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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CONOCOPHILLIPS COMPANY,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Respondent.)

PCB No. 07-14
(UST Appeal)

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph Street
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 filed with the office of the Clerk of the Pollution Control Board a Petition for Review and Entry of Appearance, copies of which are herewith served upon you by First-Class mail, postage pre-paid.

THOMPSON COBURN LLP

BY: Edward A. Cohen / EB
Edward A. Cohen, Ill. Bar #6194012
Joseph M. Kellmeyer, Ill. Bar #6205864
Ryan R. Kemper, Ill. Bar #6288297
One US Bank Plaza
St. Louis, MO 63101
314-552-6000
FAX 314-552-7000

Attorneys for Petitioner ConocoPhillips
Company

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 v.)
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 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondent.)

PCB No. 07-14
(UST Appeal)

ENTRY OF APPEARANCE

COMES NOW Thompson Coburn LLP by Edward A. Cohen, Joseph M. Kellmeyer, and Ryan R. Kemper, and enter their appearance in the above-styled matter on behalf of Petitioner ConocoPhillips Company.

Respectfully submitted,

THOMPSON COBURN LLP

BY: Edward A. Cohen / MB
Edward A. Cohen, Ill. Bar #6194012
Joseph M. Kellmeyer, Ill. Bar #6205864
Ryan R. Kemper, Ill. Bar #6288297
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Attorneys for Petitioner ConocoPhillips
Company

SEP 01 2006

BEFORE THE POLLUTION CONTROL BOARD STATE OF ILLINOIS
OF THE STATE OF ILLINOIS Pollution Control Board

CONOCOPHILLIPS COMPANY,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Respondent.)

PCB No. 06-07-14
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

COMES NOW the Petitioner, CONOCOPHILLIPS COMPANY ("COP"), by its attorneys Thompson Coburn LLP, pursuant to Sections 40 and 57 of the Illinois Environmental Protection Act, and Subpart D of 35 Ill. Admin. Code Part 105, and does hereby appeal the July 26, 2006 decision of respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency").

1. On July 26, 2006, the Agency issued its final decision denying COP's request for reimbursement from the Underground Storage Tank (UST) Fund. A copy of that Agency letter is attached as **Exhibit A** (hereinafter "Denial Letter") and incorporated herein by reference.

2. The filing of this Petition is timely because it is filed within 35 days of the Denial Letter (plus 2 of the 4 mailing rule days). The timeliness of this September 1, 2006 filing is confirmed in the Agency's August 31, 2006 correspondence that denied COP's request for an extension of time to file its Petition. The time for appeal is therefore up to and including September 1, 2006. The Agency's acknowledgement of the September 1, 2006 time for appeal is attached hereto as **Exhibit B** and incorporated herein by reference.

3. The grounds for this appeal to the Board are that (a) the Denial Letter is procedurally defective and (b) the budget rejection by the Agency was incorrect both in terms of the applicable statutes and regulations as applied to the pertinent facts and on general equitable and estoppel grounds.

a. The Denial Letter does not provide adequate or sufficient notice or explanation concerning why the budget is being rejected, thus making it difficult to state all the grounds for this appeal with further particularity. *See, e.g.*, 415 ILCS 5/57.7(c); 35 Ill. Admin. Code 734.505(b).

b. The rejection is incorrect because all or some of the rejected budget was for work that was performed pursuant to the Corrective Action plan that was approved on November 16, 2004 and/or January 9, 2006. The budget was rejected even though the Agency was kept abreast of additional tasks that were necessitated at the site. The budget rejection by the Agency is inequitable under the pertinent facts and the Agency should be estopped from denying reimbursement. The Petitioner respectfully disagrees with and appeals from all reasons set forth for the denial by the Agency in the Denial Letter.

4. Edward A. Cohen, Joseph M. Kellmeyer, and Ryan R. Kemper file herewith an Entry of Appearance on behalf of ConocoPhillips Company.

WHEREFORE, COP requests that the Board conduct a hearing, that the Board reverse the Agency's July 26, 2006 decision, and for such other relief as the Board deems appropriate.

Respectfully submitted,

THOMPSON COBURN LLP

BY: Edward A. Cohen/EG

Edward A. Cohen, III. Bar #6194012

Joseph M. Kellmeyer, III. Bar #6205864

Ryan R. Kemper, III. Bar #6288297

One US Bank Plaza

St. Louis, MO 63101

314-552-6000

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Attorneys for Petitioner ConocoPhillips Company

AN/RLM/AS/AK



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

217782-6762

CERTIFIED MAIL

7004 2510 0001 8649 1488

JUL 26 2006

RECEIVED
BY *AK* DATE *7/28*

Phillips Petroleum Company
Attention: William Prevatt
1218 Phillips Building
Bartlesville, OK 74004

Re: LPC #0430355116 - Du Page County
Elmhurst / Phillips Petroleum
524 Old York Road
Leaking UST Incident No. 901691 and 20001852
Leaking UST Technical File



Dear Mr. Prevatt:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated May 30, 2006, was received by the Illinois EPA on June 9, 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 budget is 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)).

Pursuant to 35 IAC, Section 734.335(d), owner/operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. The activities conducted at this site beyond the 11/16/04 approval of the Corrective Action plan were conducted prior to the submittal or approval of an otherwise required corrective plan or budget, pursuant to 35 IAC Section 734.335(d). Activities conducted prior to the submittal or approval of an amended corrective action plan and budget also exceeded the minimum requirements to comply with Title XVI of the Act.

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

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If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry A. Chappel".

Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:CLH

c: Environmental Protection Industries
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)(D) 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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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(217)782-5544
(TDD: 217-782-9143)

Author's Direct Line: (217)782-9827
E-Mail: william.ingersoll@epa.state.il.us
Telefax: 217-782-9807

August 31, 2006

William D. Prevatt, PhD
Site Manager
Risk Management and Remediation
ConocoPhillips
1218 Phillips Building
Bartlesville, OK 74004

Re: #0430355516 - DuPage County
Elmhurst/Former Phillips Petroleum Marketing Site
524 Old York Road
LUST Incidents No. 901691 and 20001852



Dear Mr. Prevatt:

I am in receipt of your letter dated August 28, 2006 requesting an extension of the time in which to appeal the Illinois EPA's July 26, 2006 decision regarding the above incidents and site. Since the issues relating to the decision are not likely to be resolved through the additional time, please be advised that the request for an extension of time is DENIED. Your time to appeal the earlier decision is not extended beyond its current deadline of September 1, 2006.

If you have any questions, please feel free to contact me.

Sincerely,

William D. Ingersoll, Manager
Enforcement Programs

cc: Harry Chappel, BOL/LUST Section