

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

AUG 21 2006

STATE OF ILLINOIS  
Pollution Control Board

FEDEX GROUND PACKAGE SYSTEM, INC, )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

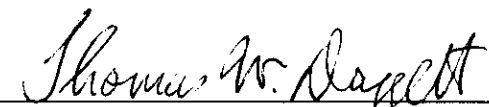
PCB 07-12  
(UST Fund Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

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 on August 21, 2006, I filed with the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies of the attached Petition for Review of Underground Storage Tank Fund Reimbursement Determination (the Petition.)

I hereby certify, under penalty of perjury, that true and accurate copies of this Notice, the Petition For Review Of Underground Storage Tank Fund Reimbursement Determination, and Appearance are being served upon the Respondent at the address shown above, by depositing it in the U.S. Mail in Chicago, IL, with First Class Postage prepaid, on this day, August 21, 2006.

  
Thomas W. Daggett

DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 North Clark Street  
Chicago, Illinois 60601  
(312) 960-1600

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **AUG 21 2006**

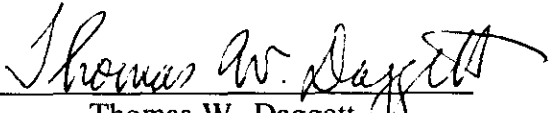
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APPEARANCE

PLEASE TAKE NOTICE that I, Thomas W. Daggett, an attorney licensed to practice law in the State of Illinois, and practicing with the Daggett Law Firm at the address given below, hereby file my appearance in this UST Fund Appeal on behalf of Petitioner, FEDEX Ground Package System, Inc.

  
\_\_\_\_\_  
Thomas W. Daggett

DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 North Clark Street  
Chicago, Illinois 60601  
(312) 960-1600

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STATE OF ILLINOIS  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PCB 07-12  
(UST Fund Appeal)

**PETITION FOR REVIEW OF UNDERGROUND STORAGE TANK  
FUND REIMBURSEMENT DETERMINATION**

Petitioner, FEDEX Ground Package System, Inc. ("Petitioner"), by its attorney, Thomas W. Daggett of the Daggett Law Firm, hereby petitions the Pollution Control Board to review and reverse a final determination issued by the Illinois Environmental Protection Agency ("IEPA") on July 17, 2006, which rejected Petitioner's Budget Amendment submitted for reimbursement from the Illinois Underground Storage Tank Fund ("UST Fund"), stating as follows:

1. Petitioner is the owner of a facility located at 6767 West 75<sup>th</sup> Street, Bedford Park, Illinois, 60638, which the IEPA has assigned LPC# 0310120014 (the "Facility").
2. Petitioner notified the Illinois Emergency Management Agency ("IEMA") of releases from a diesel underground storage tank at the Facility, which IEMA assigned Incident Nos. 20030468 and 20040575.

3. Petitioner submitted a Corrective Action Plan and Budget to the IEPA for LUST Incident Nos. 20030468 and 20040575, which IEPA approved on July 14, 2005.

4. Over the next year, Petitioner, through its consultant, MACTEC Engineering and Consulting, Inc. ("MACTEC"), implemented the corrective action in accordance with the plan approved by IEPA. This included the removal of the subject diesel underground storage tank, for which Petitioner obtained additional Incident No. 20060145.

5. On April 20, 2006, MACTEC submitted a Corrective Action Completion Report on Petitioner's behalf, with a certification that the corrective action had been completed in compliance with the plan and all legal requirements.

6. Petitioner has fully complied with all Illinois laws and regulations addressing petroleum underground storage tanks since purchasing the property in November 2002, and discovering a release from an underground storage tank there in 2003.

7. On May 10, 2006, IEPA accepted the Corrective Action Completion Report as showing the satisfactory completion of the plan, and granted Petitioner a No Further Remediation ("NFR") letter covering LUST Incidents Nos. 20030468, 20040575, and 20060145.

8. On May 30, 2006, Petitioner submitted a proposed Budget Amendment to IEPA, including documentation of expenses already incurred in implementing the corrective action plan previously approved by IEPA. This proposed Budget Amendment requested IEPA approval and reimbursement for \$72,878.75 of incurred

expenses that were not covered in the budget previously approved by IEPA. However, because certain corrective action tasks had been completed by Petitioner for less than the previously approved budget amounts, the total reimbursement requested was only \$39,122.55 more than the total budget previously approved by IEPA.

9. In a letter dated June 21, 2006, IEPA initially rejected the May 30, 2006 proposed Budget Amendment covering these already expended costs, stating that they could not be approved because they were submitted to IEPA after the NFR letter was issued.

10. On July 3, 2006, Petitioner's consultant MACTEC sent IEPA a letter asserting that the NFR letter cutoff provision did not apply to Petitioner's May 30, 2006 Budget Amendment covering costs already incurred for work under an Corrective Action Plan previously approved by IEPA and already implemented by Petitioner, and requesting the IEPA to reconsider its earlier position.

