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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 21 2004

STATE OF ILLINOIS
Pollution Control Board

CRAIG'S SERVICE STATION,)	
)	
Petitioner,)	
)	PCB No. 04-169
vs.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

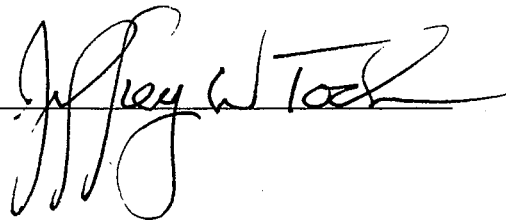
TO: Ms. Dorothy M. Gunn	John J. Kim, Esq.
Clerk of the Board	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
100 W. Randolph Street	1021 N. Grand Avenue East
Suite 11-500	P.O. Box 19276
Chicago, IL 60601	Springfield, IL 62794-9276

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 each of an Entry of Appearance of Jeffrey W. Tock and Petition for Review of LUST Fund Reimbursement Decision, copies of which are herewith served upon you.

Respectfully submitted,

CRAIG'S SERVICE STATION
Petitioner,

By:



Dated: June 18, 2004

Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue, Suite 601
P.O. Box 1550
Champaign, IL 61824-1550
Telephone: (217) 352-4167

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STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-169
(UST Appeal)

Jeffrey W. Tock

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Petitioner,)	
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PROTECTION AGENCY,)	
)	
Respondent.)	

PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION

NOW COMES Petitioner, Craig's Service Station (hereinafter "Petitioner"), by and through its attorneys, Harrington, Tock & Royse, pursuant to Sections 40, 22.18b(g) and 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/40, 5/22.18b(g) and 5/57.8(i)), and 35 Ill.Admin.Code Part 105, and hereby requests review of the decision by the Respondent, Illinois Environmental Protection Agency ("Agency"), regarding reimbursement of personnel costs and other costs. In support of this Petition, the Petitioners states as follows:

1. Petitioner is the owner of certain property located at Bloomington, Illinois, hereinafter referred to as "the site".
2. Petitioner is the owner of underground storage tanks ("USTs") formerly located at the site.
3. On November 18, 2003, Petitioner submitted its budget amendment for activities at the site.

4. By letter dated February 17, 2004, the Agency modified the request for the budget, stating that the Agency had made the following deductions:

(a) \$20,675.25 from Personnel Costs as unreasonable;

(b) \$480.00 from Field Purchases as unreasonable;

(c) \$1,075.56 from Other Costs as not eligible;

(d) \$80.67 from Other Costs as not eligible; and,

(e) \$130.89 from Handling Charges. (The Agency's letter is attached as Exhibit "A".) The letter further stated that "[A]n 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."

5. By an order entered on April 1, 2004, the Board extended the 35 day appeal period until June 21, 2004.

6. Petitioner is seeking review of the Agency's February 17, 2004 determination rejecting reimbursement for the above referenced costs.

The Agency's determinations are arbitrary, capricious, and without statutory authority, and contrary to the Board's decision in *Illinois*

Ayers Oil Company (PCB 03-214) entered April 1, 2004.

WHEREFORE, for the above and foregoing reasons, Petitioner, Craig's Service Station, respectfully requests that the Illinois Pollution Control Board grant the following relief:

1. Find that the Agency's February 17, 2004 decision is arbitrary and capricious, without statutory authority and contrary to the Board's decision in PCB 03-214;
2. Reverse the Agency's decision regarding the budget;
3. Remand this matter to the Agency with instructions to approve the budget;
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,

CRAIG'S SERVICE STATION,
Petitioner,

By: _____


Jeffrey W. Tock

Dated: June 18, 2004

Jeffrey W. Tock
Harrington, Tock & Royse
201 W. Springfield Avenue, Suite 601
P.O. Box 1550
Champaign, IL 61824-1550
Telephone: (217) 352-4167

CERTIFICATE OF SERVICE

I, Jeffrey W. Tock, the undersigned certify that I have served the attached Entry of Appearance of Jeffrey W. Tock and Petition for Review of LUST Fund Reimbursement Decision upon:

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

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Harold Craig
1013 W. Wood Street
Bloomington, IL 61701

Kevin Saylor, P.E.
HDC Engineering
201 W. Springfield Avenue
Suite 300
Champaign, IL 61824-0140

by depositing said documents in the United States Mail in Champaign, Illinois, postage prepaid, on June 18, 2004.

