

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

CLERK'S OFFICE

JUN 30 2003

ESTATE OF OLIVIA TYBERENDT, Deceased,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB No. 03-237

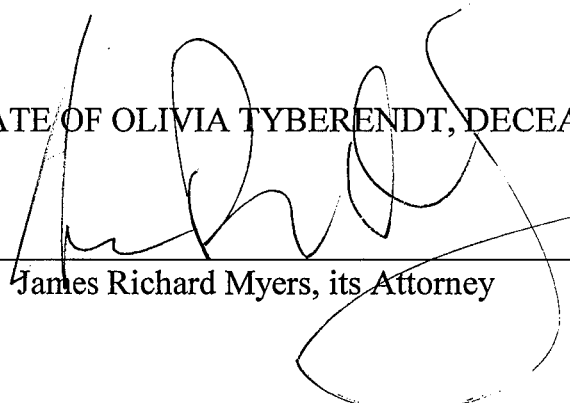
LUST Reimbursement

TO: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on June 27, 2003, a Petition for Review of LUST Fund Reimbursement Denial was filed with the Clerk of the Illinois Pollution Control Board, along with the appropriate filing fee, a copy of which is hereby served upon you.

ESTATE OF OLIVIA TYBERENDT, DECEASED

BY:


James Richard Myers, its Attorney

James Richard Myers
Attorney for Oliva Tyberendt Estate
LeFevre Oldfield Myers & Thoele Law Group, Ltd.
303 S. Seventh St., P.O. Box 399
Vandalia, IL 62471
Telephone: (618) 283-3034
Fax: (618) 283-3037
File #1683/0101

RECEIVED
CLERK'S OFFICE

JUN 30 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ESTATE OF OLIVIA TYBERENDT, Deceased,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

PCB No. 03-237

LUST Reimbursement

**PETITION FOR REVIEW OF
LUST FUND REIMBURSEMENT DENIAL**

NOW COMES the Petitioner, the Estate of Olivia Tyberendt, Deceased (the "Estate"), by and through its attorney, James Richard Myers of LeFevre Oldfield Myers & Thoele Law Group, Ltd., and pursuant to the Illinois Environmental Protection Act hereby appeals a decision of the Illinois Environmental Protection Agency (the "IEPA") denying reimbursement of certain costs from the Illinois Leaking Underground Storage Tank Fund (the "Fund"), and in support thereof states as follows:

1. On May 27, 2003, the IEPA sent a letter to the Estate stating that certain costs incurred by the Estate were not eligible for reimbursement from the Fund. A copy of said letter is attached hereto as Exhibit A.
2. The IEPA's determination that certain costs incurred by the Estate are not eligible for reimbursement from the Fund is erroneous.

WHEREFORE, the Estate of Olivia Tyberendt, Deceased, respectfully requests that the Pollution Control Board accept this matter for hearing and reverse the IEPA's decision concerning reimbursement as set forth in Exhibit A.

Dated: JUNE 26, 2003

ESTATE OF OLIVIA TYBERENDT, DECEASED

BY: 

James Richard Myers, its Attorney

James Richard Myers
Attorney for Estate of Olivia Tyberendt, Deceased
LeFevre Oldfield Myers & Thoele Law Group, Ltd.
303 S. Seventh St., P.O. Box 399
Vandalia, IL 62471
Telephone: (618) 283-3034
Fax: (618) 283-3037
File #1683/0101

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

70023150000062018877

MAY 27 2003

Estate of Oliva Tyberendt
Attention: Ronald Cox
2745 Cambridge Hills Road
Cummings, GA 30130

Re: LPC #0270305012 -- Clinton County
Carlyle/Marty's Stop & Shop
15309 Boulder Road
LUST Incident #912967
LUST FISCAL FILE

Dear Mr. Cox:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from December 31, 2000 to October 12, 2002. The amount requested was \$31,824.99.

The deductible amount for this claim is \$10,000.00. On March 26, 1997, the Agency sent a letter stating that the first request for reimbursement has been reviewed and the deductible was being deducted from that request. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons the costs are not being reimbursed.

On January 14, 2003, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$28,366.17 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 claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) 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

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) 693-5462
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 244-2125
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 993-7200
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

EXHIBIT

A

tabbies

Page 2

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:

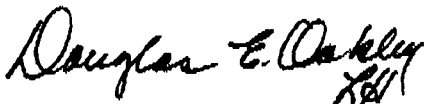
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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, please contact Bambi Redpath of my staff at 217/782-6762.

Sincerely,



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

DEO:BR:jk\032299.doc

Attachment

cc: Terracon

Attachment A
Accounting Deductions

Re: LPC #0270305012 -- Clinton County
Carlyle/Marty's Stop & Shop
15309 Boulder Road
LUST Incident #912967
LUST FISCAL FILE

Item # Description of Deductions

1. \$3,458.82, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).
 - a. To reduce the rate for mileage (\$57.00)
 - b. To reduce the rate for vehicle and tools (\$15.00)
 - c. Mileage – will either pay for mileage or vehicle; not for both of them (\$110.00)
 - d. Supplies – cannot accept a lump sum for costs. Need a breakdown on items and costs per item. Also you cannot add handling charges to stock items. You would have to put it under field purchases and submit a receipt for the items (\$16.10)
 - e. Personnel hours for meetings are not eligible (\$483.00)
 - f. Personnel hours for reimbursement are not eligible (\$168.00)
 - g. To reduce the rate for electric water tape (\$29.50)
 - h. To reduce the rate for drilling services down to 1.5 days instead of 15 days. Per diem submitted for the 2 man crew was for 1.5 days also the other equipment on this invoice was for 1.5 days (\$2,160.00)
 - i. Well supplies – cannot accept a lump sum for costs. Need a breakdown on items and cost per item. Also you cannot add handling charges to stock items. You would have to put it under field purchases and submit a receipt for the items (\$121.06)
 - j. Expendable supplies – cannot accept a lump sum for costs. Need a breakdown on items and cost per item. Also you cannot add handling charges to stock items. You would have to put it under field purchases and submit a receipt for the items (\$72.48)
 - k. To reduce the rate for mobilization (\$100.00)
 - l. Total that was on our personnel form for John Brimeyer was added wrong (\$117.00)
 - m. Shipping to Mr. Ronald Cox (\$9.68)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Notice** along with all documents referenced therein was served upon the party of record to the above cause by enclosing the same in an envelope addressed to such attorney/party as shown on the attached list:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 1500
Chicago, Illinois 60601

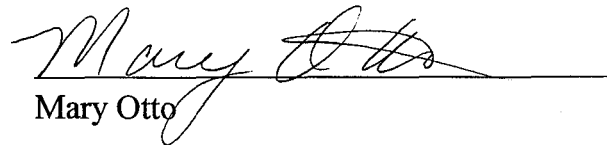
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62702

Terracon
Attn: Mr. James Buckhahn
870 40th Avenue
Bettendorf, IA 52722

AgriPride
c/o Mr. Kevin Stine
Suite 100
720 West Main Street
Belleville, IL 62220

by regular mail with postage fully prepaid and by depositing said envelope in a U.S. Post Office mailbox in Vandalia, Illinois, on the 26th day of June, 2003.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.


Mary Otto