

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CITY OF BENTON FIRE)	
DEPARTMENT,)	
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 18th day of July, 2016.

Respectfully submitted,
CITY OF BENTON FIRE DEPARTMENT,
Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
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Springfield, IL 62704
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF BENTON FIRE DEPARTMENT,)	
Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, CITY OF BENTON FIRE DEPARTMENT, 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 releases of gasoline and diesel fuel from tanks formerly located at a fire-department operated by the City of Benton Fire Department in Benton, County of Franklin, Illinois, and assigned LPC # 0550055092.

2. The releases were reported on October 24, 2014 and assigned Incident # 20141215, and the tanks were removed thereafter.

3. On August 12, 2015, the Agency approved a Stage One Site Investigation Plan and Budget, subject to actual costs not exceeding the requirements of Subpart H.

4. Thereafter, Petitioner’s consultant performed the site investigation work, and on February 9, 2016, submitted to the Agency the Site Investigation Completion Report & Stage 1 Site Investigation Actual Costs.

5. The aforementioned submittal indicated that the consultant had charged the work on a “time and materials” basis with \$960.01 incurred in consulting materials costs. To wit:

Vehicle and mileage.....	\$282.40
Survey Equipment.	\$150.00
Copies.	\$150.00
Photoionization detector (PID).	\$135.00
Bailers.	\$125.00
Water level indicator.	\$60.00
Camera.....	\$30.00
Latex gloves	\$16.80
Ice.....	\$8.06
Plastic bags.....	\$2.75

6. The rates for these consulting materials have consistently been approved in previous budgets and reimbursement requests made by Petitioner’s consultant.

7. During review of the application, the Agency reviewer requested additional information, which was provided on June 9, 2016.

8. On June 10, 2016, the Agency approved the Stage 1 Site Investigation Report and modified the Stage 1 Site Investigation Actual Costs by removing all consulting materials costs.

9. The Illinois EPA’s decision to refuse to reimburse any consultant’s material costs incurred should be reversed for the following reasons:

- a. The application was legally complete, containing all of the information required by Section 57.8(a)(6) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(a)(6)), Section 734.605 of the Board’s regulations (35 Ill. Adm. Code § 734.605), and Illinois EPA forms and instructions existing at the time of the

submittal;

- b. All of the consulting materials, with the exception of the two bags of ice needed for sample preservation, are specifically listed as types of consultant's materials which are reimbursable direct costs in the Agency's Instructions for the Budget and Billing Forms;
- c. All of the consulting materials costs incurred were reasonable as they were based upon rates that had consistently been approved in previous budgets and reimbursement requests made by Petitioner's consultant and they do not exceed any maximum payment amount established in Subpart H of the Board's regulations (35 Ill. Adm. Code § 734.800 *et seq.*);
- d. The request for a mathematical financial derivation analysis for each cost item, including purchase costs, maintenance costs, usage rate and product life is a proper subject for rulemaking, and not for case-by-case analysis of material costs of as little as \$2.75; and
- d. No statutory or regulatory provision would be violated by approving payment of the consulting material costs incurred herein.

10. The subject Illinois EPA letter was received by certified mail on June 13, 2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, CITY OF BENTON FIRE DEPARTMENT, 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 as submitted,

(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.

CITY OF BENTON FIRE DEPARTMENT,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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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

BRUCE RAUNER, GOVERNOR

LISA BONNETT, DIRECTOR

217-524-3300

CERTIFIED MAIL

JUN 10 2016

7014 2120 0002 3289 0041

City of Benton
Attention: Fred Kondritz
500 West Main Street
Post Office Box 640
Benton, Illinois 62812

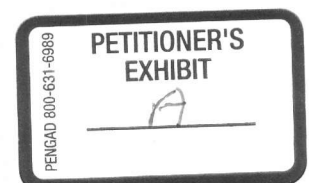
RE: LPC 0550055092 - Franklin County
Benton - Benton Fire Department
107 North Maple Street
LUST Incident 20141215
LUST TECHNICAL FILE

Dear Mr. Kondritz:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the February 9, 2016 Site Investigation Completion Report & Stage 1 Site Investigation Actual Costs. This information was prepared by Chase Environmental Group, and was received by the Illinois EPA on February 11, 2016. The report proposes the information which is summarized in Attachment 1 of this letter. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code.

