

# ORIGINAL

ILLINOIS POLLUTION CONTROL BOARD

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**SEP 29 2014**

STATE OF ILLINOIS  
Pollution Control Board

PAK-AGS, INC., )  
 )  
Petitioner, )  
 )  
-vs- ) No. PCB 15-14  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

THE PROCEEDINGS of the Pollution Control Board in regards to PCB 15-14, taken before me, Jill A. Bleskey, CSR-RPR, License Number 084-004430, a Notary Public in and for the State of Illinois, at the Illinois Environmental Protection Agency, 1021 North Grand Avenue East, County of Sangamon, and State of Illinois on the 17th day of September, A.D., 2014 commencing at 1:00 p.m.

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Jill A. Bleskey, RPR  
CSR #084-004430

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APPEARANCES

For the Pollution Control Board:

POLLUTION CONTROL BOARD  
1021 North Grand Avenue East  
Springfield, Illinois 62702  
(217)524-8509

BY: Ms. Carol Webb

For the Petitioner:

MOHAN, ALEWELT, PHILLAMAN & ADAMI  
Attorneys at Law  
1 North Old Capitol Plaza, Suite 325  
Springfield, Illinois 62701  
(217)528-2517

BY: Mr. Patrick D. Shaw

For the Respondent:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
1021 North Grand Avenue East  
Springfield, Illinois 62702  
(217)782-2893

BY: Ms. Melanie Jarvis

1 MS. WEBB: Good afternoon. My name  
2 is Carol Webb. This is the hearing for PCB 15-14,  
3 Pak-Ags, Inc. versus IEPA. It is September 17th  
4 and we are beginning at one o'clock p.m. There are  
5 no members of the public present.

6 The facility is located in Granite  
7 City, Madison County but the parties request to  
8 hold the hearing in Springfield was granted as  
9 there's no known public interest in this case. At  
10 issue in this case is whether petitioner must  
11 submit an eligibility determination for an incident  
12 that occurred prior to the incident for which  
13 petitioner seeks reimbursement. The decision  
14 deadline is November 20th. The Pollution Control  
15 Board members will make the final decision in this  
16 case. My purpose is conduct the hearing in a  
17 neutral and orderly manner so that we have a clear  
18 record of the proceedings.

19 This hearing was noticed pursuant to  
20 the Act and the Board's rules and will be conducted  
21 pursuant to Sections 101.600 to 101.632 of the  
22 Board's procedural rules. At this time I'll ask  
23 the parties to please make their appearances on the  
24 record.

1 MR. SHAW: I'm Patrick Shaw on behalf  
2 of the petitioner.

3 MS. JARVIS: Melanie Jarvis on behalf  
4 of the Illinois Environmental Protection Agency.

5 MS. WEBB: Thank you. We do have one  
6 preliminary matter to discuss on the record.  
7 Before we began we were discussing a briefing  
8 schedule and petitioner indicated that he would  
9 like the opportunity to file a reply brief. So  
10 petitioner agreed to waive the decision deadline to  
11 December 4th; is that correct?

12 MR. SHAW: That is correct.

13 MS. WEBB: Okay. So I will be  
14 granting you leave to reply -- to file a reply  
15 brief by November 3rd. Are there any other  
16 preliminary matters to discuss on the record?

17 MS. JARVIS: Did we want to get the  
18 whole briefing schedule on the record?

19 MS. WEBB: I will, yeah.

20 MS. JARVIS: Okay.

21 MS. WEBB: In a little bit.

22 MS. JARVIS: I wanted to make sure.

23 MS. WEBB: Would the petitioner like  
24 to give an opening statement?



1 MR. SHAW: I'll reserve my opening  
2 statement for the brief.

3 MS. WEBB: Would the Agency like to  
4 make an opening statement?

5 MS. JARVIS: I will also reserve  
6 mine.

7 MS. WEBB: Okay. Does the petitioner  
8 have anything to present today?

9 MR. SHAW: Just as a matter of  
10 clarification. The administrative record is also  
11 filed; is that correct?

12 MS. JARVIS: Correct.

13 MR. SHAW: So we're not doing that  
14 today?

15 MS. JARVIS: No. The administrative  
16 record has been filed. It was filed August 27th.

17 MR. SHAW: I thought that would be a  
18 good starting point to make sure we had that  
19 clarified.

20 MS. JARVIS: Yes.

21 MR. SHAW: We have one document we  
22 would like to move to be included in the record to  
23 the Board and it is for a limited purpose. I will  
24 hand you a copy here.

