

**RECEIVED**  
CLERK'S OFFICE

AUG 16 2006

STATE OF ILLINOIS  
Pollution Control Board

*PLB07-11*

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

LINCOLNSHIRE/STATE OIL )  
S&S PETROLEUM, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

**NOTICE OF FILING**

TO: 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 filed with the Office of the Clerk of the Pollution Control Board the Petition for Hearing and Entry of Appearance of Lincolnshire/State Oil S&S Petroleum, a copy of which is herewith served upon you.

Respectfully submitted,

LINCOLNSHIRE/STATE OIL S&S  
PETROLEUM, Petitioner,

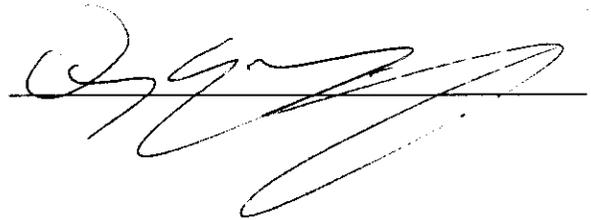
By:   
Douglas J. Quivey  
Londrigan, Potter & Randle, P.C.  
1227 South Seventh Street  
P.O. Box 399  
Springfield, IL 62705  
217/544-9823  
217/544-9826 (fax)

August 14, 2006

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Notice of Filing on each of the addresses hereinafter set forth by placing same in a sealed envelope and depositing it in the U.S. Mail, postage fully prepaid, at Springfield, Illinois, this 14<sup>th</sup> day of August, 2006, and that the original was filed with the Illinois Pollution Control Board.

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

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be the name of the undersigned.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

AUG 16 2006

STATE OF ILLINOIS  
Pollution Control Board

LINCOLNSHIRE/STATE OIL )  
 S&S PETROLEUM, )  
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 Petitioner, )  
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 v. )  
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 PROTECTION AGENCY, )  
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 Respondent. )

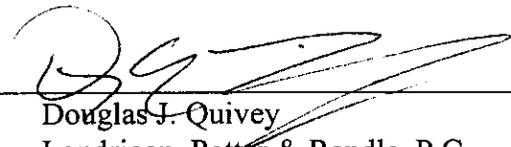
PC 07-11

ENTRY OF APPEARANCE

I hereby file my appearance in this proceeding on behalf of Lincolnshire/State Oil S&S Petroleum.

Respectfully submitted,

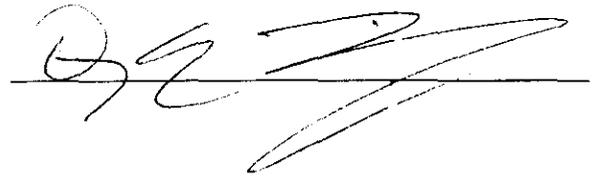
LINCOLNSHIRE/STATE OIL S&S  
PETROLEUM, Petitioner,

By:   
 Douglas J. Quivey  
 Londrigan, Potter & Randle, P.C.  
 1227 South Seventh Street  
 P.O. Box 399  
 Springfield, IL 62705  
 217/544-9823  
 217/544-9826 (fax)

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Entry of Appearance on each of the addresses hereinafter set forth by placing same in a sealed envelope and depositing it in the U.S. Mail, postage fully prepaid, at Springfield, Illinois, this 14<sup>th</sup> day of August, 2006, and that the original was filed with the Illinois Pollution Control Board.

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

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.



B. Law:

The applicable Statute relating to LUST Fund reimbursement states in relevant part that when payment is sought pursuant to an approved budget: “[t]he Agency’s review shall be limited to generally accepted auditing and accounting practices. In 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).

C. Argument:

A review of the Agency’s decision shows that the Agency went well beyond auditing ‘for adherence to the corrective action measures in the proposal’ and well beyond generally accepted accounting procedures. The best evidence of this are the requests in Attachment A of Exhibit A for “a detailed breakdown that includes dates, times, employees’ names, and the equipment used for the costs requested on Environmental Control System, LLC’s invoice” and a “detailed breakdown that includes dates, times, employees’ names, and a description of the work performed.” (Exhibit A). The Agency’s request for such detail shows that the Agency is going well beyond auditing for adherence to the corrective action measures in the proposal and also well beyond even what is required by the instructions for submitting the payment vouchers.

As explained in Exhibit B, Petitioner agrees with a reduction of \$19,155.60. It, however, does not agree that it has failed to adequately support reimbursement for the remaining amounts sought. The agency apparently agrees that the corrective action plan with an approved budget of \$1,122,408.02 was completed, but it only agrees that it cost \$35,967.80 to complete it.<sup>1</sup> As is made clear in both the original application for payment and in Exhibit B, the work was performed and the

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<sup>1</sup>This number does not include some small interim payments that are not at issue.

contaminated soil was removed and replaced.

