

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CHRONISTER OIL CO. d/b/a QIK-N-EZ,)	
)	
Petitioner,)	
v.)	PCB No. 24-50
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer	Richard Kim
Illinois Pollution Control Board	Division of Legal Counsel
1021 N. Grand Avenue East	1021 North Grand Avenue East
P.O. Box 19274	P.O. Box 19276
Springfield, IL 62794-9274	Springfield, IL 62794-9276
(carol.webb@illinois.gov)	(richard.kim@illinois.gov)

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 PETITIONER'S MOTION TO AMEND PETITION FOR REVIEW, 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 September, 2024.

CHRONISTER OIL CO. d/b/a QIK-N-EZ ,

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

CHRONISTER OIL CO. d/b/a QIK-N-EZ ,)	
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PETITIONER'S MOTION TO AMEND PETITION FOR REVIEW

NOW COMES Petitioner, CHRONISTER OIL CO. d/b/a QIK-N-EZ , pursuant to Section 101.500 of the Board's Procedural Rules (35 Ill. Adm. Code § 101.500), moving for leave to file the attached petition for review, stating as follows:

1. On May 10, 2024, Petitioner filed its petition for review herein from a final decision of the Illinois EPA, which refused to pay any portion of a reimbursement package of \$109,770.86 in corrective action costs.
2. The Board accepted the petition for review on May 16, 2024.
3. On July 23, 2024, the Illinois EPA filed its appearance and the administrative record.
4. After reviewing the administrative record, Petitioner no longer wishes to appeal certain cuts totaling \$4,996.39. These cuts were not specifically identified in the Illinois EPA's decision letter and could only be discerned by reading the reviewer's handwritten notes in the margins of the submission following receipt of the record.
5. The Agency decision letter lists one deduction with three distinct issues: (1) failure to submit a PLA certification, (2) duplicate billing, and (3) costs incurred prior to notifying the Illinois Emergency Management Act of a release. (A.R.683) It is undersigned

counsel's understanding that the Illinois EPA believes that the first issue makes the entire reimbursement package unpayable, while the remaining two issues relate to certain individual costs for additional reasons.

6. Concerning duplicate billing claims, there are three costs marked as such in the handwritten notes in the administrative record:

- a) **Analytical Costs.** Lab results totaling \$3,162.83 included in a submission by a previous consultant. (A.R.620) Petitioner does not challenge this cut.
- b) **Backfill Costs.** The Agency reviewer's notes cut 68.34 cubic yards of backfill costs from the 557.65 cubic yards requested. (A.R.621) At \$26.83 per cubic yard, this cut is worth \$1,833.56. (Id.) Petitioner does not challenge this cut.
- c) **Excavating, Transportation and Disposal ("ET&D") Costs.** The Agency's reviewer's notes cut 396.04 cubic yards for ET&D costs, which at \$76.46 per cubic yard, is worth \$30,281.22. (A.R.621) The Agency reviewer mistakenly converted tons to cubic yards for an invoice item already converted to cubic yards. (A.R.623) Petitioner challenges this cut as based on a mathematical error.

7. Attached hereto is the Amended Petition for Review, which only modifies paragraph 19 and the prayer for relief from the previous petition.

8. The motion is not brought for any improper purpose, but merely seeks to withdraw from contention issues after receipt and evaluation of the administrative record. It is likewise submitted that withdrawing issues with the Illinois EPA's decision does not prejudice the Illinois EPA either.

9. The decision deadline for this case is currently April 19, 2025, which is more than 120 days away.

WHEREFORE, Petitioner CHRONISTER OIL CO. d/b/a QIK-N-EZ, prays that motion for leave to file the attached amended petition be granted and for such other and further relief as it deems meet and just.

CHRONISTER OIL CO. d/b/a QIK-N-EZ,
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
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Respondent.)	