1           This is a quitclaim deed dated  
2 approximately April 10th, 2012 indicating that  
3 Pak-Ags deeded the subject property to a purchaser.  
4 And we are asking for this to be submitted to the  
5 Board for the limited purpose of showing that  
6 Pak-Ags no longer owns the subject property.

7           And that is relevant to one of our  
8 arguments and an argument the Board may or may not  
9 get to which is that Pak-Ags is legally -- it is  
10 impossible for Pak-Ags to obtain an eligibility  
11 deductibility determination for this prior incident  
12 since it no longer has an ownership interest. So  
13 we would move to include it as a document solely  
14 for the purposes of that defense and recognizing  
15 that it was in existence prior to the Agency's  
16 decision although it was not made a part of the  
17 Agency record. And I will let --

18           MS. JARVIS: And that's where I  
19 object. So we have an objection to this document  
20 on several grounds. The first one of course is  
21 relevance. Because it is not part of the  
22 administrative record, the Agency did not have this  
23 information nor was it submitted to us in any form  
24 prior to us making our final decision. Further, it

1 really is not self-verifying and I really think a  
2 foundation needs to be presented on this document.  
3 Because as a quitclaim deed, although it appears to  
4 have been filed, we have no way to know whether or  
5 not the party it was quitclaimed to ever received  
6 it, ever got title to the property or in any way  
7 acted as owner of this property.

8           Also, I have a couple exhibits. I  
9 have Exhibit 1 and Exhibit 2 which are from the  
10 Secretary of State's Office, they're marked  
11 Respondent Exhibit 1 and Respondent Exhibit 2. And  
12 there's a couple things I'd like to point out on  
13 these documents. First is that the agent's street  
14 address is the same as the facility's address. And  
15 further, that Dascosh Rujawitz (phonetic), which is  
16 the recipient of the quitclaim deed, was -- hold on  
17 just a second -- was brought into business just 13  
18 days before the quitclaim and it's currently now  
19 not -- no longer a company.

20           Further, -- I have one more document  
21 that I didn't get to show Patrick beforehand. This  
22 is Respondent Exhibit 3. And this is a printout  
23 from the Secretary of State's web site. And while  
24 Patrick is focusing on whether or not they

1 currently own the property, which I think is still  
2 in dispute despite the quitclaim deed, this  
3 document clearly shows that this facility's current  
4 owner is still Pak-Ags, Inc. according to the  
5 Office of State Fire Marshal. So those would be my  
6 objections to this.

7 MS. WEBB: Okay.

8 MS. JARVIS: Because I just don't  
9 think from this document only that we can tell  
10 exactly what's gone on with the property. And I  
11 honestly think it's irrelevant whether or not they  
12 own it now or not because they're clearly the  
13 owners and operators of the tanks and they had the  
14 responsibility under the Act for these cleanups and  
15 for both numbers.

16 On the Secretary of State filing, if  
17 I can find it, at the bottom, the two LUST fund  
18 eligibility deductibility determinations listed for  
19 Packages or Pak-Ags is the '05 EMA number and the  
20 '11 EMA number, it's down at the bottom.

21 MS. WEBB: Of Respondent's Exhibit 3?

22 MS. JARVIS: Of Respondent Exhibit 3.

23 MS. WEBB: Mr. Shaw, do you have any  
24 response to Ms. Jarvis's objection?



1 MR. SHAW: Well, I'm not sure these  
2 documents are relevant to what the deeds -- the  
3 deed is for. The deed is to establish that they  
4 have the -- Pak-Ags has gotten rid of the property,  
5 it no longer has the property. And the issue in  
6 the appeal is whether or not Pak-Ags should obtain  
7 eligibility deductibility ability determination for  
8 an old incident number and it's impossible for them  
9 to do that, they no longer hold the property.

10 The quitclaim deed, which has been  
11 recorded, shows that according to the government --  
12 and this has been conveyed. It is not a situation  
13 where the deed has been given to the purchaser and  
14 the purchaser decided to keep the deed so that he  
15 can avoid legal responsibilities for property taxes  
16 and whatever kind of mischief they do, this has  
17 been recorded. As far as the government is  
18 concerned, this transaction occurred and there were  
19 fees associated with it that are identified by the  
20 filing stamp.

21 I cannot speak to what the subsequent  
22 owner has done with the property, I can't say  
23 whether or not the subsequent owner is in a  
24 position that they're going to lose this property.



1 But the fact that they did not pay their annual  
2 fees doesn't mean they've ceased to exist, it means  
3 they're not doing their paperwork properly. And  
4 not doing paperwork properly doesn't mean that  
5 Pak-Ags is the owner of the property still.  
6 Pak-Ags sold it, they've been winding down their  
7 business, they are essentially out of business  
8 except for whatever obligations they have that are  
9 subsequent to, you know, selling off their business  
10 to this new company.

