

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

STEVE'S FUEL & AUTO CARE, INC.,)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
60 E. Van Buren St., Ste. 630	1021 North Grand Avenue East
Chicago, IL 60605	P.O. Box 19276
	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (h), a PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION, a copy of which is herewith served upon Respondent.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon Respondent by enclosing same in envelopes addressed as above with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 19th day of April, 2024.

STEVE'S FUEL & AUTO CARE, INC.,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STEVE'S FUEL & AUTO CARE, INC.,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, STEVE'S FUEL & AUTO CARE, INC., pursuant to Section 57.8(I) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(I), and hereby appeals the Illinois EPA's final decision, refusing payment in full for early action costs, stating as follows:

1. Petitioner owns a former self-service fueling station in Jacksonville, County of Morgan, Illinois, assigned LPC #1370205074.
2. In 1993, four underground storage tanks were installed at the site pursuant to a permit from the Office of the State Fire Marshal ("OSFM"). The installed tanks were registered with OSFM and registration fees were paid for each tank.
3. The four tanks consisted of an 8,000 gallon regular gasoline tank, an 8,000 gallon premium gasoline tank, a 4,000 gallon mid-grade gasoline tank and a 4,000 gallon diesel tank.
4. On June 8, 2023, Petitioner reported a release from all four tanks at the site, and the Illinois Emergency Management Agency assigned Incident Number 2023-0455 to the releases.
5. On June 12, 2023, Petitioner's consultant applied for a permit from OSFM to remove all four tanks, which was approved the same day.
6. From July 7, 2023 to July 10, 2023, tank removal activities took place and were documented by Petitioner's consultant with oversight from an OSFM Tank Specialist.

7. In consultation with the OSFM Tank Specialist during the tank removals, it was determined that the release was a result of overfilling and piping leaks from the tanks.

8. On August, 4, 2023 Petitioner's consultant submitted a 45-Day Report detailing early action activities, including removal of all four tanks, associated piping, and contaminated backfill from the tank pit. The 45-Day Report was approved on November 27, 2023.

9. On December 5, 2023, OSFM issued an eligibility and deductible determination finding that all four tanks were eligible for costs of corrective action in excess of a \$5,000 deductible.

10. On December 6, 2023, Petitioner's consultant submitted an application for payment for early action costs in the amount of \$127,501.87.

11. On March 21, 2024, the Illinois EPA approved all but \$10,020.20 requested. A true and correct copy of the decision is attached hereto as Exhibit A.

12. All of the cuts are premised on the conclusion that there was only the "equivalent of two 12,000 gallon USTs (based on outside dimensions of the tanks)" removed from the property instead of four.

13. By reducing the number of tanks from four to two, the Illinois EPA reduced the amount of contaminated fill material that could be removed from the tank pit (\$749.74), reduced the maximum payment amount for tank removal activities (\$9,187.38), and reduced the handling charges for amounts already paid to subcontractors (\$83.08).

14. The Illinois EPA's conclusion is erroneous as a matter of law. The determination of the number of tanks eligible for payment from the Underground Storage Tank Program is entrusted to OSFM, which has determined that there are four tanks. (415 ILCS 5/57.9(c))

(“Eligibility and deductibility determinations shall be made by the Office of the State Fire Marshal.”)

15. Furthermore, none of the statutory or regulatory provisions cited in the Illinois EPA’s decision letter authorize the Illinois EPA to treat the number of tanks differently than the determination made by OSFM.

16. The Illinois EPA determination was mailed on March 21, 2024, and therefore this appeal is timely.

WHEREFORE, Petitioner STEVE’S FUEL & AUTO CARE, INC., prays that: (a) the Illinois EPA produce the Record; (b) a hearing be held; (c) the Board find the Illinois EPA erred in its decision, (d) the Board direct the Illinois EPA to pay \$10,020.20 erroneously deducted from the submittal, (e) the Board award payment of attorney’s fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

STEVE’S FUEL & AUTO CARE, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
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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 #

9589 0710 5270 1326 4519 62

MAR 21 2024

Steve's Fuel & Auto Care, Inc.
C/O CWM Company
701 South Grand Avenue West
Springfield, IL 62704

Re: 1370205074 -- Morgan County
Jacksonville / Steve's Fuel & Auto Care, Inc.
935 South Main Street
Incident-Claim No.: 20230455 -- 74383
Queue Date: December 11, 2023
Leaking UST Fiscal File

Dear Mr. McNeece:

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 December 6, 2023 and was received by the Illinois EPA on December 11, 2023. The application for payment covers the period from June 1, 2023 to October 31, 2023. The amount requested is \$127,501.87.

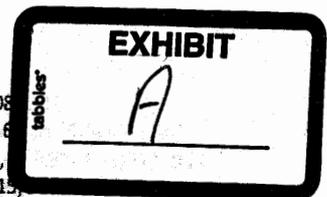
On December 11, 2023, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$112,481.67 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the 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.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
115 S. LaSalle Street, Suite 2203, Chicago, IL 60603
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000

595 S. State Street, Elgin, IL 60123 (847) 608-2309
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 992-2309
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 691-2309
4302 N. Main Street, Rockford, IL 61103 (815) 398-2309



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,



Jennifer Rossi
Interim Unit Manager
Special Projects and Financial Unit
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Mr. Shawn McNeece
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 1370205074 -- Morgan County
Jacksonville / Steve's Fuel & Auto Care, Inc.
935 South Main Street
Incident-Claim No.: 20230455 -- 74383
Queue Date: December 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. \$749.74, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734.Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734.Appendix C during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

In addition, deduction for costs for 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 and 35 Ill. Adm. Code 734.630(o) 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.

Additionally, deduction for early action costs for 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).

Pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.Appendix C, the maximum amount of backfill material to be replaced under early action for a 12,000-gallon UST is 357 cubic yards. The equivalent of two 12,000 gallon USTs (based on outside dimensions of the tanks) were removed from the subject property; therefore, 714 cubic yards is the maximum amount of backfill to be replaced under early action.

2. \$9,187.38, deduction for tank removal costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. 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.

In addition, deduction for costs for tank removal, 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 and 35 Ill. Adm. Code 734.630(o) 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.

Additionally, deduction for early action costs for tank removal 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).

The equivalent of two 12,000-gallon tanks (based on outside dimensions of the tanks) were removed from the subject property; therefore, only the costs for the removal of two tanks are eligible for reimbursement.

3. \$83.08, 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.

Handling is not eligible on costs that exceed Subpart H or maximum allowance.

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