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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FREEDOM OIL COMPANY,)	
)	
Petitioner,	)	PCB 03-54
	)	PCB 03-105
vs.	)	PCB 03-179
	)	PCB 04-02
ILLINOIS ENVIRONMENTAL	)	(LUST Fund)
PROTECTION AGENCY,	)	PCB 03-56
	)	(UST Appeal)
Respondent.	)	(Consolidated)

**MOTION FOR DEFAULT JUDGMENT OR IN THE ALTERNATIVE
TO PROHIBIT INTRODUCTION OF EVIDENCE**

NOW COMES the Petitioner, FREEDOM OIL COMPANY, an Illinois corporation ("Petitioner"), by its attorneys, Howard and Howard Attorneys, P.C., and in support of its Motion for Default Judgment or in the Alternative to Prohibit Introduction of Evidence, states as follows:

BACKGROUND FACTS

This matter has been delayed by the Illinois Environmental Protection Agency's ("IEPA") lack of attention to it. As discussed below, this matter was continued for over a year while Petitioner waited for a settlement position promised by the state. Once it became apparent no settlement offer would be forthcoming, Petitioner requested the hearing be set. Since then, additional delays have arisen from the IEPA's failure to comply with Board discovery rules and two Hearing Officer Orders setting discovery deadlines. Moreover, the agency record has never been filed despite Orders by the Board and Hearing Officer setting filing deadlines. The IEPA's delays are prejudicial to Defendant and without justification given Petitioner's rights at issue. As a result, the

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conduct justifies the imposition of default judgment or in the alternative an order barring agency evidence at hearing.

The Original Delay Arising From Unmet Commitments

This case was initially filed on October 25, 2002, over two-and-a-half years ago. Freedom incurred significant early action and corrective action costs to address April and August 2002 releases at Freedom's Paris Illinois gasoline station. IEPA denied Freedom reimbursement of approximately Two Hundred Seventy One Thousand Dollars (\$271,000.00) from the LUST Fund and Freedom appealed to the Board. IEPA denied the majority of the costs (\$240,000.00) because some tanks ineligible for LUST Fund reimbursement were discovered during Freedom's clean up of the 2002 releases. Freedom maintains the Ineligible Tanks were a coincidental discovery during the clean up. More importantly, Freedom maintains the Ineligible Tanks did not create any conditions at the Property requiring remediation. As the reports filed by Petitioner with the state demonstrate, the tanks had been filled with sand and closed in place by the prior property owner. In addition, the soil surrounding the Ineligible Tank cavity did not show color, odor, or PID readings indicating the presence of gross contamination or contamination requiring remediation under 35 IAC Part 732 or 742. As a result, apportionment of clean up costs to these tanks is inappropriate. To date, the IEPA has not offered an explanation why clean up costs were apportioned to the Ineligible Tanks beyond the conclusionary statements in its denial letters.

At the time of the appeal filing, Petitioner advised the Hearing Officer it was prepared to go to trial and did not plan to file a waiver of the statutory decision deadline.

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Petitioner agreed to extensions of the decision deadline to allow consolidation of the cases as it would be more efficient for Petitioner, the Board and the agency to hear the appeals together as the facts and issues were identical. To permit consolidation, an extension regarding the waiver of statutory deadline decision until July 10, 2003 was filed.

After that, Petitioner agreed to postpone the hearing for settlement negotiations. During this period, IEPA made several representations to the Hearing Officer that IEPA would make a settlement proposal. In the belief the negotiations would be worthwhile, Petitioner agreed to the delays. Petitioner's counsel and consultants met with IEPA and IEPA's counsel in August 2003 and explained why the site information demonstrated the Ineligible Tanks did not cause any conditions requiring remediation. (Exhibit 1) At IEPA's request Petitioner provided further explanation in follow up to the meeting in December 2003. (Exhibit 2) Petitioner also requested that at a minimum, IEPA correct the apportionment allocations for Application 1 and 2 for which there was no dispute. (See Exhibit 2)

Based upon the belief that IEPA's technical unit would consider Freedom's information and that thereafter the parties would resume settlement negotiations, Petitioner filed an open waiver of decision deadline following a January 15, 2004 teleconference. The matter was further continued based on the agency's representations in March and July 2004 that settlement proposals would be made to Petitioner.

As reflected by the Board's record, during a telephonic conference status hearing on March 18, 2004, IEPA represented to the Hearing Officer that its technical unit had

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the additional information and that the IEPA would send a proposal to Petitioner within two weeks (See March 18, 2004 Hearing Officer Order). In reliance on this report, Petitioner's counsel agreed to an extension of six weeks on a May 27, 2004 teleconference call.

Three months after the telephonic conference in which IEPA represented it would make a proposal, IEPA still had not made the promised proposal. Nonetheless, on a July 13, 2004, telephone conference with the Hearing Officer, IEPA confirmed to the Hearing Officer that it planned to make a settlement offer within one week (See July 13, 2004 Hearing Officer Order). During the August 31, 2004 status hearing, IEPA committed to a September meeting to explore settlement (See August 31, 2004 Hearing Officer Order). The meeting did not take place. At the September 24, 2004, status hearing, IEPA advised counsel was still checking with the technical unit and would contact Petitioner soon (See September 24, 2004 Hearing Officer Order).

Even though Petitioner relied upon these representations in agreeing to constant continuances, IEPA did not make a settlement offer and did not engage in settlement discussions. Moreover, IEPA did not inform Petitioner it did not intend to make an offer. Lastly, IEPA did not take steps to correct the erroneous allocations on Applications 1 and 2 for which there was no dispute. (IEPA corrected the allocation error in Application 1 after Petitioner filed a Motion for Partial Summary Judgment in February 2005). Once it became apparent further continuances would be unproductive, at the Petitioner requested the hearing officer set a hearing date. As a result, a tentative hearing date was set for February 8, 2005.

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Delays in Filing the Record

On January 23, 2003, the Board ordered the IEPA to file the Record by February 13, 2003. On February 18, 2003, IEPA filed a Motion for Extension of Time to File the Record. In support of its Motion, IEPA noted the agency's intent to conduct settlement discussions with Petitioner and that the agency would report the progress of said negotiations to the Board. IEPA further represented that the Record would be filed not less than fourteen days from the date the Board issued notice of a hearing or earlier if requested by Petitioner. On February 19, 2003 the Hearing Officer granted the agency's motion. Thereafter the Board entered orders requiring the agency to file the Record. While these later orders may have been confusing as to whether the Hearing Officers Order was voided, the Administrative Record of the agency's determination has not been filed with the Board even though hearing dates were set for February 8, 2005, March 2, 2005, and April 6, 2005.

Delays in Discovery

In preparation for the February 8, 2005, hearing, Petitioner sought discovery of the basis for IEPA's allocation of corrective action costs to the Ineligible Tanks. In accordance with the rules Petitioner submitted discovery requests on November 17, 2004. (Exhibit 3) The Rules required IEPA to answer by December 14, 2004. IEPA did not comply with the December 14, 2004 rule deadline. During a teleconference on January 4, 2005, the Hearing Officer was advised of the outstanding discovery requests. The Hearing Officer ordered IEPA to comply by January 27, 2005, and set the hearing date for March 2, 2005. (Exhibit 4)

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IEPA did not comply with the January 27, 2005, deadline established by this order. As a result, Petitioner filed a Motion for Discovery Relief on February 21, 2005, seeking to bar the agency's evidence at hearing. At a February 24, 2005, teleconference, the Hearing Officer once again ordered IEPA to respond to the discovery requests setting a new due date of March 2, 2005. Petitioner indicated the Motion for Discovery Relief could be withdrawn based on the state's agreement with the revised discovery deadline. As the hearing could not proceed without the discovery, the hearing had to be postponed until April 6, 2005. (Exhibit 5)

IEPA did not comply with March 2, 2005, discovery deadline. On March 16, 2005, IEPA counsel advised Petitioner via email he was on paternity leave until March 29, 2005. Counsel for the IEPA indicated a continuance would be requested by the state and has notified the hearing officer via email on March 22, 2005, of that intent.

Petitioner agreed to continue the statutory decision deadline in reliance on IEPA's representations that settlement discussions would be productive. Instead, there have been no substantive settlement discussions and Petitioner continues to suffer economic penalties by IEPA's delay. As discussed below, Petitioner does not believe the answer is continued delays and continuances. Nor should Petitioner be forced into a hearing where evidence may be produced that was not produced in discovery. Instead, Petitioner believes at this point default judgment in Freedom's favor is appropriate. Alternatively, the agency should be barred from presenting any evidence that should have been produced in response to Petitioner's written discovery at the hearing which should proceed at the earliest possible time.

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ARGUMENT

The Board's Procedural Rules authorize relief, including default judgment, for failure to comply with discovery orders. 35 Ill. Admin. Code § 101.800 provides:

- a) If any person unreasonably fails to comply with . . . any order entered by the . . . hearing officer, . . . the Board may order Sanctions. . .
- b) Sanctions include the following . . .
 - 2). The offending person may be barred from filing any other pleading or other document relating to any issue to which the refusal or failure relates;
 - 3). The offending person may be barred from maintaining any particular . . . or defense relating to that issue;
 - 4). As to claims or defenses asserted in any pleading or other document to which that issue is material a judgment by default be entered against the offending person;
 - 5). Any portion of the offending person's pleadings or documents relating to that issue may be stricken and, if appropriate, judgment may be entered as to that issue; and
 - 6). The witness may be barred from testifying concerning that issue.

In determining to impose a sanction, Rule 101.800 further provides:

- c). In deciding what sanction to impose, the Board will consider factors including: the relative severity of the refusal or failure to comply; the past history of the proceeding, the degree to which the proceeding has been delayed or prejudiced, and the existence of bad faith on the part of the offending party or person.

A. IEPA's Failure To Comply With The Hearing Officer's Orders Justifies Striking All Defenses And Entering Default Judgment In Petitioner's Favor.

Rule 101.800 is patterned after Illinois Supreme Court Rule 219. Although it is well settled under that rule that default is a drastic remedy, such result is warranted where "there is a deliberate and continuous disregard of the rules." *Illinois E.P.A. v. Celotex Corp.* 168 Ill. App. 3d 592, 522 N.E.2d 888, 119 Ill. Dec. 226 (1988). Furthermore, in

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reviewing the appropriateness of this sanction, the Board may consider the history of the entire proceeding, including not only the failure to comply with the Hearing Officer's discovery orders, but also the making of personal commitments to a hearing officer that were repeatedly disregarded. *Modine Manufacturing Company v. The Pollution Control Board* 192 Ill. App. 3d 511, 517, 548 N.E.2d 1145, 1149, 139 Ill. Dec. 589, 593 (1989). In short, an unwarranted disregard of the hearing officer's authority is sufficient to impose a default. *Modine* 192 Ill. App. 3d at 517, 548 N.E.2d at 1149, 139 Ill. Dec. at 593.

In *Celotex*, a witness produced by the IEPA refused to answer questions concerning monitoring well data in the agency's files. The hearing officer ordered the witness to answer the questions. The IEPA, however, cancelled the deposition in which compliance would have occurred. Again, the hearing officer ordered compliance. Once again, the IEPA cancelled the deposition and offered no substitute date. Similarly, the IEPA failed to produce another expert witness as required by order. In addition, the IEPA failed to produce certain documents as required by order.

This Board found the conduct to be sanctionable stating that the "pattern of sluggish response or disregard of hearing officer orders" coupled with only a justification of "unforeseeable events" was unacceptable. 522 N.E.2d at 890, 119 Ill. Dec. at 228. Further, this Board also stated the conduct had to be viewed "in light of the pattern of disregard of deadlines set in hearing officer orders and failure to request extensions thereof in advance of default." *Id.*

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The Board reserved decision on the sanctions pending briefs. In the interim, the IEPA then failed to conform to a hearing officer's order to specify the violated water pollution standards and parameters.

This Board then determined the appropriate sanctions. It struck Count IV of the IEPA's complaint and further barred any assertion of groundwater claims by the IEPA. The Illinois Appellate Court upheld the Board's decision because the IEPA engaged in a "pattern of dilatory response to hearing officer orders, unjustifiable cancellation of depositions" and "further that the explanations tendered for these activities were not reasonable."

Similarly, in *Modine*, the Board imposed the sanction of dismissal with prejudice for failure to file a timely brief. In justifying this sanction, this Board took into account not only repeated late filings but also that Plaintiff ignored an order of a hearing officer and failed to honor personal commitments made to the hearing officer. In upholding this dismissal, the Illinois Appellate Court also noted the impropriety of failing to seek an extension of time before the deadline in an order occurs. While noting sanctions are not a punishment, they nonetheless still need to be used "as a general deterrent to provide a strong incentive for all litigants to fully and accurately comply with procedural rules." 192 Ill. App. 3d at 518, 548 N.E.2d at 1150, 139 Ill. Dec. at 594.

The court in *Modine* also stressed the fact that the litigant's conduct served the purpose of delay. This Board found in *Modine* that such conduct, being used to create delay, was a serious matter. The Illinois Appellate Court agreed.

