

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GREEN OIL COMPANY,)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 2nd day of March, 2011.

Respectfully submitted,
GREEN OIL COMPANY, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GREEN OIL COMPANY,)	
Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, GREEN OIL COMPANY (“Green”), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued on January 28, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency refused to pay the amount for which it applied for payment, and in support thereof states as follows:

1. Green is the owner of former service station property in Greenville, Bond County, Illinois, and assigned LPC#0050055010.

2. On August 10, 2010, a release was reported to the Illinois Emergency Management Agency from two underground storage tanks at the site, identified as tanks 4 and 5, and assigned Incident Number 20100879.

3. Subsequently, the Office of the State Fire Marshall issued an eligibility and deductibility determination, finding that both tanks 4 and 5 were eligible for reimbursement of corrective action, subject to a \$5,000 deductible.

4. Between August 10, 2010 and October 8, 2010, early action work was performed in response to the release.

5. On October 28, 2010, Green submitted an application for payment of \$96,041.80 for the early action work performed at the site.

6. On January 28, 2011, the Agency rejected the application amount, reducing it to \$46,521.82. A true and correct copy of that determination is attached hereto as Exhibit A. The letter was received on January 31, 2011, which is less than 35 days from the date of this filing.

7. The Agency decision is incorrect and should be rejected by the Board for the following reasons:

- a. The Agency improperly deducted early action costs associated with Tank 5. The Office of the State Fire Marshall determined that Tank 5 was eligible for reimbursement of corrective action taken in response to incident number 20100897. While the tank had not been utilized for several years, that does not mean that there was not product in the tank or associated lines that caused or contributed to incident 20100897.
- b. The Agency improperly reduced costs for the destruction and replacement of concrete, assuming that only 1,200 square feet needed to be removed and replaced. The amount of concrete replacement was actually 1,600 square feet due to the need to destroy not only the concrete to access the tanks, but the UST piping that had to be uncovered and removed pursuant to OSFM regulations. There was also a small amount of concrete that broke off due to the sluffing of excavation walls. These costs are authorized pursuant to 35 Ill. Admin. Code § 734.625(a)(16).
- c. The Agency improperly eliminated the cost of removing the canopy. The canopy

needed to be removed in order to safely remove the underground storage tanks and piping.

- d. The Agency improperly reduced the personnel costs for concrete replacement. For the reasons stated in subparagraph b supra, these costs should be reimbursed.
- e. The Agency improperly deducted handling charges for landfill, backfill or concrete costs. These costs were paid and should be eligible for the applicable statutory reimbursement for handling charges.
- f. The Agency improperly reduced the handling charges for the canopy removal. For the reasons stated in subparagraph c supra, these charges should be reimbursed.

WHEREFORE, Petitioner, GREEN OIL COMPANY, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the application for payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Green such other and further relief as it deems meet and just.

GREEN OIL COMPANY, Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

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THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL #

JAN 28 2011

7009 2820 0001 7493 4446

Green Oil Company
c/o Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, Illinois 62711

Re: LPC 0050055010—Bond County
Greenville/ Green Oil Company
110 East Harris Avenue
Incident-Claim No.: 20100879—59426
Queue Date: October 29, 2010
Leaking UST Fiscal File

Dear Sir or Madam:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated October 28, 2010 and was received by the Illinois EPA on October 29, 2010. The application for payment covers the period from August 10, 2010 to October 8, 2010. The amount requested is \$96,041.80.

On October 29, 2010, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$46,521.82 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA 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 Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$5,000 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 967-7760
Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131
Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-1462
Collinsville • 2009 Mail Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 9415 N. University St., Peoria, IL 61614 • (309) 692-5463
Champaign • 2129 S. First St., Champaign, IL 61820 • (217) 244-2222
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 992-2222

EXHIBIT

A

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

If you have any questions or require further assistance, please contact Brad Dilbaitis of my staff at (217) 785-8378 or at Bradley.Dilbaitis@illinois.gov.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BD 

Attachment: Attachment A
Appeal Rights

c: Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: LPC 0050053010—Bond County
Greenville/ Green Oil Company
110 East Harris Avenue
Incident-Claim No.: 20100879—59426
Queue Date: October 29, 2010
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. None of the costs associated with UST #5 incurred from August 10, 2010 to October 8, 2010 are eligible for payment from the Leaking UST Fund under early action. To be considered for payment, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for payment. Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.210(g). In addition, these costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Furthermore, there is no approved free product removal, site investigation, or corrective action budget. The Illinois EPA is unable to approve billings for free product removal conducted more than 45 days after the confirmation of the presence of free product, site investigation or corrective action activities without an approved budget pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(f).

UST #5 was taken out of service prior to reporting incident #20060067 on January 19, 2006. If a release occurred from tank #5 after this date, the release would have been minimal and it would be impossible to discern between the contamination from the 2006 release and contamination from a new release. Based upon the above, a deduction of \$31,436.60 was made. The individual deductions are as follows:

- a. \$15,262.12 for costs associated with the excavation, transportation and delivery of contaminated soil and/or the four-foot backfill material removed during early action.
- b. \$4,946.42 for costs associated with backfilling the excavation.
- c. \$3,573.85 for costs associated with the removal of UST #5.
- d. \$3,371.20 for costs associated with concrete replacement costs for UST#5.
- e. \$499.20 for UST removal and oversight costs associated with UST #5 by a Senior Professional Geologist.
- f. \$873.60 for soil remediation, oversight and backfill costs associated with UST #5 by a Senior Professional Geologist.
- g. \$663.75 for soil remediation, traffic control and backfilling costs associated with UST #5 by a Senior Technician.
- h. \$413.00 for pavement replacement costs associated with UST #5 by a Senior Technician
- i. \$763.10 for handling charges associated with the above-listed deduction for excavation, transportation and delivery of soils associated with UST #5 (deduction 1(a)).

- j. \$250.09 for handling charges associated with the above-listed deduction for backfill costs associated with UST #5 (deduction 1(h))
- k. \$319.40 for handling charges associated with removal of UST #5 (deduction 1(c)).
- l. \$500.87 for handling charges associated with concrete replacement associated with UST #5 (deduction 1(d)). Also includes the handling charges deduction associated with concrete replacement costs exceeding the square feet of the UST and the four feet of backfill allowable under early action.

- 2. \$2,889.60 deduction for costs for the destruction and replacement of concrete, asphalt, or paving, except as otherwise provided in 35 Ill. Adm. Code 734.625(a)(16). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(oo). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

The maximum amount of concrete to be replaced during early action for two 10,000-gallon USTs is 1,200 square feet (with four feet of backfill). The application for reimbursement requests 1,600 square feet.

- 3. \$7,000.00 deduction for costs for canopy removal, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). In addition, costs which lack supporting documentation 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.

There has been no information presented to indicate that removal of the canopy was necessary during early action.

- 4. \$354.00 deduction for costs Personnel Costs associated with concrete replacement above what is allowed under early action (deduction #2), which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

This deduction is for 4.8 hours for a Senior Technician for pavement replacement oversight at a rate of \$73.75 per hour.

- 5. \$2,139.78 deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630 (ii). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The application for payment does not contain the proof of payment for landfill, backfill or concrete costs.

6. \$700.00 adjustment in the handling charges due to the deduction of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

An adjustment was made to the handling charges for the canopy removal deduction listed above (deduction #3)

BD

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) 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