2013

**CERTIFICATE OF SERVICE**

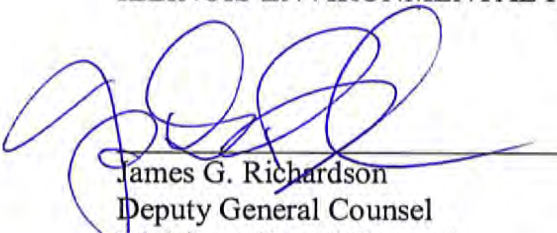
STATE OF ILLINOIS  
Pollution Control Board

I, the undersigned attorney at law, hereby certify that on November 6, 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  
Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

David L. Rieser  
Much Shelist, P.C.  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson  
Deputy General Counsel  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)