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Celotex and *Modine* are applicable to this matter. Striking all defenses and entering a default judgment in favor of Petitioner is not only warranted, but the only means by which this Board can establish a general deterrent to unreasonable delay or disregard of hearing officer orders.

In this case, IEPA denied Fund Reimbursement based on discovery of Ineligible Tanks during soil excavation. However, the agency has not provided a factual basis for this position in any letter or other document in response to Freedom's appeal of the denial. Freedom has directed the agency's attention to information in the reports filed with the state supporting Freedom's position. IEPA, however, has offered no factual or other evidence in response that the Ineligible Tanks caused a release requiring remediation such that allocation of corrective action costs to these tanks was appropriate under Illinois law. Discovery in this case sought the evidence and basis for IEPA's position.

IEPA's delays suggest the possibility the agency lacks a defensible position in response to Freedom's technical information. Even if this is not the case, the state delays demonstrate Freedom is entitled to relief because IEPA did not meet its commitments.

Personal commitments to attempt settlement were made to the hearing officer, but never honored. Petitioner waived its statutory deadline rights upon assurances that settlement negotiations would occur. Petitioner's conduct was reasonable given that the agency made credible commitments some settlement position would be forthcoming. The commitments by IEPA's counsel were credible and Petitioner was justified in relying on them because they were made to the hearing officer as the basis for continuing the

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hearing. Notwithstanding the commitments made, IEPA never made a settlement proposal. While IEPA had no obligation to make a particular settlement offer or any offer at all, the agency did have an obligation, having made the commitment, to let Petitioner know the agency would not make a proposal. Moreover, IEPA did not follow through on its commitment to correct the undisputed allocation error. Instead, Petitioner had to incur even more legal fees to file a Motion for Partial Summary Judgment on the issue after waiting for two years.

Commitments to a Hearing Officer are the equivalent of representations to a judge. Such commitments impact the officer's willingness to enter certain orders including the granting of extensions and induce action. Repeated or serious failure to follow through on commitments can provide the basis for relief. This Board in *Modine* agreed with this approach, finding that the failure to honor personal commitments made to a hearing officer is a significant factor in awarding sanctions.

In addition, the agency did not comply with the Board's rules, the two orders of the Hearing Officer regarding discovery or the Board and Hearing Officer orders to file the Record to allow Petitioner to prepare for hearing. The IEPA did not comply with the Board's order or its commitment to file the Record fourteen days prior to the hearing date. After missing the discovery deadline established by the Board's rules, the agency thereafter missed two deadlines set by the hearing officer. Furthermore, the agency allowed the most recent deadline to pass without seeking an extension of time to respond before the deadline occurred.

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Petitioner recognizes and respects the importance of paternity leave and the many obligations agency counsel must attend to. Having had prior cases with agency counsel, Petitioner realizes the procedural history may arise from workload and/or the need for client information, not a personal inclination to disregard commitments, Board rules or hearing officer orders. However, Freedom has waited for more than two years for reimbursement of over \$240,000.00 in corrective action costs (some of which the agency didn't dispute) from the LUST Fund. Freedom incurred these costs in reliance on reimbursement from the Fund. As the Board and agency are aware, the Fund plays a critical role in the ability of the petroleum retailers to offer gasoline at reasonable prices, particular small and medium sized companies such as Petitioner. For this reason, Petitioner's rights are not insignificant and less important than other agency matters.

It would be unfair to have a hearing without Freedom being afforded the discovery it properly requested. Continuance of the hearing, however, is not the fair solution to Petitioner given the procedural history of unfulfilled settlement commitments and Board discovery rule and missed discovery and record order deadlines. Given this history and the substance of the issues, judgment in Freedom's favor should be entered.

Based on the agency's Fund denial letters which are part of the record, it appears the agency's position is that the Ineligible Tanks were found during excavation, and therefore, corrective action costs can be allocated to them. Illinois law does not provide for such allocation. Allocation to ineligible tanks is allowed when the corrective action costs cannot be justified based on releases from Eligible Tanks. 415 ILCS 5/57.8(m). Petitioner provided IEPA considerable material demonstrating the Ineligible Tanks did

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not create any need for remediation and that the corrective action costs were associated with releases from the Eligible Tanks. According to IEPA's counsel, the material was reviewed by its technical unit over nine months ago. Presumably, IEPA would have developed its case to respond to this data, if it had one, before Petitioner delivered its discovery request.

B. Alternatively, IEPA Should be Precluded From Presenting as Evidence Any Document Not Produced By the Deadline And Further Barring Any Witness From Testifying as to Any Matter Covered By The Discovery Requests

If this Board is reluctant to enter default, alternatively it may bar IEPA's witnesses and IEPA documentary evidence that falls within the scope of the discovery requests. Thus, the IEPA may examine Petitioner's witnesses at trial and argue its case based upon evidence submitted by Freedom. It may not present its own witnesses or evidence.

Such sanction is fair. IEPA has not responded to any discovery request of Petitioner. It has not identified potential witnesses and the subject of their testimony despite an interrogatory as to such matters. It has not answered the interrogatory as to the IEPA's basis for allocation of corrective action costs to the Ineligible Tanks or supplied any documents evidencing such basis.

It would be unfair to require Petitioner to address the testimony of undisclosed witnesses and evidence contained in undisclosed documents at the hearing. It is further unfair to postpone this hearing any longer or to set yet another discovery date in an order. Therefore, the hearing should proceed and IEPA should be barred from presenting any

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evidence that was the subject of the discovery requests. As such requests go to IEPA's entire defense, the result would be a complete bar as to the presentation of any witnesses and evidence by the IEPA.

Rule 100.800 specifically contemplates the barring of witness and documentary evidence. Moreover, this Board has previously employed this remedy in similar circumstances. This Board has recognized barring evidence as an appropriate sanction when a party has repeatedly delayed a proceeding. This was true in a case in which the party had only disregarded one order to comply, not two as in this case.

In *Unity Ventures v. the Pollution Control Board*, 132 Ill. App. 3d 421, 476 N.E.2d 1368, 87 Ill. Dec. 376 (1985), Unity received discovery requests. Appropriately, Unity filed for extensions of time and was granted several. Finally, the hearing officer entered an order requiring Unity to respond to discovery by a date certain. On that date, Unity filed objections to discovery. The Board denied the motion to strike interrogatories and ordered a response to discovery by November 19, 1982. Unity did not receive the order until November 18, 1982.

When Unity failed to respond, this Board entered an order finding their actions to be "intentionally dilatorious." The order struck matters from their Petition and prohibited them from raising any issues concerning such matter at its hearing.

Seeking the vacation of this Board's order, Unity argued to the Illinois Appellate Court that the sanctions were inappropriate because in effect it violated only one order compelling discovery and that the sanctions were equivalent to a default, a sanction requiring higher standard be met before imposition. The Appellate Court disagreed,

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Initially, we note that the Board did not dismiss Unity's petition for variance. Unity was afforded an evidentiary hearing, and, in fact, as discussed above, has argued in this court that it was able to present sufficient evidence at that hearing to require a decision in its favor. What the Board did was to prohibit Unity from introducing evidence concerning the issues on which it had failed to provide discovery. We are aware of no authority, and Unity has cited none, to the effect that the standards relating to the sanctions of dismissal are applicable under these circumstances.

See also, Allaert Rendering, Inc. v. Ill. Pollution Control Board, 91 Ill. App. 3d 160, 414 N.E.2d 497, 46 Ill. Dec. 613, 615 (1980) ("Further, when Allaert failed to comply with the discovery orders, the hearing officer had the power to apply such sanction as prohibiting the introduction of evidence regarding Allaert's financial condition and there was no error in the Board's affirmance of this action.")

Conclusion

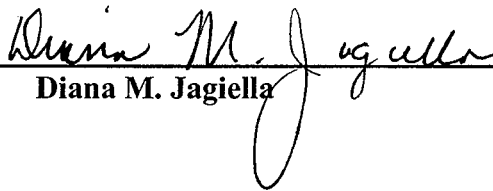
This case has been unduly delayed to the prejudice of Petitioner. Further delay is unwarranted and causes further financial damage to Petitioner. IEPA has had ample opportunity to comply with discovery requests. Freedom's Petition for reimbursement of the Fund costs is reasonable and consistent with Illinois law.

WHEREFORE, Petitioner requests that this Board enter an order:

1. Striking all defenses of the IEPA and entering default judgment in favor of Petitioner; or
2. Barring IEPA from introducing evidence at the hearing.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: 
Diana M. Jagiella

Dated: March 22, 2005

Diana M. Jagiella
Attorney for Petitioner
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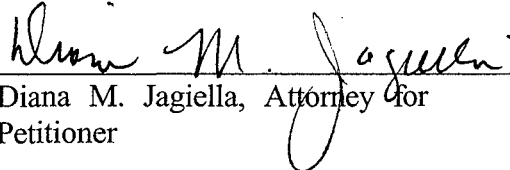
CERTIFICATE OF SERVICE

STATE OF ILLINOIS
Pollution Control Board

I, the undersigned, hereby certify that on this 22nd day of March, 2005, I have served
the attached *Motion for Default Judgment or in the Alternative to Prohibit Introduction of
Evidence* by depositing same via first-class U.S. mail delivery to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601-3218
Carol Webb
Hearing Officer
Illinois Pollution Control Board
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Exhibit 1

Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

June 30, 2003

John J. Kim, Esq.

Division of Legal Counsel

Illinois Environmental Protection Agency

1021 North Grand Avenue East, P. O. Box 19276

Springfield, IL 62794-9276

*Via Facsimile (217) 782-9807
and Regular U.S. Mail*

**Re: Freedom Oil Company, Paris, Illinois
LUST Fund Reimbursement Denial
Our File No. 17273-1**

Dear John:

As you know, two release incidents occurred at the Freedom Oil Company station in Paris, Illinois ("Property") in 2002. In April, 2002 a shear valve leaked. This was discovered after vapors were noted in the sewer connected to Paris High School across the street from the Property. (Incident 20020433) In August 2002, a tank liner failure occurred. This was discovered after vapors were reported in the southern sewer. (Incident 2002112)

IEPA has denied LUST Fund reimbursement to Freedom Oil Company ("Freedom") in the amount of \$293,733.95. Specifically, on December 18, 2002, \$102,122.04 was denied. On March 19, 2003, \$169,051.90 was denied. On May 28, 2003, \$22,559.71 was denied. Freedom has appealed denial of these costs to the Illinois Pollution Control Board. We seem to be in agreement that a discussion prior to a Board hearing to determine if settlement can be reached would be appropriate. As promised, set forth below is a summary of the costs denied, and our basis for requesting IEPA to reconsider its denial.

I. Handling Costs

IEPA denied \$24,638.82 in handling costs. As illustrated in the chart below, based on handling charges allowable under the law, Freedom is entitled to an additional \$9,643.95 in handling charges.



ESE Invoice 0383876		
	Invoice Amount	Allowable Handling Charges Based on Per Subcontract/Field Cost¹
Mileage	292.36	35.08
Vehicle Rental	194.61	23.35
Lodging	736.83	88.42
Subcontractors	119,689.88	
-Bodine (109,598.23)		7,091.96
-Ribbe Trucking (2,081.65)		251.00
Lab	190,360.24	8,707.20
Equipment Rental	1,990.08	238.81
Field Supplies	720.81	86.50
Postage	206.22	24.75
Printing	92.50	11.10
Total	\$306,283.53	\$16,558.17
Amount Paid by IEPA		\$11,279.72
Amount Still Owed to Freedom		\$ 5,278.45

ESE Invoice 0369674		
	Invoice Amount	Allowable Handling Charges Based on Per Subcontract/Field Cost
Mileage	609.55	73.15
Vehicle Rental	240.11	28.81
Lodging	855.47	102.66
SubContractor	271,930.08	
-Ingrum (774.00)		92.88
-Bodine (62,520.28)		5,026.01
-Illiana (1,980.00)		237.60
-Brickyard Disposal (206,655.80)		9,033.12
Lab	5,521.50	652.15

¹ Calculated using IEPA's formula for each subcontract or field expense separately.

ESE Invoice 0369674		
	Invoice Amount	Allowable Handling Charges Based on Per Subcontract/ Field Cost
Equipment rental	520.69	62.40
Field Supplies	355.31	42.64
Photo	21.24	2.54
Printing	1.00	.12
Total	\$280,054.95	\$15,354.08
Amount Paid by IEPA		\$10,988.58
Amount Still Owed to Freedom		\$ 4,365.50

II. \$362.84 for Cell Phone and Mileage Handling Costs

- \$226.76 was deducted for cell phone rental from 10/28/2002 - 11/27/2002. Apparently, IEPA made this deduction based on a belief ESE staff were on site for five days, not nine days. A similar deduction of \$103.96 was made for the period 09/28/2002 - 10/27/2002. Attached are time sheets verifying ESE staff were on site for these time periods.
- \$23.39 was deducted as a handling charge on mileage costs. This should have been allowable.