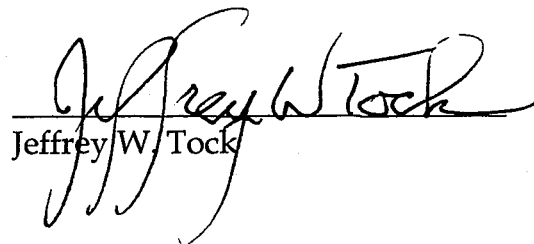

Jeffrey W. Tock

Exhibit "A"



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1255 1653

FEB 17 2004

Craig Service Station
Attention: Harold Craig
1013 West Wood St.
Bloomington, IL 61701

Re: LPC #1130205258 -- McLean County
Bloomington/Craig's Service Station
905 South Morris
LUST Incident No. 990396
LUST Technical File

Dear Mr. Craig:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) Amendment submitted for the above-referenced incident. This budget, dated November 18, 2003, was received by the Illinois EPA on November 19, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

All future correspondence must be submitted to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

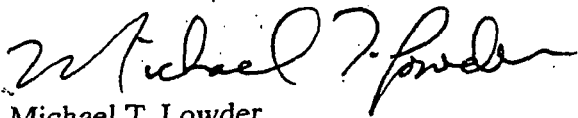
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Page 2

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 need further assistance, please contact Robin McCain at 217/785-6309

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:RMM

RMM

Attachment: Attachment A
Appeal Rights

c: Kevin Saylor, HDC Engineering
Division File

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FEB 15 2008
HDC ENGINEERING

Attachment A

Re: LPC #1130205258 -- McLean County
Bloomington/Craig's Service Station
905 South Morris
LUST Incident No. 990396
LUST Technical File

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

SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

High Priority Site Investigation Corrective Action Plan budget, approved September 11, 2003

\$7,730.50	Investigation Costs
\$14,462.22	Analysis Costs
\$57,927.00	Personnel Costs
\$37,145.98	Equipment Costs
\$133,351.13	Field Purchases and Other Costs
\$8,726.28	Handling Charges

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts have been approved:

Modified High Priority Corrective Action Plan Budget Amendment, dated November 10, 2003, received by the Illinois EPA on November 18, 2003

\$610.95	Analysis Costs
\$3,100.00	Personnel Costs
\$880.00	Equipment Costs
\$14,171.86	Field Purchases and Other Costs
\$1,612.27	Handling Charges

Total High Priority Corrective Action Plan budget

\$7,730.50	Investigation Costs
\$15,073.17	Analysis Costs
\$61,027.00	Personnel Costs
\$38,025.98	Equipment Costs
\$147,522.99	Field Purchases and Other Costs,
\$10,338.55	Handling Charges

SECTION 2

1. The Illinois EPA has determined that the following costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 IAC Section 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 IAC Section 732.505(c)).

- A. Deduct \$20,675.25 from Personnel Costs Section. Personnel costs are unreasonable as submitted.
- B. Deduct \$480.00 from Field Purchases and Other Costs Section, under Abandon Wells. Rate is unreasonable as submitted.

2. The following costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act) and 35 Ill. Adm. Code 732 (Section 732.505(c)). Costs for 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 (35 Ill. Adm. Code 732.606(o)). In addition, these costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action." (Section 57.9(a)(7) of the Act)

In addition, the following costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(y)). This cost is not a corrective action cost. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)).

Deduct \$1,075.56 from Field Purchases and Other Costs Section, under Sewer Repair Materials and Sewer Repair.

3. Deductions from the following sections of the budget, make it necessary to recalculate the sales tax and handling charges less the deducted amounts.

- A. Deduct \$80.67, from Field Purchases and Other Costs Section, under Sales Tax on Fill, Concrete, and Sewer Materials. Given that Sewer Repair Materials and

Sewer Repair are not eligible for reimbursement, the lump sum sales tax amount was recalculated and reduced accordingly.

- B. Deduct \$130.89, from Handling Charges. Deductions from the sections of the budget which handling charges are calculated, make it necessary to recalculate the handling charges less the deducted amounts.

RMM\

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)(D) 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