AMENDED PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, CHRONISTER OIL CO. d/b/a QIK-N-EZ , 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 for corrective action costs, stating as follows:

1. Petitioner owns an active self-service fueling station in the City of Springfield, County of Sangamon, Illinois, which is assigned LPC #1671205520.
2. In the 1990s there were a series of incidents reported at the site which have been subject to corrective action activities, but to date have not received a No Further Remediation Letter. These 1990 incidents are 94-2157, 96-1540 and 99-1895. These releases stemmed from three underground storage tanks installed in 1976.
3. On December 9, 2020, Petitioner reported a release from three tanks at the site to the Illinois Emergency Management Agency, which assigned the releases Incident Number 2020-1063.
4. The releases were identified during the removal and abandonment of the three tanks. The excavation of the tanks exposed evidence of a continuing releases in the tanks and the Office of the State Fire Marshal Tank Specialist present required that the releases be reported.

5. In addition to removing two tanks and abandoning one tank, some contaminated backfill was removed. Soil samples were taken following the removal of tanks and the samples confirmed the presence of contamination in excess of applicable site remediation objectives.

6. The activities taken in response to Incident 2020-1063 were reported in a 45-Day report. The 45-Day report was approved by the Illinois EPA on May 26, 2021 without further need to perform site investigation activities and allowing remediation to proceed pursuant to corrective action work for all incidents at the site.

7. On September 2, 2021, Petitioner's consultant submitted a billing package for early action costs for preparing the 45-Day report and for some lab results. These were substantially approved and paid by the Illinois EPA subject to a \$5,000 deductible.

8. On March 25, 2022, Petitioner's consultant submitted a second billing package for early action costs relating to removal of four feet of contaminated backfill material around the underground storage tanks, sampling and oversight. These were approved and paid in full by the Illinois EPA.

9. On March 22, 2022, Petitioner's consultant submitted a corrective action plan with two budgets. The first budget was for corrective action activities that had already been performed in December of 2020 that were not early action costs (i.e., past costs) and the second budget was for future corrective action activities proposed in the corrective action plan. The plan was submitted pursuant to all existing Incident Numbers.

10. The Corrective Action Plan also requested that a Project Labor Agreement not be required for the activities proposed in the plan and offered justifications.

11. On June 15, 2022, the Illinois EPA analyzed the appropriateness of a project labor

agreement and while no considerations were deemed to favor utilization of a project labor agreement, the Illinois EPA determined a project labor agreement should be required.

12. On July 22, 2022, the Illinois EPA approved the corrective action plan and both budgets with modifications, as well as provided "Notice of Project Labor Agreement Requirements."

13. On July 7, 2023, Petitioner's consultant submitted two reimbursement packages, listing all incident numbers at the site as being associated with the packages. Neither package included a certification that the work had been performed pursuant to a Project Labor Agreement.

14. The first reimbursement package consisted of \$11,068.70 in consulting costs for preparing the corrective action plan and budget, as well as for reimbursement preparation. These costs had been approved in the March 22, 2022 budget as future corrective action costs. The Illinois EPA approved these costs in toto.

15. The second reimbursement package consisted of \$109,770.86 of corrective action costs for work performed in December of 2020 that was not early action, but had been approved in these exact amounts in the March 22, 2022 budget.

16. On January 3, 2024, the Illinois EPA issued its final decision refusing to pay any portion of the second reimbursement package. A true and correct copy of the decision is attached hereto as Exhibit A.

17. The Illinois EPA explained in its determination:

The required PLA certification was not submitted in this reimbursement package. In addition, there are requests for costs that have been previously paid, as well as for costs that were incurred prior to the IEMA date of December 9, 2020.

18. First, Section 57.8(a)(6)(F) of the Illinois Environmental Protection Act is relied

upon in the Illinois EPA decision and *inter alia* requires the owner operator to certify that “the corrective action was . . . performed under a project labor agreement.” (415 ILCS 5/57.8(a)(6))

The corrective action work in the reimbursement package was performed more than eighteen months prior to notice of the Project Labor Agreement requirement and thus this obligation would be impossible to satisfy and cannot be legally imposed retroactively.