III. \$20,000 Deductible Assessed

IEPA denied reimbursement of \$20,000 as deductible amounts owed. Although no reason for this deduction was specified, it appears the adjustment was made because an additional deductible was anticipated to be owed with respect to a subsequent incident number assigned at the facility for the release caused by tank liner failure in August 2002. (Incident 20021122) It also appeared IEPA was unaware the \$10,000 deductible for Incident 20020433 was already paid by Freedom. Accordingly, Freedom should be reimbursed for the \$10,000 deductible for Incident 20020433 which had already been paid.

IV. \$27.76 – Tracer Dye / \$140.00 – Notice of Smoke Testing

IEPA denied \$27.76 for dye for tracer testing the sewer on the basis it “has been determined to not be related to Early Action Activities. Therefore, it is not reasonable”

MACTEC completed dye tracer testing of sewer in order to determine if a sewer connection existed between the Freedom Oil station and sewers in the vicinity of the site. The dye testing of the

sewer was completed at the direction of IEPA-Office of Emergency Response ("OER") as part of Early Action/Emergency Response activities. Therefore, this cost should be eligible for reimbursement.

IEPA also denied \$140.00 for publication fees associated with the notice of smoke testing. MACTEC completed smoke testing of sewer in order to determine if a sewer connection existed between the Freedom station and sewers in the vicinity of the site. The dye testing of the sewer was completed at the direction of OER as part of Early Action/Emergency Response activities. Public notice was required by the City of Paris in order for permission to be granted to MACTEC to complete the test. Therefore, this cost should be eligible for reimbursement.

V. \$33.25 – VHS Copies

These charges were for VHS tape copies of the sewer investigation conducted by MACTEC. The Illinois Attorney General's Office and OER specifically requested copies of these videos.

VI. Corrective Action Costs

As previously stated, three reimbursement applications were submitted by Freedom. As explained below, IEPA denied a certain percentage of corrective action costs in each application based on the presence of unregistered (and, therefore, Fund ineligible) tanks.

By way of background, the following table contains a complete and accurate list of the tanks known to have been at the site and the registration status of each tank. In summary, a total of 22,000 gallons of tank product storage capability had been present at the site (18,000 gallons of which would be associated with Fund eligible tanks and 4,000 gallons of which would be associated with Fund ineligible tanks).

Registered and Known Tanks

UST #	Volume (gallons)	Product	Status/ Incident #
1	4,000	Diesel	Registered. 20021122
2	4,000	Gasoline	Registered. 20020433; 20021122
3	4,000	Gasoline	Registered. 961825; 962059; 20020433; 20021122

UST #	Volume (gallons)	Product	Status/ Incident #
4	4,000	Gasoline	Registered. 20020433; 20021122
5	1,000	Gasoline	Registered. 930540, tank removed prior to April 1, 2002; incident closed
6	1,000	Kerosene	Registered. 20021122
Total	18,000 gallons		

The following table lists the Old Tanks subsequently discovered at the site during the clean up. These tanks were apparently taken out of service prior to 1974. The Old Tanks were located on the east side of the property. Although there were no releases from these tanks, IEPA assigned Incident No. 20021420 to these tanks.

Unregistered/Previously Unknown Tanks ("Old Tanks")

UST #	Volume (gallons)	Product
7	500	Heating Oil
8	1,000	Gasoline
9	1,000	Gasoline
10	1,000	Gasoline
11	500	Heating Oil
Total	4,000 gallons	

Reimbursement Application 1. Corrective Action costs in the amount of \$185,644.12 were incurred between April 3, 2002 and August 2, 2002 in connection with Incident 20020433. These costs were incurred based on activities ordered by OER for the purpose of identifying the migration pathway from the shear value release to a conduit causing vapors in the school. In summary, these costs included trench excavation to halt migration and sewer exploration to identify the conduit of the free product entering the sewer purported to have caused gasoline vapors in the school. On December 18, 2002, IEPA denied \$81,954.58 of the requested costs based on the presence of tanks ineligible for reimbursement.

IEPA reimbursed 55.814% of the costs. In reaching this amount, IEPA decided a total of 21,500 gallons of tank product storage was present at the site. Twelve thousand gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 2, 3 and 4) and 9,500 gallons to be associated with Fund ineligible tanks (Tanks 1, 5, 6, 7, 8, 9 and 10). According to IEPA, in evaluating this application, it considered the following tanks with the registration/eligibility status noted below:

Tank 1	4,000 gallon diesel	Ineligible
Tank 2	4,000 gallon gasoline	Eligible
Tank 3	4,000 gallon gasoline	Eligible
Tank 4	4,000 gallon gasoline	Eligible
Tank 5	1,000 gallon gasoline	Ineligible
Tank 6	1,000 gallon kerosene	Ineligible
Tank 7	500 gallon heating oil	Ineligible
Tank 8	1,000 gallon petroleum	Ineligible
Tank 9	1,000 gallon petroleum	Ineligible
Tank 10	1,000 gallon petroleum	Ineligible
Total	21,500 Gallons	12,000 Gallons Eligible/9,500 Gallons Ineligible

With respect to the December 2002 denial of the \$81,954.58, there does not appear to be a dispute that at least some eligible costs were denied because IEPA was unaware Tanks 1, 5 and 6 were registered and Fund eligible. In fact, all three of these tanks were properly registered and Fund eligible.

Reimbursement Application 2 - December 24, 2002. After August 2, 2002, corrective action costs were incurred in connection principally with the second release assigned Incident 20021122. These costs were incurred based on the tank liner failure. The December 2002 reimbursement submission related to these costs requested \$709,748.50. On March 19, 2003, IEPA denied \$143,123.59 of the requested costs based on the presence of tanks ineligible for reimbursement.

IEPA reimbursed 79.07% of the costs. In reaching this amount, IEPA decided a total of 21,500 gallons of tank product storage had been present at the site. According to IEPA, in evaluating the application it considered the following tanks with the registration/eligibility status noted below:

Tank 1	4,000 gallon diesel	Eligible
Tank 2	4,000 gallon gasoline	Eligible
Tank 3	4,000 gallon gasoline	Eligible
Tank 4	4,000 gallon gasoline	Eligible
Tank 5	1,000 gallon gasoline	Ineligible ²
Tank 6	1,000 gallon kerosene	Eligible
Tank 7	500 gallon heating oil	Ineligible
Tank 8	1,000 gallon petroleum	Ineligible
Tank 9	1,000 gallon petroleum	Ineligible
Tank 10	1,000 gallon petroleum	Ineligible
Total	21,500 Gallons	17,000 Gallons Eligible/4,500 Gallons Ineligible

² IEPA incorrectly determined this tank to be unregistered. In fact, it was registered and had been previously removed.

As noted, 17,000 gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 1, 2, 3, 4, and 6) and 4,500 gallons to be associated with Fund ineligible tanks (Tanks 5, 7, 8, 9, and 10). Based on this ratio, IEPA reached an 80.95% reimbursement allocation.

Reimbursement Application 3 - February 11, 2003. The next reimbursement submission, dated February 11, 2003, requested \$116,848.37. On May 28, 2003, IEPA denied \$22,189.00 for similar reasons.

IEPA reimbursed 80.95% of the costs. In reaching this amount, IEPA found a total of 20,000 gallons of tank product had been present at the site. According to IEPA, in evaluating this application, it considered the following tanks with the registration/eligibility status noted below:

Tank 1	4,000 gallon diesel	Eligible
Tank 2	4,000 gallon gasoline	Eligible
Tank 3	4,000 gallon gasoline	Eligible
Tank 4	4,000 gallon gasoline	Eligible
Tank 5	Excluded from consideration by IEPA	
Tank 6	1,000 gallon kerosene	Eligible
Tank 7	500 gallon heating oil	Ineligible
Tank 8	1,000 gallon petroleum	Ineligible
Tank 9	1,000 gallon petroleum	Ineligible
Tank 10	1,000 gallon petroleum	Ineligible
Tank 11	500 gallon heating oil tank	Ineligible
Total	20,000 Gallons	17,000 Gallons Eligible/4,000 Gallons Ineligible

As noted, 17,000 gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 1, 2, 3, 4, and 6) and 4,500 gallons to be associated with Fund ineligible tanks (Tanks 5, 7, 8, 9, and 10). Based on this ratio, IEPA reached a 80.95% reimbursement allocation.

There is No Scientific Evidence Whatsoever Connecting the Old Tanks at the Site to the Work Undertaken

With respect to the corrective action amounts denied, denial of these costs is contrary to law. While Section 57.8(m)(1) of the Act allows the Agency to apportion reimbursement costs to eligible and ineligible tanks, this apportionment must be based on the corrective action actually necessitated by the Old Tanks and the owner's failure to justify the costs as related to the eligible tanks. In this case, there is no relationship between the costs incurred and the Old Tanks at the site. The presence of the Old Tanks did not necessitate any of the work conducted.

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
June 30, 2003
Page 8

There is no evidence conditions associated with the Old Tanks contributed in any way to the school vapor problem or to contamination cleaned up as a result of the tank liner failure. None of the work conducted was related in any way to conditions associated with the Old Tanks. In fact, the pre-74 tanks did not have to be removed. These tanks were properly abandoned in place. IEPA OER demanded removal of the tanks.

Analysis of extensive soil borings completed on the northern portion of the site in connection with the April incident did not identify contamination in excess of applicable TACO criteria (see Table 1). A Site Map has been attached identifying the corresponding soil sampling location and the sample numbers.

Further, photoionization detector ("PID") field screening of the soil in the vicinity of the Old Tanks conducted following the August Incident indicated readings less than eight units above background readings. Thus, field screening did not indicate the presence of a recent release that would be causing an imminent threat to human health and safety. Since this emergency response action was under the direction of the IEPA Emergency Response Unit with a deadline mandated by the injunction obtained by the state, Freedom was not afforded the opportunity to stop work to collect and analyze soil samples to verify the orphan tanks were not contributing to the site condition.

Nonetheless, subsequent analytical results from soil sampled from the bottom and sidewalls of the excavation adjacent to Tanks 7, 8, 9, 10, and 11 were below IEPA Remediation Objectives (see Table 2). This scientific evidence amply demonstrates the Old Tanks did not give rise to any conditions that could have caused the vapors in the school located north of the site or the sewer located south of the site. Quite simply, any residual impact caused by the Old Tanks was so insignificant it could barely register on a PID, let alone cause a sheen and vapors in a sewer 200 feet north adjacent to the school, or 100 feet south within the alley.

As discussed above, we strongly believe that it is inappropriate to allocate costs in this case on the basis of "eligible" and "ineligible" tanks. None of the costs incurred in remediating the site are the result of the presence of tanks designated as ineligible. No analytical data exists to indicate that these ineligible tanks contributed to the need for any of the work undertaken.

It is also important to keep in mind that the corrective action work performed was directed by IEPA OER and required to be performed for the most part on an emergency basis. MACTEC objected to much of the work as unwarranted, but was overruled by IEPA OER. Due to the time constraints by IEPA OER, MACTEC was also denied the opportunity to demonstrate through further testing that the work was unwarranted. Accordingly, it is not equitable to require Freedom to perform work it objected to, and then deny Fund reimbursement.

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
June 30, 2003
Page 9

Conclusion

We hope this information is helpful to explain Freedom's position it should not have been denied the requested Fund reimbursement. We look forward to hearing from you.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.

Diana M. Jagiella
Diana M. Jagiella

Enclosures

cc: A. Michael Owens
Michael J. Hoffman

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EMPLOYEE TIMESHEET

Employee ID Number 615223

Employee Name Richard Pletz

Week Ending OCT. 4, 2002

Project/Proposal Number	Organization Code	Labor Category	Activity Code	Total Hours		Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Additional Comments
				Regular	Other	28		30	1	2	3	4	
FREEDOM PARIS 530693.0200	061.02.05			40		8.00		10.00	10.00	9.50	10.25		
General Administration 61.02.05.00	06.1.02.05												
Traveling Allowable 004911.023.000	06.1.02.05												
Marketing Unallowable 004911.025.000	06.1.02.05												
Paid Time Off (PTO) * 4206-001	06.1.02.05												
Holiday * 6044-031	06												
TOTALS				40		8.00		10.00	10.00	9.50	10.25		

*OS1 (Salary Employees) Straight Time over 40 hrs. project chargeable
 **OT (Hourly Employees) 1.5 x hourly rate over 40 hrs.

Richard Pletz
 EMPLOYEE SIGNATURE

 SUPERVISOR SIGNATURE

I certify the above hours are an accurate record of my hours worked in accordance with Harding ESE timesheet procedures (see back).

MAR-26-2003 16:25 MACTEC INC 309 692 9364 P.09

Employee ID Number 615223

Employee Name Richard Platz

Week Ending Oct 11, 2002

Project/Proposal Number	Organization Code	Labor Category	Activity Code	Total Hours		Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Additional Comments
				Regular	Other								
FREEDOM PARKS 5306930200	06.1.07.05			24.00	0.00	2.00		16.00	8.00	8.00	10	11	
				21.00	12.00			14.00	9.00	11.00			
General Administration 06.1.02.05.00	06.1.02.05												
Marketing Allowable 004911.023.000	06.1.02.05												
Marketing Unallowable 004911.025.000	06.1.02.05												
Paid Time Off (PTO) * 4206-001	06.1.02.05			16.00							8.00	8.00	
Holiday * 6044-031	06												
TOTALS				32.00	12.00	2.00		14.00	9.00	11.00			

*OSI (Salary Employees) Straight Time over 40 hrs. project chargeable.
**OT (Hourly Employees) 1.5 x hourly rate over 40 hrs.

