

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

HENSON OIL COMPANY, 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 30th day of April, 2024.

HENSON OIL COMPANY, 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

HENSON OIL COMPANY, INC.,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, HENSON OIL COMPANY, INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Illinois EPA’s final decision, modifying a budget, stating as follows:

1. Petitioner owns a former self-service fueling station in Towanda, County of McLean, Illinois, assigned LPC #1131055007.

2. In 2000, releases were reported from all three gasoline tanks at the site, and the Illinois Emergency Management Agency assigned Incident Number 2000-1913 to the releases.

3. Thereafter, the tanks were removed and site investigation activities took place under former Part 732 of the Board’s regulations, also known as the Site Classification system.

4. In 2003, the Illinois EPA approved a Site Classification Completion Report.

5. Thereafter, certain corrective action activities took place, but on September 21, 2009, Petitioner’s consultant filed a petition under Chapter 11 of the Bankruptcy Code.

6. On March 4, 2022, Petitioner’s new consultants visited the site to determine if any wells were still present that could be used for resampling.

7. On May 6, 2022, a corrective action plan was submitted by Petitioner’s consultant that indicated that the soil contamination plume had not as yet been defined, and proposed that soil

and groundwater samples be taken to determine the current conditions at the site, as well as to conduct a vapor intrusion investigation.

8. On September 6, 2022, the corrective action plan was approved as submitted.

9. On November 20, 2023, a new corrective action plan was submitted which reported the results of the previous work. Soil sampling indicated that contamination levels had declined and that site remediation objectives were exceeded in a defined, limited area on site. Groundwater contamination had declined and exceeded site remediation objectives in a limited area. The vapor intrusion investigation indicated that this pathway could be excluded.

10. The new corrective action plan proposed obtaining a groundwater ordinance from the Village of Towanda to address soil and groundwater contamination. Thereafter, the monitoring wells would be abandoned and the entitlement to a No Further Remediation letter would be documented in the Corrective Action Completion Report.

11. On March 19, 2024, the Illinois EPA modified the plan in part and modified the budget in part. A true and correct copy of the decision is attached hereto as Exhibit A.

12. The budget for \$27,831.15 was cut by \$13,052.00, the bulk of which were all of the costs estimated to obtain a groundwater ordinance and prepare the Corrective Action Completion Report.

13. In violation of the Illinois Environmental Protection Act and regulations promulgated thereto, the Illinois EPA refused to approve a budget for work approved in the corrective action plan until after the work is performed (\$11,099.08). "The budget must include . . . an estimate of all costs the development, implementation, and completion of the corrective action plan." 35 Ill. Adm. Code 734.335(b). The costs of developing, implementing and completing the groundwater

ordinance and the corrective action completion report is properly to be addressed in this budget.

14. The Illinois EPA also cut the consultant's cost of preparing, scheduling, arranging and documenting the abandonment of sixteen monitoring wells (\$887.70).

15. The Illinois EPA claims those consulting costs are included in the Well Abandonment rate. To the contrary, professional consulting services are reimbursed on a time and materials basis. (35 Ill. Adm. Code § 734.845) Boreholes and monitoring wells must be abandoned pursuant to regulations promulgated by the Illinois Department of Public Health. (35 Ill. Adm. Code 734.435) Professional consulting services are necessary to prepare, oversee and document well abandonment in accordance with regulations, just as they are necessary to prepare, oversee and document the installation of wells, which the Illinois EPA reimburses outside the well installation rate. There is nothing in the Board's regulations that indicate that consulting services are included in the fixed rates for one, but not for the other. (35 Ill. Adm. Code 734.820)

16. Petitioner's consultants do not appeal the budget cuts that were agreed to in the hope of getting a budget approved though unfortunately the Illinois EPA choose not to approve a budget for the work proposed in the corrective action plan anyway.

17. The Illinois EPA determination was received on March 27, 2024, which is less than 35 days from today and therefore this appeal is timely.

WHEREFORE, Petitioner HENSON OIL COMPANY, 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 reinstate \$11,986.78 erroneously cut from the budget, (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.

HENSON OIL COMPANY, INC.,
Petitioner,

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



(217) 524-3300

MAR 19 2024

CERTIFIED MAIL

9589 0710 5270 1328 8602 50

Jerry Henson
Henson Oil Company
PO Box 712
Bloomington, IL 61702

Re: 1131055007 -- McLean County
Towanda / Henson Oil Company
Old Highway 66
Leaking UST Incident 20001913
Leaking UST Technical File

Dear Mr. Henson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated November 16, 2023, was received by the Illinois EPA on November 20, 2023. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

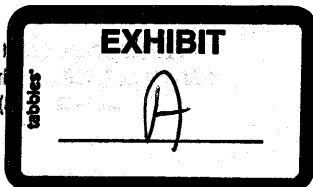
Pursuant to Section 57.7(b)(2) of the Act, 35 Ill. Adm. Code 734.345(a)(3)(B), and 35 Ill. Adm. Code 742.1000(a)(9), an institutional control consisting of a building with a full concrete slab-on-grade or a full concrete basement floor and walls must be placed on the property when indoor inhalation exposure route remediation objectives are based on the use of Title 35 742 Appendix A Table H.

