BEFORE THE POLLUTION CONTROL BOARD OF THE STATE OF ILLINOIS

MARY JANE BENNETT,)	
Petitioner,)	
v.)	PCB
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	, , , , , , , , , , , , , , , , , , , ,
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting 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 THE 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 21ST day of November, 2014.

Respectfully submitted,
MARY JANE BENNETT, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw MOHAN, ALEWELT, PRILLAMAN & ADAMI 1 North Old Capitol Plaza, Suite 325 Springfield, IL 62701-1323

Telephone: 217/528-2517 Facsimile: 217/528-2553

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MARY JANE BENNETT,)
Petitioner,)
)
v.) PCB
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MARY JANE BENNETT, pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the Agency's final decision, refusing to approve the application for payment, and in support thereof states as follows:

- This appeal arises from underground storage tanks formally at the Cobden One Stop in Cobden, Union County, Illinois, now owned by Mary Jane Bennett, and assigned LPC #1810155013.
- Petitioner filed an application for payment for work performed pursuant to plans and budgets approved by the Illinois EPA.
- On October 17, 2014, the Illinois EPA rejected the application for payment on the grounds that the application was incomplete. Attached hereto is a true and correct copy of said decision.
 - 4. The Illinois EPA's decision should be reversed for the following reasons:
 - a. The application was complete, containing all of the information required of a complete application pursuant to Section 57.8 of the Illinois Environmental

- Protection Act (415 ILCS 5/57.8(a)(6));
- The application was complete, containing all of the information required of a complete application pursuant to 35 III. Adm. Code § 734.605;
- The application was complete pursuant to forms that existed at the time application for payment was submitted to the Illinois EPA;
- d. The Petitioner is relieved from the obligation to submit or file forms that are not in compliance with the Forms Notice Act (20 ILCS 435/1 et seq.);
- e. The information sought is irrelevant under the LUST Program; and
- f. The Agency improperly seeks to review documents that exceed its scope of review, including mandating the creation of new documents that were not created when the underlying transactions occurred, and were not relied upon in the completion of the application for payment.
- The Agency's determination was made on October 17, 2014, which is 35 days
 from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, MARY JANE BENNETT, 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 application for payment in full, (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.

MARY JANE BENNETT, Petitioner

By its attorneys, MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw MOHAN, ALEWELT, PRILLAMAN & ADAMI 1 N. Old Capitol Plaza, Ste. 325 Springfield, IL 62701

Telephone: 217/528-2517 Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER



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

OCT 17 2014

CERTIFIED MAIL#
7012 0470 0001 2967 0220

Mary Jane Bennett Attn: Environmental Management, Inc. 1154 North Bradfordton Road Springfield, IL. 62711

Re: LPC #1810155013 -- Union County

Cobden / Cobden One Stop

111 Oak Street

Incident-Claim No.: 20100774 -- 64733

Queue Date: June 23, 2014 Leaking UST Fiscal File

Dear Ms. Bennett:

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 June 16, 2014 and was received by the Illinois EPA on June 23, 2014. The application for payment covers the period from January 6, 2014 to May 12, 2014. The amount requested is \$419,858.91.

On June 23, 2014, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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

Page 2

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.

Sincerely,

Henry A. Alberrain

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

HAA:CSE

ATTACHMENT

c: Mary Jane Bennett
Leaking UST Claims Unit
Cathy Elston

Attachment A Accounting Deductions

Re: LPC #1810155013 -- Union County

Cobden / Cobden One Stop

111 Oak Street

Incident-Claim No.: 20100774 -- 64733

Queue Date: June 23, 2014 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).

Description of Deductions

The application for payment in its entirety is denied because it contains costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(cc). Without additional 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 documentation listed below in items 1 through 7 is necessary to support this claim submitted to the Illinois EPA.

Further, pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.605(a), an owner or operator seeking payment from the Fund must submit to the Illinois EPA an application for payment on forms prescribed and provided by the Illinois EPA. The claim submitted did not include the forms listed below in items 1 and 6.