Richard Platz

EMPLOYEE SIGNATURE

Donna M. ...

SUPERVISOR SIGNATURE

I certify the above hours are an accurate record of my hours worked in accordance with Harding ESE timesheet procedures (see back).

MAR-26-2003 16:26 MACTEC INC 309 692 9364 P.10

Employee ID Number 615223

Employee Name Richard Phetz

Week Ending OCT. 18, 2002

Project/Proposal Number	Organization Code	Labor Category	Activity Code	Total Hours		Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Additional Comments
				Regular	Other								
FREEDOM OIL PARIS 530 693 0200	06-1-02-05			35.00				14	15	16	17	18	
Stockland F.S. 530 962 0100	06-1-02-05			2.00								2.00	
DEX 530 120 0100	06-1-02-05			2.00								2.00	
General Administration 06-1-02-05-00	06.1.02.05												
Marketing Allowable 004911.023.000	06.1.02.05												
Marketing Unallowable 004911.025.000	06.1.02.05												
Paid Time Off (PTO) * 4206-001	06.1.02.05			1.00			1.00						
Holiday * 6044-031	06												
TOTALS				40.00				1.00	12.00	13.00	6.75	7.75	

*OSI (Salary Employees) Straight Time over 40 hrs. project chargeable
**OT (Hourly Employees) 1.5 x hourly rate over 40 hrs.

Richard Phetz
EMPLOYEE SIGNATURE

SUPERVISOR SIGNATURE

I certify the above hours are an accurate record of my hours worked in accordance with Harding ESE timesheet procedures (see back).

MHR-26-2003 16:28 MACTEC INC 309 692 9364 P. 11

Employee ID Number 61523

Employee Name RICHARD PLETZ

Week Ending OCT 25, 2002

Project/Proposal Number	Organization Code	Labor Category	Activity Code	Total Hours		Saturday	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Additional Comments
				Regular	Other								
Freedom PARIS 530 697 0200	06.1.02.05			22.75				4.00	3.00	.25	12.00	2.50	Site visit 2009 45 day osth Approved
EVER HASP 531 0100	06.1.02.05			5.50					1.00	3.75		.75	
Stockland Riverlands 531 0100	06.1.02.05			3.00				2.00	1.00				
General Administration (1.02.05.00	06.1.02.05			8.75				2.00	3.00	4.00		.75	
Marketing Allowable 004911.023.000	06.1.02.05												
Marketing Unallowable 004911.025.000	06.1.02.05												
Paid Time Off (PTO) * 4206-001	06.1.02.05												
Holiday * 6044-031	06												
TOTALS				40.20				8.00	9.00	8.00	12.00	4.00	

Richard Plez
EMPLOYEE SIGNATURE

SUPERVISOR SIGNATURE

I certify the above hours are an accurate record of my hours worked in accordance with Harding ESE timesheet procedures (see back).

TOTAL P 12

MAR-26-2003 16:29
MACTEC INC
309 692 9364 P.12



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

GEORGE H. RYAN, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

DEC 18 2002

Freedom Oil Company
Attn: Gene Adams
Post Office Box 3697; 814 W. Chestnut
Bloomington, Illinois 61702

Re: LPC #0450305043 -- Edgar County
Paris/Freedom Oil Co.
401 South Main Street
LUST Incident No. 20020433
LUST FISCAL FILE

Dear Mr. Adams:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated September 17, 2002 and was received by the Agency on September 18, 2002. The application for payment covers the period from April 3, 2002 to August 16, 2002. The amount requested is \$185,644.12.

The deductible amount to be assessed on this claim is \$20,000.00, which is being deducted from this payment. In addition to the deductible, 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.

On December 12, 2002, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$83,521.78 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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 of time 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 applicant 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:

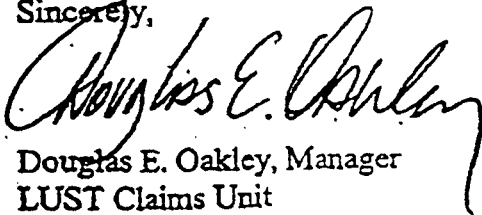
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Michael Heaton of Michael Lowder's staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

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Attachment

cc: Harding ESE

Attachment A
Technical Deductions

Re: LPC # 0450305043 -- Edgar County
Paris / Freedom Oil Company
401 South Main Street
LUST Incident No. 20020433, 20021122, and 20021420
LUST File

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Illinois Environmental Protection Act (Act).

Item # Description of Deductions

1. \$27.76 for USA Bluebook (dye for dye tracing of sewer). This cost has been determined to not be related to Early Action activities; therefore, it is not reasonable (35 IAC 732.606(ii)).
2. \$140.00 Parish Beacon Publishing (notice of smoke testing in newspaper). This cost has been determined to not be related to Early Action activities; therefore, it is not reasonable (35 IAC 732.606(ii)).
3. \$81,954.58 for deductions for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the fund (Section 57.8(m)(1) of the Act and 35 IAC 732.608).

Specifically, there were ten tanks at the subject facility, each of which was determined by the Office of State Fire Marshall to have had a significant release. Tank Nos. 2, 3, and 4 were deemed eligible to access the LUST Fund for reimbursement purposes. Tanks 1, 5, 6, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes.

Tank #	Description
1	4,000 gallon diesel tank
2	4,000 gallon gasoline tank
3	4,000 gallon gasoline tank
4	4,000 gallon gasoline tank
5	1,000 gallon gasoline tank
6	1,000 gallon kerosene tank
7	500 gallon heating oil tank
8	1,000 gallon gasoline and/or diesel tank
9	1,000 gallon gasoline and/or diesel tank
10	1,000 gallon gasoline and/or diesel tank

The total gallonage of tanks eligible to access the LUST Fund is 12,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund is 9,500 gallons. Therefore, 55.814% of costs are apportioned to the tanks eligible to access the LUST Fund, and 44.186% of costs are apportioned to the tanks not eligible to access the LUST Fund.

With regard to \$81,954.58 deduction, \$40,014.29 was deducted from Personnel, \$27.40 was deducted from Equipment, \$857.23 was deducted from Materials and Expendable (in stock items), \$2,866.22 was deducted from Materials & Expendables (field purchases, after the \$140 and \$27.76 deductions listed on lines a and b above), and \$38,189.44 was deducted from Subcontractors.

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLACOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #

Freedom Oil Co.
Attention: Mike Owens
Post Office Box 3697
Bloomington, IL 61702

Re: LPC #0450305043 -- Edgar County
Paris/Freedom Oil Co.
401 South Main Street
LUST Incident No. 20020433
LUST FISCAL FILE

Dear Mr. Owens:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732. Subpart F. This information is dated December 24, 2002 and was received by the Agency on December 30, 2002. The application for payment covers the period from June 30, 2002 to November 22, 2002. The amount requested is \$709,748.50.

The deductible amount for this claim is \$20,000.00, which was previously deducted from the billing submittal received by the Agency on December 12, 2002 for \$185,644.12. 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.

On February 7, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$540,696.60 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However,

Rockford - 2102 North Main Street, Rockford, IL 61103 - (815) 967-7760 • Dis. Illinois - 9511 W. Harrison St., Des Plaines, IL 60016 - (647) 294-2000
Evanston - 305 South State, Evanston, IL 60120 - (708) 601-3333 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 691-2500
Chicago - 2700 S. State Street, Chicago, IL 60608 - (312) 227-7000 • Springfield - 2125 South First Street, Champaign, IL 61820 - (217) 253-5800
Springfield - 2700 S. State Street, Springfield, IL 62761 - (217) 780-0000 • Carbondale - 2009 South Street, Carbondale, IL 62201 - (618) 526-5120
Alton - 2300 W. Main St., Suite 110, Alton, IL 62920 - (618) 993-7200

the 35-day period may be extended for a period of time 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 applicant 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:

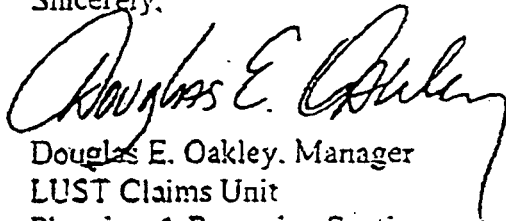
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact **Lieura Hackman** of my staff or **Michael Heaton** of **Michael Lowder's** staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

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Attachment . . .

cc: Harding ESE

Attachment A
Accounting Deductions

Re: LPC #0450305043 -- Edgar County
Paris/Freedom Oil Co.
401 South Main Street
LUST Incident No. 20020433
LUST Fiscal File

Citations in this attachment are from and the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$362.84, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh))

A deduction in the amount of \$226.76 was made from the cell phone rental for the period of October 28, 2002 to November 27, 2002 (staff was at the site for 5 days of this billing period; the costs have been pro-rated).

A deduction in the amount of \$8.73 was made for late charges on the cell phone rental for the period of October 28, 2002 to November 27, 2002.

A deduction in the amount of \$103.96 was made from the cell phone rental for the period of September 28, 2002 to October 27, 2002 (staff was at the site for 4 days; the costs have been pro-rated).

A deduction in the amount of \$23.39 was made for the request for handling charges on mileage costs.

2. \$896.64, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

The following deductions were made on the Bodine invoice numbered 014084. The amounts requested on the Bodine invoice were greater than the invoices from the subcontractors:

A deduction in the amount of \$480.00 was made because the Al's Backhoe (invoice #925) submitted with the claim was less than amount requested by Bodine.

A deduction in the amount of \$51.00 was made because the Neals Machinery (invoice #002014) submitted with the claim was less than the amount requested by Bodine.

deductions

A deduction in the amount of \$359.66 was made because the Jones & Son invoice submitted with the claim was less than the amount requested by Bodine.

A deduction in the amount of \$5.98 was made for a meal for R. Pletz on September 27, 2002.

- 3. \$0.27, deduction for costs due to a mathematical error. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(ff))

This deduction was made because the amount requested on the Subcontractors form dated August 23, 2002 and October 15, 2002 is incorrect. The amounts listed on the form total \$302,409.85.

- 4. \$29.74, adjustment in the handling charges due to the deduction(s) of ineligible costs (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607).

A deduction of \$17.83 was made on the ineligible costs of \$890.66 requested on ESE invoice 0000369674.

A deduction of \$11.91 was made on the ineligible cell phone costs in the amount of \$342.15.

- 5. \$24,638.82, deduction for handling charges in the billing(s) exceed the handling charges set forth in Section 57.8(f) of the Act. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost	Eligible Handling Charges as a Percentage of Cost
\$0-\$5,000	12%
\$5,001-\$15,000	\$600 + 10% of amount over \$5,000
\$15,001-\$50,000	\$1600 + 8% of amount over \$15,000
\$50,001-\$100,000	\$4400 + 5% of amount over \$50,000
\$100,001-\$1,000,000	\$6900 + 2% of amount over \$100,000

A deduction in the amount of \$13,223.01 was made on the Harding ESE invoice numbered 0000383876.

A deduction in the amount of \$11,415.81 was made on the Harding ESE invoice numbered 369674.

Attachment A
Technical Deductions

Re: LPC # 0450305043 -- Edgar County
Paris / Freedom Oil Company
401 South Main Street
LUST Incident No. 20020433, 20021122, and 20021420
LUST File

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Illinois Environmental Protection Act (Act).

Item # Description of Deductions

1. \$143,123.59 for deductions for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the fund (Section 57.8(n)(1) of the Act and 35 IAC 732.608).

Specifically, there were ten tanks at the subject facility, each of which was determined by the Office of State Fire Marshal to have had a significant release. Tank Nos. 1, 2, 3, 4, and 6 were deemed eligible to access the LUST Fund for reimbursement purposes. Tanks 5, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes.

Tank #	Description
1	4,000-gallon diesel tank
2	4,000-gallon gasoline tank
3	4,000-gallon gasoline tank
4	4,000-gallon gasoline tank
5	1,000-gallon gasoline tank
6	1,000-gallon kerosene tank
7	500-gallon heating oil tank
8	1,000-gallon gasoline and/or diesel tank
9	1,000-gallon gasoline and/or diesel tank
10	1,000-gallon gasoline and/or diesel tank

The total gallonage of tanks eligible to access the LUST Fund is 17,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund is 3,500 gallons. Therefore, 79.07% of costs are apportioned to the tanks eligible to access the LUST Fund, and 20.93% of costs are apportioned to the tanks not eligible to access the LUST Fund.

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

MAY 28 2003

Freedom Oil Co.
Attention: Gene Adams
Post Office Box 3697
Paris, IL 61944

Re: LPC #0450305043 -- Edgar County
Paris/Freedom Oil
401 South Main
LUST Incident No. 20020433
LUST FISCAL FILE

Dear Mr. Adams:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated February 11, 2003 and was received by the Agency on February 20, 2003. The application for payment covers the period from March 1, 2002 to January 24, 2003. The amount requested is \$116,848.37.

