

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RDK VENTURES, LLC,)	
Petitioners,)	
)	
v.)	PCB 24-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
AGENCY,)	
Respondent.)	

NOTICE


Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

RDK Ventures, LLC
Attn: Ginger Huffman
1100 Situs Court, Suite 100
Raleigh, NC 27606

Pinnacle Environmental Management Support
Attn: Jana Langnickel
Program Manager
1255 S. Military Trail, Suite 210-A
Deerfield Beach, FL 33442

PLEASE TAKE NOTICE that I have today caused to be filed a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
melanie.jarvis@illinois.gov

Dated: September 21, 2023

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RDK VENTURES, LLC,)	
Petitioners,)	
)	
v.)	PCB 24-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
AGENCY,)	
Respondent.)	

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Deputy Chief Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to January 15, 2024, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On or about September 7, 2023, the Illinois EPA issued a final decision to the Petitioner.
2. On September 19, 2023, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five-day period for filing a petition by ninety days. Upon information and belief, Petitioner received the final decision on or about September 12, 2023.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
866/273-5488 (TDD)
melanie.jarvis@illinois.gov
Dated: September 21, 2023

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 21, 2023, I served true and correct copies of a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** by the method(s) and to the persons identified below:

Electronic and mail Service

Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

RDK Ventures, LLC
Attn: Ginger Huffman
1100 Situs Court, Suite 100
Raleigh, NC 27606

Pinnacle Environmental Management Support
Attn: Jana Langnickel
Program Manager
1255 S. Military Trail, Suite 210-A
Deerfield Beach, FL 33442

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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1255 S Military Trail
Suite 210-A
Deerfield Beach, FL 33442

OFFICE 954.977.3775
FAX 866.209.4401
PinnacleEMS.com

September 19, 2023

Illinois Environmental Protection Agency
Bureau of Land
1021 North Grand Avenue East
Springfield, IL 62794-9276
Attn: Brian Bauer

RE: **Reimbursement Submittals**
LPC #0316688604 – Cook County
Chicago / Circle K Store 4706736
350 West Chicago Avenue
IEMA Incident 20200892 -- 73899
Queue Date: May 11, 2023

RECEIVED
SEP 20 2023
IEPA/BOL

Dear Mr. Bauer:

Enclosed please find an Agency review letter dated September 9, 2023 in response to the above referenced early action claim submitted in May of this year. Could you please submit the necessary form to the Pollution Control Board that will allow discussions of this review letter to exceed the 35 day deadline to file an appeal. That deadline is currently set at October 11, 2023. If Pinnacle must file a formal appeal instead, could you please advise so that action can be taken.

There are three deductions taken from this claim totaling \$61,816.64 that I believe should be reimbursed. These costs include soil disposal activities associated with a UST removal project along with their associated handling charges as well as dewatering. Prior to reviewing the costs for this letter, I had believed that the purpose of the dewatering was to install the new tanks but after researching and discussing with the PE I believe the dewatering occurred due to heavy rains prior to loading the soils for disposal, making that activity an eligible cost.

For Deduction #1 under Attachment A of the attached letter, the Agency cites 734.630(cc) as the reason for deducting \$53,987.64, as well as 734.630(ee), 734.630(aaa) and 734.630(o).

These deductions include the following reasons:

734.(cc) Costs lacking documentation...

734.630(ee) costs incurred during early action that are unreasonable....

734.630(aaa) onsite corrective action to achieve remediation objectives that are more stringent than Tier 2....

34.630(o) costs that exceed the minimum requirements...

The claim in question included costs associated with a UST removal project that began on 10/21/2020. The consultant was on site 10/21/2020 and 10/22/2020 collecting soil samples. It appears the project may have been interrupted by adverse weather as there was more than 2" of rain occurring between 10/22/20 and 10/23/20 with high winds on 10/22/20 and 10/23/20 (see attached). On Monday, 10/26/20, dewatering activities occurred and soils were disposed of at the landfill.

The activities stated were well documented in the 45 Day Report dated 12/18/2020. Other than the delay in disposal, this would appear to be a typical project where up to four feet of soil disposal would be allowed under the early action portion of the regulations. The Agency's response letter does not provide enough information to explain why the deductions were taken and what documentation could be provided to rectify any perceived deficiencies.

Additionally, citation 734.210(f) allows"Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank." The deduction cited in the Agency's letter along with the verbiage provided in the Agency's letter would seem to contradict the allowances under this citation. Further, by providing several citations without context it is difficult to understand why the Agency feels that these typical costs would not be eligible in this case.