19. Second, Petitioner does not challenge \$3,162.83 in analytical costs or \$1,833.56 in backfill costs that the Illinois EPA deemed duplicative. Petitioner challenges the \$30,281.22 in excavation, transportation and disposal costs the Illinois EPA deemed duplicative on the grounds that the Illinois EPA committed a mathematical error in application of the conversion factor.

20. Third, the reimbursement package listed all of the 1990 incidents, not just Incident No. 2020-2063, so the assumption that the 2020 Incident is the sole basis of the reimbursement claim is erroneous. Instead, the basis of the claim is the corrective action plan and budget approving these costs, which likewise was submitted for all incidents.

21. When reviewing a payment application seeking reimbursement for an approved plan or budget, the Agency’s review is limited to “auditing for adherence to the corrective action measures in the proposal.” (415 ILCS 5/57.8(a)(1)) There is no claim that corrective action measures were not adhered too, and in this case it was known by the Illinois EPA technical staff that approved the budget that the corrective action work had been completed.

22. Petitioner and the Illinois EPA agreed to a 90-day extension of the appeal deadline herein, which was approved by the Pollution Control Board on February 15, 2024. Petitioner was given until May 13, 2024 to file an appeal, and therefore this appeal is timely.

WHEREFORE, Petitioner CHRONISTER OIL CO. d/b/a QIK-N-EZ, 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 requested in its payment application other than the \$3,162.83 in analytical costs and \$1,833.56 backfill costs, (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.

CHRONISTER OIL CO.d/b/a QIK-N-EZ,
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
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pdshaw1law@gmail.com



Electronic Filing: Received, Clerk's Office 09/19/2024
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 #

7020 1290 0002 1666 4981

JAN 03 2024

Chronister Oil Company
Attn: Amy Ridley
2023 North Republic Street
Springfield, IL 62702

Re: 1671205520 -- Sangamon County
Springfield / Qik-N-EZ
2800 North Peoria Road
Incident-Claim No.: 20201063 -- 74044
Queue Date: July 7, 2023
Leaking UST Fiscal File

Dear Ms. Ridley:

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 July 7, 2023 and was received by the Illinois EPA on July 7, 2023. The application for payment covers the period from December 1, 2020 to July 31, 2022. The amount requested is \$109,770.86.

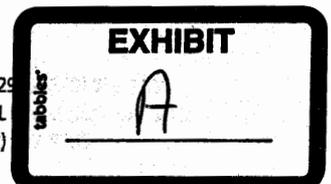
On July 7, 2023, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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 for this claim is \$5,000.00, which was previously withheld from your payment(s). 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
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 61602
4302 N. Main Street, Rockford, IL 61103 (815) 398-1111



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,

A handwritten signature in black ink, appearing to read "Brian P. Bauer". The signature is written in a cursive style with a large initial "B".

Brian P. Bauer
Interim Section Manager
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Green Wave Consulting, LLC
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 1671205520 -- Sangamon County
Springfield / Qik-N-EZ
2800 North Peoria Road
Incident-Claim No.: 20201063 -- 74044
Queue Date: July 7, 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. Pursuant to Section 57.8(a)(6)(F) of the Act, the application for payment from the UST Fund is incomplete because it did not include a certification from the owner or operator that the corrective action was (i) performed under a project labor agreement that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act.

In addition, 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). Furthermore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd) because they are not reasonable.

Additionally, deduction for costs of corrective action incurred before providing notification of the release of petroleum to Illinois Emergency Management Agency (IEMA) in accordance with 35 Ill. Adm. Code 734.210. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(k) of the Act and 35 Ill. Adm. Code 734.630(n).

The required PLA certification was not submitted in this reimbursement package. In addition, there are requests for costs that have been previously paid, as well as for costs that were incurred prior to the IEMA date of December 9, 2020.

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