The deductible amount for this claim is \$20,000.00, which was previously deducted from the Invoice Voucher dated January 17, 2003. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On March 3, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$94,288.66 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 of time not to exceed 90 days by written notice

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant 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:

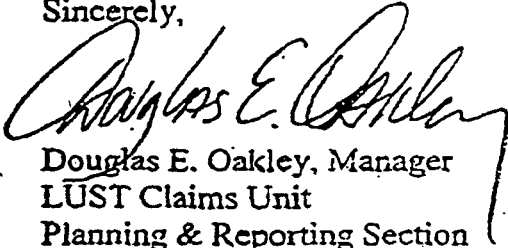
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Lieura Hackman of my staff or Michael Heaton of Michael Lowder's staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:LH:jk\032238.doc

Attachment

cc: Harding ESE

Attachment A
Technical Deductions

Re: LPC# 0450305043 -- Edgar County
Paris / Freedom Oil Company
401 South Main Street
LUST Incident No. 20020433, 20021122, and 20021420
LUST File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

\$33.25 for VHS copies. This cost has been determined to not be related to Early Action activities, therefore is not reasonable (35 IAC 732.606(jj)).

\$22,189.00, for deductions for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the fund (Section 57.8(n)(1) of the Act and 35 IAC 732.608).

Specifically, there were ten tanks at the subject facility, each of which was determined by the Office of State Fire Marshal to have had a significant release. Tank Nos. 1, 2, 3, 4, and 6 were deemed eligible to access the LUST Fund for reimbursement purposes, Tanks 5, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes. Since Tank 5 was addressed under IEMA Incident No. 930540, it is not included in the gallonage total for Tanks for which an eligibility determination has not been made by Illinois Office of State Fire Marshall (OSFM).

Tank #	Description
1	4,000-gallon diesel tank
2	4,000-gallon gasoline tank
3	4,000-gallon gasoline tank
4	4,000-gallon gasoline tank
5	1,000-gallon gasoline tank
6	1,000-gallon kerosene tank
7	500-gallon heating oil tank
8	1,000-gallon gasoline and/or diesel tank
9	1,000-gallon gasoline and/or diesel tank
10	1,000-gallon gasoline and/or diesel tank
11	500-gallon heating oil tank

The total gallonage of tanks eligible to access the LUST Fund as determined by OSFM is 17,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund as determined by OSFM is 4,000 gallons. Therefore, 80.95% of costs are apportioned to the tanks eligible to access the LUST Fund, and 19.05% of costs are apportioned to the tanks not eligible to access the LUST Fund.

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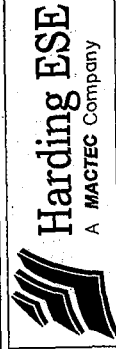
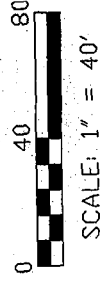
LEGEND

- MW-1 ○
- MONITORING WELL
- ⊕-40-1 SOIL BORING
- TANK FILL
- MANHOLE
- ⊕ POWER POLE
- ⊕^M WATER METER
- ⊕^{VV} WATER VALVE
- LIGHT POLE

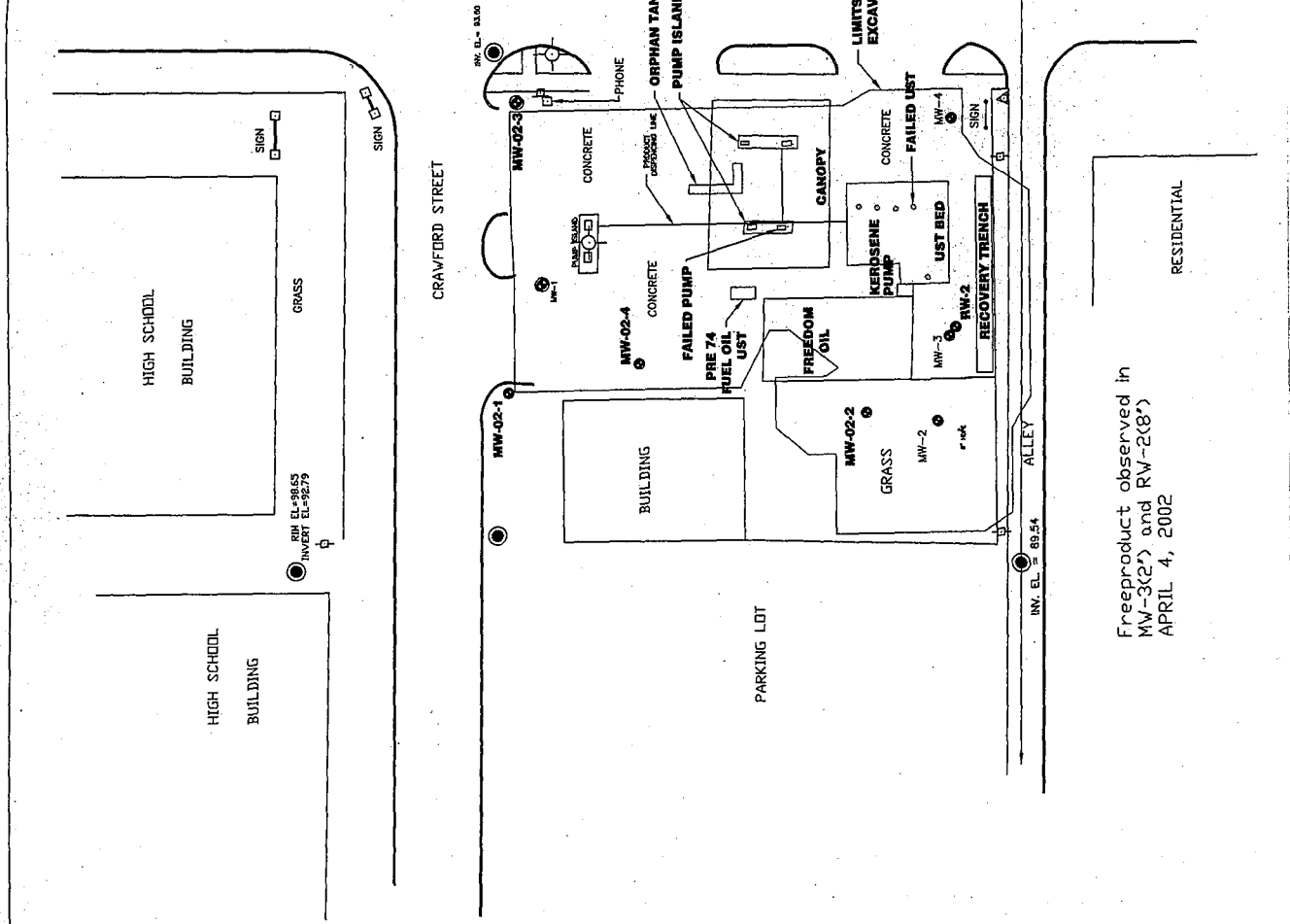
— APPROXIMATE PROPERTY BOUNDARY
 — INCIDENT #20021122

GENERAL NOTES:

1. INCIDENT #20021122.
2. DATE: AUGUST 7, 2002 THROUGH PRESENT.
3. WORK COMPLETED:
 - INSTALL INTERCEPTOR / COLLECTION ALONG ALLEY.
 - INVESTIGATE SEWERS AND HOMES SOUTH AND WEST OF SITE.
 - TEST USTS.
 - COLLECT GROUND WATER FROM TRENCHES.
 - COMPLETE VAPOR EXCAVATION FROM SEWER AND TRENCH.
 - REMOVE ACTUAL USTS PUMP ISLAND AND CANOPY.
 - DEMOLISH FREEDOM OIL BUILDING.
 - EXCAVATE, TRANSPORT AND DISPOSE OF 9,150 CUBIC YARDS OF SOIL.
 - COLLECTED AND ANALYZED 84 SOIL SAMPLES.
 - CAP ALL FORMER SEWER LINES.
 - BACK FILL SITE EXCAVATION.
 - COMPLETE IEPA REPORTING.



INCIDENT NUMBER 20021122
SITE MAP
FREEDOM OIL
PARIS, IL



Freeproduct observed in
 MW-3(2') and RW-2(8')
 APRIL 4, 2002

LEGEND

- MW-1 MONITORING WELL
- SOIL BORING
- TANK FILL
- MANHOLE
- POWER POLE
- WATER METER
- WATER VALVE
- LIGHT POLE

APPROXIMATE PROPERTY BOUNDARY
 INCIDENT #20020433

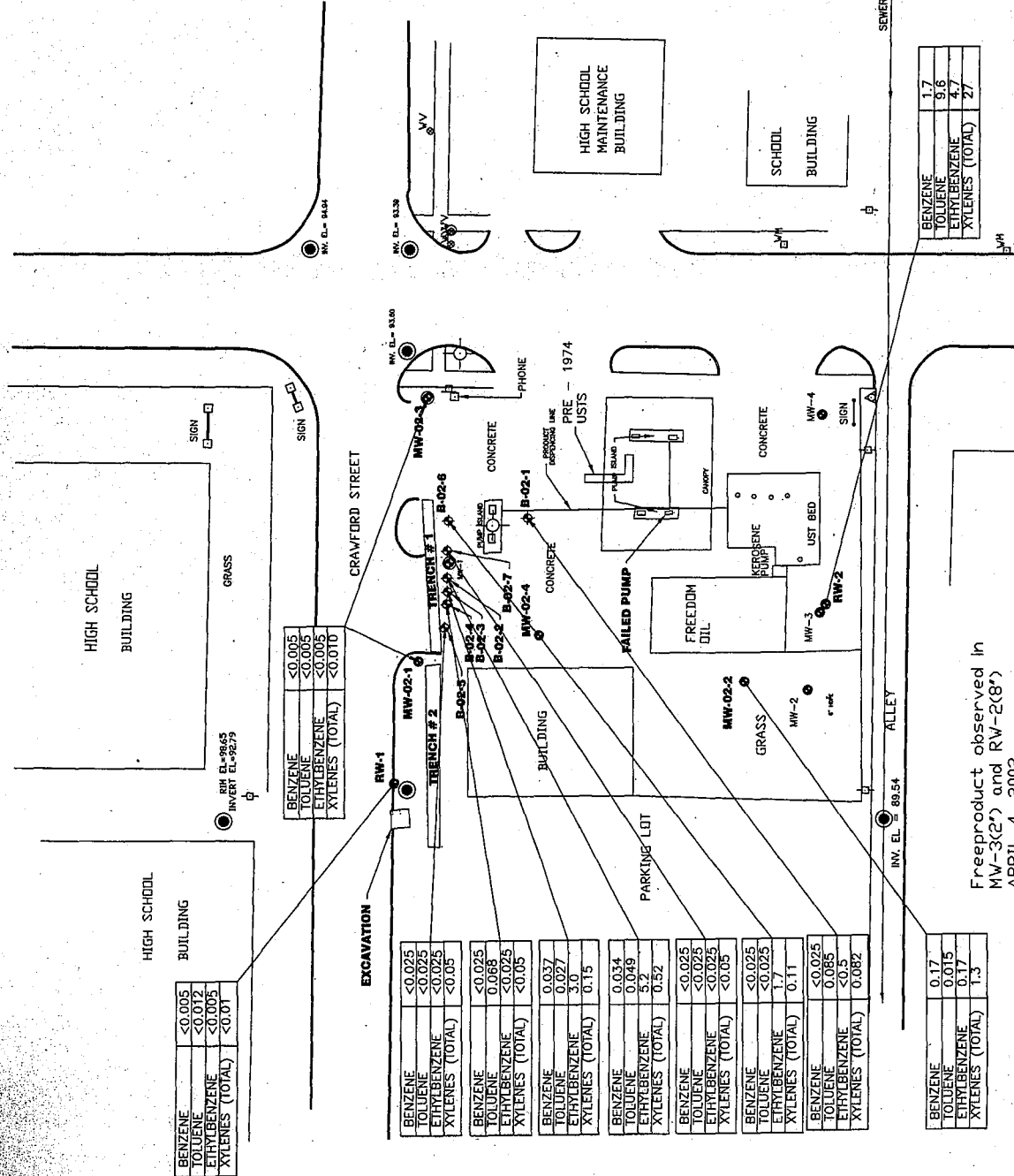
GENERAL NOTES:

1. INCIDENT #20020433 - SHEAR VALVE RELEASE
2. WORK COMPLETED:
 - EMERGENCY RESPONSE / MITIGATION OF SEWER BY HIGH SCHOOL
 - SAMPLE OLD AND NEW MONITORING WELLS.
 - INVESTIGATE HIGH SCHOOL
 - AIR MONITORING IN HIGH SCHOOL
 - INVESTIGATE SEWER SURROUNDING THE HIGH SCHOOL AND FREEDOM OIL PROPERTY
 - INSTALL (2) WATERSEPTIC / COLLECTION TRENCHES.
 - INSTALL (4) GROUNDWATER MONITORING WELLS AND SAMPLES.
 - COMPLETE (7) SOIL BORINGS AND SAMPLES.
 - COMPLETE EPA REPORTING.
 - COMPLETE A EXPLORATORY EXCAVATION ALONG CRAWFORD STREET.
 - COLLECTION OF GROUNDWATER FROM TRENCHES AND WELLS.