Please note the following:

- Where the Agency states the costs lack documentation - all invoices, subcontractor invoices and supporting backup would seem to be sufficient documentation.
- Where the Agency states the costs are unreasonable - they fall within the allowed 4' rule for excavation, hauling and disposal costs, so it's unclear how they would be unreasonable.
- Where the Agency states the costs are association with attempts to achieve remediation objectives that are more stringent then Tier 2 – this citation would not seem to apply to early action disposal costs where the release was confirmed.



- Where the Agency states the costs exceed the minimum requirements – this does not appear to be accurate as the allowable amount of soil would have been up to 756 cy for the three 10,000 gallon tanks that were removed. 699.42 cy of soil disposal was claimed at the rate of \$52.58/cy.

If the Agency agrees that deduction #1 should be reimbursed, then deduction #6, in the amount of \$4,579 (handling charges associated with deduction #1) should also be reimbursed.

In addition, as stated above, we would also request that deduction #2, in the amount of \$3,250 for dewatering should also be reimbursed. This was necessitated due to the weather which also appears to be the reason that the disposal activities were delayed.

After reviewing this letter if you could please reach out to me to discuss this site, I would very much appreciate it. Should you require additional information, please contact me at (954) 361-0099. Thank you.

Sincerely,

PINNACLE ENVIRONMENTAL MANAGEMENT SUPPORT, INC.



Jana Langnickel
Program Manager





ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

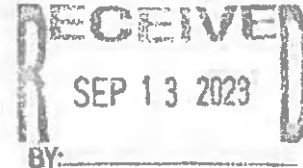
(217) 524-3300

CERTIFIED MAIL #

7021 2720 0000 2257 4773

SEP 07 2023

RDK Ventures, LLC
Attn: Ginger Huffman
1100 Situs Court, Suite 100
Raleigh, NC 27606



Re: 0316688604 -- Cook County
Chicago / Circle K Service Station 4706736
350 West Chicago Avenue
Incident-Claim No.: 20200892 -- 73899
Queue Date: May 11, 2023
Leaking UST Fiscal File

Dear Ms. Huffman:

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 Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated May 9, 2023 and was received by the Illinois EPA on May 11, 2023. The application for payment covers the period from October 21, 2020 to March 31, 2023. The amount requested is \$72,729.83.

On May 11, 2023, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$5,601.16 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA 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 Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

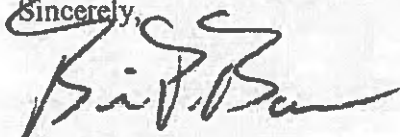
The deductible amount of \$5,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an 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 Nicole Howland of my staff at (217) 524-0435 or at Nicole.Howland@illinois.gov.

Sincerely,



Brian P. Bauer
Leaking UST Claims
Leaking Underground Storage Tank Section
Bureau of Land

Attachment: Attachment A
Appeal Rights

c: Pinnacle Environmental Management Support
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 0316688604 -- Cook County
Chicago / Circle K Service Station 4706736
350 West Chicago Avenue
Incident-Claim No.: 20200892 -- 73899
Queue Date: May 11, 2023
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).

Item # Description of Deductions

1. \$53,987.64, deduction for costs for excavation, disposal and backfill, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no 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.

In addition, deduction for early action costs for excavation, disposal and backfill that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

**Work
performed under
734.210.f and
734.625.i**

In addition, deduction for costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(aaa). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they will 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.

In addition, deduction for costs for excavation, disposal and backfill, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and 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 pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). **exceeds minimum requirements - inaccurate**

Costs for excavation, disposal, and backfill lacked documentation despite efforts obtain more information. Provided documentation did not meet with technical reports.

It appears GES responded to direct questions from the IEPA

Per PE this should be eligible. Dewatering occurred after rainy weather on 10/22 and prior to excavating on 10/26.

2. \$3,250.00, deduction for costs for groundwater, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and 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 pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

In addition, deduction for costs for groundwater, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no 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.

In addition, deduction for early action costs for groundwater that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

Technical documents indicated no groundwater removal.

3. \$245.84, deduction for personnel costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734.630(zz). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

**Rate was \$118.04
Claimed \$131.51
Alpana Dunn
887486**

In addition, deduction for costs for personnel, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no 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.

In addition, deduction for early action costs for personnel that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

Geologist III time exceeded the Subpart H maximum reimbursement rate.

4. \$59.19, deduction for costs for personnel, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no 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.

887486

In addition, deduction for early action costs for personnel that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

Senior Administrative Assistant for field time lacks documentation.

5. \$7.00, deduction for costs associated with duplicate billings. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 734.630(o). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

This is accurate - tolls were billed on invs 894318 and 889978 Same backup for both invoices

In addition, deduction for costs for consultant's materials, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no 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.

In addition, deduction for early action costs for consultant's materials that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

Toll charges were duplicated.

6. \$4,579.00, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

Dispute this along with disposal costs

In addition, deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 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.

