

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WESSEL'S ENTERPRISES, INC.,)
 Petitioner,)
 v.) PCB _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
 Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk Division of Legal Counsel
 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 day of January, 2015.

Respectfully submitted,
WESSEL'S ENTERPRISES, INC., 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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WESSEL'S ENTERPRISES, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, WESSEL'S ENTERPRISES, INC., pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the Agency's final decision, refusing to approve the application for payment, and in support thereof states as follows:

1. This appeal arises from underground storage tanks at Wessel's Grocery in Teutopolis, Effingham County, Illinois, owned by Wessel's Enterprises, Inc. and assigned LPC #0490455017.
2. Petitioner filed an application for payment for work performed pursuant to plans and budgets approved by the Illinois EPA.
3. On December 16, 2014, the Illinois EPA rejected the application for payment on the grounds that the application was incomplete. Attached hereto is a true and correct copy of said decision.
4. The Illinois EPA's decision should be reversed for the following reasons:
 - a. The application was complete, containing all of the information required of a complete application pursuant to Section 57.8 of the Illinois Environmental

Protection Act (415 ILCS 5/57.8(a)(6));

- b. The application was complete, containing all of the information required of a complete application pursuant to 35 Ill. Adm. Code § 734.605;
 - c. The application was complete pursuant to forms that existed at the time application for payment was submitted to the Illinois EPA;
 - d. The Petitioner is relieved from the obligation to submit or file forms that are not in compliance with the Forms Notice Act (20 ILCS 435/1 *et seq.*);
 - e. The information sought is irrelevant under the LUST Program; and
 - f. The Agency improperly seeks to review documents that exceed its scope of review, including mandating the creation of new documents that were not created when the underlying transactions occurred, and were not relied upon in the completion of the application for payment.
5. The Agency's determination was made on December 16, 2014, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, WESSEL'S ENTERPRISES, INC., 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 in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

WESSEL'S ENTERPRISES, 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) 782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217/524-3300

DEC 16 2014

CERTIFIED MAIL #

7012 0470 0001 2967 3238

Wessel Enterprises, Inc.
Attn: Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, IL. 62711

Re: LPC #0490455017 – Effingham County
Teutopolis / Wessel's Grocery
101 East Main Street
Incident-Claim No.: 20050209 -- 64915
Queue Date: August 18, 2014
Leaking UST Fiscal File

Dear Mr. Wessel:

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 15, 2014 and was received by the Illinois EPA on August 18, 2014. The application for payment covers the period from December 1, 2013 to August 5, 2014. The amount requested is \$17,548.28.

On August 18, 2014, the Illinois EPA received your 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 claim is \$10,000.00, 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 accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an

Page 1

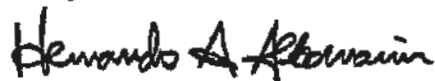
eligible owner or operator.

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: Wessel Enterprises, Inc.
Leaking UST Claims Unit
Cathy Elston

Attachment A
Accounting Deductions

Re: LPC #0490455017 -- Effingham County
Teutopolis / Wessel's Grocery
101 East Main Street
Incident-Claim No.: 20050209 -- 64915
Queue Date: August 18, 2014
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Description of Deductions

The application for payment in its entirety is denied because it contains costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(cc). Without additional 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 documentation listed below in items 1 through 7 is necessary to support this claim submitted to the Illinois EPA.

Further, pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.605(a), an owner or operator seeking payment from the Fund must submit to the Illinois EPA an application for payment on forms prescribed and provided by the Illinois EPA. The claim submitted did not include the forms listed below in items 1 and 7.

In addition, the application for payment requests handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 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. The application for payment failed to include sufficient documentation that the contractor paid the applicable subcontractor invoices. The Illinois EPA is requesting the affidavits referenced in item 6 below be completed and submitted.

