

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DISTRESSED PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 16 --
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To: John Therriault, Clerk	Scott B. Sievers
Illinois Pollution Control Board	Special Assistant Attorney General
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 22nd day of July 2015, the following was filed electronically with the Illinois Pollution Control Board: **Petitioner Distressed Properties, Inc.'s Petition for Review**, which is attached and herewith served upon you.

DISTRESSED PROPERTIES, INC.

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

Elizabeth Harvey
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CERTIFICATE OF SERVICE

I, the undersigned, state that a copy of the above-described document was served electronically upon all counsel of record on July 22, 2015.

s/Elizabeth S. Harvey

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DISTRESSED PROPERTIES, INC.,)	
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Petitioner,)	
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v.)	PCB 16 --
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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") June 18, 2015 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 its initial application for payment of costs from the UST Fund. The Agency issued its decision on that application on November 26, 2014, approving payment of some, but not all, of the costs requested. The amount at issue is \$69, 518.77.
2. DPI appealed the Agency's November 26, 2014 decision. That appeal is pending before the Board as *Distressed Properties, Inc. v. Illinois Environmental Protection Agency*, PCB 15-108.
3. In an effort to resolve the appeal, DPI has worked with the Agency and provided additional documentation in support of its reimbursement application.

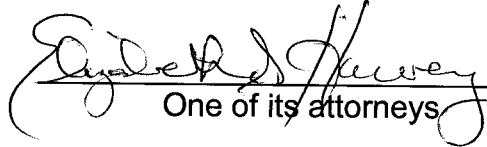
4. On June 18, 2015, the Agency issued a second decision on DPI's reimbursement application. That June 18, 2015 decision approved reimbursement of \$21,642.00 of the \$69,518.77 at issue. The Agency's June 18, 2015 decision is attached as Exhibit 1.
5. There are still denied costs of \$49,876.77. DPI continues to work with the Agency, and on June 30, 2015 submitted additional information in support of the DPI application. However, DPI does not anticipate receiving a written decision on that additional information until after the appeal period on the June 18 letter expires.
6. This appeal arises from the same circumstances as the currently-pending appeal, *Distressed Properties, Inc. v. Illinois Environmental Protection Agency*, PCB 15-108. However, because the Agency's June 18, 2015 decision states it is the Agency's final action, DPI is filing this separate petition for review of the June 18, 2015 decision.
7. DPI will file a motion to consolidate this appeal with the pending appeal, PCB 15-108.
8. DPI seeks a review of the denial of all costs (\$49,876.77) denied in the Agency's June 18, 2015 decision. (Exhibit 1.) The denied costs were incurred in executing an approved corrective action plan, and were part of an approved budget. The costs should be reimbursed.

WHEREFORE, DPI seeks review of the Agency's June 18, 2015 denial of \$49,876.77 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: July 22, 2015

Elizabeth S. Harvey
SWANSON, MARTIN & BELL LLP
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Exhibit 1



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

Later letter received from DEP

217/524-3300

JUN 18 2015

CERTIFIED MAIL #

7012 0470 0001 2968 5156

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 -- 65705
Queue Date: March 12, 2015
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 March 7, 2015 and was received by the Illinois EPA on March 12 2015. The application for payment covers the period from June 1, 2012 to July 31, 2014. The amount requested is \$69,518.77.

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 \$21,642.00 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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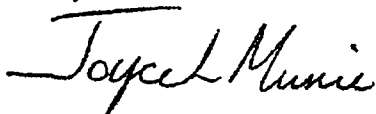
the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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 at 217-785-9351 or Brian Bauer at 217-782-3335.

Sincerely,



Joyce L. Munie
Acting Manager, Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

JLM:CSE 

ATTACHMENT

c: O2Tube Technology
Leaking UST Claims Unit
Cathy Elston
Scott Sievers - DLC
Brian Bauer

Attachment A
Accounting Deductions

Re: LPC #0312975187 -- Cook County
South Holland / Distressed Properties, Inc.
15401 South Park Avenue
Incident-Claim No.: 20010053 -- 65705
Queue Date: March 12, 2015
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

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. \$6,845.00, deduction for personnel costs that 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.

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.

The personnel costs were also billed at a higher rate than submitted and approved in the budget dated May 20, 2004 and November 2, 2005

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.

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.

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