

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
OCT 23 2014

STATE OF ILLINOIS
Pollution Control Board

TRI-STAR PETROLEUM, LLC,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB NO.: 15-77
(UST Appeal)

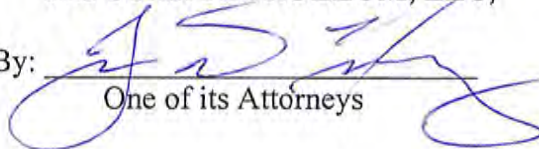
 ORIGINAL

NOTICE OF FILING

To: Pollution Control Board, Attn: Clerk Division of Legal Counsel
100 West Randolph Illinois Environmental Protect Agency
James R. Thompson Center, Ste. 11-500 1021 North Grand Avenue, East
Chicago, IL 60601-3218 P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE, that on this 23rd day of October, 2014, the undersigned filed with the Illinois Pollution Control Board via Hand Delivery, the foregoing **Petition for Review and Certificate of Service**, a copy of which is attached hereto and hereby served upon you.

TRI-STAR PETROLEUM, LLC,

By: 
One of its Attorneys

Jon D. Hoag, Esq. (ARDC #06289752)
SMITHAMUNDSEN LLC
3815 E. Main Street, Suite A-1
St. Charles, IL 60174
Phone: (630) 587-7914
Fax: (630) 587-7443
Email: jhoag@salawus.com
ATTORNEYS FOR PETITIONER

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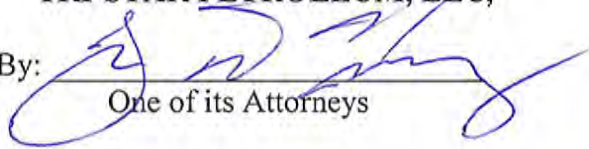
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused to be served a true and correct copy of the forgoing **Notice of Filing** and **Petition for Review** upon the following individual, via Hand Deliver and/or Regular U.S. Mail, postage prepaid, on this 23rd day of October, 2014.

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Ste. 11-500
Chicago, IL 60601-3218
VIA HAND DELIVERY

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276
VIA U.S. MAIL

TRI-STAR PETROLEUM, LLC,

By: 
One of its Attorneys

Jon D. Hoag, Esq. (ARDC #06289752)
SMITHAMUNDSEN LLC
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PETITION FOR REVIEW

NOW COMES Petitioner, TRI-STAR PETROLEUM, LLC, pursuant to Sections 40 and 57.7(c)(4) of the Illinois Environmental Protection Act ("Act") and 35 Ill. Adm. Code Part 105, hereby timely requests review of the decision by the Illinois Environmental Protection Agency ("IEPA") regarding Petitioner's Corrective Action Plan for Leaking UST Incident No. 20110485. In support thereof, Petitioner states as follows:

1. Petitioner was the owner of three 10,000 gallon unleaded gasoline underground storage tanks ("USTs") and one 6,000 gallon diesel UST located at 302 West Main Street, Du Quoin, Illinois. The site has been assigned IEPA Bureau of Land Identification Number 1450105012. The USTs were properly decommissioned on May 12, 2011.

2. A notification of release from the USTs was made to the Illinois Emergency Management Agency ("IEMA") on May 12, 2011 (Incident No. 20110485). The Office of the Illinois State Fire Marshal ("OSFM") issued an Eligibility and Deductibility Determination on August 17, 2011 that the incident was eligible for reimbursement from the LUST Fund, with a \$5,000 deductible.

3. On August 15, 2014, Petitioner submitted a Corrective Action Plan and Budget to the Agency for its approval.

4. On September 19, 2014, the IEPA conditionally approved and served its final decision regarding the corrective action plan for the Tri-Star Petroleum, LLC site in Perry County. A copy of the final decision is attached hereto as **Exhibit A**.

5. This Petition for Review is timely filed within 35 days of the Agency's final decision in accordance with Section 40 of the Act and 35 Ill. Adm. Code 105.404.

6. The IEPA's final decision includes a requirement that a Project Labor Agreement (PLA) be used for the project. *See, Exhibit A*

7. The IEPA's decision does not include any information to support or justify the PLA requirement under the Project Labor Agreement Act, and the IEPA even cautions that use of a PLA might increase the cost of the project.

8. The IEPA relies on conclusory assertions, rather than any type of analysis, to conclude that a PLA will purportedly advance the State's interest.

9. Furthermore, the IEPA lacks authority to set forth the specific requirements in its decision dated September 19, 2014 with respect to the use of a PLA.

10. Petitioner asserts that review of the underlying record will show the requirement to use a PLA was improperly included in the IEPA's September 19, 2014 decision and must be stricken.

WHEREFORE, Petitioner, TRI-STAR PETROLEUM, LLC, prays that the Pollution Control Board will grant the following relief:

- a. Find that the IEPA's September 19, 2014 final decision is arbitrary, capricious and not supported by statutory or regulatory authority;

- b. Modify the IEPA's September 19, 2014 final decision to remove any reference or requirement that a Project Labor Agreement (PLA) be used on this project;
- c. Award Petitioner reasonable attorneys' fees and expenses related to bringing this action; and
- d. Grant Petitioner any other relief the Board deems just and appropriate.

