

RECEIVED

CLERK'S OFFICE

AUG 4 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
STATE OF ILLINOIS

Pollution Control Board

WARECO SERVICE, INC.)	
)	
Petitioner,)	
)	
v.)	PCB No. 03-212
)	(UST – Petition
ILLINOIS ENVIRONMENTAL)	for Review)
PROTECTION AGENCY)	
)	
Respondent.)	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	John J. Kim, Esq.
Clerk of the Board	Special Assistant Attorney General
Illinois Pollution Control Board	Division of Legal Counsel
100 West Randolph Street	Illinois Environmental Protection Agency
Suite 11-500	1021 North Grand Avenue East
Chicago, Illinois 60601	Post Office Box 19276
(VIA FIRST CLASS MAIL)	Springfield, Illinois 62794-9276
	(VIA FIRST CLASS MAIL)

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of an **ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF CASSANDRA L. KARIMI** and **PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION**, copies of which are herewith served upon you.

Respectfully submitted,

WARECO SERVICE, INC.,
Petitioner,

By: Cassandra Karimi
Cassandra L. Karimi

Dated: August 1, 2003
Edward W. Dwyer
Cassandra L. Karimi
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900


CERTIFICATE OF SERVICE

I, Cassandra L. Karimi, the undersigned, certify that I have served the attached
ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE
OF CASSANDRA L. KARIMI and PETITION FOR REVIEW OF LUST FUND
REIMBURSEMENT DECISION upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

John J. Kim, Esq.
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail in Springfield, Illinois, on
August 1, 2003.



Cassandra L. Karimi

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **AUG 4 2003**

WARECO SERVICE, INC.,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board


PCB No. 03-212

ENTRY OF APPEARANCE OF EDWARD W. DWYER

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER
ZEMAN, and hereby enters his appearance on behalf of Petitioner, WARECO SERVICE,
INC.

Respectfully submitted,

WARECO SERVICE, INC.,
Petitioner,

By: 
Edward W. Dwyer

Dated: August 1, 2003

Edward W. Dwyer
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WARE:001/Fil/EOA3-EWD (Galesburg #224)

RECEIVED

CLERK'S OFFICE

AUG 4 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WARECO SERVICE, INC.,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB No. 03-212

ENTRY OF APPEARANCE OF CASSANDRA L. KARIMI

NOW COMES Cassandra L. Karimi, of the law firm of HODGE DWYER
ZEMAN, and hereby enters her appearance on behalf of Petitioner, WARECO
SERVICE, INC.

Respectfully submitted,

WARECO SERVICE, INC.,
Petitioner,

By: Cassandra Karimi
Cassandra L. Karimi

Dated: August 1, 2003

Cassandra L. Karimi
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WARE:001/Fil/EOA3-CLK (Galesburg #224)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

CLERK'S OFFICE

AUG 4 2003

STATE OF ILLINOIS

PCB No. 03-21 Pollution Control Board

(UST - Petition

for Review)

WARECO SERVICE, INC.,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION

Petitioner, WARECO SERVICE, INC. ("Petitioner"), pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40 and 5/57.8(i)), and Subpart D of 35 Ill. Admin. Code Part 105, hereby requests review of the final decision by the Respondent, Illinois Environmental Protection Agency ("Agency"), denying Petitioner's request for reimbursement of certain corrective action costs incurred in response to a release of petroleum from underground storage tanks ("USTs"). In support of this Petition, the Petitioner states as follows:

1. Petitioner is the owner of certain property located at 1309 Grand Avenue in Galesburg, Illinois, hereinafter referred to as "the site."
2. Petitioner is the owner of USTs formerly located at the site.
3. On November 25, 1998, Petitioner notified the Illinois Emergency Management Agency of a release from the above-described USTs, in accordance with applicable requirements. Thereafter, Petitioner performed corrective action in response to the release, in accordance with applicable statutory and regulatory requirements.

4. On January 23, 2003, Petitioner submitted an application for payment to the Agency for corrective action costs incurred in response to a release from the above-described USTs, in accordance with the applicable requirements.