In addition, the application for payment requests handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 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. The application for payment failed to include sufficient documentation that the contractor paid the applicable subcontractor invoices. The Illinois EPA is requesting the affidavits referenced in item 6 below be completed and submitted.

Moreover, in accordance with 35 Ill. Adm. Code 734.665, an owner or operator that submits an application for payment must maintain all books, records, documents, and other evidence directly pertinent to the application for payment, including but not limited to all financial information and data used in the preparation or support of applications for payment. All books, records, documents, and other evidence must be maintained in accordance with accepted business practices and appropriate accounting procedures and practices. (Sections 57.6(a) and 57.15 of the Act)

Pursuant to 35 Ill. Adm. Code 734.605(b)(9) and (10), a complete application for payment must contain:

An accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed; and

Proof of payment of subcontractor costs for which handling charges are requested. Proof of payment may include cancelled checks, lien waivers, or affidavits from the subcontractor.

The following information is needed to complete the review of the claim:

- 1. A breakdown of consulting personnel time requested for payment. Specifically requested are the Consulting Personnel Costs Form for the above-referenced claim and the companion Personnel Weekly Work Sheet that includes the days and times of day worked for each employee. Both forms are accessible on the Illinois EPA's Leaking UST Program Web page at www.epa.state.il.us/land/lust/forms/budget-forms/forms-1/table-of-contents.html under the Application for Payment Forms.
- A copy of all employees' time sheets for the period for which consulting personnel time was requested for payment.
- 3. A copy of all contracts signed by the UST owner or operator for the above-referenced claim.
- 4. A copy of all contracts and agreements between the consultant and all subcontractors.
- 5. Documentation that the UST owner or operator paid the applicable deductible. Documentation could include a copy of the canceled check (front and back).
- 6. Affidavit(s) (attached)—completed, signed, and sealed—for the following subcontractor for the work completed pursuant to the above-referenced claim:

JK Five Construction, Inc.
Prairie Analytical Systems, Inc.(4 affidavits)
Southern Illinois Regional Landfill (2 affidavits)
McVicker Excavating, Inc.
Anna Quarries, Inc.(2 affidavits)

 A time and material breakdown is needed for the canopy that was removed and hauled off site for disposal.

The Illinois EPA has determined that a complete application for payment has not been submitted and the information listed above in items 1 through 7 is needed for a complete application for payment.

Attachment: Affidavit(s)

State of Illinois
County of Sangarnon
I, the undersigned,, being first duly sworn upon my oath, do hereby depose and state as follows:
I am an authorized agent of JK Five Construction, Inc.
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois
Soil remediation services of excavate, transport, and dispose of 3,852 cubic yards of contaminated soil at a solid waste landfill by persons directly employed by JK Five Construction, Inc.
Soil remediation services of the purchase of 3,884 cubic yards of clean backfill material by persons directly employed by JK Five Construction, Inc.
Soil remediation services to excavate and return clean overburden soil in the amount o 200 cubic yards back into the excavation area by persons directly employed by JK Five Construction, Inc.
Site remediation services for the removal of an existing canopy and to haul it off site for proper disposal by persons directly employed by JK Five Construction, Inc.
I have personal knowledge of invoice #2752 for the sum of \$356,297.48, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Section 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of
(Aletery Dublic)

State of Illinois
County of Sangamon
f, the undersigned,
upon my oath, do hereby depose and state as follows:
I am an authorized agent of Prairie Analytical Systems, Inc.
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Laboratory analysis of fourteen BETX/MTBE samples and fourteen PNA samples by persons directly employed by Prairie Analytical Systems, Inc.
I have personal knowledge of invoice #1401297 for the sum of \$3,882.06, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were owill be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of
(Notary Public)

State of Illinois
County of Sangamon
I, the undersigned,, being first duly sworn upon my oath, do hereby depose and state as follows:
I am an authorized agent of Prairie Analytical Systems, Inc.
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois
Laboratory analysis of twenty two BETX/MTBE samples and twenty two PNA samples by persons directly employed by Prairie Analytical Systems, Inc.
I have personal knowledge of invoice #1401125 for the sum of \$6,100.38, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were owill be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the
Seal:
(Notary Public)