Dated: October 23, 2014

Respectfully submitted,
TRI-STAR PETROLEUM, LLC,

By: 

One of its Attorneys

Jon D. Hoag, Esq. (ARDC #06289752)
SMITHAMUNDSEN LLC
3815 E. Main Street, Suite A-1
St. Charles, IL 60174
Phone: (630) 587-7914
Fax: (630) 587-7443
Email: jhoag@salawus.com
ATTORNEYS FOR PETITIONER



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

CERTIFIED MAIL

SEP 19 2014

7012 0470 0001 2974 1326

Tri-Star Petroleum, LLC
Attn: Paul Dandona
1515 Seward Street
Schaumburg, IL 60193

Re: LPC #1450105012 -- Perry County
Du Quoin/Tri-Star Petroleum, LLC
302 West Main Street
Leaking UST Incident No. 20110485
Leaking UST Technical File

Dear Mr. Dandona:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated August 15, 2014, was received by the Illinois EPA on August 15, 2014. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

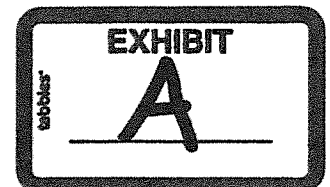
The corrective action plan for the Tri-Star Petroleum, LLC site should be modified for the following reason:

The indoor inhalation exposure route must be addressed as part of corrective action since there is not an interval of at least five feet of uncontaminated soil between contaminated groundwater and the lowest point of an overlying receptor.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. This model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). You must submit a signed copy of the model PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President
Illinois AFL-CIO
534 South Second Street, Suite 200
Springfield, IL 62701-1764



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) 278-5800
2009 Mall St., Collinsville, IL 62234 (618) 346-5120

9511 Harrison St., Des Plaines, IL 60016 (847) 294-4000
412 SW Washington St., Suite D, Peoria, IL 61602 (309) 671-3022
2309 W. Main St., Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312) 814-6026

Once the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

In addition, the total budget is approved for the amounts listed in Attachment B. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

In the event that the use of a PLA will impact the project costs set forth in the approved or modified budget, a revised budget may be submitted for Illinois EPA review and decision. As set forth at 35 Ill. Adm. Code 734.800(a)(2), if the revised costs exceed the maximum payment amounts at 35 Ill. Adm. Code 734.Subpart H (Subpart H amounts), bidding is required in order for payment from the UST Fund to exceed the Subpart H amounts. Any bidding must be done in accordance with 35 Ill. Adm. Code 734.855, and the requirement for a PLA must be part of the invitation for bid.

Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least three (3) working days prior to the scheduled field activities. Besides providing at least three days' notice to Leaking UST staff in Springfield, notification must be provided to Rob Mileur either by telephone at (618) 993-7223 or by e-mail at Robert.Mileur@illinois.gov.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

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

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

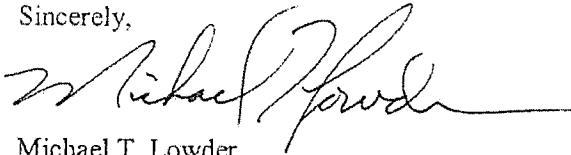
If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

Page 2

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 need further assistance, please contact Scott McGill at (217) 524-5137.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Lowder", with a long horizontal flourish extending to the right.

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

Attachment: Attachment A
Attachment B
Appeal Rights

cc: Marlin Environmental
BOL File

Attachment A

Re: LPC #1450105012 -- Perry County
Du Quoin/Tri-Star Petroleum, LLC
302 West Main Street
Leaking UST Incident No. 20110485
Leaking UST Technical File

NOTICE OF PROJECT LABOR AGREEMENT REQUIREMENT

Please be advised that, pursuant to Section 57.7(c)(3) of the Environmental Protection Act (415 ILCS 5/57.7(c)(3)), the Illinois EPA has determined that a project labor agreement (PLA) is required for the work included in the plan for which the UST owner or operator is seeking payment from the Underground Storage Tank (UST) Fund. The basis for the Illinois EPA's determination that a PLA is required for the project is set forth, as follows:

Use of a PLA will advance the State's interest in labor continuity and stability in completing the project work in accordance with the plan approved by the Illinois EPA.

Use of a PLA will advance the State's interest of advancing minority-owned and women-owned business and minority and female employment.

A PLA is not required for project work for which no payment from the UST Fund is being requested.

Pursuant to Section 57.8 of the Environmental Protection Act (415 ILCS 5/57.8), applications for payment from the UST Fund must include a certification signed by the UST owner or operator stating that the work was (i) performed under a PLA that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act (820 ILCS 130).

Attachment B

Re: LPC # 1450105012 -- Perry County
Du Quoin/Tri-Star Petroleum, LLC
302 West Main Street
Leaking UST Incident No. 20110485
Leaking UST Technical File

SECTION 1

The following amounts are approved:

\$2,062.87	Drilling and Monitoring Well Costs
\$7,583.16	Analytical Costs
\$252,326.20	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$2,187.00	Paving, Demolition, and Well Abandonment Costs
\$52,257.93	Consulting Personnel Costs
\$6,344.00	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act and 35 Illinois Administrative Code 734.635.

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