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JUL 28 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

McDONALD'S CORPORATION,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

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)  
)  
) PCB 04-14  
) (UST Appeal)  
)  
)  
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NOTICE OF FILING AND CERTIFICATE OF SERVICE

The undersigned hereby states on oath that on this 28th day of July, 2003, copies of Petition For Review Of Lust Fund Payment Denial were filed with the Illinois Pollution Control Board and served by First Class Mail, postage pre-paid, upon the parties named on the attached Service List.

McDonald's Corporation

BY:   
its attorney

Barbara A. Magel  
Mark D. Erzen  
Karaganis, White & Magel Ltd.  
414 North Orleans Street, Suite 810  
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John J. Kim, Esq.  
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Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276

JUL 28 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

McDONALD'S CORPORATION, )  
 )  
 Petitioner, )  
 ) PCB 04-14  
 v. ) (UST Appeal)  
 )  
 ILLINOIS ENVIRONMENTAL PROTECTION )  
 AGENCY, )  
 )  
 Respondent. )

**PETITION FOR REVIEW OF LUST FUND PAYMENT DENIAL**

Pursuant to §57.8(i) and §40 of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i) and 5/40, and Subpart D of Part 105 of the Rules of the Illinois Pollution Control Board, Ill.Adm.Code Title 35, §§105.400 *et seq.*, Petitioner McDonald's Corporation respectfully asks the Illinois Pollution Control Board to review and reverse the June 23, 2003 decision of the Illinois Environmental Protection Agency insofar as that decision partially denies McDonald's Corporation's application for reimbursement from the Leaking Underground Storage Tank ("LUST") Fund.

## INTRODUCTION

This appeal arises out of the June 23, 2003 decision of the Illinois Environmental Protection Agency (“IEPA”) denying reimbursement from the Leaking Underground Storage Tank Fund for \$31,515.00 in costs that were incurred by McDonald’s Corporation (“McDonald’s”) relating to the remediation of a site located on 22nd Street in Oak Brook, Illinois, IEPA Incident Numbers 902922 and 952344. The reason given by IEPA for its denial of those costs was that McDonald’s “failed to demonstrate [that the costs for ‘compaction’] were reasonable” as that term is used in §22.18b(b)(4)(C) of the Illinois Environmental Protection Act (the “Act”).

This appeal is being filed because the costs of compaction were demonstrated to be “reasonable” as that term is used in the Act in at least two respects:

FIRST, the compaction at issue in this instance was limited only to the amount needed to insure that the clay soil which was being used as clean backfill would not settle or subside, and would thus remain at grade. *See* Ill.Adm.Code Title 35, §732.605(a)(9) (“Types of costs that may be eligible for payment from the Fund include ... (9) the placement of clean backfill to grade to replace excavated soil contaminated by petroleum at levels in excess of the established corrective action objectives.”) The compaction at issue in this instance did not attempt to compact the clean backfill to any specific density or for any other purpose, and the clean backfill was not tested for density. *See* Ill.Adm.Code Title 35, §732.606(w) (“Costs ineligible for payment from the Fund include but are not limited to: ... (w) Costs associated with the compaction and density testing of backfill material”). The compaction at issue in this instance was therefore reasonable under the Act because it was necessary to insure that the clean backfill would remain at grade.

SECOND, the use of soil as clean backfill at this site – even including the cost of compaction – reduced the total cost of the remediation below the cost that would have been incurred if crushed stone had been used as clean backfill. The use of soil with necessary compaction was therefore more cost-effective than using backfill material that did not require compaction to remain at grade.

### **PETITION TO APPEAL**

In compliance with Ill.Adm.Code Title 35, §105.408, Petitioner McDonald's Corporation states as follows in support of its Petition To Appeal:

1. The Petitioner in this matter is McDonald's Corporation ("McDonald's"). McDonald's is the owner of a site located at 1120 West 22nd Street in Oak Brook, Illinois, IEPA Incident Numbers 902922 and 952344. Ill.Adm.Code Title 35, §§105.400(a), 105.402.