Harding ESE
 A MACTEC Company

INCIDENT NUMBER 20020433
SITE MAP
FREEDOM OIL
PARIS, IL



BENZENE	<0.005
TOLUENE	<0.012
ETHYLBENZENE	<0.005
XYLENES (TOTAL)	<0.01

BENZENE	<0.005
TOLUENE	<0.005
ETHYLBENZENE	<0.005
XYLENES (TOTAL)	<0.010

BENZENE	<0.025
TOLUENE	<0.025
ETHYLBENZENE	<0.025
XYLENES (TOTAL)	<0.05

BENZENE	<0.025
TOLUENE	0.068
ETHYLBENZENE	<0.025
XYLENES (TOTAL)	<0.05

BENZENE	0.037
TOLUENE	0.097
ETHYLBENZENE	3.0
XYLENES (TOTAL)	0.15

BENZENE	0.034
TOLUENE	0.049
ETHYLBENZENE	5.2
XYLENES (TOTAL)	0.52

BENZENE	<0.025
TOLUENE	<0.025
ETHYLBENZENE	<0.025
XYLENES (TOTAL)	<0.05

BENZENE	<0.025
TOLUENE	<0.025
ETHYLBENZENE	1.7
XYLENES (TOTAL)	0.11

BENZENE	<0.025
TOLUENE	0.085
ETHYLBENZENE	<0.5
XYLENES (TOTAL)	0.082

BENZENE	0.17
TOLUENE	0.015
ETHYLBENZENE	0.17
XYLENES (TOTAL)	1.3

BENZENE	1.7
TOLUENE	9.6
ETHYLBENZENE	4.7
XYLENES (TOTAL)	27

Freeproduct observed in MW-3(2') and RW-2(8')
 APRIL 4, 2002

Exhibit 2

Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

December 18, 2003

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P. O. Box 19276
Springfield, IL 62794-9276

Mr. Mike Heaton
Illinois Environmental Protection Agency
Bureau of Land #24
P.O. Box 19276
Springfield, IL 62794-9276

Mr. Mike Lowder
Illinois Environmental Protection Agency
Bureau of Land #24
P.O. Box 19276
Springfield, IL 62794-9276

**Re: Freedom Oil Company, Paris, Illinois
LUST Fund Reimbursement Denial
Our File No. 17273-1**

Dear Gentlemen:

At our August meeting, we agreed to focus our LUST Fund reimbursement discussions on the big ticket item – the costs deducted based on the presence of four unregistered tanks, Tanks 7, 8, 9 and 10 (“Ineligible Tanks”). At the meeting, we argued the remediation costs incurred had no connection to the Ineligible Tanks. The costs were necessitated by two significant events - an April 2002 shear valve leak and an August 2002 tank liner failure.

All of the costs incurred were associated with work ordered by IEPA-OER before the Ineligible Tanks were even discovered. In particular, IEPA-OER had ordered excavation and removal of soil from property line to property line prior to discovery of the tanks. Thus, the discovery of the tanks did not give rise to an obligation for remedial activities - that obligation already existed. Further, the nature of the work conducted and the analytical results obtained confirm the Ineligible Tanks did not contribute to the need for site cleanup or emergency response activities. Thus, apportionment of cleanup costs to the Ineligible Tanks has no basis in fact or law.

You requested that we present our technical information in support of this point for further consideration and evaluation by you. This information is presented below.

Costs Denied Based on Ineligible Tanks

The following chart identifies the approximately 20% in costs denied in each Reimbursement Application based on the presence of the Ineligible Tanks. As you will note, the costs denied on this basis total \$247,267.17

Application	Date of IEPA Action	Amount Denied for Ineligible Tanks	Percentage Paid
Reimbursement Application 1 for costs between April 3, 2002 and August 2, 2002	December 18, 2002	\$81,954.58	55.814% ¹
Reimbursement Application 2 for costs between August 2, 2002 and December 24, 2002	March 19, 2003	\$143,123.59	79.07%
Reimbursement Application 3 for Costs between December 24, 2002 and February 11, 2003	May 28, 2003	\$22,189.00	80.95%
TOTAL		\$247,267.17	

Brief Overview of Releases at the Paris Site

- April 1993 Soil contamination was discovered during removal of a gasoline tank located on the northwest corner of the building. The contaminated soil surrounding the tank was removed. Samples taken from the excavation walls were clean and the incident was closed. (See Exhibit 1 - map of 1993 incident depicting analytical results)
- October/
November
1996 Vapors were discovered in the southern sewer during a tank upgrade. Tank releases prior to the upgrade caused the release. The tanks were upgraded which abated the release. An investigation trench was excavated. Sampling identified soil and groundwater contamination to the south. (See Exhibit 2 - map of 1996 incident depicting analytical results). This incident has not been closed and is eligible for FUND reimbursement.
- April 2002 Midwest Tank Testing failed to properly secure a shear valve after testing the lines for tightness. The faulty shear valve was discovered after vapors were detected in the school to the north. Freedom initiated emergency response activities after the discovery. In summary, emergency response activities conducted by Freedom

¹ As IEPA is aware, the 55% allocation to eligible tanks was in error. Even assuming apportionment was proper, the allocation to eligible tanks should have been 80 percent. Thus, Freedom, in any event, is owed \$44,827.76.

included investigation of the school vapors and efforts to abate any related threat (including air monitoring). Freedom also investigated to determine if a conduit from the pump to the school could be identified. These activities included sewer investigation (via smoke and remote controlled camera), installation of two interceptor/collection trenches on Crawford Street and sampling from the trench, an exploratory excavation along Crawford Street, sampling from seven soil borings, installation of four new wells and sampling of all wells.

August 2002 Vapors were discovered in the sewer lines in the southern alley and homes to the south. The vapors were caused by a release from one of the active tanks found to have a tank liner failure. Emergency response activities included installation of an interceptor/collection trench along the southern alley. In addition, the USTs were removed, along with approximately 11,811 tons of soil and on-site structures to allow removal of underlying soil. The extent of soil removal was determined and dictated by IEPA-OER before actual excavation began. The Ineligible Tanks were discovered and removed as part of the soil excavation previously ordered by IEPA-OER. The site was backfilled.

Summary of Relevant Facts

The following facts underscore the conclusion the Ineligible Tanks did not contribute to the need for any site cleanup or emergency response activities for which cost reimbursement was requested.

- The Ineligible Tanks are located slightly north and west of the center of the site. They are approximately 40 feet due north of the UST bed of eligible tanks. The Pump Islands are in between the eligible and Ineligible Tanks. (See Exhibit 1)
- IEPA-OER ordered removal of the on-site structures and excavation of soil from property line to property line prior to the discovery of the pre-74 tanks. Their discovery did not expand the work already ordered by IEPA-OER.
- The Ineligible Tanks were discovered and removed on October 1, 2002. Both field observations and analytical results, as documented in the attachments, demonstrate the tanks did not give rise to a remediation obligation. Analytical results confirm the absence of soil and groundwater contamination from the Ineligible Tanks. Specifically:
 - PID readings taken around the pre-74 tanks during the removal and excavation in October 2002 were very low indicating no releases requiring remediation from these tanks. The PID readings were 0.0, 1.0, 1.6, 1.8, 1.8, 3.4, and 8.5. The exact locations at which these PID readings were taken are depicted on the attached map. (See Exhibit 2)

- Lab analysis of soil samples taken in the area of the Ineligible Tanks during removal and excavation in October 2002 also confirm no contamination in the vicinity of the pre-74 tanks. The sample results were non-detect for BTEX. The exact locations at which these samples were taken are depicted on the attached map (samples 52, 53, 54, 55, 57, 58, 59, 60). (See Exhibit 3)
- Although IEPA-OER ordered significant investigation and soil excavation on the north end of the property, the results of this work did not identify soil or groundwater contamination associated with these tanks. Analysis of soil and groundwater samples from the north end of the property revealed benzene at levels from less than .025 ppb to .037 ppb in soil and less than .05 ppb in groundwater. (See Exhibit 3) These low levels of contaminants appear consistent with the presence of a pump island in that area. They are also consistent with sampling in this area conducted in 1996 which found only residual low level contaminants. (See Exhibit 4)

Reimbursement Application 1

Reimbursement of \$185,644.12 was requested. \$81,954.58 was denied based on the presence of Ineligible Tanks. This work was necessitated by an April 2002 release caused by a failed shear valve on a gas pump. The release was discovered after vapors were detected in the school north of the property. The work conducted was supervised or ordered by IEPA-OER. A review of the emergency response work conducted and related analytical evidence demonstrates none of these costs was associated with the Ineligible Tanks. Except for monitoring well sampling, all the work conducted involved the north end of the property and was focused on identifying a migration route from the shear valve release to the north. OER believed a migration pathway existed between the shear valve release and the school north of the property. The emergency response work is depicted on Exhibit 1 and included:

- Investigation of the School Vapors including air monitoring.
- Sewer Investigation.
- Installation of two Interceptor/Collection Trenches along Crawford Street (to the north) and sampling from the trench.
- Exploratory Excavation along Crawford Street.
- Sampling from 7 Soil Borings.
- Installation of 4 new monitoring wells.
- Sampling all monitoring wells.

Reimbursement Application 2

Reimbursement of \$709,748.50 was requested. \$143,123.59 was denied based on the presence of Ineligible Tanks. This work was initiated after odors were detected in the sewer and homes southwest of the site. The odors resulted from a release caused by a tank liner failure. The work addressed the odors and contamination caused by the tank liner failure. It also included excavation of soil north of the tank cavity as IEPA-OER believed this work was necessary to address any contamination that might be present from the April shear valve release. All work was conducted as ordered by IEPA-OER. The emergency response work is depicted on Exhibit 5 and included:

- Construction of an interceptor trench on the south alley boundary to intercept and prevent free product from entering the sewer.
- Free product removal. Free product was observed entering the trench directly south of the UST bed. Fluid removal was initiated twice daily.
- Construction and operation of a vapor extraction system in the sewer.
- Investigation of the UST tank cavity. This investigation revealed the liner in the southernmost tank had failed, causing the release. All tanks were removed (one kerosene, one diesel fuel, and three gasoline USTs). The tanks were in sound condition except for the two gasoline USTs located on the south end of the tank bed which appeared to have internal liner damage. One of these tanks caused the August 2002 release.
- Removal of Southern Contaminated Soil. Soil excavation began in the UST cavity and proceeded south (South Excavation). A clay tile was discovered that may have been the migration pathway for vapor and free product transport into the sewer. Approximately 5-6,000 tons of contaminated soil was excavated as part of the South Excavation. The approximate areas of this excavation are depicted on Exhibit 6. Analysis of samples taken from this excavation revealed significantly contaminated soil.
- Removal of Northern Contaminated Soil. IEPA-OER demanded that the excavation continue from the tank cavity to the north (North Excavation). (Freedom contended this excavation was unwarranted). The excavation proceeded north and an additional 5-6,000 tons of soil was removed. A total of 11,811 tons of soil were removed as part of the South and North Excavation. The full extent of the excavation is depicted on Exhibit 5.
- The five pre-74 tanks were discovered as the soil excavation moved north and removed.

- Removal of the station building and canopy.
- Collection of closure samples taken every twenty linear feet and from every 400 square feet of excavation floor. None of the closure samples showed contamination from the pre-74 tanks.
- Back-filling the excavation.

Reimbursement Application 3

Reimbursement of \$116,848.37 was requested. \$22,189.00 was denied based on the presence of Ineligible Tanks. This work was necessitated to complete work required by IEPA-OER. The work included:

- Continuation of ventilation of the sewer system.
- Continuation of air monitoring on site and at surrounding properties.
- Final disposal of contaminated groundwater.
- Final excavation subcontractor costs for bulldozer, concrete removal and trackhoe.
- Costs related to final 19 closure samples taken during the last week of work including consultant cost (\$4,000) and lab costs (\$6,000).
- Completion of backfilling the excavation (last couple rounds of sand \$2,260).

Conclusion

As explained above, remediation costs were incurred to address a shear valve release and a tank liner failure. The remediation also addressed any final clean up necessary as a result of the 1996 incident. None of the clean up activities were necessitated by the presence of the Ineligible tanks.

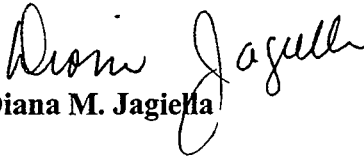
These tanks were discovered during soil excavation ordered by IEPA-OER to respond to the shear valve release and the tank liner failure. The tanks were a chance discovery. Their discovery did not cause any more soil excavation than had already been ordered by IEPA-OER. Furthermore, analytical evidence indicates that even if the tanks were discovered under other circumstances, no

John J. Kim, Esq.
Mr. Mike Heaton
Mr. Mike Lowder
December 18, 2003
Page 7

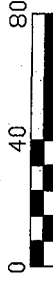
remediation would have been necessitated by the discovery. For these reasons, we request reconsideration of the costs denied based on the discovery of the Ineligible Tanks.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.


Diana M. Jagiella

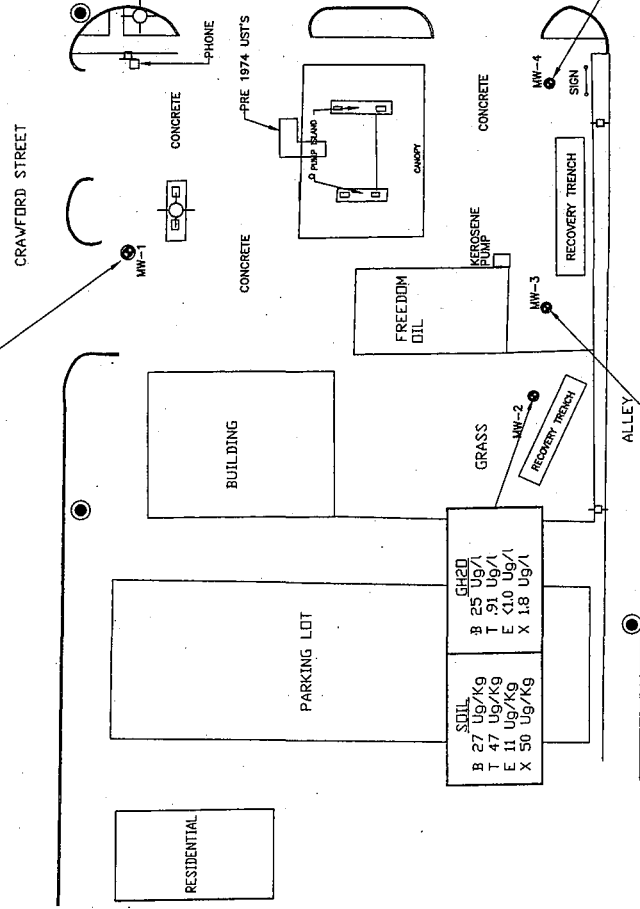
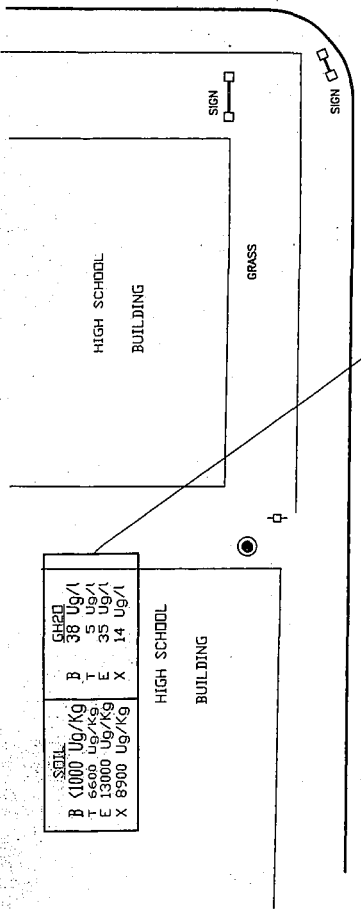
cc: Mr. Michael Owens
Mr. Michael J. Hoffman, P.E.
man:G:\F\Freedom Oil\cor\iepa (Kim-Heaton) 12.10.03.doc



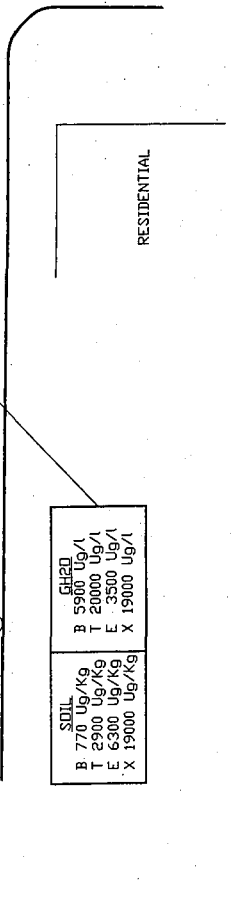
SCALE: 1" = 40'

LEGEND

- TANK FILL
- MANHOLE
- ⊕ POWER POLE
- ⊕_W WATER METER
- ⊕_V WATER VALVE
- ⊕_L LIGHT POLE



SOIL		GH20	
B	1400 Ug/Kg	B	70 Ug/l
T	6800 Ug/Kg	T	1100 Ug/l
E	4600 Ug/Kg	E	70 Ug/l
X	13000 Ug/Kg	X	1000 Ug/l



MACTEC
 ENGINEERING AND CONSULTING, INC.
 PEORIA • CHICAGO • ST. LOUIS • NATIONWIDE
 (309)-692-4422 (800)-373-1999

FREEDOM OIL, PARIS 1996

HIGH SCHOOL BUILDING

SIGN

RIM EL=98.65
INVERT EL=92.79

GRASS

SIGN

INV. EL. = 94.34

CRAWFORD STREET

RW-1

MW-02-1

INV. EL. = 93.00

INV. EL. = 83.30

TRENCH # 2

TRENCH # 1

Sewer Line

BUILDING

CONCRETE 63

CONCRETE 74

Well
Pre 74
Fuel Oil
UST

MW-02-4

PUMP ISLAND

CONCRETE 49

LIMITS OF EXCAVATION

HIGH SCHOOL MAINTENANCE BUILDING

35 FREEDOM OIL

28 GRASS

MW-02-28

MW-2

26

33

Former Sewer Line

MW-3

RW-2

OR UST BEDZ

RECOVERY TRENCH

KEROSENE PUMP

CONCRETE 49

MW-4

47

46

45

44

43

42

41

40

39

38

37

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Water and Gas service

RESIDENTIAL

SCHOOL BUILDING

SEWER LIN

SOIL EXCAVATION
FREEDOM

Exhibit 3

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FREEDOM OIL COMPANY,)	
)	
Petitioner,	)	PCB 03-54
	)	PCB 03-105
vs.	)	PCB 03-179
	)	PCB 04-02
ILLINOIS ENVIRONMENTAL	)	(LUST Fund)
PROTECTION AGENCY,	)	PCB 03-56
	)	(UST Appeal)
Respondent.	)	(Consolidated)

FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT

Pursuant to the General Rules of the Illinois Pollution Control Board (hereafter "Board"), specifically Section 101.620(a) (35 Ill. Admin. Code 101.620(a)), Petitioner serves the attached Interrogatories and Requests for Production of Documents upon the Respondent. Answer the attached separately, fully, in writing, and under oath. Deliver a true copy of your answers or objections to the undersigned attorney within twenty-eight (28) days of service.

INSTRUCTIONS FOR INTERROGATORIES

Petitioner, by and through the undersigned attorney, propound the attached questions to you under the provisions of Section 101.620(a) (35 Ill. Admin. Code 101.620(a)). The answers may be offered in evidence at the hearing in this case.

In answering these Interrogatories, furnish all information available to you, including information in the possession of your attorneys or their investigators and all persons acting in your behalf and not merely such information known of you or of your own personal knowledge. If you cannot answer the Interrogatories in full after exercising due diligence to secure the information, so

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state in your answer and, to the extent possible, answer stating whatever information or knowledge you have.

The questions which follow are to be considered as continuing, and you are requested to provide by way of supplemental answers hereto such additional information as you or any other person acting on your behalf may hereafter obtain which will augment or otherwise modify your answers given below. Such supplemental responses are to be filed and served upon this party immediately upon receipt of such information.

INSTRUCTIONS FOR REQUESTS FOR PRODUCTION OF DOCUMENTS

You are required to serve upon Petitioner, by and through the undersigned attorney, a written response which shall state, with respect to each item or category of items, that inspection and copying will be permitted as requested. The documents shall be produced as they are kept in the regular course of business, or shall be organized and labeled by you to correspond to any items or categories of items in this request. All objections to any item or categories of items or parts thereof, and the reasons for such objection, shall be specifically stated in your response.

With respect to any documents responsive to this request which you have declined to produce by reason of any claim of privilege or immunity, please state (1) the author and recipient, if any, of such document; (2) the date of the document; (3) a description of the nature and subject matter of the document; (4) the grounds upon which the privilege is asserted; and (5) the name and address of the present custodian of the document.

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DEFINITIONS

As used herein, the following terms shall have the meaning indicated below.

A. "Persons" means natural persons, corporations, partnerships, sole proprietorships, associations or any other kind of entity or its agents, servants, and employees.

B. "You" and "your" means the parties to whom these questions are directed as well as agents, employees, attorneys, investigators, subsidiaries, affiliates and all other "persons" acting for said party. Provided, however, the inclusion of attorneys is not meant to and does not seek any information or documents protected by the attorney-client privilege or the work product doctrine.

C. "Respondent" is defined as the Respondent named in this administrative proceeding, and any of its agents, servants, employees, subsidiaries, or affiliates.

D. The term "documents" shall mean writings of every kind, source, and authorship, both originals and all non-identical copies thereof, in your possession, custody, or control, known by you to exist irrespective of whether the writing is intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative entity, or personnel. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded pictures, sound recordings, films, tapes, calculations, permit reviewer notes, and information stored in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand that use such systems. For purposes of illustration and not limitation, the term shall include: Affidavits, agendas, agreements, analyses, announcements, bills, statements and other records of obligations and expenditures, books, brochures, bulletins, calendars, canceled checks, vouchers, receipts and other records of payment, charts, drawings, checkbooks, circulars, collateral files and contents, contracts,

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corporate by-laws, corporate charters, correspondence, credit files and contents, deeds of trust, deposit slips, diaries, drafts, files, guaranty agreements, instructions, invoices, ledgers, journal balance sheets, profit and loss statements, and other sources of financial data, letters, logs, notes, or memoranda of telephonic or face-to-face conversations, manuals, memoranda of all kinds, to and from any persons, agencies, or entities; minutes, minute books, notes, notices, parts, lists, papers, press releases, printed matter (including published books, articles, speeches, and newspaper clippings); purchase orders, records of administrative, technical, and financial actions taken or recommended; reports, safety deposit boxes and contents and records of entry, schedules, security agreements, specifications, statement of bank accounts, statements, interviews, stock transfer ledger, technical and engineering reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test plans, manuals, procedure, data, reports, results, and conclusions; summaries, notes, and other records and recordings of any conferences, meetings, visits, statements, interviews or telephone conversations; telegrams, teletypes and other communications sent or received, transcripts of testimony, UCC instruments, work papers and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested. The term shall also include data or information that exists in electronic or magnetic form. To the extent that such information exists in electronic or magnetic form, this information shall be produced in hard copy form (printed on regular paper).

The term "documents" also includes all such documents, as defined above, whether in the actual possession or under the actual or constructive control of the individual who is requested to produce such documents.

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The term "documents" also includes documents which are considered privileged. If a "document" is considered privileged, such document shall be identified by the type of the document, its subject matter, its author, its date, present location of the custodian of document, and the grounds alleged for the claim of "privilege."

E. In those instances when requested information is stored only on computer hardware or software or other data compilations, the responding party should either produce the raw data along with all codes and programs for translating it into usable form, or produce the information in a finished usable form that includes all necessary glossaries, keys, and indices for interpretation of the material.

F. The conjunctions "and" and "or" are interchangeable and the meaning is always "and/or."

G. "Including" shall mean "including, but not limited to."

H. "Communication" shall mean any method or means by which information, oral or written, is exchanged, including, but not limited to, any telephone conversation, meeting, discussion, letter, facsimile, telex, telegram, electronic mail or any other means by which information was received by you, or transmitted by or to you.

I. "Constructive Control" is defined to include, but not be limited to, all documents (as defined above) in the possession or under the control of other individuals or entities other than the party requested to produce same, when such other individuals are subcontractors, other state agencies, attorneys, relatives, corporations or partnerships owned or controlled by the party, banks, safety-deposit boxes and other places designed for the safe-keeping of records or personal property.

J. "Identify" should be interpreted as requiring the following: with respect to persons, the person's full name, last known address and telephone number; with respect to non-natural

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persons (*e.g.* a corporation), its name, registered agent, address of its principal place of business, registered address (if different from principal place of business) and principal business activity. With respect to documents or things, the term "Identify" should be interpreted as requiring sufficient information regarding the item so that the party seeking discovery can locate and identify the object as readily as the party from whom it is being sought.

K. "Reference to Documents" In those instances when the responding party chooses to answer a request for information by referring to a specific document or record, it is requested that the specification be in sufficient detail to permit the requesting party to locate and identify the records and/or documents from which the answer is to be ascertained, as readily as can the party served with the request.

L. "Document Destruction" It is requested that all documents and/or other data compilations that might impact on the subject matter of this litigation be preserved and that any ongoing process of document destruction involving such documents cease. In the event a responsive document has been destroyed or is no longer in the possession or control of the Respondent, it is requested that the Respondent identify the document and explain any such circumstances.

