

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

AUG 18 2017

STATE OF ILLINOIS  
Pollution Control Board

FREEDOM OIL COMPANY, )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
Respondent. )

PCB 18- 6  
(LUST Appeal – Ninety Day  
Extension)

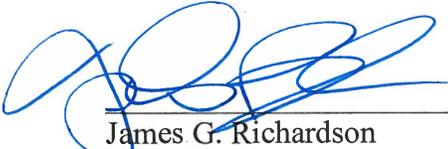
NOTICE

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

Robert M. Riffle  
Attorney at Law  
133A South Main Street  
Morton, Illinois 61550

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  
Deputy General Counsel  
Dated: August 16, 2017  
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  
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FREEDOM OIL COMPANY, )  
Petitioner, )  
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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 18-6  
(LUST Appeal – Ninety Day  
Extension)

**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, Deputy General 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 December 3, 2017, 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 July 27, 2017, the Illinois EPA issued a final decision to the Petitioner.
2. On August 7, 2017, 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 received the final decision on or about July 31, 2017.

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



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James G. Richardson  
Deputy General Counsel

Dated: August 16, 2017

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) 782-3397

BRUCE RAUNER, GOVERNOR

ALEC MESSINA, DIRECTOR

217/524-3300

JUL 27 2017

CERTIFIED MAIL #

7014 2120 0002 3282 5074

Freedom Oil Company  
c/o Midwest Environmental Consulting & Remediation Services, Inc.  
22200 Illinois Route 9, P.O. Box 614  
Tremont, IL 61568

Re: LPC #1050605131—Livingston County  
Pontiac/ Freedom Oil Company  
957 West Reynolds Street  
Incident-Claim No.: 20160722—68302  
Queue Date: April 17, 2017  
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 Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated March 24, 2017 and was received by the Illinois EPA on April 17, 2017. The application for payment covers the period from August 10, 2016 to November 30, 2016. The amount requested is \$70,620.93.

On April 17, 2017, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$37,158.03 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.

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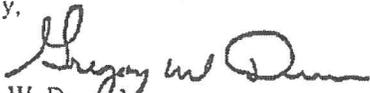
An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

**IEPA/BOI**

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

Sincerely,



Gregory W. Dunn, Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

GWD:BD 

Attachment: Attachment A  
Appeal Rights

c: Freedom Oil Company  
Leaking UST Claims Unit

Attachment A  
Accounting Deductions

Re: LPC #1050605131—Livingston County  
Pontiac/ Freedom Oil Company  
957 West Reynolds Street  
Incident-Claim No.: 20160722—68302  
Queue Date: April 17, 2017  
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$5,315.12, deduction for Backfill 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.

The Backfill Costs requests 212.35 cubic yards of backfill at a rate of \$25.03 per cubic yard for a total of \$5,315.12. The application for payment does not include an invoice from Earth Services to document the transportation cost for the backfill. The application for payment includes an invoice from Illinois Oil Marketing Equipment, Inc. that includes the \$25.03 per cubic yard charge for the backfill but it is unclear what role Illinois Oil Marketing Equipment, Inc. had in the purchase, transportation and placement of the backfill. The transportation invoice from Earth Services, and any additional invoice(s) for the placement of the backfill (if applicable) is/are required prior to payment being made for Backfill Costs.

2. \$180.95, deduction for Drum Disposal 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.

The Remediation and Disposal Costs requests \$180.95 for Drum Disposal Costs for a 55-gallon drum of liquid waste. The supporting documentation includes an invoice from Total Petroleum Service Co. (TPS) indicates that TPS picked up and disposed of the drum for \$180.95 - the TPS invoice indicates that Poracky Environmental was used as a subcontractor for the drum disposal - the drum disposal documentation from Poracky Environmental is required before payment can be made for the Drum Disposal Costs.

3. \$230.68, 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,

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and/or Appendix E of 35 Ill. Adm. Code 734. The UST Removal Costs rate has been reduced to \$3,942.33 per UST. 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.

4. \$1,590.00, 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 paving rate has been reduced to \$5.47 per square foot. 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 Paving Costs requests a total of 3,000 square feet of 6" thick concrete at a rate of \$6.00 per square foot for a total of \$18,000.00. The applicable Subpart H rate for concrete replacement at a thickness of six inches is \$5.47 per square foot.

5. \$16,410.00, deduction for Paving Costs, 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, payment shall not be made for activities and related services or materials that are unnecessary. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(aa). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable and/or will 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. Furthermore, the request lacks 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. Additionally, the request is 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). Costs associated with the replacement of concrete, asphalt, or paving, are not eligible 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 Paving Costs requests 3,000 square feet of concrete at a thickness of six inches. The excavation appeared to have been approximately 40' x 35', which would be approximately 1,400 square feet of concrete to replace the concrete removed from over the excavation, which includes the additional 4 feet from outside the dimensions of the tanks that is allowed pursuant to 35 Ill. Adm. Code 734.210(f). However, no soil was removed during early action so the additional 4 feet from outside the tank dimensions is not applicable. There has been no documentation presented (maps, photos) that would establish the area directly over the four USTs that is eligible for replacement concrete costs. There has been no technical

documentation presented to verify that the thickness of the concrete being requested for replacement is the same thickness of the existing concrete as required pursuant to 35 Ill. Adm. Code 734.625(a)(16). There have been no individual concrete load tickets or a concrete purchase invoice submitted. This documentation is required prior to payment being made for Paving Costs.

6. \$8,615.00, deduction for Demolition 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.

The Demolition Costs request \$6,458.75 for canopy demolition/removal. The canopy removal does not appear to have been necessary to remove the USTs and the removal was done without prior approval, which is required pursuant to 35 Ill. Adm. Code 734.625(a)(16).

7. The Consulting Personnel Costs associated with Stage 1 planning in December 2016 are not eligible for reimbursement. Early Action activities must be performed within the Illinois EPA-approved extension dates. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). 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 Consulting Personnel Costs requests 1.75 hours for a Project Manager at a rate of \$103.26 per hour for a total of \$180.71 and 2 hours for a Senior Project Manager at a rate of \$121.49 per hour for a total of \$242.98 for costs associated with Stage 1 planning. These personnel charges are for December 25, 2016 and December 27, 2016. The early action time frame was extended to November 30, 2016. Based upon the above deduction, a deduction of \$423.69 was made.

8. \$4,293.29, adjustment in the handling charges due to the deduction(s) 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.

The Handling Charges were adjusted to reflect the deductions in Backfill Costs, UST Removal Costs, Paving Costs and Demolition Costs.

9. \$404.17, 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 include the proof of payment for the Analytical Costs. Handling Charges cannot be approved for the Analytical Costs until the proof of payment to the laboratory is received by the Agency.

### 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:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson 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

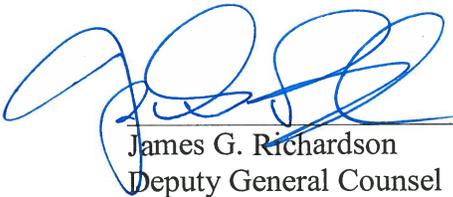
**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on the afternoon of August 16, 2017 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:

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

Robert M. Riffle  
Attorney at Law  
133A South Main Street  
Morton, Illinois 61550

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson  
Deputy General Counsel  
Division of Legal Counsel  
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