

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PIASA MOTOR FUELS, INC.,)
 Petitioner,)
 v.) PCB _____
) (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 2nd day of January, 2018.

Respectfully submitted,
PIASA MOTOR FUELS, INC.,
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
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PIASA MOTOR FUELS, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, PIASA MOTOR FUELS, INC., pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the Agency's final decision to not pay corrective action costs in full, stating as follows:

1. Petitioner was the owner or operator of a service station known as Campus 76 Kwick Shop, in the City of Glen Carbon, County of Madison, Illinois, which had been assigned LPC # 1190305016.

2. In August of 1999, an incident was reported from the underground storage tanks at the property, which was assigned Incident Number 99-1940. In November of 1999, all tanks were removed in the presence of a representative of the Office of the State Fire Marshal, who observed evidence of releases on the tank floors, resulting in a second incident being reported to the Illinois Emergency Management Agency, which was assigned Incident Number 99-2577 and is believed to be a re-reporting of the former incident.

3. Subsequently, site classification and investigation work was performed, and the extent of the contamination plume was further delineated through multiple rounds of corrective action.

4. On February 1, 2013, a corrective action plan was submitted for the excavation

and landfill disposal of on-site soils exceeding tier 2 industrial/commercial site remediation objectives. The estimated volume of the contaminated soil to be excavated was 2,870 cubic yards, which was derived by using the formula required by 35 Ill. Adm. Code 734.825(a). The total budget for the work was \$351,175.21, including \$191,400.30 for excavating, transporting and disposing of 2,870 cubic yards of contaminated soil and \$67,158.00 for backfilling the excavation.

5. On March 5, 2013, the corrective action plan and budget were approved by the Illinois EPA without any modifications.

6. In November and December of 2013, corrective action work was performed pursuant to the approved plan and budget.

7. On March 14, 2014, a corrective action documentation report was submitted to the Illinois EPA, detailing the work performed. The report indicated that the actual extent of the excavation was less than approved in the plan and budget, amounting to 2,435 cubic yards of soil using the formula required by 35 Ill. Adm. Code 734.825(a). Using the same regulation to convert cubic yards to tonnage, the report indicated 3,652.50 tons were excavated and the report attached copies of landfill dump tickets and manifests showing 3,629.74 tons of contaminated soil were disposed in the Roxana Landfill.

8. On the same date, an application for reimbursement for corrective action activities was submitted to the Agency, seeking \$300,744.45 in reimbursement.

9. On July 10, 2014, the Agency approved reimbursement for all but \$57,982.12 of those costs, denying the remainder for an alleged lack of supporting documentation.

10. Another application for payment was submitted on August 19, 2014 for the

remaining \$57,982.12 with additional support.

11. On December 11, 2014, the Agency approved reimbursement of \$45,181.47 of those costs and denied reimbursement for excavation, transportation and disposal costs, as well backfill costs for want of supporting documentation.

12. Thereafter, Petitioner's consultant obtained the Agency's review notes through a Freedom of Information Act request to ascertain the reason why these items were not approved and the specific type of information the Agency sought. This information disclosed that the documentation submitted had been misunderstood and the Board regulations misapplied.

13. On July 19, 2017, Petitioner submitted an application for payment for \$20,776.86 which included additional support for reimbursement for excavation, transportation and disposal costs, as well backfill costs. This application also included \$7,976.22 in handling charges not previously submitted.

14. On November 27, 2017, the Agency approved payment of \$7,720.42 in handling charges, and denied reimbursement for the rest. A true and correct copy of the Agency's decision is attached hereto as Exhibit A.

15. First, the Agency deducted \$1,003.12 for excavation, transportation and disposal costs for lack of supporting documentation, which is erroneous for the following reasons:

- a. The application for payment was complete, including all documentation required by the Illinois Environmental Protection Act (415 ILCS 5/57.8(a)(6)) and the Board's regulations (35 Ill. Adm. Code 734.605(b)). In particular, the application included a paid invoice to the subcontractor for excavating, transporting and disposing of 2,435 cubic yards of contaminated soil.

- b. The decision letter states in part that these costs are not approved pursuant to Section 57.7(c)(3) of the Act, which governs budgets, not applications for payment, and is therefore legally irrelevant here. (415 ILCS 5/57.7(c)(3))
- c. In reviewing an application for payment, the Act states that “[i]n no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.” (415 ILCS 5/57.8(a)(1)) “Agency approval of any plan and associated budget . . . shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget.” (415 5/57.7(c)(1)) Here, the costs requested are less than the amounts approved in the budget.
- d. Information obtained through the Freedom of Information Act indicate that the Agency is not using the formula required by 35 Ill. Adm. Code 734.825(a) by omitting the 1.05 factor required to determine the volume of soil removed. The Agency erroneously believes that this formula is used for budgets, not applications for payment, which is contrary to the plain language of the referenced regulation, and contrary to the purpose served by budgets in the Illinois Environmental Protection Act.