The Illinois EPA has determined that the requirements of Title XVI of the Act have been satisfied (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(a)). Therefore, the Site Investigation Completion Report is approved.

The Stage 1 Site Investigation Actual Costs are modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(b). Based upon the modifications which are explained in Attachment 2 of this letter, the amounts which are summarized in Attachment 3 of this letter are approved. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Illinois Administrative Code 734.630 and 734.655.



Pursuant to Sections 57.7(b)(2) and (3) and 57.12(c) and (d) of the Act and 35 Illinois Administrative Code 734.100, 734.125, and 734.335(a), the Illinois EPA requires submittal of a Corrective Action Plan and Budget within 30 days from the date of this letter to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Division of Remediation Management
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Please note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek payment from the Underground Storage Tank Fund.

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

The Illinois EPA also has additional comments. These comments are explained in Attachment 4 of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 5 of this letter.

Any questions with regard to this letter should be directed to Michael Piggush via phone (217-782-3101) or electronic mail (michael.piggush@illinois.gov).

Sincerely,



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

Attachments (5):

1. Summary of Report Proposal.
2. Stage 1 Site Investigation Actual Costs Modifications.
3. Stage 1 Site Investigation Actual Costs Summary.
4. Additional Comments.
5. Appeal Rights.

Electronic Copies:

1. Marvin Johnson (mjohnson@chaseenv.com).
2. Kelly Tensmeyer (ktensmeyer@chaseenv.com).

ATTACHMENT 1

SUMMARY OF REPORT PROPOSAL

RE: LPC 0550055092 - Franklin County
Benton - Benton Fire Department
107 North Maple Street
LUST Incident 20141215
LUST TECHNICAL FILE

The report proposes the following information:

1. The report proposes that releases have occurred from the following underground storage tank systems:
 - a. 1-500 gallon gasoline underground storage tank system.
 - b. 1-500 gallon diesel fuel underground storage tank system.
2. The report proposes that the indicator contaminants would be the following: BETX, MTBE & PNAs.
3. The report assumes a Class I groundwater designation.
4. The report proposes that the releases from the underground storage tank systems were discovered on October 24, 2014, as the result of a site assessment.
5. The report proposes that corrective action activities were performed from November 17, 2014 → November 19, 2014.
 - a. The report proposes that 800 gallons of fuel & water were removed from the underground storage tank systems & disposed of.
 - b. The report proposes that the underground storage tank systems were removed.
 - c. The report proposes that 83.73 cubic yards (125.6 tons) of contaminated soil were excavated & disposed of.
 - d. The report proposes that 6 soil samples (soil samples W-1 → W-4 & F-1 → F-2) were obtained from the soil excavation area.

- e. The report proposes that the soil samples were analyzed for the following: BETX, MTBE & PNAs.
 - f. The report proposes that the most stringent soil remediation objectives were not exceeded.
 - g. The report proposes that water was encountered in the soil excavation area.
 - h. The report proposes that the water was absorbed and the material disposed of.
 - i. The report proposes that site circumstances did not allow for the soil excavation area to be left open for 24 hours in order to observe for recharge.
 - j. The report proposes that the soil excavation area was backfilled & paved over.
6. The report proposes that additional site assessment activities were subsequently performed.
- a. The report proposes that 5 groundwater monitoring wells (groundwater monitoring wells MW-1 → MW-5) were installed on November 23, 2015.
 - b. The report proposes that groundwater samples were obtained from the groundwater monitoring wells on December 2, 2015.
 - c. The report proposes that the groundwater samples were analyzed for the following: BETX, MTBE & PNAs.
 - d. The report proposes that the most stringent groundwater remediation objectives were not exceeded.
7. The report requests approval of a Site Investigation Completion Report.
8. The report requests approval of Stage 1 Site Investigation Actual Costs, for an amount of \$20,119.05.
9. The report proposes that the next stage of work would be to submit a Corrective Action Plan & Budget for the abandonment of the groundwater monitoring wells.