11           And it is true that nobody has filed  
12 a new ownership with the State Fire Marshal. This  
13 is one of the ambiguities not of property law but  
14 of the LUST program which traditionally was  
15 established as an insurance policy for owners and  
16 operators of tanks. And we had the problem for  
17 many years that once the tanks were gone everybody  
18 drops out of the program, the program does not  
19 exist any more. And so now somebody has to take  
20 affirmative steps to get into the program and take  
21 over responsibility. But in the interim, to the  
22 extent that they could do that, parties continue to  
23 do cleanups for their old tanks.

24           At some point -- this cleanup has not

1 reached an NFR letter as far as I'm aware. At some  
2 point the new purchaser is going to have to pick  
3 this up, they're going to have to file certain  
4 things. But all I'm asking for is the Board to  
5 consider -- and again, I'm not arguing that the  
6 Agency's decision is erroneous because of  
7 information they did not have, I'm saying that the  
8 result or consequence that they have reached is one  
9 I think the Board needs to be aware we cannot  
10 satisfy. It is impossible for us to satisfy that.  
11 And for the limited purpose of establishing that we  
12 do not own the property, we do not have an  
13 ownership interest and therefore Pak-Ags cannot  
14 elect to proceed as owners of this prior incident.  
15 That's what would ask that the Board's --

16 MS. WEBB: Why was the quitclaim deed  
17 not filed with the Agency?

18 MR. SHAW: They didn't know this was  
19 an issue. I mean, this is -- it's not one of the  
20 requirements for the LUST program. The LUST  
21 program operates on the assumption that you can  
22 just submit an eligibility deductible determination  
23 and whatever other list of documents. But this is  
24 not something that as a matter of course somebody

1 would think to provide and, I mean, it wasn't  
2 provided.

3 MS. JARVIS: But I think Patrick  
4 actually summed up my argument probably better than  
5 I could. A, Pak-Ags may not be the former -- or  
6 the current opener of the property, I can't tell  
7 'cause I don't know if this other company ever took  
8 title. They have a deed but I don't know if they  
9 ever took title to this deed. I can't tell, based  
10 on this document that he's filing.

11 Further, the owner of the property is  
12 irrelevant. Pak-Ags is the owner and operator of  
13 the tanks, they're responsible under Illinois law,  
14 under LUST law. Property law really doesn't  
15 matter, LUST law matters. And they're responsible  
16 for this cleanup, they're responsible for the '05  
17 cleanup and they need to get an eligibility  
18 determination on the '05 cleanup. They're also  
19 listed as the owner/operator under the '05 cleanup,  
20 they just haven't gotten their eligibility  
21 determination.

22 And if they can't get on the property  
23 we have people do that all the time when they have  
24 adjacent property owners that they don't own and

1 they have to clean up. You get an agreement with  
2 the property owner, you go on and you finish the  
3 cleanup. But your client, Pak-Ags, is responsible  
4 for this cleanup under LUST law. Period. It  
5 doesn't matter if they own the property any more.  
6 It's still an open site, they still haven't even  
7 closed the '11 incident yet. And if they want to  
8 -- they don't have to elect to proceed because  
9 they're the owner/operators of the tank.

10 MS. WEBB: Okay. Well, here's what  
11 I'm going to do. Something fairly new and I'm sure  
12 the Board will tell me if they do not want me to do  
13 it again. But it seems to me that both exhibits on  
14 both sides are pretty crucial to the Board's  
15 consideration of this case. I'm going to admit  
16 them as hearing exhibits rather than admit them as  
17 part of the agency's administrative record. And I  
18 will see what the Board has to say about that.  
19 Maybe I will not be doing that in the future, I  
20 don't know. But they honestly both seem like  
21 important pieces of information, all four of these  
22 exhibits.

23 MS. JARVIS: Okay.

24 MS. WEBB: So is there anything else,



1 Patrick, you would like to introduce as part of  
2 your case?

3 MR. SHAW: No. That was it.

4 MS. WEBB: Okay. Ms. Jarvis, would  
5 you like to --

6 MS. JARVIS: That's all that I have.

7 MS. WEBB: -- make any presentation?

8 Okay. Now we'll discuss the briefing schedule.  
9 The transcript is due by September 29th, it will be  
10 posted on the Board's web site. The public comment  
11 deadline is October 1st, any public comment must be  
12 filed in accordance with Section 101.628 of the  
13 Board's procedural rules. The petitioner's brief  
14 is due by October 8th and respondent's brief is due  
15 by October 20th and the petitioner's reply brief is  
16 due by November 3rd pending the receipt of the  
17 deadline waiver to February 4th -- I mean, I'm  
18 sorry, December 4th. The mailbox rule will not  
19 apply and if the parties file electronically the  
20 briefs must be filed by 4:30 p.m. on the due date.

