

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DISTRESSED PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 15-108
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To:	John Therriault, Clerk	James G. Richardson
	Illinois Pollution Control Board	Deputy General Counsel
	100 West Randolph Street	IEPA
	Suite 11-500	1021 North Grand Avenue East
	Chicago, Illinois 60601	P.O. Box 19276
		Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on this 2nd day of April 2015, the following were filed electronically with the Illinois Pollution Control Board: **Petitioner Distressed Properties, Inc.'s Appearance** and **Petition for Review**, which are attached and herewith served upon you.

DISTRESSED PROPERTIES, INC.

By: s/Elizabeth S. Harvey
One of its attorneys

Elizabeth Harvey
SWANSON, MARTIN & BELL, LLP
330 North Wabash, Suite 3300
Chicago, Illinois 60611
312.923.8260 (direct)
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eharvey@smbtrials.com

CERTIFICATE OF SERVICE

I, the undersigned, state that a copy of the above-described documents were served electronically upon all counsel of record on April 2, 2015.

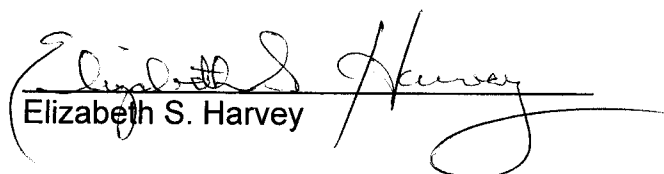
s/Elizabeth S. Harvey

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APPEARANCE

Elizabeth S. Harvey hereby submits her appearance on behalf of petitioner
DISTRESSED PROPERTIES, INC.


Elizabeth S. Harvey

Dated: April 2, 2015

Elizabeth S. Harvey
SWANSON, MARTIN & BELL LLP
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PETITION FOR REVIEW

Petitioner DISTRESSED PROPERTIES, INC. ("DPI"), by its attorneys Swanson, Martin & Bell, LLP, seeks review of respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("the Agency") decision denying reimbursement of some costs incurred under the Underground Storage Tank ("UST") program. This petition is brought pursuant to Sections 40 and 57.8(i) of the Environmental Protection Act ("Act") (415 ILCS 5/40, 5/57.8(i)) and 35 Ill. Adm. Code Part 105.

1. On July 31, 2014, DPI filed an application for payment of costs from the UST Fund. The costs were incurred in the remediation of contamination at 15401 South Park Avenue, South Holland, Illinois. The Agency received the application on August 4, 2014.
2. On November 26, 2014, the Agency issued its decision. The application requested reimbursement of \$86,434.77: the Agency approved payment of only \$16,916.00. Thus, the Agency denied reimbursement of \$69,518.77. The Agency decision is attached as Exhibit A.

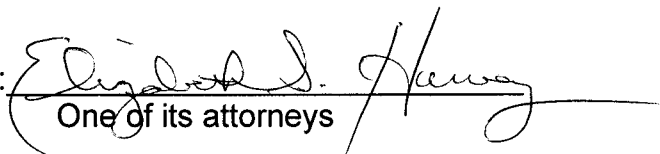
3. DPI received the Agency's decision on or about November 28, 2014. The Agency and DPI subsequently agreed to seek an extension of the 35-day appeal period.
4. On December 8, 2014, the Agency filed a request with the Board for a ninety-day extension of the appeal period. That request was made pursuant to Section 40(a)(1) of the Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208.
5. On December 18, 2014, the Board granted the request for extension, and extended the appeal period to April 2, 2015. (See Exhibit B.)
6. The purpose of the requested extension was to allow DPI and the Agency to further discuss the costs denied by the Agency. DPI hoped to avoid an appeal to the Board.
7. DPI provided additional information to the Agency for its review, and discussed the matter with Agency staff several times.
8. DPI learned on March 31, 2015 that the Agency will approve an additional \$21,642.00 in personnel costs, but will not approve any of the other previously-denied costs. That leaves \$47,876.77 in denied costs.
9. DPI has not yet received the Agency's March 31, 2015 decision in writing.
10. DPI is in the difficult position of not knowing exactly what it is appealing. However, because the time to appeal expires today, April 2, 2015, DPI is filing this petition for review.
11. DPI seeks review of the denial of all costs (\$69,518.77) denied in the Agency's November 26, 2014 decision (Exhibit A). The costs were incurred in executing an approved corrective action plan, and were part of an approved budget. The costs should be reimbursed.

12. DPI anticipates receiving a formal written decision from the Agency, approving the additional \$21,642.00 in personnel costs. DPI will review that written decision, and likely seek to file an amended petition for review.

WHEREFORE, DPI seeks review of the Agency's November 28, 2014 denial of \$69,518.77 in reimbursable costs, an award of those denied costs, and such other relief as the Board deems appropriate.

Respectfully submitted,

DISTRESSED PROPERTIES, INC.

