

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MARINE BANK SPRINGFIELD TRUST #53-0051)

Petitioner,)

)

v.)

PCB No. _____

)

(UST Permit Appeal)

ILLINOIS ENVIRONMENTAL)

PROTECTION AGENCY,)

Respondent.)

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, MARINE BANK SPRINGFIELD TRUST #53-0051 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 corrective action budget, stating as follows:

1. Petitioner owns a former self-service fueling station in Cantrall, County of Sangamon, Illinois, assigned LPC #1670255005.
2. On February 4, 2003, a release was reported from four underground storage tanks at the site, and the incident was assigned Incident Number 2003-0135.
3. Subsequently, the tanks were removed as a part of early action.
4. On April 7, 2023, a corrective action plan and budget was submitted for the site, which proposed further soil sampling (including a soil-gas vapor sample for vapor intrusion analysis). The samples would be analyzed and TACO calculations updated to determine whether the site could be closed through the use of institutional controls.
5. On August 1, 2023, the Illinois EPA approved the corrective action plan in toto, but cut numerous budget items, including two items that the Illinois EPA stated "must be submitted in the next corrective action plan budget."

6. Thereafter, the corrective action was performed and the results were reported in a Corrective Action Plan dated February 2, 2024, which proposed the use of various institutional controls or similar restrictions that would permit the issuance of a No Further Remediation letter, namely:

- a. Replacement of concrete to form an engineered barrier for contamination exceeding applicable site remediation objectives;
- b. Implementation of a Construction Worker Caution area for contamination exceeding applicable site remediation objectives;
- c. Implementation of a restriction for future buildings to be built on a concrete base with no sumps to address the vapor intrusion assessment;
- d. Seeking a Groundwater Ordinance from the Township for potential groundwater issues on site; and
- e. Seeking an Environmental Land Use Control for potential groundwater issues for potential groundwater issues off-site and outside village boundaries.

7. The Corrective Action Plan was accompanied by a budget of \$22,725.26 to implement the various institutional controls and restrictions.

8. On May 28, 2024, the Illinois EPA modified the budget by cutting \$8,884.41. A true and correct copy of the decision is attached hereto as Exhibit A.

9. The first two deductions to Senior Project Manager time fail to comply with Section 57.7(c)(4) of the Illinois Environmental Protection Act, which requires an explanation and a statement of specific reasons why this particular cost could not be approved or what specific type of information the Agency deems the applicant did not provide. In addition, the

first deduction of 6 hours of Senior Project Manager time (\$887.70) was the same cost Petitioner was directed to resubmit in the Agency's August 1, 2023 determination. Both of these costs were documented as all other costs were documented in the budget and the Agency's failure to explain why these were not approved was arbitrary and capricious.

10. The third deduction is for the cost of placing concrete as an engineered barrier (\$3,992.88) and appears to be an improper attempt to address potential future submissions. The plan approved installation of a concrete engineered barrier, and the budget estimates the cost of concrete based upon the maximum rate (currently \$7.86 per square foot) provided in the Board's Subpart H regulations. However, the Agency refuses to approve the costs of the work it approved unless Petitioner provides "documentation that the costs for installing the concrete will be at or below the Subpart H rate of \$7.86 per square foot." This type of anticipatory objection was disallowed by the Board in Knapp Oil Co. v. IEPA, PCB 16-103 (Sept. 22, 2016) and should be disallowed here. A concrete barrier was approved and the cost estimate is within the Board's Subpart H maximum payment amounts, and there is no legal justification for documenting costs before the payment stage.

11. The fourth deduction for the cost of obtaining a groundwater ordinance is explained as the Agency reviewer requires "assurances that the local government authority is amenable to the proposed option to address offsite contamination." The reviewer further states that this decision can be "submitted for reconsideration" once the ordinance has been obtained. A groundwater ordinance was approved in the corrective action plan, but the Agency improperly refuses to approve a corresponding budget for those costs, but promises "reconsideration" once the work is done. This is not how budgets work; the Illinois Environmental Protection Act

requires legal assurances from the Agency that if the work is performed within budget that the Agency will approve payment for the work. The Agency, in short, has imposed an unlawful condition on a budget.

12. The Illinois EPA determination was received on May 30, 2024, which is less than thirty-five days from today and therefore this appeal is timely.

WHEREFORE, Petitioner MARINE BANK SPRINGFIELD TRUST #53-0051 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 the amounts erroneously deducted from the payment application, (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.