2. The Respondent in this matter is the Illinois Environmental Protection Agency ("IEPA"). Ill.Adm.Code Title 35, §105.400(b).

3. This Petition is being filed to appeal the IEPA's decision dated June 23, 2003, insofar as that decision denied \$31,515.00 in costs based upon IEPA's determination that "the owner/operator failed to demonstrate were reasonable..." The IEPA's decision is attached as Exhibit 1. Ill.Adm.Code Title 35, §105.408(a).

4. This Petition To Appeal is being filed within thirty-five days of service of the IEPA's June 23, 2003 decision. The IEPA's June 23, 2003 decision was received after June 23, 2003, thus making this Petition To Appeal timely. Ill.Adm.Code Title 35, §105.408(b).

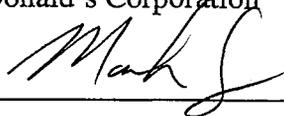
5. The grounds for this Appeal from the IEPA's June 23, 2003 decision is that the decision is contrary to the requirements of the Act. Section 22.18b(d)(4)(C) of the Act, 415 ILCS 5/22.18b(d)(4)(C) (now repealed).

6. Section 22.18b(d)(4)(C) of the Act provided that, to be approved for reimbursement from the LUST Fund, a cost had to be demonstrated to be "reasonable."

7. Here, Petitioner McDonald's has demonstrated that the costs were reasonable. *See* Letter dated May 20, 2003 from Devine and Yung of MACTEC Engineering and Consulting, Inc. to Douglas Oakley or IEPA, attached as Exhibit 2. As that letter indicates, the "compaction" costs were necessary to insure only that the clean backfill would remain at grade, and the use of clay soil as clean backfill was also cost-efficient, saving approximately \$50,000 when compared to the cost of crushed stone.

WHEREFORE, McDonald's Corporation respectfully prays that the Illinois Pollution Control Board reverse the June 23, 2003 decision of the IEPA, and approve reimbursement from the LUST Fund of \$31,515.00 in costs relating to compaction.

McDonald's Corporation

BY: 

\_\_\_\_\_  
their attorney

Barbara A. Magel  
Mark D. Erzen  
Karaganis, White & Magel Ltd.  
414 North Orleans Street, Suite 810  
Chicago, Illinois 60610  
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**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

JUN 23 2003

CERTIFIED MAIL

7002315000012224632

McDonald's Corporation  
Attn: Den Koide  
McDonald's Plaza  
Oak Brook, Illinois 60523

Re: LPC #0434705070 -- DuPage County  
Oak Brook/McDonald's Corporation  
1120 West 22nd Street  
LUST Incident Number 902922  
LUST FISCAL FILE

Dear Mr. Koide:

On May 12, 2003, the Agency sent you a letter regarding the site referenced above. Upon further review, an additional voucher for \$1,684.19 will be prepared for submission to the Comptroller's Office for payment as funds become available. In addition, there are costs from this claim which are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons they are not being paid.

An underground storage tank owner or operator may appeal this decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision may, within 35 days after the notification of the final Agency decision, petition for a hearing before the Board; however, the 35-day period may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the 35-day initial appeal period.

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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-1  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-61  
MARION - 2309 W. Main St., Suite

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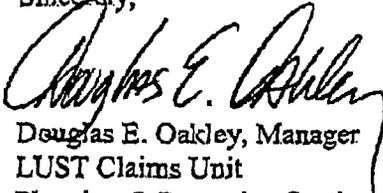
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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, please contact Lieura Hackman or myself at 217/782-6762.

Sincerely,

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

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cc: MATEC Engineering & Consulting, Inc.

Attachment A  
Accounting Deductions

Re: LPC #0434705070 -- DuPage County  
Oak Brook/McDonald's Corporation  
1120 West 22nd Street  
LUST Incident No. 902922  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$31,515.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

A deduction in the amount of \$7,680.00 was made on the R.W. Collins invoice numbered 1132324 for the ineligible costs for compaction.

A deduction in the amount of \$2,025.00 was made on the R.W. Collins invoice numbered 113255 for the ineligible costs for compaction.

