

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GARY COOPER,)	
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 17th day of August, 2011.

Respectfully submitted,
GARY COOPER, 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
Springfield, IL 62701-1323
Telephone: 217/528-2517
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GARY COOPER,)	
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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, GARY COOPER, 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 a July 27, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency modified a Site Investigation Completion Report, and in support thereof states as follows:

1. On or before March 27, 2009, Mr. Cooper purchased a former service station property, commonly known as the Royal Station, in Royal, Champaign County, Illinois, and assigned LPC #0190705001.

2. On or about April 6, 2009, a consultant hired by Mr. Cooper called the Illinois Emergency Management Agency to report a suspected gasoline leak or spill at the subject property of unknown amount, unknown cause and unknown extent. As a result of this phone call, incident number 20090334 was assigned.

3. No work was performed to confirm the suspected release, nor was corrective action taken in response to incident number 20090334 (hereinafter "2009 Incident").

4. Mr. Cooper was unaware of any leaks or holes in the existing tanks when the consultant decided to report a suspected release. After investigating these events with owner/operators of underground storage tanks, he decided to hire a new environmental consultant to conduct an investigation of site conditions.

5. On September 22, 2010, a subsurface investigation was conducted at the subject property. Organic vapor concentrations in a soil boring revealed the presence of a release. A soil sample was then collected and sent to a laboratory. The soil analytical results revealed concentrations above remediation objectives for one or more indicator constituents.

6. On October 14, 2010, the Illinois Emergency Management Agency was notified of a release from three underground storage tanks at the subject property, as evidenced by the soil analytical results. The report was assigned incident number 20101122 (hereinafter "2010 Incident").

7. On November 18, 2010, Mr. Cooper, through his consultants, submitted a forty-five day report, detailing the corrective action activities taken as of that date in response to the 2010 Incident and certifying that additional corrective action activities would be necessary.

8. On December 17, 2010, the Office of the State Fire Marshall issued an eligibility and deductibility determination for the 2010 Incident, finding that corrective action taken in response to this incident is eligible for reimbursement from the LUST fund, and assessing a \$5,000 deductible.

9. Subsequently, Petitioner has sought and been denied reimbursement for early action work performed in response to the 2010 Incident. The reason given by the Agency is that it determined that the 2010 Incident was a re-reporting of the 2009 Incident. This matter is in

dispute before the Board. See Cooper v. IEPA, PCB No. 11-89.

10. On May 27, 2011, Petitioner submitted a Site Investigation Completion Report for Incident 2010.

11. On July 27, 2011, the Agency conditionally approved the report with a modification finding that the 2010 Incident is a re-reporting of the 2009 Incident. A true and correct copy of the decision is attached hereto as Exhibit A.

12. The reason given is not a proper basis for modifying the report and appears to address a dispute pending before the Board and not a legal or regulatory requirement. In addition, there is no basis for the Agency concluding that the two incidents were re-reportings of a single incident. Indeed, there is no evidence that there was a release in 2009. Furthermore, the OSFM has determined that the 2010 Incident is separately eligible for reimbursement from the 2009 Incident.

WHEREFORE, Petitioner, GARY COOPER, 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 report, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

GARY COOPER,
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

JUL 27 2011

7009 2820 0001 7489 1749

Gary Cooper
2550 Homer Lake Road
Ogden IL, 61859

Re: LPC # 0190705001-- Champaign County
Royal / Cooper, Gary
103 East Main Street
Leaking UST Incident No. 20090334/20101122
Leaking UST Technical File

Dear Mr. Cooper:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated May 27, 2011, was received by the Illinois EPA on July 08, 2011. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the report; therefore, the report is conditionally approved with the Illinois EPA's modifications. The Illinois EPA has determined that the following modifications are necessary to demonstrate compliance with Title XVI of the Act (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(h) and 734.510(a)):

Information in possession of the Illinois Environmental Protection Agency (IEPA) states that over spills and an underground pipe leak resulted in a release being reported in 2009. A second release was called in 2010 for the same tanks. It is the IEPA's findings that the 2010 release was a re-reporting of the 2009 incident.

In addition, the budget for Stage I is approved for the amounts listed in Section 1 of Attachment A (Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)). Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

Pursuant to Sections 57.7(b)(2) and (3) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires submittal of a Corrective Action Plan and budget within 90 days from the date of this letter to:

Rockford • 4303 N. Main St., Rockford, IL 61103 • (815) 987-7760
Evan • 595 S. State, Evan, IL 60123 • (847) 608-3131
Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5463
Collinsville • 2009 Main Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 298-3400
Peoria • 3413 N. University St., Peoria, IL 61614 • (309) 693-3400
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-3400
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-3400

EXHIBIT
A

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Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek payment from the Underground Storage Tank Fund.

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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 need further assistance, please contact Wayne Zuehlke at 217/557-6937.

Sincerely,



Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:WSZA

Attachment: Attachment A
Appeal Rights

cc: Environmental Management
BOL File

EX. A
PG. 2 OF 4

Attachment A

Re: LPC # 0190705001-- Champaign County
Royal / Cooper, Gary
103 East Main Street
Leaking UST Incident No. 20090334/20101122
Leaking UST Technical File

SECTION 1

STAGE 1 Actual Costs

The following amounts are approved:

\$1,668.46	Drilling and Monitoring Well Costs
\$1,481.22	Analytical Costs
\$283.64	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$7,034.41	Consulting Personnel Costs
\$435.40	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

WSZ

EX. A
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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

EX. A
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