21 Mr. Shaw, would you like to make any  
22 closing statement?

23 MR. SHAW: I'd like to reserve my  
24 closing statement for the brief.



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MS. WEBB: Ms. Jarvis?

MS. JARVIS: I would like to  
likewise.

MS. WEBB: Well, then at this time I  
will conclude the proceedings. We stand adjourned  
and I thank you all for your participation.

(Hearing was concluded at 1:15 p.m.)

1 CERTIFIED SHORTHAND REPORTER'S CERTIFICATION

2  
3 I, JILL A. BLESKEY,  
4 Certified Shorthand Reporter, Registered  
5 Professional Reporter, and Notary Public of the  
6 State of Illinois, do hereby certify that the  
7 foregoing is a true, correct, and complete copy of  
8 all proceedings conducted before the Illinois  
9 Pollution Control Board, 1021 North Grand Avenue  
10 East, Springfield, Illinois on September 17th,  
11 2013, at 1:00 p.m.

12 Dated this 24th day of  
13 September, 2014.

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16  
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19 \_\_\_\_\_  
20 Jill A. Bleskey, CSR-RPR

21 "OFFICIAL SEAL"  
22 Jill A. Bleskey  
23 Notary Public, State of Illinois  
24 My Commission Expires 4/25/16

<p style="text-align: center;"><b>A</b></p> <p><b>a</b> 1:12,13,20 3:16,17 4:7,9 4:14,21 5:9,17 5:23,24 6:1,3 6:13,16 7:1,3,8 7:12,17,19,22 9:12,23 10:12 11:24 12:5,8 16:3,7,18,22</p> <p><b>A.D</b> 1:17</p> <p><b>ability</b> 9:7</p> <p><b>about</b> 13:18</p> <p><b>accordance</b> 14:12</p> <p><b>according</b> 8:4 9:11</p> <p><b>Act</b> 3:20 8:14</p> <p><b>acted</b> 7:7</p> <p><b>actually</b> 12:4</p> <p><b>ADAMI</b> 2:7</p> <p><b>address</b> 7:14,14</p> <p><b>adjacent</b> 12:24</p> <p><b>adjourned</b> 15:5</p> <p><b>administrative</b> 5:10,15 6:22 13:17</p> <p><b>admit</b> 13:15,16</p> <p><b>affirmative</b> 10:20</p> <p><b>afternoon</b> 3:1</p> <p><b>again</b> 11:5 13:13</p> <p><b>Agency</b> 1:6,15 2:11 4:4 5:3 6:17,22 11:17</p> <p><b>agency's</b> 6:15 11:6 13:17</p> <p><b>agent's</b> 7:13</p> <p><b>agreed</b> 4:10</p> <p><b>agreement</b> 13:1</p> <p><b>ALEWELT</b> 2:7</p> <p><b>all</b> 11:4 12:23 13:21 14:6 15:6 16:8</p> <p><b>also</b> 5:5,10 7:8</p>	<p>12:18</p> <p><b>although</b> 6:16 7:3</p> <p><b>ambiguities</b> 10:13</p> <p><b>an</b> 3:11,11 4:24 5:4 6:8,10,12 6:19 9:8 10:15 11:1,12,19,22 12:17 13:1,6</p> <p><b>and</b> 1:13,16 3:4 3:17,20,20 4:8 5:23 6:4,7,8,14 6:17,18 7:1,9 7:11,11,14,18 7:22,23 8:10 8:13,13,14,19 9:5,8,12,13,16 9:18 10:3,11 10:15,16,19,20 11:5,11,13,23 12:1,12,15,17 12:22,24 13:2 13:7,11,17 14:14,15,19 15:6 16:5,7</p> <p><b>annual</b> 10:1</p> <p><b>any</b> 4:15 6:23 7:6 8:23 10:19 13:5 14:7,11 14:21</p> <p><b>anything</b> 5:8 13:24</p> <p><b>appeal</b> 9:6</p> <p><b>appearances</b> 2:1 3:23</p> <p><b>appears</b> 7:3</p> <p><b>apply</b> 14:19</p> <p><b>approximately</b> 6:2</p> <p><b>April</b> 6:2</p> <p><b>are</b> 