11. On July 17, 2006, IEPA issued its final action on Petitioner's request, rejecting it and stating as its reason that, "The budget was submitted after the issuance of a No Further Remediation Letter." (with citation to 35 Ill. Admin. Code 734.335(d)). The letter erroneously identifies the July 3, 2006 letter addressing the proposed Budget Amendment as a Corrective Action Plan. A true and accurate copy of that final agency determination is attached as Exhibit A to this Petition.

12. Exhibit A was served upon Petitioner by certified mail dated July 17, 2006, and was received by Petitioner's Environmental Department on July 20, 2006.

13. Petitioner prays that the Board reverse the IEPA's July 17, 2006, final determination, and order the approval of the Petitioner's Budget Amendment and its request for reimbursement of the referenced costs.

14. Petitioner asserts, as the grounds for its appeal, that the Board regulations cited in IEPA's July 17, 2006 final action as its basis for rejecting Petitioner's submittal do not apply here, where Petitioner obtained approval of IEPA for its Corrective Action Plan and Budget before proceeding with its underground storage tank cleanup, and now only seeks to amend the budget to recover actual costs incurred in implementing the IEPA approved plan; IEPA's asserted interpretation of certain subsections of the regulations is contrary to meaning of the Board's Petroleum Underground Storage Tank Regulations read as a whole, and to their statutory basis in the Environmental Protection Act at 415 ILCS 5/57, *et seq.*. Petitioner reserves the right to present additional grounds for reversal of the IEPA's July 17, 2006 final determination as they may be identified by Petitioner during the course of this appeal.

WHEREFORE, Petitioner respectfully requests that the Board:

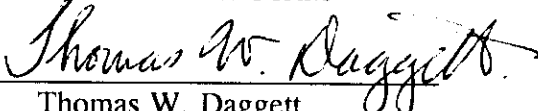
- A) grant it a hearing in this matter;
- B) reverse the IEPA's July 17, 2006 final determination;
- C) remand the matter to the IEPA with instructions to approve the Petitioner's proposed Budget Amendment to the extent that it covers actual costs of implementing the Corrective Action plan previously approved by IEPA;
- D) instruct IEPA to approve a further budget amendment to cover Petitioner's legal fees and costs for seeking payment in this appeal, and related costs, if Petitioner prevails before the Board, consistent with 35 Ill. Admin. Code 734.630(g) and 415 ILCS 5/57.8(1); and

E) grant all other relief to the Petitioner as is just and appropriate.

Respectfully submitted,

FEDEX Ground Package System, Inc.

By DAGGETT LAW FIRM

  
Thomas W. Daggett

Thomas W. Daggett  
DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 N. Clark Street  
Chicago, IL 60601  
(312) 960-1600



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

JUL 20 2006

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 -- (217) 782-3397 FAX: (217) 782-3398  
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

JUL 17 2006

Mr. Jerry Swart  
FedEx Ground  
100 Federal Express Drive  
Moon Township, PA 15708

CERTIFIED MAIL  
7004 2510 0001 8589 6314

Re: LPC #0310120014 - Cook County  
Bedford Park/FedEx Ground  
6767 West 75<sup>th</sup> Street  
Leaking UST Incident No. 20030468, 20040575  
Leaking UST Technical File

Dear Mr. Swart:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated July 3, 2006, was received by the Illinois EPA on July 7, 2006. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The plan and the associated budget are rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), 734.510(a) and 734.510(b)).

The budget was submitted after the issuance of a No Further Remediation Letter. Pursuant to 35 Ill. Adm. Code 734.335(d)), any corrective action plan or budget must be submitted to the Illinois EPA for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of 35 Ill. Adm. Code 734 prior to the issuance of a No Further Remediation Letter.

Future correspondence should be submitted 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

Regional Office - 400 North LaSalle St., Chicago, IL 60610 - (312) 987-7260 • District Office - 911 W. Harrison St., Des Plaines, IL 60018 - (815) 291-4400  
Field Office - 195 South State St., Elgin, IL 60120 - (847) 606-3131 • Field Office - 5415 N. University St., Peoria, IL 61614 - (309) 691-1163  
State Office - 7620 N. Cicero Ave., Skokie, IL 60074 - (309) 691-5462 • Central Office - 2120 South First Street, Chicago, IL 60616 - (312) 814-6026  
State Office - 4700 South State St., Springfield, IL 62764 - (217) 782-6002 • Central Office - 2000 W. Illinois St., Collinsville, IL 62424 - (618) 463-1129  
State Office - 2300 W. Main St., State College, Illinois, IL 62458 - (618) 992-0200



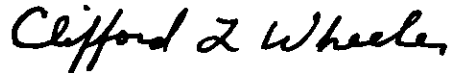
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Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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 Jennifer Rossi at 217-782-9285.

Sincerely,



Clifford L. Wheeler  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

CLW:jjr\

Attachment: Appeal Rights

c: Carmen Yung, MACTEC Engineering and Consulting, Inc.  
BOL File

## 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