5. On March 28, 2003, the Agency issued its final decision regarding the January 23, 2003, application for payment. The Agency's March 28, 2003, determination stated that certain costs included in the application for payment were not eligible for payment from the Leaking Underground Storage Tank Fund ("LUST Fund"), and further stated that this decision constituted "the Agency's final action with regard to the above application(s) for payment." (See Exhibit A attached.)

6. Petitioner is seeking review of the Agency's denial of reimbursement of certain corrective action costs incurred by Petitioner in response to a release of petroleum from USTs at the site as described in Exhibit A. The Agency's stated basis for its denial of reimbursement of these costs is arbitrary, capricious, and without statutory authority. Furthermore, the Agency is bound on review by the reasons given in its March 28, 2003, denial letter regarding access to the LUST Fund.

WHEREFORE, for the above and foregoing reasons, Petitioner, WARECO SERVICE, INC., respectfully requests that the Illinois Pollution Control Board ("Board") grant the following relief:

1. Find that the Agency's March 28, 2003, final decision is arbitrary and capricious, and without statutory authority;
2. Reverse the Agency's decision denying certain corrective action costs as set forth above;

3. Remand this matter to the Agency with instructions to issue payment of Petitioner's corrective action costs as provided for by the Act, but not inconsistent with the Board's order, within 30 days of its entry;

4. Award Petitioner reasonable attorney's fees and expenses incurred in bringing this action; and

5. Award such further relief as deemed just and equitable in these premises.

Respectfully submitted,

WARECO SERVICE, INC.
Petitioner,

By: Cassandra Karimi
Cassandra L. Karimi

Dated: August 1, 2003

Edward W. Dwyer
Cassandra L. Karimi
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

WARE:001/Fil/Petition for Review of 3-28 decision



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7002203000015207815

MAR 28 2003

Wareco Service, Inc. No. 224
Attention: Jim Ware
Post Office Box 762
Jacksonville, IL 62650

Re: LPC #0950205083 -- Knox County.
Galesburg/Wareco Service, Inc. #224
1039 Grand Avenue
LUST Incident No. 982927
LUST FISCAL FILE

Dear Mr. Ware:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated January 23, 2003 and was received by the Agency on January 24, 2003. The application for payment covers the period from April 29, 2000 to October 27, 2000. The amount requested is \$10,828.99.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the billing submittal received by the Agency on January 25, 2002 for \$72,896.48. 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.

On February 27, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$551.26 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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

Rockford - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • Des Plaines - 9511 W. Harrison St., Des Plaines, IL 60018 - (847) 294-4000
Evanston - 595 South State Street, Evanston, IL 60123 - (847) 608-3131 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 693-5467
Evanston (Camp) - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • Champaign - 2125 South First Street, Champaign, IL 61820 - (217) 276-5800
Springfield - 4300 S. Sixth Street, Springfield, IL 62705 - (217) 786-6892 • Collinsville - 2000 Mall Street, Collinsville, IL 62234 - (618) 146-5120
Marion - 2309 W. Main St., Suite 110, Marion, IL 62954 - (618) 913-7210

A

Page 2

applicant 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:

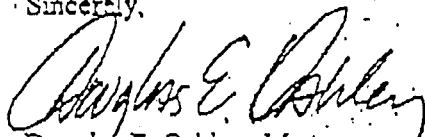
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Lieura Hackman of my staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:LH:jkn032817.doc

Attachment

cc: Hodge-Dwyer-Zeman

Attachment A
Accounting Deductions

Re: LPC #0950205083 — Knox County
Galesburg/Wareco Service, Inc. #224
1039 Grand Avenue
LUST Incident No. 982927
LUST Fiscal File

Citations in this attachment are from and the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$10,081.21, deduction for costs associated with site classification activities. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts. (Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(f))

A deduction in the amount of \$7,982.00 was made on the amount requested for Personnel Costs.

A deduction in the amount of \$6.08 was made on the amount requested for Equipment Costs.

A deduction in the amount of \$2,093.13 was made on the amount requested for Field Purchases and Other Costs.

2. \$196.52, adjustment in the handling charges due to the deduction(s) of ineligible costs (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607).

This deduction for handling charges was made in association with the ineligible costs for Field Purchases and Other Costs.

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