MARINE BANK SPRINGFIELD TRUST
#53-0051
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



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 0477 0527 90

MAY 28 2024

Jeffrey M. Ulrich
Marine Bank Trust #53-0051
201 Clock Tower Drive
East Peoria, IL 61611

Re: 1670255005 -- Sangamon County
Cantrall/Marine Bank Trust #53-0051
9520 Illinois State Route 29
Leaking UST Incident 20030135
Leaking UST Technical File

Dear Mr. Ulrich:

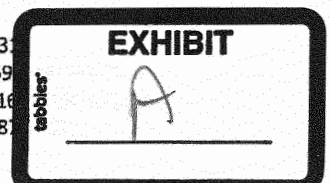
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated February 2, 2024, was received by the Illinois EPA on February 2, 2024. Citations in this letter are from the Environmental Protection 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)):

1. Pursuant to 35 Ill. Adm. Code 742.312 (B), since remediation objectives are exceeded for benzene in both groundwater and soil gas, a building control technology which meets the requirements of Title 35 Subpart L must be utilized for any future buildings.
2. Pursuant to 35 Ill. Adm. Code 734.355 (a) (3)(A) the Corrective Action Plan must include a description of the remedial technologies selected and how each fit into the overall corrective action plan strategy. The Corrective Action Plan states ISGS Well ID 00210 (Athens Community School District) is not in use. Proof of abandonment of this well must be submitted prior to issuance of an NFR letter.
3. Pursuant to 35 Ill. Adm. Code 734.355 (a) (3)(A) the Corrective Action Plan must include a description of the remedial technologies selected and how each fit into the overall corrective action plan strategy. The groundwater plume extends off site in the

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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) 608-3131
2309 W. Main Street, Suite 116, Marion, IL 62959
412 SW Washington Street, Suite D, Peoria, IL 61603
4302 N. Main Street, Rockford, IL 61103 (815) 981-1111



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western direction to groundwater wells MW-6, MW-7, and MW-8. Additionally, the groundwater plume extends off site in the southern direction to groundwater wells MW-20 and MW-21. The Corrective Action Plan must demonstrate how groundwater contamination off site in these directions will be addressed.

4. Pursuant to Section 57.7(b)(2) of the Act and 35 Ill. Adm. Code 742.320(d), the groundwater ingestion exposure route may be excluded from consideration if, as demonstrated in accordance with Section 742.1015, for any area within the measured and modeled extent of groundwater contamination above what would otherwise be the applicable Tier 1 groundwater remediation objectives, an ordinance adopted by a unit of local government is in place that effectively prohibits the installation of potable water supply wells (and the use of such wells).

To ensure that all possibly affected off-site properties are notified of the use of the groundwater ordinance, the Illinois EPA requests that all modeling be done using a semicircle in the direction of groundwater flow.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits. 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 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 December 1, 2025, to:

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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,

A handwritten signature in black ink, appearing to be 'SR' or similar initials, written over a horizontal line.

for
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: 1670255005 -- Sangamon County
Cantrall/Marine Bank Trust #53-0051
9520 Illinois State Route 29
Leaking UST Incident 20030135
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
\$1,552.95	Paving, Demolition, and Well Abandonment Costs
\$12,198.05	Consulting Personnel Costs
\$89.92	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 (Review of analytical results/bore log and analytical tabulation)), 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).

This results in a deduction of \$887.70 from the Consulting Personnel Costs Form.

2. \$1,183.60 for costs for Senior Project Manager (Scheduling, Contractor search/arrangements/coordination for corrective action activities), 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).

This results in a deduction of \$1,183.60 from the Consulting Personnel Costs Form.

3. \$3,992.88 for concrete placement costs 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 and associated materials or services exceeding the minimum requirements necessary to comply with 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).

Pursuant to 35 Ill. Adm. Code 870(d)(1), for costs approved by the Illinois EPA in writing prior to the date the costs are incurred, the applicable maximum payment amounts must be the amounts in effect on the date the Illinois EPA received the budget in which the costs were proposed. Once the Illinois EPA approves a cost, the applicable maximum payment amount for the cost must not be increased. Please provide documentation that the costs for installing the concrete will be at or below the Subpart H rate of \$7.86 per square foot.

This results in a deduction of \$3,992.88 from Paving, Demolition, and Well Abandonment Costs.

4. \$2,820.23 for costs for obtaining a groundwater ordinance, which lack supporting documentation. The plan must include assurances that the local governmental authority is amenable to the proposed option to address off-site contamination. 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).

These costs can be submitted for reconsideration once the ordinance has been obtained from Fancy Prairie

This includes the following deductions:

\$1,775.40 for Senior Project Manager – 12 hours at \$175.95 per hour (Preparation and Distribution of Groundwater Ordinance). Deducted from Consulting Personnel Costs.

\$887.70 for Senior Project Manager – 6 hours at \$147.97 per hour (groundwater ordinance notifications). Deducted from Consulting Personnel Costs.

\$133.16 for Senior Administrative Assistant – 2 hours at \$66.58 per hour (groundwater ordinance notifications). Deducted from Consulting Personnel Costs.

\$24.00 for Postage (four notifications at \$6.00 per notification). Deducted from Consultant's Materials Costs.

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, Ste. 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
Post Office Box 19276
Springfield, IL 62794-9276
(217) 782-5544