It also does not stand to reason that personnel costs of \$41,260.00 that were budgeted for \$64,780.00 were cut to \$0. Again, the Agency review is supposed to be limited to “auditing for adherence to the corrective action measures in the proposal.” 415 ILCS 5/57/8(a)(1). The law does not authorize a full and complete audit. Accordingly, the Agency decision is not well supported by the law and the application for payment as amended in Exhibit B should be approved.

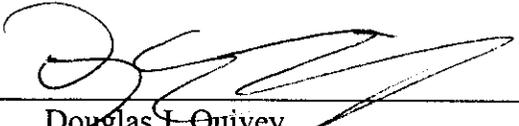
Lastly, a great injustice will result if the Agency decision is allowed to stand. The Agency approved a budget of \$1,122,408.02, agreed that the work was done, and then only approved payment of \$35,967.80. While the Agency has an obligation to manage the fund, it does not have a charter to go beyond the dictates of the statute. As supplemented, the voucher supports payment for \$1,070,245.20.

Wherefore, Petitioner prays that a hearing be held and the Agency decision be reversed.

Respectfully submitted,

LINCOLNSHIRE/STATE OIL S&S  
PETROLEUM, Petitioner,

By: \_\_\_\_\_

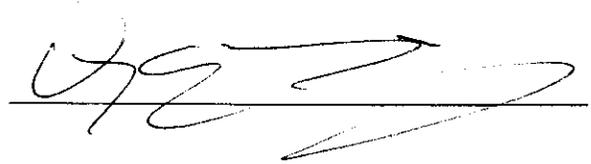


Douglas J. Quivey  
Londrigan, Potter & Randle, P.C.  
1227 South Seventh Street  
P.O. Box 399  
Springfield, IL 62705  
217/544-9823  
217/544-9826 (fax)

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Petition for Hearing on each of the addresses hereinafter set forth by placing same in a sealed envelope and depositing it in the U.S. Mail, postage fully prepaid, at Springfield, Illinois, this 14<sup>th</sup> day of August, 2006, and that the original was filed with the Illinois Pollution Control Board.

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

A handwritten signature in black ink, appearing to be "J. G. ...", is written over a horizontal line.



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8594 4886

JUL 10 2006

State Oil - S & S Petroleum  
Attention: Jim Peters  
8522 Thistlewood Court  
Darien, Illinois 60561

Re: LPC #0970955522 -- Lake County  
Lincolnshire/State Oil S & S Petroleum  
399 Milwaukee Avenue  
Leaking UST Incident No. 20010139  
Leaking UST FISCAL FILE

Dear Mr. Peters:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated February 28, 2006 and was received by the Agency on March 1, 2006. The application for payment covers the period from January 7, 2006 to February 16, 2006. The amount requested is \$1,089,400.80.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on November 16, 2001 for \$20,713.69. 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.

On March 1, 2006, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$35,967.80 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 applicant 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:

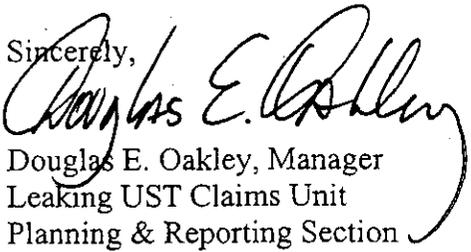
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions or require further assistance, please contact Doug Tolan of my staff and or Brian Bauer at 217/782-6762.**

Sincerely,



Douglas E. Oakley, Manager  
Leaking UST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:DT:asr\061785.doc

Attachment

cc: Environmental Management, Inc.

Attachment A  
Technical Deductions

Re: LPC #0970955522 -- Lake County  
Lincolnshire / State Oil S & S Petroleum  
399 Milwaukee Avenue  
LUST Incident No. 20010139  
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item #      Description of Deductions

1.      \$16,350.00, deduction for costs associated with site investigation or corrective action. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.606(m).

The Visqueen, caution tape, and barricade charge exceed the budgeted amount by \$2,000.00, the end loader charge exceeded the budgeted amount by \$8,250.00, and the street sweeper for \$6,100.00 was not included in the budget.

2.      \$327.00, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(f) of the Act and 35 Ill. Adm. Code 734.635.

3.      \$973,075.00, deduction for costs from Environmental Control System, LLC, 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.

The Illinois EPA is requiring copies of all invoices of subcontractors and a detailed breakdown that includes dates, times, employees names, and the equipment used for the costs requested on Environmental Control System, LLC's invoice.

4.      \$22,421.00, deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 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.

Without the supporting documentation required in number 3 above the Illinois EPA cannot determine if the appropriate proof of payments have been submitted. In addition, it appears that Onyx and Powell, Inc were used as subcontractors but no documentation has been submitted indicating that they have been paid.

- 5 \$41,260.00, deduction for costs for personnel 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.

The Illinois EPA is requiring a detailed breakdown that includes dates, times, employees names, and a description of the work performed.

BPB: