

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PARKER'S GAS & MORE, INC.)
Petitioner,)
v.) PCB _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph Street
State of Illinois Building, Suite 11-500
Chicago, IL 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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 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 21st day of December, 2018.

Respectfully submitted,

PARKER'S GAS & MORE, INC.
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PARKER'S GAS & MORE, INC.)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, PARKER'S GAS & MORE, INC. pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the final decision of the Illinois Environmental Protection Agency (hereinafter "the Agency") to not pay corrective action costs in full, stating as follows:

1. Petitioner was the owner or operator of a service station in the City of Clayton, County of Adams, Illinois, which had been assigned LPC # 0010105006.
2. In May of 1995, an incident was reported from underground storage tanks at the property, which was assigned Incident Number 95-1012. All tanks were removed from the property in 1998 and 1999.
3. On February 13, 2015, a corrective action plan was submitted to the Agency, which proposed the excavation, transportation and disposal of petroleum contaminated soil located on-site and off-site. The plan was accompanied by a budget in the amount of \$709,246.73.
4. On May 20, 2015, the Agency approved the corrective action plan and budget without any modifications or deductions.
5. Thereafter and in reliance upon the Agency's approval of the corrective action

plan and budget, Petitioner, through its consultants, performed said corrective action.

6. Petitioner's consultant learned of the availability of suitable backfill material for the excavation that could be obtained free of charge, so long as it was handled and transported by Petitioner's consultant, and this opportunity was utilized.

7. On August 13, 2018, Petitioner's consultant submitted an application for payment in the amount of \$577,244.80.

8. On November 15, 2018, the Agency approved partial payment in the amount of \$572,925.56. A true and correct copy of the decision is attached hereto as Exhibit A.

9. The Agency deducted \$3,755.42 purportedly because backfill material was provided free of charge.

10. The application for payment did not request reimbursement for said backfill material. The Agency Instructions for the Budget and Billing Forms makes it clear that the cost of the material itself is only one component of the cost of backfilling an excavation:

Backfilling the Excavation: Include in the "Cost per Cubic Yard (\$)" all costs associated with the purchase, transportation, and placement of clean material used to backfill the excavation resulting from the removal and disposal of soil, including but not limited to all non-consulting personnel (subcontractors), trucker/equipment operator labor, trucker/equipment operator travel and per diems, truck charges, visqueen truck liner, backhoe charges, equipment, equipment mobilization, backfill material (clay, sand, gravel), barriers, cones, tape, permit fees, traffic control, and other materials and related expenses.

11. In support of its modification, the Agency cites Section 57.7(c)(3) of the Act, which governs budgets, and does not apply to the application for payment being reviewed. (415 ILCS 5/57.7(c)(3))

12. The Agency further cites Section 734.630(cc) of the Board's regulations to claim that the amounts are cut for lack of supporting documentation, without explaining what document is missing.

13. The application for payment was complete, including all documentation required by the Illinois Environmental Protection Act (415 ILCS 5/57.8(a)(6)) and the Board's regulations (35 Ill. Adm. Code 734.605(b)).

14. In reviewing an application for payment, the Act states that “[i]n no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.” (415 ILCS 5/57.8(a)(1)) “Agency approval of any plan and associated budget . . . shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget.” (415 5/57.7(c)(1)) Here, the costs requested are less than the amounts approved in the budget.

15. The subject decision letter was received by certified mail on November 16, 2018, making December 21, 2018 the deadline for any appeal, and therefore this appeal is timely.

WHEREFORE, Petitioner, PARKER'S GAS & MORE, 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 payment application in total, (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.

PARKER'S GAS & MORE, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com



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

CERTIFIED MAIL #

7017 2680 0001 0206 3067

NOV 15 2018

Ted Parker
c/o Chase Environmental Group, Inc.
2701 East Ash
Springfield, IL 62703

Re: LPC #0010105006 -- Adams County
Clayton / Parker's Gas & More, Inc.
101 East Outer Belt Drive
Incident-Claim No.: 951012 -- 69508
Queue Date: August 16, 2018
Leaking UST Fiscal File

Dear Mr. Parker:

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 Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated August 13, 2018 and was received by the Illinois EPA on August 16, 2018. The application for payment covers the period from December 1, 2017 to June 30, 2018. The amount requested is \$577,244.80.

On August 16, 2018, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$572,925.56 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 \$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 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.

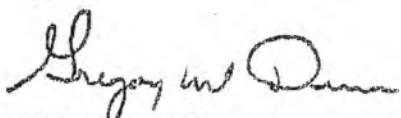


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An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

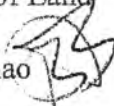
If you have any questions or require further assistance, please contact Melissa Owens of my staff at (217)785-9351.

Sincerely,



Gregory W. Dunn, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

GWD:mao



Attachments

c: Parker's Gas & More, Inc.
Leaking UST Claims Unit

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:

Clerk of the Board
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

Attachment A
Deductions

Re: LPC #0010105006 -- Adams County
Clayton / Parker's Gas & More, Inc.
101 East Outer Belt Drive
Incident-Claim No.: 951012 -- 69508
Queue Date: August 6, 2018
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).

Item # Description of Deductions

1. \$3,755.42, deduction for costs for Remediation 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.

520.195 tons at \$6.70 per ton plus 7.75% sales tax are being cut from the Backfill line item because they were provided free of charge.

2. \$563.82, deduction for costs for Consultant's Materials that were not approved in a budget. The overall goal of the financial review must be to assure 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 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with Consultant's Materials were not approved in a budget and are, therefore, ineligible for payment.

In addition, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

Finally, the 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).

\$563.82 for grass seed is being cut.

mao