

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

L.W. PAUL SUPPLY CO., INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No.
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.8(i) of the Environmental Protection Act (“Act”), 415 ILCS 5/40, 5/57.8(i), and to the Board’s regulations on Leaking Underground Storage Tank (“LUST”) decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner L.W. Paul Supply Co., Inc. (“Paul Supply”), by its attorneys in this regard, The Sharp Law Firm, P.C., submits this Petition for Review of the Illinois Environmental Protection Agency (“Agency”) decision attached hereto as Exhibit 1 (“Decision”) purporting to deny Paul Supply reimbursement for \$11,936.89 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Paul Supply further requests the Board to order the Agency to pay Paul Supply’s legal costs for seeking payment in this appeal.

I. THE AGENCY’S FINAL DECISION

The Decision of which review is sought is contained in Exhibit 1 hereto.

II. SERVICE OF THE AGENCY’S FINAL DECISION

The Decision indicates it was mailed March 7, 2007. It was received by Paul Supply March 9, 2007.

III. GROUND'S FOR APPEAL

A. The Agency's contention that Paul Supply analysis costs "lack supporting documentation" is erroneous, arbitrary and capricious. 35 Ill. Adm. Code 732.601(b)(9) and 734.605(b)(9) state that a complete application for payment consists of the following elements: ...[A]n accounting of costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. Paul Supply in fact submitted the required documentation, which was ignored by the Agency.

B. The Agency's contention that it cannot determine if the \$11,936.89 will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" is erroneous, arbitrary and capricious. The application at issue was not for a budget but for reimbursement. The activities already have been performed and the conjecture by the Agency is both illogical and erroneous.

IV. CONCLUSION.

For the foregoing reasons, petitioner LW Paul Supply Company, Inc. respectfully petitions the Board to reverse the denial of reimbursement in the amount of the \$11,936.89 and order the Agency to pay Paul Supply's attorneys' fees for this appeal.

April 2, 2007

L.W. PAUL SUPPLY CO., INC.

By: /s/ Mandy L. Combs
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 – 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner L.W. Paul Supply Co., Inc.

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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

RECEIVED

MAR 07 2007

MAR 07 2007

BY: _____

CERTIFIED MAIL #

7004 2510 0001 8616 8335

LW Paul Supply Company
Attn: Robert Kaplan, Southwest Bank
Commercial Lending
Jennifer Vescogni-Acct. #0032713725
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

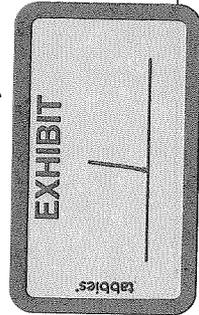
Re: LPC #0313365046 -- Cook County
Worth/Paul's Supply Co.
11120 Richland Avenue
Leaking UST Incident No. 990040
Leaking UST FISCAL FILE

Dear Mr. Kaplan:

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 October 31, 2006 and was received by the Agency on November 2, 2006. The application for payment covers the period from January 1, 2006 to October 23, 2006. The amount requested is \$387,970.63.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittals received by the Agency on October 13, 2004 for \$645.00 and October 20, 2005 for \$41,178.72. 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 November 2, 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 \$358,710.17 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.



ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 * DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 * PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 * CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 * COLLINSVILLE - 2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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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:

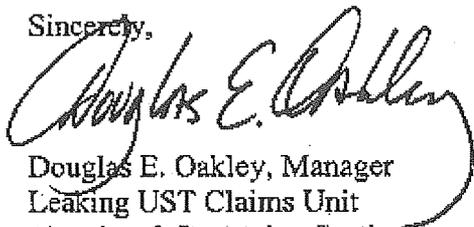
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Niki Weller of my staff or Chris Covert from the technical section at 217/782-6762.

Sincerely,



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

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Attachment

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #0313365046 -- Cook County
Worth/Paul's Supply Co.
11120 Richland Avenue
Leaking UST Incident No. 990040
Leaking UST FISCAL 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. \$17,323.57, deduction for corrective action costs that are not reasonable as submitted. 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 732.601(g) and 732.606(m).

Deduction for corrective action costs that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

The High Priority Budget was approved February 24, 2006. The rates that were approved at the time of the budget approval are the rates that need to be used for the reimbursement request. The rates being requested are the maximum rates approved for the period of July 1, 2006 through June 30, 2007. (Refer to 35 Ill. Adm. Code Section 732.870(d).)

A deduction is being made in the amount of \$2,479.03 from the Personnel costs. The costs submitted did not agree with the amounts approved in the budget. The personnel costs were adjusted to reflect the amounts approved in the budget.

A deduction is being made in the amount of \$69.99 from the Equipment costs. The costs submitted did not agree with the amounts approved in the budget. The equipment costs were adjusted to reflect the amounts approved in the budget.

A deduction is being made in the amount of \$7,235.39 for the excavation, transportation and disposal costs. The cubic yard amount approved in the budget is \$57.00 a cubic yard. The amount submitted for reimbursement is \$58.59 per cubic yard. An adjustment was made to reflect the cubic yard amount approved in the budget.

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A deduction is being made in the amount of \$1,867.00 for the backfilling, backfill, placement and transportation costs. The cubic yard amount approved in the budget is \$20.00 a cubic yard. The amount submitted for reimbursement is \$20.56 per cubic yard. An adjustment was made to reflect the cubic yard amount approved in the budget.

A deduction is being made in the amount of \$5,672.16 from the Handling charges. The handling charges for the companies listed were not approved in the budget. The total amount approved for handling charges in the budget is \$18.00 and a portion of that was used in a previous claim. The amount paid in this claim is \$1.70.

2. \$11,936.89, deduction for costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). 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)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

A deduction is being made in the amount of \$11,936.89 from the Analysis costs. An invoice from First Environmental is needed with the dollar amounts paid.

NW:mls/073012.doc

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14th & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

April 2, 2007

/s/ Mandy L. Combs
Mandy L. Combs

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
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