

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

BPS OIL, INC.,)
Petitioner,)
v.) PCB _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, 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 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 17th day of March, 2020.

Respectfully submitted,

BPS OIL, 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

BPS OIL, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, BPS OIL, INC. pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the final decision of the Illinois Environmental Protection Agency (hereinafter “the Agency”) to only partially pay an application for payment, stating as follows:

1. Petitioner owns or operates a service station in the City of Illiopolis, County of Sangamon, Illinois, which had been assigned LPC # 1670555013.
2. On September 13, 2015, an incident was reported from the a diesel underground storage tank at the property, which was assigned Incident Number 2016-0832.
3. On September 28, 2018, the Agency approved a corrective action plan and budget for excavation transportation and disposal of contaminated soil, and backfilling the excavation.
4. Thereafter said corrective action activities were performed and an application for payment was submitted for various work performed from July 25, 2018 to September 26, 2019, totaling \$442,330.40 in reimbursable costs.
5. On January 28, 2020, the Agency approved \$433,369.45 in its final decision letter, a true and correct copy of which is attached hereto as Exhibit A. Through this appeal, Petitioner only challenges the third deduction, relating to handling charges.

6. Given the size of this excavation, six different vendors were utilized and paid amounts ranging from \$7,422.12 to \$103,547.03, each of which gave rise to separate “administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.” (35 Ill. Adm. Code § 734.115 (definition of “handling charges”)). Each of these subcontracts and field purchases was eligible for payment of handling charges so long as they are equal to or less than the formula found in the Board regulations at 35 Ill. Adm. Code § 734.635, which for these subcontracts totaled \$17,303.86.

7. Without explanation or justification, the Agency erroneously treated the six different vendors as a single contract and thus authorizing only \$9,092.91 for handling charges, in contradiction to the plain language of the statute, and Pollution Control Board precedent, which indicates that handling charges are incurred separately for each contract. State Bank of Whittington v. IEPA, PCB 92-152 (June 3, 1993). Furthermore, the Agency has failed to perform or report to the Board on a triennial basis as to whether the amounts are consistent with the prevailing market rates, (35 Ill. Adm. Code § 735.875), and therefore the rates for handling charges should be construed in a manner most consistent with the Agency’s last such testimony to the Board. Chuck and Dan’s Auto Serv. v. IEPA, PCB 92-203 (Aug. 26, 1993) (Board affirmed Agency’s testimony that 15% handling charges reflected prevailing market rates).

8. The subject decision letter was received by certified mail on February 12, 2020, making March 18, 2020, the deadline for any appeal, and therefore this appeal is timely.

WHEREFORE, Petitioner, BPS OIL, 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.

BPS OIL, INC.,
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

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

7017 2680 0001 0210 3879

JAN 28 2020

BPS Oil, Inc.
Attn: Chase Environmental Group, Inc.
2701 East Ash Street, Building B
Springfield, IL 62703

Re: 1670555013 -- Sangamon County
Illioopolis / BPS Oil, Inc.
705 Old Route 36
Incident-Claim No.: 20160832 -- 70672
Queue Date: October 15, 2019
Leaking UST Fiscal File

Dear Mr. Bhalla:

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 October 11, 2019 and was received by the Illinois EPA on October 15, 2019. The application for payment covers the period from July 25, 2018 to September 26, 2019. The amount requested is \$442,330.40.

On October 15, 2019, 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 \$433,369.45 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 \$5,000.00, 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 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.

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

9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 691-1111
2309 W. Main Street, Suite 116, Marlon, IL 62959 (618) 998-1111
100 W Randolph Street Suite 4-500 Chicago, IL 60601

PENGAD 800-631-6888

PETITIONER'S
EXHIBIT

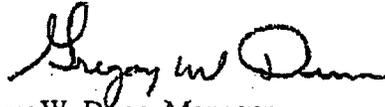
A

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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 at (217) 785-3437.

Sincerely,



Gregory W. Dunn, Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments

c: BPS Oil, Inc.
Leaking UST Claims Unit

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 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:

Clerk of the Board
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
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544

Attachment A
Accounting Deductions

Re: 1670555013 -- Sangamon County
Illioopolis/BPS Oil, Inc.
705 Old Route 36
Incident-Claim No.: 20160832 -- 70672
Queue Date: October 15, 2019
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. \$150.00, deduction for costs for Paving, Demolition, and Well Abandonment, 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.

\$150.00 for demo permit is being cut.

2. \$600.00, deduction for costs for Paving, Demolition, and Well Abandonment, 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).

\$600.00 for a job trailer is being cut.

3. \$8,210.95, deduction for handling charges in the billing(s) exceed the handling charges set forth in Section 57.1(a) of the Act. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

Subcontract or	Eligible Handling Charges
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Field Purchase Cost	as a Percentage of Cost
\$0-\$5,000	12%
\$5,001-\$15,000	\$600 + 10% of amount over \$5,000
\$15,001-\$50,000	\$1600 + 8% of amount over \$15,000
\$50,001-\$100,000	\$4400 + 5% of amount over \$50,000
\$100,001-\$1,000,000	\$6900 + 2% of amount over \$100,000

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.

\$8,210.95 is being cut.