

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ATTORNEY LAND TRUST #1, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

PCB NO.: \_\_\_\_\_  
(UST Appeal)

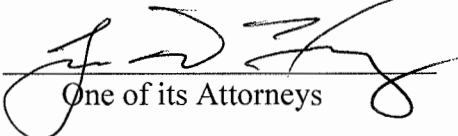
**NOTICE OF FILING**

To: Pollution Control Board, Attn: Clerk  
100 West Randolph  
James R. Thompson Center, Ste. 11-500  
Chicago, IL 60601-3218

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE, that on this 23<sup>rd</sup> day of December, 2014, the undersigned filed with the Illinois Pollution Control Board via Electronic Filing, the foregoing **Petition for Review** and **Certificate of Service**, a copy of which is attached hereto and hereby served upon you.

**ATTORNEY LAND TRUST #1,**

By:   
One of its Attorneys

Jon D. Hoag, Esq. (ARDC #06289752)  
**SMITHAMUNDSEN LLC**  
3815 E. Main Street, Suite A-1  
St. Charles, IL 60174  
Phone: (630) 587-7914  
Fax: (630) 587-7443  
Email: jhoag@salawus.com  
**ATTORNEYS FOR PETITIONER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused to be served a true and correct copy of the forgoing **Notice of Filing** and **Petition for Review** upon the following individual, via Electronic Filing and/or Regular U.S. Mail, postage prepaid, on this 23<sup>rd</sup> day of December, 2014.

Pollution Control Board, Attn: Clerk  
100 West Randolph Street  
James R. Thompson Center, Ste. 11-500  
Chicago, IL 60601-3218  
**VIA ELECTRONIC FILING**

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276  
**VIA U.S. MAIL**

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One of its Attorneys

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**PETITION FOR REVIEW**

NOW COMES Petitioner, ATTORNEY'S LAND TRUST #1, pursuant to Sections 40 and 57.7(c)(4) of the Illinois Environmental Protection Act ("Act") and 35 Ill. Adm. Code Part 105, hereby timely requests review of the decision by the Illinois Environmental Protection Agency ("IEPA") regarding Petitioner's Corrective Action Plan for Leaking UST Incident No. 20140030. In support thereof, Petitioner states as follows:

1. On or about November 21, 2014, the IEPA approved and served its final decision regarding the corrective action plan for the Stonington/Attorney's Land Trust (Waltz's Dairy Bar) site in Christian County. A copy of the final decision is attached hereto as **Exhibit A**.
2. This Petition for Review is timely filed within 35 days of the Agency's final decision in accordance with Section 40 of the Act and 35 Ill. Adm. Code 105.404.
3. The IEPA's final decision includes a requirement that a Project Labor Agreement (PLA) be used for the project. *See, Exhibit A*
4. The IEPA's decision does not include any information to support or justify the PLA requirement under the Project Labor Agreement Act, and the IEPA even cautions that use of a PLA might increase the cost of the project.

5. The IEPA relies on conclusory assertions, rather than any type of analysis, to conclude that a PLA will purportedly advance the State's interest.

6. Furthermore, the IEPA lacks authority to set forth the specific requirements in its decision dated November 21, 2014 with respect to the use of a PLA.

7. Petitioner asserts that review of the underlying record will show the requirement to use a PLA was improperly included in the IEPA's November 21, 2014 decision and must be stricken.

WHEREFORE, Petitioner, ATTORNEY'S LAND TRUST #1, prays that the Pollution Control Board will grant the following relief:

- a. Find that the IEPA's November 21, 2014 final decision is arbitrary, capricious and not supported by statutory or regulatory authority;
- b. Modify the IEPA's November 21, 2014 final decision to remove any reference or requirement that a Project Labor Agreement (PLA) be used on this project;
- c. Award Petitioner reasonable attorneys' fees and expenses related to bringing this action; and
- d. Grant Petitioner any other relief the Board deems just and appropriate.

Dated: December 23, 2014

Respectfully submitted,  
ATTORNEY'S LAND TRUST #1,

By: 

One of its Attorneys

Jon D. Hoag, Esq. (ARDC #06289752)  
**SMITHAMUNDSEN LLC**  
3815 E. Main Street, Suite A-1  
St. Charles, IL 60174  
Phone: (630) 587-7914  
Fax: (630) 587-7443  
Email: jhoag@salawus.com  
**ATTORNEYS FOR PETITIONER**

# **EXHIBIT**

# **A**



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217/524-3300

**CERTIFIED MAIL**

NOV 21 2014

7012 0470 0001 2967 7687

Attorney's Land Trust  
Attn: Josh Appleton  
14716 Highway 14  
Benton, Illinois 62812

Re: LPC #0210555019 -- Christian County  
Stonington/Attorney's Land Trust (Waltz's Dairy Bar)  
104 North Main Street  
Leaking UST Incident No. 20140030  
Leaking UST Technical File

Dear Mr. Appleton:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated October 23, 2014, was received by the Illinois EPA on October 23, 2014. 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).

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. This model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). You must submit a signed copy of the model PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President  
Illinois AFL-CIO  
534 South Second Street, Suite 200  
Springfield, IL 62701-1764

Once the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

In addition, the total budget is approved for the amounts listed in Attachment B. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the

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Fund may be limited by Sections 57.7(c), 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.

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan 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 submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

If you have any questions or need further assistance, please contact Matthew Urish, P.G., at 217/524-6941.

Sincerely,



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

MTL:MU20140030.doc

Attachment: Attachment A  
Attachment B  
Appeal Rights

cc: Joe Buhlig, Marlin Environmental, Inc.

Attachment A

Re: LPC #0210555019 -- Christian County  
Stonington/Attorney's Land Trust (Waltz's Dairy Bar)  
104 North Main Street  
Leaking UST Incident No. 20140030  
Leaking UST Technical File

**NOTICE OF PROJECT LABOR AGREEMENT REQUIREMENT**

Please be advised that, pursuant to Section 57.7(c)(3) of the Environmental Protection Act (415 ILCS 5/57.7(c)(3)), the Illinois EPA has determined that a project labor agreement (PLA) is required for the work included in the plan for which the UST owner or operator is seeking payment from the Underground Storage Tank (UST) Fund. The basis for the Illinois EPA's determination that a PLA is required for the project is set forth, as follows:

Use of a PLA will advance the State's interest in labor continuity and stability in completing the project work in accordance with the plan approved by the Illinois EPA.

Use of a PLA will advance the State's interest of advancing minority-owned and women-owned business and minority and female employment.

A PLA is not required for project work for which no payment from the UST Fund is being requested.

Pursuant to Section 57.8 of the Environmental Protection Act (415 ILCS 5/57.8), applications for payment from the UST Fund must include a certification signed by the UST owner or operator stating that the work was (i) performed under a PLA that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act (820 ILCS 130).



Attachment B

Re: LPC #0210555019 -- Christian County  
Stonington/Attorney's Land Trust (Waltz's Dairy Bar)  
104 North Main Street  
Leaking UST Incident No. 20140030  
Leaking UST Technical File

**SECTION 1**

The following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$5,822.81	Analytical Costs
\$51,546.05	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$911.25	Paving, Demolition, and Well Abandonment Costs
\$29,205.34	Consulting Personnel Costs
\$1,162.00	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 and 35 Illinois Administrative Code 734.635.

### 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)(D) 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