16. Second, the Agency deducted \$11,797.53 for backfilling the excavation, for exceeding the minimum requirements, being unreasonable and being unapproved in the budget, which is erroneous for the following reasons:

- a. The last justification is false. The budget approved by the Agency included \$67,158.00 for backfilling the excavation, of which \$45,181.47 has previously been paid by the Agency, and the remaining \$11,797.53 would not exceed the total approved in the budget. The Agency is required to provide an explanation in its denial letter, including a statement of the “specific reasons” for disapproving any portion of the payment application. (35 Ill. Adm. Code 734.610(d)(3)) The only explanation given in the letter that is not mere boilerplate is that “[t]he costs associated with excavation of backfill material were not approved in a budget and are, therefore, ineligible for payment.” This explanation is without basis in fact.
- b. Agency approval of the budget “shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budget.” (415 5/57.7(c)(1)) Furthermore, “[i]n no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.” (415 ILCS 5/57.8(a)(1)) These costs were less than or equal to the amounts approved in the budget.
- c. The remaining justifications given are premised on Section 57.7(c)(3) of the Act, which governs budgets, not applications for payment. (415 ILCS 5/57.7(c)(3) (Agency reviews budgets to determine “that the costs . . . are reasonable,” and “will not be used for . . . corrective action activities in excess of those required to meet the minimum requirements of this Title”)) Since the costs for which

reimbursement is sought are under the approved budget, as well as within Subpart H rates, these reasons are not legally justified.

17. Third, the Agency deducted \$255.80 for handling charges associated with the first two deductions and therefore, this deduction should also be reversed for the reasons given above.

18. The subject Illinois EPA letter was received by certified mail on November 29, 2017, making January 3, 2018 the deadline for any appeal, and therefore this appeal is timely.

WHEREFORE, Petitioner, PIASA MOTOR FUELS, INC., 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 payment application in total, (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.

PIASA MOTOR FUELS, INC.,
Petitioner

By its attorneys,
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
pdshaw1law@gmail.com



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

NOV 27 2017

CERTIFIED MAIL #

7014 2120 0002 3291 3276

Piasa Motor Fuels
CSD Environmental Services, Inc.
P.O. Box 20912
Springfield, IL 62708-0912

Re: LPC #1190305016 -- Madison County
Glen Carbon / Piasa Motor Fuels
Highway 270 and Route 157
Incident-Claim No.: 991940 -- 68600
Queue Date: July 31, 2017
Leaking UST Fiscal File

Dear Mr. Schrimpf:

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 July 19, 2017 and was received by the Illinois EPA on July 31, 2017. The application for payment covers the period from November 18, 2013 to December 31, 2013. The amount requested is \$20,776.86.

On July 31, 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 \$7,720.42 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 for this claim is \$15,000.00, 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

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-
412 SW Washington St., Suite D, Peoria, IL 61602
2309 W. Main St., Suite 116, Marion, IL 62959 (618)
100 W. Randolph, Suite 10-300, Chicago, IL 60601



Page 2

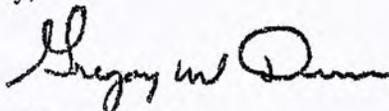
accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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.

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 Melissa Owens of my staff at (217)785-9351.

Sincerely,



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

GWD:mao



Attachment

c: Piasa Motor Fuels
Leaking UST Claims Unit

Attachment A
Deductions

Re: LPC #1190305016 -- Madison County
Glen Carbon / Piasa Motor Fuels
Highway 270 and Route 157
Incident-Claim No.: 991940 -- 68600
Queue Date: July 31, 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. \$1,003.12, deduction for costs for excavation, transportation and disposal costs for the contaminated soil, 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.

Supporting documentation from Roxana Landfill added up to 2,419.83 cubic yards, but the reimbursement was requested for 2,435 yards.

2. \$11,797.53, deduction for costs for the excavation of backfill material, 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, the costs 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, the costs were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for

payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734. Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with excavation of backfill material were not approved in a budget and are, therefore, ineligible for payment.

3. \$255.80, 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.

Costs are reimbursable on \$153,810.77 minus (\$1,003.12 and \$11,797.52).

mao

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