

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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APR 07 2004

STATE OF ILLINOIS
Pollution Control Board

THREE SQUARE FEEDS,)
)
Petitioner,)
)
v.) PCB 04- 176
) UST Fund Appeal
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

TO: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on April 7, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decisions.

Dated: April 7, 2004

Respectfully submitted,

Three Square Feeds

By: Carolyn S Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
213292v1

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decisions by placing a copy in an envelope addressed to:

John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 7th Day of April, 2004.



Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
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STATE OF ILLINOIS
Pollution Control Board

THREE SQUARE FEEDS,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 04- 176
UST Fund Appeal

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISIONS**

Three Square Feeds by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Three Square Feeds ("Petitioner") owned underground storage tanks (USTs) at property located at Route 267 South, Murrayville, Morgan County, Illinois. Three Square Feeds sold feed and fuel, such as gasoline, that had been stored in underground storage tanks (USTs) on the property.
2. LUST Incident Number 900731 was obtained following a site investigation, and LPC #1370350002 was assigned.
3. On November 19, 2003, the Agency received Petitioner's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from June 1, 2002 to August 31, 2002 in the amount of \$46,762.48.

4. The Agency denied certain costs in the Request in a letter dated April 5, 2004, a copy of which is attached hereto as Exhibit A.
5. Petitioner is appealing this April 5, 2004 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that certain costs were reasonable.
6. Petitioner disagrees with the Agency's decision and believes that the costs submitted for reimbursement are corrective action costs, are reasonable and are the types of costs that are eligible for reimbursement under the Act and implementing regulations.
7. The Agency's letter denying reimbursement, Exhibit A, provides no further explanation of the Agency's reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner's right to reimbursement under the UST Fund.

WHEREFORE, Three Square Feeds respectfully requests that the Board enter an order that will provide that it be reimbursed from the UST Fund for its submitted costs and for its attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Three Square Feeds

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
213285v1

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

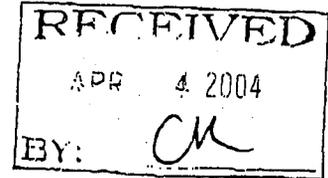
1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601. 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

APR 05 2004

Three Square Feeds
Attention: George Archer
1325 Merritt Road
Jacksonville, IL 62650



Re: LPC #1370350002 -- Morgan County
 Murrayville/Three Square Feeds
 Route 267 South
 LUST Incident #900731
 LUST FISCAL FILE

Dear Mr. Archer:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from June 1, 2002 to August 31, 2002. The amount requested was \$46,762.48.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated June 15, 1991. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On November 19, 2003, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$27,805.82 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 claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) 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 owner or

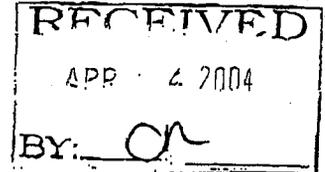
ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 394-4000
ELGIN - 595 South State, Elgin, IL 60120 - (847) 608-3131 • PEORIA - 5419 N. University St., Peoria, IL 61614 - (309) 691-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 691-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5000
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINGSVILLE - 2009 Mall Street, Collingsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

EXHIBIT
A

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, 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 Kevin Mably of my staff at 217/782-6762.

Sincerely,

A handwritten signature in cursive script that reads "Douglas E. Oakley".

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

DEO:KM:jk\042766.doc

Attachment

cc: CW3M Company

Attachment A
Accounting Deductions

RECEIVED
SEP 4 2004
BY: CA

Re: LPC #1370350002 -- Morgan County
Murrayville/Three Square Feeds
Route 267 South
LUST Incident #900731
LUST FISCAL FILE

Item # Description of Deductions

1. \$18,956.66, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

CW3M Company-Invoice dated	August 2002	\$162.00	Personnel
	August 2002	\$1,048.00	Equipment
	August 2002	\$17,746.66	Soil disposal and backfill costs

\$18,956.66 Total Accounting Deductions

DEO:KM;jk\042766.doc