Costs associated with the excavation, transportation, disposal, and backfill are not eligible for handling. In addition, Pinnacle costs are not primary contractor and lack proof of payment.

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 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:

Clerk of the Board
Illinois Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, IL 60605
(312) 814-3461

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544

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Schiller Park, IL (60176)
58 °F Rain [\(weather/us/il/schiller-park/41.96,-8](#)

41.8 °N 87.75 °W

Chicago, IL Weather History

[59° CHICAGO MIDWAY INTERNATIONAL AIRPORT STATION \(/DASHBOARD/PWS/KILCHICA656?CM_VEN=LOCALWX_PWSDASH\)](#) | [CHANGE](#)

[HISTORY \(/HISTORY/DAILY/US/IL/CHICAGO/KMDW\)](#)

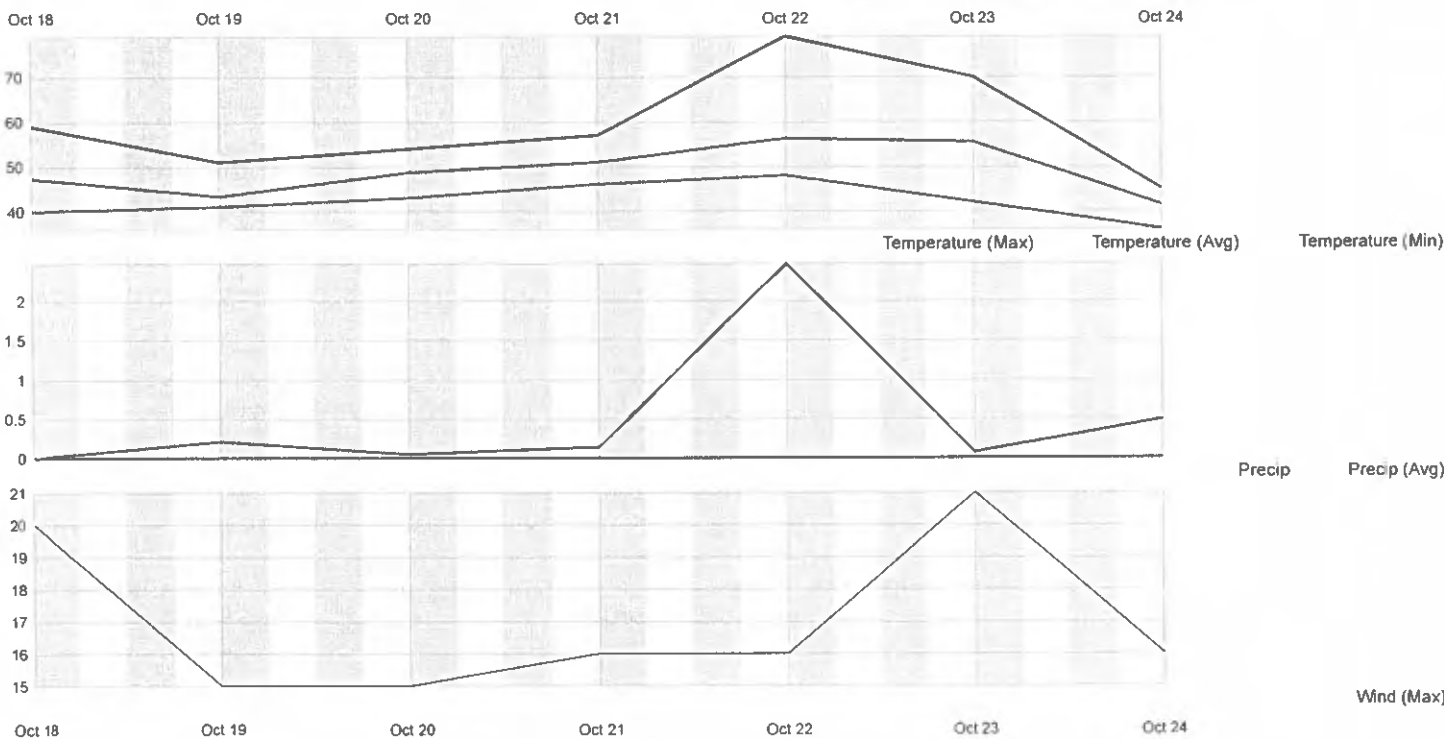
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- [HOURLY \(/HOURLY/US/IL/CHICAGO/KMDW\)](#)
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[10-22](#) [10-22](#) [10](#)

[October](#) [22](#) [2020](#) [View](#)



Summary

Temperature (°F)	Max	Average	Min	
Max Temperature	79	59.29	45	
Avg Temperature	56.26	49.05	41.38	
Min Temperature	48	42.29	36	
Dew Point (°F)	Max	Average	Min	