

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 22 2012

STATE OF ILLINOIS
Pollution Control Board

PAUL SCHWENDENER, INC.,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

118
PCB 12-
(LUST Appeal – Ninety Day
Extension)

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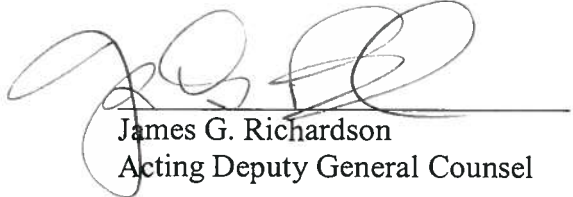
NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

David S. Kay, P.E.
Laicon Environmental Engineering Services
9914 Derby Lane
Westchester, Illinois 60154-3768

PLEASE TAKE NOTICE that I have today caused to be filed a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


James G. Richardson
Acting Deputy General Counsel

Dated: February 21, 2012
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PAUL SCHWENDENER, INC.,)
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PROTECTION AGENCY,)
Respondent.)

PCB No. 12- 118
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REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to May 24, 2012, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

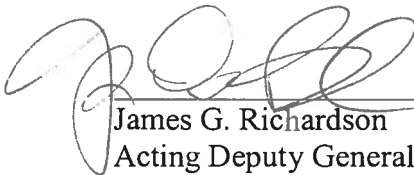
1. On January 18, 2012, the Illinois EPA issued a final decision to the Petitioner.
2. On February 2, 2012, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on or about January 20, 2012.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
Acting Deputy General Counsel

Dated: February 21, 2012

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

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, ILLINOIS 60601 - (312) 814-6026

PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

217/782-6762

JAN 18 2012

CERTIFIED MAIL #

7009 3410 0002 3751 0116

Paul Schwendener, Inc.
Attn: Gina Krol
105 West Madison, Suite 1100
Chicago, IL. 60602

Re: LPC #0430955084 -- DuPage County
Westmont / Paul H. Schwendener, Inc.
1000 Vandustrial Drive
Incident-Claim No.: 20090124 -- 60808
Queue Date: October 27, 2011
Leaking UST Fiscal File

Dear Ms. Krol:

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 20, 2011 and was received by the Illinois EPA on October 27, 2011. The application for payment covers the period from April 30, 2009 to April 20, 2011. The amount requested is \$23,808.60.

On October 27, 2011, the Illinois EPA received your complete application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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 for this claim is \$10,000.00, which was previously withheld from your payment(s). 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.

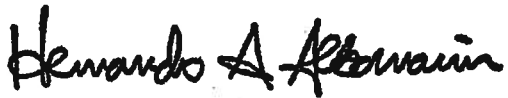
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There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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 Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



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

HAA:CSE 

ATTACHMENT

c: Laicon, Inc.
Leaking UST Claims Unit
Cathy Elston

Attachment A
Accounting Deductions

Re: LPC #0430955084 -- DuPage County
Westmont / Paul H. Schwendener Inc.
1000 Vandustrial Drive
Incident-Claim No.: 20090124 -- 60808
Queue Date: October 27, 2011
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. \$23,808.60, deduction for costs submitted more than one year after the date the Illinois EPA issued a No Further Remediation Letter pursuant to Subpart G of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(nm). 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 No Further Remediation Letter was dated October 6, 2010 and the owner/operator must have submitted the reimbursement claim by October 6, 2011 in order to be eligible for reimbursement.

If the claim had been submitted within the one year after the NFR the following costs would have been deducted.

- a. \$1,361.40, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with backfill are included in the paving rate, for which a maximum rate has been applied. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The backfill 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).

Corrective action costs for backfill 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). These costs were denied in the June 7, 2010 budget letter.

- b. \$2,000.00, deduction for costs for tree removal, 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.

The costs for tree removal 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).

An invoice was not provided for the removal of the trees.

- c. \$4,760.08, deduction for costs for paving 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).

The amount approved for paving in the June 7, 2010 budget letter was \$4,323.62.

- d. \$1,250.00, deduction for costs for consulting personnel 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).

The amount approved for consulting personnel in the June 7, 2010 budget letter was \$1,250.00.

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

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Pollution Control Board

CERTIFICATE OF SERVICE

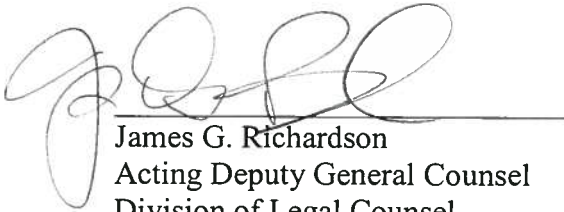
I, the undersigned attorney at law, hereby certify that on February 21, 2012 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

David S. Kay, P.E.
Laicon Environmental Engineering Services
9914 Derby Lane
Westchester, Illinois 60154-3768

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