

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

| | | |
|-------------------------|---|----------------|
| MAHR'S SERVICE & SALES, |) | |
| <i>Petitioner,</i> |) | |
| |) | |
| v. |) | PCB No. 07-119 |
| |) | (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), to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the Board's Order entered June 15, 2007 a copy of which is attached hereto as Exhibit 1, petitioner Mahr's Service and Sales ("Mahr's") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Mahr's reimbursement for \$1,967.40 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Mahr's further requests the Board to order the Agency to pay Mahr'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 April 18, 2007. It was received by Mahr's April 20, 2007 and this appeal is timely pursuant to the Board's Order entered June 15, 2007 a copy of which is attached as Exhibit 2.

III. GROUND FOR APPEAL

A. The Agency's contention that Mahr's analysis costs and shipping 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 "an accounting of costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed." Mahr's submitted appropriate documentation, which was ignored by the Agency.

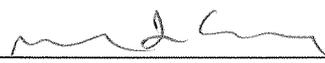
B. The Agency's contention that it cannot determine if the \$1,916.00 for analysis costs and \$51.40 for shipping costs will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" and/or are "not reasonable" is erroneous, arbitrary 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 Mahr's Service respectfully petitions the Board to reverse the denial of reimbursement in the amount of the \$1,967.40 and order the Agency to pay Mahr's attorneys' fees for this appeal.

August 24, 2007

MAHR'S SERVICE & SALES

By: 
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 Mahr's Service & Sales.

MandyCombs\US\Mahr's\Pet for Review.wpd

to Barry 6/15/07
447

ILLINOIS POLLUTION CONTROL BOARD
June 7, 2007

RECEIVED
JUN 15 2007
TERRY SHARP, P.C.

| | | |
|-------------------------|---|--------------------|
| MAHR'S SERVICE & SALES, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 07-119 |
| |) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL |) | (90-Day Extension) |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by G.T. Girard):

On May 24, 2007, the parties timely filed a joint notice to extend the 35-day period within which Mahr's Service & Sales (Mahr's Service) may appeal an April 18, 2007 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. Mahr's Service received the Agency determination on April 21, 2007. The Agency declined reimbursement for specified costs for corrective action at Mahr's Service's leaking underground petroleum storage tank facility located at 8810 East IL 9 Highway in Fulton County.

Cpu-T320x

The Board extends the appeal period until August 24, 2007, as the parties request, based on the April 21, 2007 receipt date. See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. If Mahr's Service fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 7, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board



1800114-5M



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

217/782-6762

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

CERTIFIED MAIL #

7004 2510 0001 8623 9783

APR 18 2007

APR 23 2007

BY: AW/wo

Mahr's Service & Sales
Attention: Bruce Mahr/Southwest Bank/Commercial Lending
Jennifer Vesgocni - Acct. #0032713725
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

3F/NS-84,779 (17,967.40) = 18
LLH

No Vendors

Re: LPC #0570405002 -- Fulton County
Ellisville/Mahr's Sales and Service
8810 East IL 9 Hwy.
Leaking UST Incident No. 20001742
Leaking UST FISCAL FILE

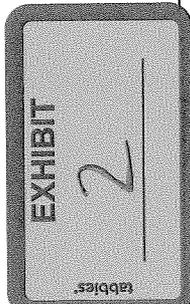
Dear Mr. Mahr:

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 December 19, 2006 and was received by the Agency on December 21, 2006. The application for payment covers the period from June 1, 2006 to November 4, 2006. The amount requested is \$4,779.08.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the billing submittal received by the Agency on January 4, 2001 for \$17,967.03. 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 December 21, 2006, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$2,811.68 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



Page 2

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:

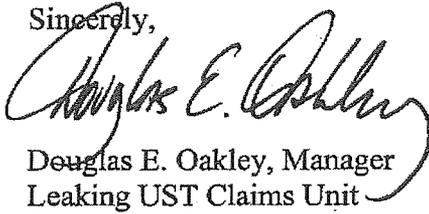
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 at 217/782-6762.

Sincerely,



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

DEO:NW:bjh\072571.doc

Attachment

cc: United Science Industries

Attachment A
Accounting Deductions

Re: LPC #0570405002 -- Fulton County
Ellisville/Mahr's Sales and Service
8810 East IL 9 Hwy.
Leaking UST Incident No. 20001742
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. \$1,967.40, 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.

Deduction for corrective action costs for analysis 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).

*Rec'd →
WOP
#014165*

A deduction is being made in the amount of \$1,916.00 from the Analysis costs. The claim contained lab reports from Prairie Analytical for analysis work that suggests the work was done by their company. If the work was done by Prairie Analytical please provide an invoice with dates the work was done and the amounts charged.

If the analytical work was done by USI, to our knowledge USI is not an accredited lab.
35 Ill. Adm. Code 732.106
35 Ill. Adm. Code 732.606(i)
35 Ill. Adm. Code 732.606(q)

A deduction is being made in the amount of \$51.40 from the Field Purchases and Other Costs. The costs are for shipping costs. A receipt is necessary.

DEO:NW:bjh\072572.doc

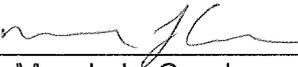
CERTIFICATE OF SERVICE

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

August 24, 2007



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
618-242-0246
Counsel for Mahr's Service & Sales