State of Illinois
County of Sangamon
I, the undersigned,, being first duly sworn upon my oath, do hereby depose and state as follows:
1 am an authorized agent of Prairie Analytical Systems, Inc.
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Laboratory analysis of twenty six BETX/MTBE samples and twenty six PNA samples by persons directly employed by Prairie Analytical Systems, Inc.
I have personal knowledge of invoice #1401236 for the sum of \$7,209.54, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,
Seal:
(Notary Public)

State of Illinois
County of Sangamon
I, the undersigned,, being first duly sworn
upon my oath, do hereby depose and state as follows:
i am an authorized agent of Prairie Analytical Systems, Inc.
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Laboratory analysis of one sample each of paint filter, lead TCLP, TCLP, and flash point modified by persons directly employed by Prairie Analytical Systems, Inc.
I have personal knowledge of invoice #1400277 for the sum of \$166.12, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,
(Notary Public)

State of illinois
County of Sangamon
, the undersigned,, being first duly sworn
upon my oath, do hereby depose and state as follows:
I am an authorized agent of Southern Illinois Regional Landfill
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Soil disposal services of 2,S36.35 tons of contaminated soil and the purchase of 1,503.98 tons of clean backfill by persons directly employed by Southern Illinois regional Landfill.
I have personal knowledge of invoice #0000004556 for the sum of \$62,338.16, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS S/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,,
Seal:
(Notary Public)

State of Illinois
County of Sangamon
I, the undersigned,, being first duly sworn
upon my oath, do hereby depose and state as follows:
I am an authorized agent of Southern Illinois Regional Landfill
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Soil disposal services of 3,340.11 tons of contaminated soil and the purchase of 1,757.57 tons of clean backfill by persons directly employed by Southern Illinois regional Landfill.
I have personal knowledge of invoice #0000004637 for the sum of \$83,940.94, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,,
Earle
Seal:
(Notary Public)

·
State of Illinois
County of Sangamon
, the undersigned,, being first duly sworn
upon my oath, do hereby depose and state as follows:
I am an authorized agent of Mc Vicker Excavating, Inc
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Trucking services of forty seven semi-truck loads of clean backfill material and fifty five tandem truck loads of clean backfill material by persons directly employed by Mc Vicker Excavating, Inc.
I have personal knowledge of invoice #4369 for the sum of \$7,608.00, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of
Seal:
(Notary Public)

State of Illinois
County of Sangamon
, the undersigned,, being first duly sworn upon my oath, do hereby depose and state as follows:
spon my dath, do nevery depose and state as follows.
I am an authorized agent of Anna Quarries, Inc
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Trucking services of 188.79 tons of clean backfill by persons directly employed by Anna Quarries, Inc.
I have personal knowledge of invoice #59979 for the sum of \$1,613.45, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were o will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,
Seal:
(Notary Public)

State of Illinois
County of Sangamon
•
l, the undersigned,, being first duly sworn
upon my oath, do hereby depose and state as follows:
I am an authorized agent of Anna Quarries, Inc
The following activity has been completed at Cobden One Stop, 111 Oak Street, Cobden, Illinois:
Trucking services of 599.42 tons of clean backfill by persons directly employed by Anna Quarries, Inc.
I have personal knowledge of invoice #60222 for the sum of \$5,122.79, and it has been paid in full. I further attest that no discounts, price reduction, give backs, or rebates of any kind were or will be issued to any party regarding the payment of this invoice.
I am aware there are significant penalties for submitted false statements or representations to the Illinois EPA, including but not limited to fines, imprisonment, or both as provided in Sections 44 and 57.17 of the Environmental Protection Act [415 ILCS 5/44 and 57.17].
Further affiant sayeth not.
Signature:
Subscribed and sworn to before me the day of,
Seal:
(Notary Public)

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