

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KNAPP OIL COMPANY,)	
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 30th day of June, 2017.

Respectfully submitted,
KNAPP OIL COMPANY, 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

KNAPP OIL COMPANY,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, KNAPP OIL COMPANY, pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency’s final decision, modifying the budget, and in support thereof states as follows:

1. This appeal arises from underground storage tank incidents at a self-service station in Metropolis, County of Massac, Illinois, owned and operated by Knapp Oil Company, and assigned LPC #1270155039.
2. Details on the release and remediation activities are detailed in the Board’s decision in Knapp Oil Co. v. IEPA, PCB 16-103 (Sept. 22, 2016).
3. The previous Board decision restored all cuts to a Stage 1 Site Investigation budget; specifically a camera claimed to be an indirect cost, and a bailer, survey equipment and sampling kit pending submission of additional documentation.
4. On November 17, 2016, the Board issued its final order, which included reimbursement of attorney’s fees.
5. On April 4, 2017, the Agency approved the Stage One Site Investigation budget with the costs restored pursuant to the Board’s order.

6. On April 5, 2017, Petitioner, through its consultant, submitted a Stage Two Site Investigation plan and budget.

7. On May 23, 2017, the Agency approved the plan, but modified by the budget by cutting \$44.25 for vehicle charges for lack of supporting documentation, \$130 for a PID for lack of supporting documentation, and \$30.00 for a camera considered to be an indirect cost and for lack of supporting documentation. A true and correct copy of this decision is attached hereto as Exhibit A.

8. The Board has ruled that a camera is not an indirect cost and found the Agency's argument (cameras are rarely used these days) to have "no basis in Board regulations." Knapp Oil Co. v. IEPA, PCB 16-103, at p. 7 (Sept. 22, 2016). The Board regulations have not changed in the interim.

9. With respect to "supporting documentation," the budget submittal included all information required by the Agency forms and Board regulations, and the same information was submitted and eventually approved for each of these items for State One Site investigation activities.

10. Furthermore, the Agency decision letter does not identify precisely what documents are required and what statute or regulation requires it, in contrast to clear requirements to provide invoices as "supporting documentation" for a payment application. See 35 Ill. Adm. Code § 734.605(b)(9).

11. The subject Illinois EPA letter was received by certified mail on May 26, 2017, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, KNAPP OIL COMPANY, 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 budget 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.

KNAPP OIL COMPANY,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ 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) 782-3397
BRUCE RAUNER, GOVERNOR ALEC MESSINA, DIRECTOR

217/524-3300

RECEIVED via email
05-24-17

T1406024
Knapp Metropolis

CERTIFIED MAIL

7014 2120 0002 3286 5087

MAY 23 2017

Knapp Oil Company, Inc.
Attention: Mr. Rick Forth
220 Front Street
Xenia, Illinois 62899

Re: LPC #1270155039 -- Massac County
Metropolis/ Knapp Oil
1117th East 5th Street
Leaking UST Incident No. 991949, 992410, 20141214
Leaking UST Technical File

Dear Mr. Forth:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Stage 2 Site Investigation Plan (plan) and proposed budget submitted for the above-referenced incident. This plan, dated April 5, 2017, was received by the Illinois EPA on April 10, 2017. 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 has determined that the activities proposed in this plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 734 (Sections 57.7(a)(1) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the plan is approved.

In addition, the proposed budget for Stage(s) 2 is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). The modifications are listed in Section 2 of Attachment A. Costs must be incurred in accordance with the approved plan. The maximum amounts that can be paid from the Fund must be determined in accordance with Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 734 (35 Ill. Adm. Code 734.310(b)). Please be advised that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H, Appendix D, and Appendix E of Part 734 (Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.510(b)).

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)230-2300
2309 W. Main St., Suite 116, Marion, IL 62959 (618)933-3300
100 W. Randolph, Suite 10-300, Chicago, IL 60601



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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 two weeks prior to the scheduled field activities.

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires submittal of a Stage 3 Site Investigation Plan, and budget within 30 days after completing the site investigation to:

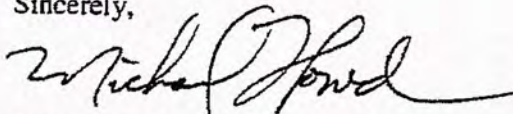
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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

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 James R. Malcom, III at 217-524-9140.

Sincerely,



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

MTL:jrm

Attachment: Attachment A

cc: Chase Environmental (electronic copy), Marvin Johnson mjohnson@chaseenv.com
BOL File

Attachment A

Re: LPC #1270155039 -- Massac County
Metropolis/ Knapp Oil
1117th East 5th Street
Leaking UST Incident No. 991949, 992410, 20141214
Leaking UST Technical File

SECTION 1

STAGE 2 Proposed Budget

Costs must be incurred in accordance with the approved plan and must be determined in accordance with 35 Ill. Adm. Code 734.Subpart H, Appendix D, and Appendix E.

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 (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

STAGE 2 Modifications

1. \$44.25 for costs for vehicle charges, 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.

Pursuant to 35 Ill. Adm. Code 734.850(b) for costs associated with activities that do not have a maximum payment amount set forth in pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the rate requested for vehicle charges pursuant 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation for the rate requested for vehicle costs 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 Illinois EPA will reimburse for mileage based on the standard federal rate of 53.5 cents/mile without supporting documentation as noted above. If the vehicle was actually rented, a rental invoice could be submitted as sufficient supporting documentation.

2. \$130 for costs for site investigation costs associated with the PID daily fee, 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.

Pursuant to 35 Ill. Adm. Code 734.850(b) for costs associated with activities that do not have a maximum payment amount set forth in pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the rate requested for PID daily fee pursuant 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation for the rate requested the PID daily fee 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).

3. \$30.00 for 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 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

The costs associated with the digital camera is considered an indirect costs and not eligible for reimbursement. In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable and lack supporting documentation. Pursuant to 35 Ill. Adm. Code 734.850(b) for costs associated with activities that do not have a maximum payment amount set forth in pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable.

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:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson 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