3:4,4 4:15 6:4 7:9 9:2,19 10:7,8 13:14</p> <p><b>arguing</b> 11:5</p>	<p><b>argument</b> 6:8 12:4</p> <p><b>arguments</b> 6:8</p> <p><b>as</b> 3:8 5:9 6:13 7:3,7,14 9:17 9:17 10:15 11:1,1,14,24 12:19 13:16,16 14:1</p> <p><b>ask</b> 3:22 11:15</p> <p><b>asking</b> 6:4 11:4</p> <p><b>associated</b> 9:19</p> <p><b>assumption</b> 11:21</p> <p><b>at</b> 1:14,17 2:7 3:4,9,22 8:17 8:20 10:24 11:1 15:4,7 16:11</p> <p><b>Attorneys</b> 2:7</p> <p><b>August</b> 5:16</p> <p><b>Avenue</b> 1:15 2:3 2:12 16:9</p> <p><b>avoid</b> 9:15</p> <p><b>aware</b> 11:1,9</p> <hr/> <p style="text-align: center;"><b>B</b></p> <p><b>based</b> 12:9</p> <p><b>be</b> 3:20 4:13 5:17,22 6:4 7:2 8:5 11:9 12:5 13:19 14:9,11 14:20</p> <p><b>because</b> 6:21 7:3 8:8,12 11:6 13:8</p> <p><b>been</b> 5:16 7:4 9:10,12,13,17 10:6</p> <p><b>before</b> 1:11 4:7 7:18 16:8</p> <p><b>beforehand</b> 7:21</p> <p><b>began</b> 4:7</p> <p><b>beginning</b> 3:4</p> <p><b>behalf</b> 4:1,3</p>	<p><b>better</b> 12:4</p> <p><b>bit</b> 4:21</p> <p><b>Bleskey</b> 1:12,20 16:3,18,22</p> <p><b>Board</b> 1:1,11 2:2 2:3 3:15 5:23 6:5,8 11:4,9 13:12,18 16:9</p> <p><b>Board's</b> 3:20,22 11:15 13:14 14:10,13</p> <p><b>both</b> 8:15 13:13 13:14,20</p> <p><b>bottom</b> 8:17,20</p> <p><b>brief</b> 4:9,15 5:2 14:13,14,15,24</p> <p><b>briefing</b> 4:7,18 14:8</p> <p><b>briefs</b> 14:20</p> <p><b>brought</b> 7:17</p> <p><b>business</b> 7:17 10:7,7,9</p> <p><b>but</b> 3:7 10:1,13 10:21 11:4,23 12:3,8 13:3,13 13:20</p> <hr/> <p style="text-align: center;"><b>C</b></p> <p><b>can</b> 8:9,17 9:15 11:21</p> <p><b>can't</b> 9:22 12:6,9 12:22</p> <p><b>cannot</b> 9:21 11:9 11:13</p> <p><b>Capitol</b> 2:8</p> <p><b>Carol</b> 2:5 3:2</p> <p><b>case</b> 3:9,10,16 13:15 14:2</p> <p><b>cause</b> 12:7</p> <p><b>ceased</b> 10:2</p> <p><b>certain</b> 11:3</p> <p><b>CERTIFICA...</b></p>	<p>16:1</p> <p><b>Certified</b> 16:1,4</p> <p><b>certify</b> 16:6</p> <p><b>City</b> 3:7</p> <p><b>clarification</b> 5:10</p> <p><b>clarified</b> 5:19</p> <p><b>clean</b> 13:1</p> <p><b>cleanup</b> 10:24 12:16,17,18,19 13:3,4</p> <p><b>cleanups</b> 8:14 10:23</p> <p><b>clear</b> 3:17</p> <p><b>clearly</b> 8:3,12</p> <p><b>client</b> 13:3</p> <p><b>closed</b> 13:7</p> <p><b>closing</b> 14:22,24</p> <p><b>commencing</b> 1:17</p> <p><b>comment</b> 14:10 14:11</p> <p><b>Commission</b> 16:23</p> <p><b>company</b> 7:19 10:10 12:7</p> <p><b>complete</b> 16:7</p> <p><b>concerned</b> 9:18</p> <p><b>conclude</b> 15:5</p> <p><b>concluded</b> 15:7</p> <p><b>conduct</b> 3:16</p> <p><b>conducted</b> 3:20 16:8</p> <p><b>consequence</b> 11:8</p> <p><b>consider</b> 11:5</p> <p><b>consideration</b> 13:15</p> <p><b>continue</b> 10:22</p> <p><b>Control</b> 1:1,11 2:2,3 3:14 16:9</p> <p><b>conveyed</b> 9:12</p> <p><b>copy</b> 5:24 16:7</p> <p><b>correct</b> 4:11,12 5:11,12 16:7</p>
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