By: 
One of its attorneys

Dated: April 2, 2015

Elizabeth S. Harvey
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Exhibit A

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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

217524-3300

NOV 26 2014

CERTIFIED MAIL #

7012 0470 0001 2967 1890

Distressed Properties, Inc.
Attn: Sul Diab
14007 South Bell Road # 220
Homer Glen, IL. 60491

Re: LPC #0312975187 - Cook County
South Holland / Distressed Properties, Inc.
15401 South Park Avenue
Incident-Claim No.: 20010053 - 64861
Queue Date: August 4, 2014
Leaking UST Fiscal File

Dear Mr. Diab:

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 Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated July 31, 2014 and was received by the Illinois EPA on August 4, 2014. The application for payment covers the period from June 1, 2012 to July 31, 2014. The amount requested is \$86,434.77.

On August 4, 2014, 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 \$16,916.00 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 \$10,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to

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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.

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 Catherine S. Elston of my staff at 217-785-9351 or Brian Bauer of Harry Chappel's staff at 217-782-3335.

Sincerely,

Hernando A. Albarracin

Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:CSE *[initials]*

ATTACHMENT

- c: O2Tube Technology ✓
- Leaking UST Claims Unit
- Cathy Elston
- Brian Bauer

(217) 782-3335

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Attachment A
Accounting Deductions

Re: LPC #0312975187 -- Cook County
South Holland / Distressed Properties, Inc.
15401 South Park Avenue
Incident-Claim No.: 20010053 -- 64861
Queue Date: August 4, 2014
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$6,472.00, deduction for investigation 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 claim did not include an invoice from the driller, or boring logs in the technical report.

The investigation costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

The drilling was not done in accordance with the plan/budget approved by the Agency.

Costs were billed as wells but the technical documentation stated as four soil borings to twelve feet.

2. \$5,655.28, deduction for analytical 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

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site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The analytical costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

The claim billed more analytical costs than were invoiced. It was not clear what lab did the PID testing of soil and water and Drager testing of soil and water on the DO Technologies invoice #2007361.

3. \$28,487.00, deduction for personnel 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 personnel costs need to be broken down on weekly work sheets.

Costs for personnel exceed those contained in the budgets approved by the Agency on May 20, 2004 and November 2, 2005. The costs included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).

Corrective action costs for personnel 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, pursuant to 35 Ill. Adm. Code 734.870(d)(1), for costs approved by the Agency in writing prior to the date the costs were incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves the cost, the applicable maximum payment amount for the cost must not be increased.

Of the above deduction, \$6,845.00 in personnel costs were also billed at a higher rate than submitted and approved in the budget dated May 20, 2004 and November 2, 2005

The personnel costs associated with oversight by an owner or operator are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(qq). In addition,

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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.

Of the above deduction, \$10,350.00 in costs were also billed for project management by the Owner/Operator.

4. \$6,000.00, deduction for costs for equipment exceeds those contained in the budgets approved by the Agency on May 20, 2004 and November 2, 2005. The costs included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).

Corrective action costs for equipment 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, pursuant to 35 Ill. Adm. Code 734.870(d)(1), for costs approved by the Agency in writing prior to the date the costs were incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Agency received the budget in which the costs were proposed. Once the Agency approves the cost, the applicable maximum payment amount for the cost must not be increased.

The equipment 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.

The equipment costs for the system was billed for four months at \$2,000.00 per month but reimbursement was requested for ten months at \$1,200.00 per month. The system ran for six months at \$1,000.00 per the corrective action completion report.

5. \$7,112.00, deduction for equipment costs for O2 Tube that exceeds those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).

The equipment costs for O2 Tube are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan.

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).

Technical documentation does not state that this equipment was used during this period.

6. \$4,982.00, deduction for equipment costs for motor starter that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

The costs for the motor starter were not approved in the budgets that were approved by the Agency on May 20, 2004 and November 2, 2005.

Technical documentation has not been received by the Agency to explain the costs for the motor starter – stabilizer & wire service for fourteen months at a total cost of \$4,982.00.

7. \$8,170.08, deduction for field purchases and other costs that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

Of the above deduction, \$7,911.22 in costs are ineligible for reimbursement for the repair of leased equipment pursuant to 35 Ill. Adm. Code 734.630(yy) which states that costs associated with the maintenance, repair, or replacement of leased or subcontracted equipment, other than costs associated with routine maintenance that are approved in a budget are not eligible for reimbursement.

Of the above deduction, \$259.96 in costs are ineligible for reimbursement. The costs associated with Universal Silencer are included in the equipment rate. 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.

8. \$2,640.41, 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.

Proof of payment in the form of cancelled checks, lien waivers, or affidavits were not submitted for the subcontractor's costs.

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The subcontractor costs that have been billed directly to the owner or operator are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(hh). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Some of the subcontractor costs were billed directly to the Owner/Operator and are therefore not eligible for handling charges.

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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:

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

Exhibit B

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2014

DISTRESSED PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	PCB 15-108
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by D. Glosser):

On December 8, 2014, the parties timely filed a joint notice to extend the 35-day period within which the petitioners may appeal a November 26, 2014 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 101.300(b), 105.206(c), 105.208(a), (c). In the determination, the Agency denied partial reimbursement of corrective action at petitioners' service station located at 15401 South Park Avenue, South Holland, Cook County.

The Board extends the appeal period until April 2, 2015, as the parties request. *See* 415 ILCS 5/40(a)(1) (2012); 35 Ill. Adm. Code 105.208(a). If petitioners fail to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 18, 2014, by a vote of 4-0.



John T. Therriault, Clerk
Illinois Pollution Control Board