

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RUSSELL OIL COMPANY, INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. <u>07-137</u>
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

September 13, 2007

RUSSELL OIL COMPANY, INC.

By: 
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 Russell Oil Company, Inc.

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

RUSSELL OIL CO., INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 07-137
)	(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 21, 2007 a copy of which is attached hereto as Exhibit 1, petitioner Russell Oil Co., Inc. ("Russell Oil") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Russell Oil reimbursement for \$333.04 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Russell Oil further requests the Board to order the Agency to pay Russell Oil'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 2 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed May 9 2007. It was received by Russell Oil May 11, 2007. This appeal is timely pursuant to the Board's Order entered June 21, 2007, a copy of which is attached as Exhibit 1.

III. GROUND FOR APPEAL

A. The Agency's contention that Russell Oil's analysis costs "lack supporting documentation" is erroneous, arbitrary and capricious. Russell Oil submitted appropriate documentation, which was ignored by the Agency.

B. The Agency's contention that it cannot determine if the \$333.04 for analysis costs 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 Russell Oil Company, Inc. respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$333.04 and order the Agency to pay Russell Oil's attorneys' fees for this appeal.

September 13, 2007

RUSSELL OIL CO., INC.

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 Russell Oil Co., Inc.

MandyCombs\USI\Russell Oil\Pet for Review.doc

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

RUSSELL OIL COMPANY, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-137
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

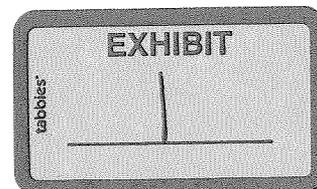
On June 11, 2007, the Board received a joint notice to extend the 35-day period within which Russell Oil Company, Inc. (Russell) may appeal a May 9, 2007 determination of the Illinois Environmental Protection Agency (Agency). According to the joint notice, Russell received the Agency determination on May 11, 2007. The joint request was therefore timely filed. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b)(2), 105.406. The Agency's determination concerns Russell's leaking underground storage tank site located at 309 DeYoung Street Facility #7-010002 in Williamson County. In the determination, the Agency accepted Russell's Corrective Action Plan but modified the budget.

The Board extends the appeal period until September 13, 2007, as the parties request, based on the May 11, 2007 decision receipt date. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If Russell 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 21, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board



1902111-JH

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 6195

MAY 09 2007

MAY 1 2007

Russell Oil Company BY: ST/De
Attention: Leon Russell, c/o Jennifer Vescogni
Southwest Bank - Acct. #0032713725
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

30/NS \$3,391.58 - (\$376.46) = \$3,015.12
\$333.04 P.R.E.M.
\$43.42-NR

No Vendor

Re: LPC #1990555168 -- Williamson County
Marion/Russell Oil Company
309 DeYoung St. Facility #7-010002
Leaking UST Incident No. 20030604
Leaking UST FISCAL FILE

Dear Mr. Russell:

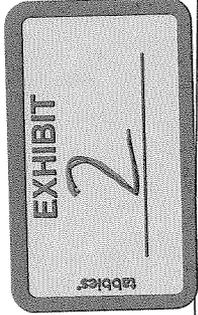
The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 12, 2006 and was received by the Agency on December 14, 2006. The application for payment covers the period from May 1, 2006 to October 7, 2006. The amount requested is \$3,391.58.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on July 30, 2003 for \$54,032.10. 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 14, 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 \$3,015.12 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,

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 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200



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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:

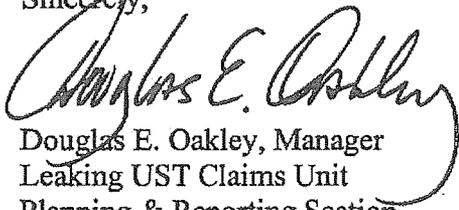
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 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 # 1990555168 -- Williamson County
Marion/Russell Oil Company
309 DeYoung St. Facility #7-010002
Leaking UST Incident No. 20030604
Leaking UST Fiscal File

Citations in this attachment 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).

Item # Description of Deductions

1. \$333.04, deduction for costs for analysis costs, 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.

#013741

a. Analysis Costs – no invoices.

2. \$43.42, 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)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

\$34.52
#014289
NR

Deduction for costs for corrective action cost that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).

a. Unreasonable and beyond the corrective action budget in regards to the itemized costs over the amounts in the approved budget – personnel costs = \$34.82:

ET IV = \$61.64/hr; approved amount = \$60/hr; \$1.64/hr. x 7.5 hrs. = \$12.30
Engineer II = \$87.36/hr; approved amount = \$85/hr; \$2.36/hr. x 7 hrs. = \$16.52
Sr. Acct. Tech. = \$56.52/hr; approved amount = \$55/hr; \$1.52/hr. x 0.5 hr. = \$0.76
Sr. Admin. Asst. = \$46.24/hr; approved amount = \$45/hr; \$1.24 hr. x 0.25 hr. = \$0.31
Acct. Tech II = \$46.24/hr; approved amount = \$45/hr; \$1.24/hr. x 0.25 hr. = \$0.31

Page 2

Proj. Manager = \$97.64/hr; approved amount = \$95/hr; \$2.64/hr. x 1.75 hrs. = \$4.62

7.20
015741
NR

- b. Unreasonable and beyond the corrective action budget in regards to the itemized costs over the amounts in the approved budget – Equipment Costs = \$7.20:
Vehicle = \$61.64/day; approved amount = \$60/day; \$1.64/day x 1 day = \$1.64
Water Le. Ind = \$20.56/day; approved amount = \$15/day; \$5.56/day x 1 day = \$5.56

1.40
014229
NR

- c. Unreasonable and beyond the corrective action budget in regards to the itemized costs over the amounts in the approved budget – field purchase and others costs = \$1.40:

Sample shipment = \$51.40 ea; amount approved = \$50 ea; \$1.40 x 1 ea. = \$1.40.

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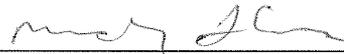
CERTIFICATE OF SERVICE

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
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September 13, 2007



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