Moreover, in accordance with 35 Ill. Adm. Code 734.665, an owner or operator that submits an application for payment must maintain all books, records, documents, and other evidence directly pertinent to the application for payment, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices. (Sections 57.6(a) and 57.15 of the Act)

Pursuant to 35 Ill. Adm. Code 734.605(b)(9) and (10), a complete application for payment must contain:

An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

The following information is needed to complete the review of the claim:

1. A breakdown of consulting personnel time requested for payment. Specifically requested are the *Consulting Personnel Costs Form* for the above-referenced claim and the companion *Personnel Weekly Work Sheet* that includes the days and times of day worked for each employee. Both forms are accessible on the Illinois EPA's Leaking UST Program Web page at www.epa.state.il.us/land/lust/forms/budget-forms/forms-1/table-of-contents.html under the Application for Payment Forms.
2. A copy of all employees' time sheets for the period for which consulting personnel time was requested for payment.
3. A copy of all contracts signed by the UST owner or operator for the above-referenced claim.
4. A copy of all contracts and agreements between the consultant and all subcontractors.
5. Documentation that the UST owner or operator paid the applicable deductible. Documentation could include a copy of the canceled check (front and back).
6. Affidavit(s) (attached)—completed, signed, and sealed—for the following subcontractor for the work completed pursuant to the above-referenced claim:

Prairie Analytical Systems, Inc.(2)
Landfill 33
Charles Heuerman Trucking(2)
Mid-Illinois Concrete, Inc.

7. Handling charges cannot be paid on costs for JK Five Construction, Inc. without the proof that their subcontractors have been paid. Proof of payment in the form of cancelled checks, lien waivers or affidavits were not provided for the following Subcontractors; Landfill 33 and Mid-Illinois Concrete, Inc.

The Illinois EPA has determined that a complete application for payment has not been submitted and the information listed above in items 1 through 7 is needed for a complete application for payment.

Attachment: Affidavit(s)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Prairie Analytical Systems, Inc.

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Laboratory analysis of four BETX/MTBE samples and four PNA samples by persons directly employed by Prairie Analytical Systems, Inc.

I have personal knowledge of invoice #1402218 for the sum of \$1,033.80, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____, _____.

Seal:

(Notary Public)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Prairie Analytical Systems, Inc.

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Laboratory analysis of one sample each of paint filter, Lead TCLP, TCLP, flash point by persons directly employed by Prairie Analytical Systems, Inc.

I have personal knowledge of invoice #1305406 for the sum of \$169.10, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____, _____.

Seal:

(Notary Public)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Landfill 33

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Soil disposal services of 126.58 tons of contaminated soil by persons directly employed by Landfill 33.

I have personal knowledge of the invoice dated 06/03/14 for the sum of \$2,388.44, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____, _____.

Seal:

(Notary Public)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Charles Heuerman Trucking Company

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Trucking of rock and sand backfill by persons directly employed by Charles Heuerman Trucking Company.

I have personal knowledge of invoice #38589 for the sum of \$2,182.58, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____,

_____ Seal:

(Notary Public)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Charles Heuerman Trucking Company

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Trucking of rock backfill by persons directly employed by Charles Heuerman Trucking Company.

I have personal knowledge of invoice #38702 for the sum of \$294.55, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____, _____.

Seal:

(Notary Public)

AFFIDAVIT

State of Illinois

County of Sangamon

I, the undersigned, _____, being first duly sworn upon my oath, do hereby depose and state as follows:

I am an authorized agent of Mid-Illinois Concrete, Inc.

The following activity has been completed at Wessel's Grocery, 101 East Main Street, Teutopolis, Illinois:

Provided concrete services of 9 cubic yards by persons directly employed by Mid-Illinois Concrete, Inc.

I have personal knowledge of invoice #146173 for the sum of \$1,073.52, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.

I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].

Further affiant sayeth not.

Signature: _____

Subscribed and sworn to before me the _____ day of _____, _____

Seal:

(Notary Public)

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