A deduction in the amount of \$21,810.00 was made on the R.W. Collins invoice numbered #113293 for the ineligible costs for compaction.

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May 20, 2003

Illinois Environmental Protection Agency  
Bureau of Land - #24  
LUST Claims Unit  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Attention: Mr. Douglas E. Oakley

Subject: **Claims for Reimbursement under LUST Fund**  
**LPC #0434705070 – DuPage County**  
**McDonald's Corporation**  
**1120 West 22nd Street, Oak Brook, Illinois**  
**IEPA Incident Nos. 902922 & 952344**  
**MACTEC Project No. 52000-2-2681-08**

Dear Mr. Oakley::

Reference is made to the two Illinois Environmental Protection Agency (IEPA)'s letters, both dated May 12, 2003 addressed to McDonald's Corporation (McDonald's) regarding McDonald's requests for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. In the Agency's letter, \$1,234.19 associated with furnishing and installing limestone for the property and \$31,965.00 associated with compaction of fill material and transportation of CA-1 crushed stone, were deducted from the costs of reimbursement.

Based on the telephone conversations between Ms. Carmen Yung of Mactec Engineering and Consulting of Georgia, Inc., (MACTEC) and Ms. Lieura Hackman of the IEPA on May 15, 2003 and between Ms. Carmen Yung and Ms. Valerie Davis of the IEPA on May 16, 2003, MACTEC is submitting the following information for your consideration:

\$1,234.19 and \$450 – Cost for Furnishing and Installing Limestone for the Property (R.W. Collins Invoices #113255)

Crushed stone was used to provide temporary paving over the entrance and exit ways of the subject property and the Village of Oak Brook's soil pile located at 31<sup>st</sup> Street in Oak Brook to facilitate

MACTEC Engineering and Consulting, Inc.  
1200 Jorie Blvd., Suite 230 • Oak Brook, IL 60523  
630-571-2162 • Fax: 630-571-0439

movement of trucks during excavation and transportation of contaminated soil and backfill soil. The crushed stone was later used as backfill material for part of the excavated areas (to provide support to the asphalt driveway). Since it was used as backfill material, the cost for transportation and placing of the limestone at the Village of Oak Brook's soil pile should be eligible for reimbursement.

\$31,515 – Cost for Compaction

The Village of Oak Brook's soil pile located at 31<sup>st</sup> Street in Oak Brook was loaded to trucks and transported to and placed at the subject property as backfill material (which was described in R.W. Collin's invoices as "Load clay fill at source pile, haul to 22<sup>nd</sup> St., place and compact with sheepsfoot roller").

The backfill soils, after being placed in the excavations were rolled over by a sheepsfoot roller a few times in order to prevent voids and severe settlement. The "compaction" performed at the site was part of the soil placement process and should not be treated as compaction according to the industry standard (which would require slower placement in thin lifts, in-place density testing and higher costs). Therefore, we feel that the above cost should be eligible for reimbursement.

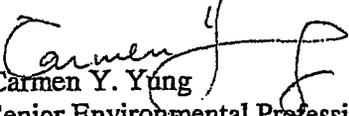
Moreover, the cost of using the Village of Oak Brook's soil pile as backfill material including loading, transportation and placement at \$15.00 per cubic yard is substantially lower than the cost of using crushed stone at \$18.00 per cubic yard. In total, McDonald's has saved more than \$50,000 by using the Village of Oak Brook's soil instead of crushed stone. Also, by using the Village of Oak Brook's soil, McDonald's has helped the Village of Oak Brook to dispose of their unwanted soil and turned it into use. McDonald's should not be penalized by employing cost saving and environmental conservation methods in site remediation when McDonald's could have obtained full reimbursement if crushed stone was used as backfill material.

It is therefore requested that the above costs be included for reimbursement.

Should you have any questions regarding this submittal or require any additional information, please feel free to contact Ms. Carmen Yung at 630-328-0420.

Sincerely,

MACTEC Engineering and Consulting of Georgia, Inc.

  
Carmen Y. Yung  
Senior Environmental Professional

  
Brian M. Devine, P.E.  
Principal

Cc: Den Koide, McDonald's