M. "Petitioner" is defined as the Freedom Oil Company, its representatives, agents, servants, employees, subsidiaries, or affiliates.

N. The abbreviation "IEPA" or "agency" shall refer to the Illinois Environmental Protection Agency.

O. References to "Freedom Facility" and "Facility" shall mean the buildings, equipment and ancillary equipment located at the common address of 401 S. Main St., Paris, Illinois, Edgar County.

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P. "Clean Up Costs" shall mean the costs incurred by Petitioner to remediate and address petroleum releases at the Facility under Incidents 20020433 and 2021122 for which Petitioner requested reimbursement from the Lust Fund.

Q. "Underground Storage Tank," "Tank" or "UST" shall have the meaning set forth in 41 Ill. Admin. Code §170.400.

R. "Ineligible Tanks" shall mean underground storage tanks designated by the state as tank Nos. 7 through 11 which were not registered with the Illinois Office of the State Fire Marshall under 41 Ill. Admin. Code §170.440.

S. "Eligible Tanks" shall mean underground storage tanks No. 1 through 6 which were registered with the Illinois Office of the State Fire Marshall under 41 Ill. Admin. Code §170.440.

T. "Lust Fund" shall mean the underground storage tank fund as described in 415 ILCS 5/57.8.

If Respondent finds the meaning of any term in these Interrogatories unclear, then Respondent should assume a reasonable meaning, state what that assumed meaning is, and answer the Interrogatory on the basis of that assumed meaning.

INTERROGATORIES AND REQUEST TO PRODUCE

INTERROGATORY NO. 1: Please identify each person who participated in preparing the answers to these Interrogatories.

ANSWER:

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INTERROGATORY NO. 2: Please list the name, address, and telephone number of any person who is expected to be called to testify at hearing.

ANSWER:

INTERROGATORY NO. 3: Please list the anticipated subject matter of testimony to be given by the persons identified in the above stated INTERROGATORY NO. 2.

ANSWER:

INTERROGATORY NO. 4: Please state the basis for the assertions in the December 18, 2002, IEPA correspondence that gallonage associated with tanks 1, 5, 6, 7, 8, 9 and 10 were not eligible to access the LUST Fund for reimbursement purposes. Please state whether IEPA continues to assert this contention is factually and/or legally correct.

ANSWER:

REQUEST TO PRODUCE NO. 1: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 4.

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INTERROGATORY NO. 5: Please state the basis for the agency's decision in its December 18, 2002, correspondence to apportion 44.186% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

ANSWER:

REQUEST TO PRODUCE NO. 2: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 5.

INTERROGATORY NO. 6: Please state the basis for the agency's decision in its March 19, 2003, correspondence to apportion 20.93% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

ANSWER:

REQUEST TO PRODUCE NO. 3: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 6.

INTERROGATORY NO. 7: Please state the basis for the agency's decision in its May 28, 2003, correspondence to apportion 19.05% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

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ANSWER:

REQUEST TO PRODUCE NO. 4: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 7.

INTERROGATORY NO. 8: Does the IEPA contend gallonage or petroleum associated with tanks 7, 8, 9, 10 and/or 11 caused or contributed to the need for clean up at the site with regard to Incidents 20021122, 20020433 and/or 20021420? If so, state the factual and legal basis for this contention.

ANSWER:

REQUEST TO PRODUCE NO. 5: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 8.

INTERROGATORY NO. 9: Please identify the facts in support of and the legal basis for IEPA's conclusion set forth in its December 18, 2002, March 19, 2003, and May 28, 2003, correspondence that apportionment of the clean up costs to tanks 7, 8, 9, 10 and/or 11 is allowed under 415 ILCS §57.8(m).

ANSWER:

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REQUEST TO PRODUCE NO. 6: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 9.

INTERROGATORY NO. 10: Please explain the basis for the state's denial of \$247,267.17 in corrective action costs given that correspondence from the state made representations corrective action costs would be reimbursed from the Fund on August 16, 2002, August 23, 2002, and September 3, 2002. (See Attachment 1)

ANSWER:

REQUEST TO PRODUCE NO. 7: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 10.

INTERROGATORY NO. 11: Does the state contend any of the corrective action costs were associated with or necessitated by the presence of the Ineligible Tanks? If so, state the factual basis for this contention. Also, identify what specific corrective action was necessitated by the Ineligible Tanks.

ANSWER:

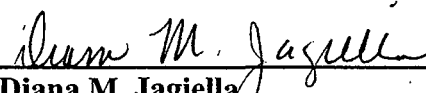
THIS FILING IS SUBMITTED ON RECYCLED PAPER

REQUEST TO PRODUCE NO. 8: Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 11.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By:



Diana M. Jagiella

Dated: November 17, 2004

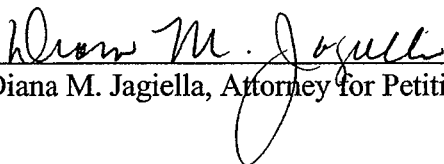
Diana M. Jagiella
Attorney for Petitioner
Howard & Howard Attorneys, P.C.
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, IL 61602-1350

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 17th day of November, 2004, I have served the attached *FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT*, by depositing same via first-class U.S. mail delivery to:

John J. Kim, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East, P.O. Box 19276
Springfield, IL 62794-9276


Diana M. Jagiella, Attorney for Petitioner

Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza, Suite 600
211 Fulton Street
Peoria, IL 61602
(309) 672-1483

man\G:\F\Freedom Oil\pldgs\Interrog&ReqtoProduce.doc

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

September 3, 2002

**James L. Morgan, Assistant
Attorney General**
Office of the Attorney General
500 S. Second Street
Springfield, IL 62706

Via Facsimile – (217) 524-7740

**Re: Freedom Oil, Paris, Illinois
Our File No. 17273-1**


Dear Jim:

In response to your September 3, 2002 letter, we do request that the actual costs be reviewed by the IEPA Underground Storage Tank Section and that you ask for an expedited review of the costs. Confirmation of reimbursement will be necessary to obtain financing for the project.

Thanks for your cooperation.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.


Diana M. Jagiella

cc: John Waligore, Esq.
Richard Pletz
Tod Rowe
Michael Owens

sw:G:\NF\Freedom Oil\cor\morgan9-3-02.doc





OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

September 3, 2002

Diana Jagiella
Howard & Howard
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

Richard S. Pletz
Project Manager
Harding ESE, Inc.
8901 North Industrial Road
Peoria, IL 61615-1509

Re: Freedom Oil, Paris, Illinois, UST System Removal

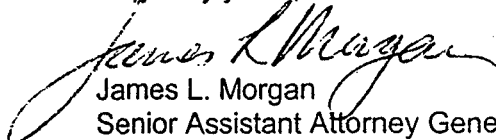
Greetings:

I have reviewed Mr. Pletz's letter of August 28, 2002, with representatives of IEPA's Emergency Response Unit. We can confirm that the 13 items listed on the first page of the letter are eligible for reimbursement from the LUST Fund. Neither I nor the ERU staff can weigh in on whether the estimated costs will actually be approved. That is the province of IEPA's UST Section and is typically done on the basis of actual bills submitted with a reimbursement application.

If necessary, I can forward the estimate to the UST Section and ascertain whether they could provide any additional feedback. I cannot gauge how quickly they could respond but would relay your desire for a quick turnaround.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,


James L. Morgan
Senior Assistant Attorney General

JM:jm
emc: John Waligore
Tod Rowe



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

August 23, 2002

Diana Jagiella
Howard & Howard
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

Re: Freedom Oil, Paris, Illinois, Your file no. 17273-1


Dear Ms. Jagiella:

I am writing to follow up on our discussion of the afternoon of August 23rd. I immediately spoke with representatives of IEPA ORU and they agreed that expedited action by the Office of State Fire Marshal on a request by Freedom to remove the entire tank system to address gross subsurface contamination is called for here. Tod Rowe left our conference to immediately contact Bill Alderson of the Fire Marshal's Office to ask for such expedited action.

I can also confirm that removal of the tank system and demolition of the building as part of the effort to eliminate gross subsurface contamination would be reimbursable from the fund, subject to the standard caveat regarding reasonable and customary costs. Requests for reimbursement would have to satisfy the other applicable requirements set forth in Subpart F. It is our intent that Freedom be reimbursed for appropriate response measures and we will work to assure that.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,


James L. Morgan
Senior Assistant Attorney General

JM:jm
emc: John Waligore
Tod Rowe



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

August 16, 2002

Diana Jagiella
Tracy C. Litzinger
Howard & Howard
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

Re: Freedom Oil, Paris, Illinois, Your file no. 17273-1

Dear Ms. Jagiella:

I am writing to confirm discussions at the August 15th hearing regarding Freedom's concern about avoiding expenses for removal of contaminated soil beyond 4 feet from the outside diameter of the leaking underground storage tank as an early action measure because those costs may not be reimbursed by the LUST Fund without an approved budget for corrective action. As was stated, because of the documented threat to human health and the environment, IEPA's OER and LUST Section have determined that OER should take the lead and direct performance by Freedom of both early action and corrective action measures pursuant to 35 Ill. Adm. Code 732.105. It is the Agency's practice that any action directed by OER as necessary to abate an emergency situation will be reimbursed by the Fund if it does not exceed the reasonable and customary charges for such activity. Furthermore, 732.405(d) authorizes an owner/operator to elect to proceed with corrective action activities prior to the submittal or approval of "an otherwise required" "corrective action plan or budget."

Thus, we sought to overcome Freedom's reluctance to provide its neighbors and the City of Paris with the significant protection that removal of the grossly contaminated soil would provide because that removal could include contaminated soil from beyond 4 feet from the outside diameter of the leaking underground storage tank by combining early action and corrective action (hence the use of the phrase grossly contaminated soil rather than just visibly contaminated soil, the term previously used in Section 57.7(a)(1)(B) and now used in Section 57.6 prior to the pronouncement of the four-foot rule) since the contamination is likely to exceed the four foot limit. OER's characterization as of the soil removal effort as both early action and corrective action should smooth over Freedom's monetary concerns.

Requests for reimbursement would have to satisfy the other applicable requirements set forth in Subpart F. It is our intent that Freedom be reimbursed for appropriate response measures and we will work to assure that.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,


James L. Morgan
Senior Assistant Attorney General

JM:jm

emc: John Waligore
Tod Rowe

Exhibit 4

ILLINOIS POLLUTION CONTROL BOARD

January 4, 2005

RECEIVED
CLERK'S OFFICE

JAN 04 2005

STATE OF ILLINOIS
Pollution Control Board

FREEDOM OIL COMPANY,)	
)	
Petitioner,)	
)	
v.	)	PCB 03-54
	)	PCB 03-56
ILLINOIS ENVIRONMENTAL	)	PCB 03-105
PROTECTION AGENCY,	)	PCB 03-179
	)	PCB 04-2
Respondent.	)	(UST Appeal)
	)	(Consolidated)

HEARING OFFICER ORDER

On January 4, 2005, the parties participated in a telephone status conference with the hearing officer. Respondent's deadline for responding to petitioner's discovery requests is January 27, 2005. A hearing was set for March 2, 2005.

The parties are directed to participate in a telephone status conference with the hearing officer at 10:30 a.m. on February 22, 2005. The status conference shall be initiated by the petitioner.

Petitioner filed an open waiver of the decision deadline in this matter.

IT IS SO ORDERED.

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS

PCB 2003-054
John J. Kim
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PCB 2003-054
Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

PCB 2003-056
John J. Kim
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PCB 2003-056
Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

PCB 2003-105
John J. Kim

PCB 2003-105
Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

PCB 2003-179
*
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PCB 2003-179
Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

PCB 2004-002
*
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PCB 2004-002
Diana M. Jagiella
Howard & Howard Attorneys, P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602-1350

Exhibit 5

ILLINOIS POLLUTION CONTROL BOARD
February 25, 2005

RECEIVED
CLERK'S OFFICE

FEB 25 2005

STATE OF ILLINOIS
Pollution Control Board

FREEDOM OIL COMPANY,)	
)	
Petitioner,)	
)	
v.	)	PCB 03-54
	)	PCB 03-56
ILLINOIS ENVIRONMENTAL	)	PCB 03-105
PROTECTION AGENCY,	)	PCB 03-179
	)	PCB 04-2
Respondent.	)	(UST Appeal)
	)	(Consolidated)

HEARING OFFICER ORDER

On February 24, 2005, the parties participated in a telephone status conference with the hearing officer. Petitioner will file a motion to withdraw the motion for partial summary judgment and the motion for discovery relief. Petitioner's motion for partial summary judgment is now moot, having been resolved by the parties. With respect to discovery, respondent will provide responses, the record, and the statement of facts by March 2, 2005. The hearing set for March 2, 2005, is postponed until April 6, 2005.

The parties are directed to participate in a telephone status conference with the hearing officer at 11:30 a.m. on March 29, 2005. The status conference shall be initiated by the petitioner.

Petitioner filed an open waiver of the decision deadline in this matter.

IT IS SO ORDERED.

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us