ATTACHMENT 2

STAGE 1 SITE INVESTIGATION ACTUAL COSTS MODIFICATIONS

RE: LPC 0550055092 - Franklin County
Benton - Benton Fire Department
107 North Maple Street
LUST Incident 20141215
LUST TECHNICAL FILE

The Illinois EPA approves of the Stage 1 Site Investigation Actual Costs, subject to the following modifications:

- I. The total amount of costs from the Consulting Materials Cost Form (\$960.01) is reduced to \$0.00.
 - a. These costs lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code 734.630(cc).
 - b. These costs may not be reasonable. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Illinois Administrative Code 734.630(dd).
 - c. These cost may include indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code 734.630(v).

In accordance with 35 Illinois Administrative Code 734.505(a), the Illinois EPA may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Illinois EPA may also review any other plans, budgets, or reports submitted in conjunction with the site.

The Illinois EPA has requested the following information directly from Chase Environmental Group. However, the information was not provided. The Illinois EPA may be willing to reconsider these costs if this information can be provided.

For each of the items which are listed on the Consulting Materials Costs Form, please provide the following information:

1. Please provide a mathematical financial derivation for how the unit rate for the item was determined. Include such variables (as applicable) as purchase costs (including receipts), operation & maintenance costs, estimated product usage, and estimated product life.
2. Please discuss if it is appropriate for the item to be charged as a direct project cost (versus as an indirect cost of doing business).

ATTACHMENT 3

STAGE I SITE INVESTIGATION ACTUAL COSTS SUMMARY

RE: LPC 0550055092 - Franklin County
 Benton - Benton Fire Department
 107 North Maple Street
 LUST Incident 20141215
 LUST TECHNICAL FILE

The Stage I Site Investigation Actual Costs are approved for the following amounts:

Category	Proposed Stage I Site Investigation Actual Cost Amount	Approved Stage I Site Investigation Actual Cost Amount
Drilling & Monitoring Well Costs	\$3,488.76	\$3,488.76
Analytical Costs	\$1,715.00	\$1,715.00
Remediation & Disposal Costs	\$1,540.00	\$1,540.00
UST Removal & Abandonment Costs	\$0.00	\$0.00
Paving, Demolition & Well Abandonment Costs	\$0.00	\$0.00
Consulting Personnel Costs	\$12,806.33	\$12,806.33
Consulting Materials Costs	\$96.01	\$96.00
Total	\$20,746.09	\$19,640.09

ATTACHMENT 4

ADDITIONAL COMMENTS

RE: LPC 0550055092 - Franklin County
Benton - Benton Fire Department
107 North Maple Street
LUST Incident 20141215
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The Illinois EPA has the following additional comments. These comments should be addressed with the next report submittal.

1. The plan diagrams illustrate that there are 2 property lines which go through the site property. The report explains that these are actually parcel lines, rather than property lines. However, the plan diagrams still refer to them as being property lines.
 - a. Please revise the plan diagrams to correctly indicate that these are parcel lines.
 - b. Please also revise the plan diagrams to include the parcel numbers.
2. Please refer to previous Figure 6 (dated December 2014).
 - a. Please revise the diagram to illustrate the geology of the subsurface.
 - b. Please provide an additional cross section diagram drawn perpendicular to the existing one.
3. Please refer to the soil boring & groundwater monitoring well logs for the 5 groundwater monitoring wells (groundwater monitoring wells MW-1 → MW-5) which were installed on November 23, 2015.
 - a. Please revise the soil boring logs to illustrate the groundwater monitoring well construction, to scale, on the same sheet of paper.
 - b. The soil boring logs state that groundwater was encountered at depths of 10' - 11.5'. However, the groundwater monitoring well logs state that the depth to groundwater in the groundwater monitoring wells was from 1.94' - 5.16'. Please discuss why there is such a significant different in groundwater levels while drilling versus the static level in the groundwater monitoring well logs.

ATTACHMENT 5

APPEAL RIGHTS

An underground storage tank system 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:

Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph
Suite 11-500
Chicago, Illinois 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, Illinois 62794-9276
217-782-5544