

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

B-PETRO CORP.,)	
Petitioner,)	
v.)	PCB 2017-80
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Division of Legal Counsel
	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 8th day of September, 2017.

Respectfully submitted,
B-PETRO CORP.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

B-PETRO CORP.,)	
Petitioner,)	
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v.)	PCB 2017-80
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, B-PETRO CORP., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency's final decision, modifying a plan and budget, stating as follows:

1. Petitioner is the owner or operator of an active service station in the City of Annawan, County of Henry, Illinois, commonly known as the Annawan Jiffy, which has been assigned LPC # 0730155011.
2. On December 1, 1995, releases were reported from tanks at the site by the previous owner/operator, which were assigned Incident Number 1995-2433.
3. On August 27, 2002, additional releases were reported from tanks at the site, which were assigned Incident Numbers 2002-1229 and 2002-1230. At that time, five underground storage tanks were removed.
4. In 2012, Petitioner hired a consulting firm to complete the remediation of these releases, who subsequently submitted three site investigation budgets that were approved.
5. On September 14, 2012, the Agency approved a Stage 2/3 Site Investigation Plan and budget.
6. After performing site investigation activities, an Amended Stage 3 Site

Investigation Plan and Budget was submitted and approved by the IEPA on April 11, 2014. The decision letter directed Petitioner to file an actual cost budget before a payment application would be processed.

7. After performing site investigation activities under the approved plan, additional site investigation activities were deemed necessary to delineate the full extent of offsite contamination. Therefore, a Second Amended Stage 3 Plan and Budget was submitted and approved by the IEPA on April 14, 2016. The decision letter directed Petitioner to file an actual cost budget before a payment application would be processed.

8. After completing site investigation activities, Petitioner submitted a Site Investigation Completion Report, and Actual Costs Stage 2/3 Budget, which included costs that were above and below those in the approved budgets and for those that were above the previous budget, justification was provided.

9. Following the submittal, e-mail exchanges took place between the IEPA and Petitioner's consultant in which further justification and explanation was given.

10. On May 4, 2017, the IEPA approved the Site Investigation Completion Report, and treated the actual cost budget submittal as alternatively an amendment to the previous budgets and as an actual cost budget. In doing so it approved the budget amounts as requested, but deducted all consulting personnel costs alternatively as a budget amendment (\$19,886.87), or as actual cost budget (\$20,743.08). A true and correct copy of the decision is attached hereto as Exhibit A.

11. The cuts to personal costs, however they are characterized in terms of the Agency's budget practices, should be reinstated. First, the presumptive purpose of an actual cost

budget cannot be simply to reinstate the same information in the proposed budget. These were the actual costs that were incurred as required by the IEPA, and where they exceeded amounts previously budgeted, justification was provided. Second, the justification given demonstrated that the additional work was reasonable, adequately documented and used in the performance of site investigation activities. Third and alternatively, the IEPA was without authority to reduce the total budget request without crediting those costs that were under budget as the purpose of the budget process is to ensure that total costs are reasonable.

12. The subject Illinois EPA letter was received by certified mail on May 8, 2017, and the parties jointly moved for an extension to file any appeal. The Board approved the motion on June 22, 2017, and gave Petitioner until Sunday, September 10, 2017 to file this appeal.

WHEREFORE, Petitioner, B-PETRO CORP., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, and reinstate the budget amounts as requested, (d) the Board award payment of attorney's fees; and (e) the Board grant Petitioner such other and further relief as it deems meet and just.

B-PETRO CORP.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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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

CERTIFIED MAIL

7014 2120 0002 3286 7609

MAY 04 2017

B-Petro Corporation
Attention: Mr. Darshan Dhaliwal
9563 N. Granville Road
Mequon, Wisconsin 53097

Re: LPC #0730155011 -- Henry County
Annawan / Bulk Petroleum #1198
306 North Canal (Rt.78 & I-80)
Leaking UST Incident Nos. 952433, 20021229, and 20021230
Leaking UST Technical File

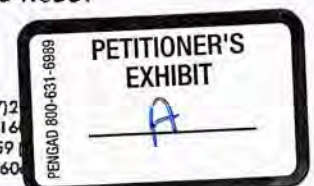
Dear Mr. Dhaliwal:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated December 9, 2016, was received by the Illinois EPA on December 12, 2016. In addition, a Site Investigation Budget Amendment, also dated December 9, 2016 and received by Illinois EPA on December 12, 2016, was reviewed. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA has determined that the requirements of Title XVI of the Act have been satisfied (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the report is approved.

The amended site investigation budget is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) or 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. 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.

In addition, the actual costs budget for Stage 2 and 3 is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment B, the amounts listed in Section 1 of Attachment B are approved. 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.



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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, 734.125, and 734.335(a), the Illinois EPA requires submittal of a Corrective Action Plan and budget within 30 days from the date of this letter to:

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 Michael A. Heaton at 217/524-3312.

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:mh\021230fi.docx

Attachment: Attachment A (Amended Site Investigation Budget)
Attachment B (Site Investigation Stage 2 and 3 Actual Costs Budget)
Appeal Rights

cc: Mr. Robert Brennan (electronic copy), RBrennan@golars.com
BOL File

Attachment A

Re: LPC #0730155011 -- Henry County
Annawan / Bulk Petroleum #1198
306 North Canal (Rt.78 & I-80)
Leaking UST Incident Nos. 952433, 20021229, and 20021230
Leaking UST Technical File

SECTION 1

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, the following Stage 2 and 3 Site Investigation amounts are approved:

\$2,505.71	Drilling and Monitoring Well Costs
\$-0-	Analytical Costs
\$-0-	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$-0-	Paving, Demolition, and Well Abandonment Costs
\$-0-	Consulting Personnel Costs
\$2,421.25	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.

SECTION 2

1. \$19,886.87 for site investigation or corrective action costs for Consulting Personnel Costs 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). In addition these costs 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. 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).

Attachment B

Re: LPC #0730155011 -- Henry County
Annawan / Bulk Petroleum #1198
306 North Canal (Rt.78 & I-80)
Leaking UST Incident Nos. 952433, 20021229, and 20021230
Leaking UST Technical File

SECTION 1

STAGE 2 and 3 Actual Costs

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, the following amounts are approved:

\$13,017.81	Drilling and Monitoring Well Costs
\$14,103.71	Analytical Costs
\$5,092.42	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$-0-	Paving, Demolition, and Well Abandonment Costs
\$70,874.78	Consulting Personnel Costs
\$6,517.91	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.

SECTION 2

1. \$20,743.08 for site investigation or corrective action costs for Consulting Personnel Costs 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). In addition these costs 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. 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).

This deduction is the amount for consulting personnel costs in excess of the amount approved in the three site investigation budgets.

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