In addition, the budget is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A have been approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
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) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (217) 993-3333
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 691-3333
4302 N. Main Street, Rockford, IL 61103 (815) 398-3333



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include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted and shall be made to EPA.FieldNotifications@illinois.gov. This notification of field activities must be provided at least two weeks prior to the scheduled field activities.

Pursuant to Sections 57.7(b)(4) and 35 Ill. Adm. Code 734.305 and 734.335(c), the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted on or before September 19, 2024, to:

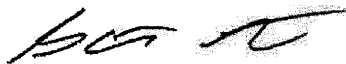
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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

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 the undersigned at (217) 785-1858 or at Scott.Rothering@illinois.gov.

Sincerely,



Scott Rothering
Project Manager
Special Projects and Financial Unit
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Carol Rowe, CWM Company (electronic copy)
BOL File

Attachment A

Re: 1131055007 -- McLean County
Towanda / Henson Oil Company
Old Highway 66
Leaking UST Incident 20001913
Leaking UST Technical File

SECTION 1

Based on the modifications in Section 2 of this Attachment A, the following amounts have been approved:

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$3,549.60	Paving, Demolition, and Well Abandonment Costs
\$11,144.55	Consulting Personnel Costs
\$85.00	Consultant's Materials Costs

Handling charges will be determined at the time an application for payment is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

1. \$887.70 for costs for Senior Project Manager (Corrective Action Plan Design and Preparation), 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.

Additionally, the costs 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(dd).

The Illinois EPA contacted the environmental consultant requesting clarification of the costs requested for Corrective Action Plan Design and Preparation, originally requested as 30 hours for Senior Project Manager. The environmental consultant agreed to a reduction of 6 hours (\$147.95 per hour) for the above task.

Therefore, \$877.70 has been deducted from the Consulting Personnel Costs line item.

2. \$7,347.42 for costs for writing the Corrective Action Completion Report, 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.

Additionally, the costs 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(dd).

This includes the following deductions:

\$5,918.00 Engineer III (40 hours at \$147.95 per hour) for Report Preparation/Development/Inputs.

\$887.60 Senior Draftsperson/CAD (10 hours at \$88.76 per hour) for Drafting/Updating & Completion of Maps.

\$384.66 Senior Professional Engineer (2 hours at \$192.33 per hour) for Report Review/Certification.

\$133.16 Senior Administrative Assistant (2 hours at \$66.58 per hour) for Report Compilation/Assembly/Distribution.

\$24.00 Distribution of CACR/Forms.

These costs may be added, with documentation, to a future budget.

3. \$3,751.66 for costs for obtaining the Village of Towanda Groundwater Ordinance, 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.

Additionally, the costs 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(dd).

This includes the following deductions:

\$1,775.40 Senior Project Manager (12 hours at \$147.95 per hour) for Village of Towanda Groundwater Ordinance Review/Preparation/Design/Village Meeting.

\$769.32 Senior Professional Engineer (4 hours at \$192.33 per hour) for Correspondence with Village Officials/Village Council.

\$532.56 Senior Draftsperson/CAD (6 hours at \$88.76 per hour) for Drafting maps for groundwater ordinance.

\$591.80 Senior Project Manager (4 hours at \$147.95 per hour) for Groundwater Ordinance Notifications.

\$66.58 Senior Administrative Assistant (1 hour at \$66.58 per hour) for Groundwater Ordinance Notifications.

\$16.00 Postage for Groundwater Distribution to Village Office/IEPA.

These costs may be added, with documentation, to a future budget.

4. \$177.52 for costs for Senior Draftsperson/CAD (Drafting for Corrective Action Plan), 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.

Additionally, the costs 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(dd).

The Illinois EPA contacted the environmental consultant requesting clarification of the costs requested for Drafting for Corrective Action Plan, originally requested as 7 hours for Senior Draftsperson/CAD. The environmental consultant agreed to a reduction of 2 hours (\$88.76 per hour) for the above task.

Therefore, \$177.52 has been deducted from the Consulting Personnel Costs line item.

5. The costs associated with Office Preparation, Scheduling, Arrangements for Well Abandonment Activities are not approved as part of this budget. These charges are included in the Well Abandonment Costs rate, for which a maximum rate of \$14.79 per foot applies. The costs 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.

Based upon the above deduction, a total of \$591.80 was deducted from the Consulting Personnel Costs Form.

6. The costs associated with CA Documentation/Compliance for Well Abandonment are not approved as part of this budget. These charges are included in the Well Abandonment rate, for which a maximum rate of \$14.79 per foot applies. The costs 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.

Based upon the above deduction, a total of \$295.90 was deducted from the Consulting Personnel Costs Form.