

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

THE ESTATE OF GERALD HESS,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 06 - 009
(UST Appeal)

RECEIVED
CLERK'S OFFICE
JUL 19 2005
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on July 19, 2005 filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decision.

Dated: July 19, 2005

Respectfully submitted,

The Estate of Gerald Hess

By:

Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
281139v1

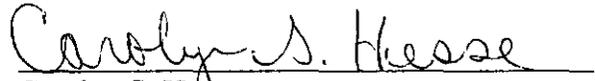
[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decision by placing a copy in an envelope addressed to:

John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 19th Day of July, 2005.


Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

JUL 19 2005

STATE OF ILLINOIS
Pollution Control Board

THE ESTATE OF GERALD HESS,)
)
Petitioner,)
)
v.) PCB 06 - 04
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISION**

The Estate of Gerald Hess, by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. The Estate of Gerald Hess (the "Estate") is the owner of underground storage tanks (USTs) at a former gasoline service station located at 2977 State Route 4, Marine, Madison County, Illinois (the "Station"). The USTs stored gasoline.
2. LUST Incident Number 20040820 was obtained following a site investigation. The site has also been assigned LPC #1190705011-Madison County.
3. On February 2, 2005, the Agency received a complete application for payment for the period of June 1, 2004 to November 30, 2004. The amount requested is \$184,702.16.

4. By letter dated June 15, 2005 (the "Letter"), the Agency applied the deductible amount of \$10,000.00 and approved for payment the amount of \$140,545.89. *See* Exhibit A.
5. The Letter states that "This constitutes the Agency's final action with regard to the above application(s) for payment." The Letter also advises the Estate of its right to appeal this final Agency decision.

COUNT I

6. The Estate hereby incorporates and realleges the allegations contained in paragraphs 1 through 5.
7. Accounting and technical deductions are listed in Attachments A to the letter. *See* Exhibit A.
8. The Letter provides no additional information regarding why the remaining deductions were made or the bases for those deductions.
9. The costs for which Petitioner seeks reimbursement are reasonable costs and are consistent with previously approved amounts.
10. Petitioner is appealing the Agency's decision Letter dated June 15, 2005.

Wherefore, The Estate of Gerald Hess respectfully requests that the Board enter an Order to require that the Agency reimburse the full amount requested by Petitioner in the February 2, 2005 reimbursement request, minus the \$10,000 deductible, and for Petitioner's attorneys' fees and costs in bringing this appeal.

COUNT II

11. CW³M hereby incorporates and realleges the allegations contained in paragraphs 1 through 10.

12. Section 732.602 of the Petroleum Underground Storage Tank regulations provides that “The Agency shall conduct a review of any application for payment submitted pursuant to this Part.” *See* 35 Ill. Admin. Code 732.602(a).
13. Section 732.602 includes review of applications for payment of early action activities. *See* 35 Ill. Admin. Code 732.602(b)(3).
14. The reimbursement request submitted by the Estate is for early action activities.
15. Section 732.602(e) provides that:

Except as provided in subsection (f) of this Section, if the Agency fails to notify the owner or operator of its final action on an application for payment within 120 days after the receipt of a complete application for payment, the owner or operator may deem the application for payment approved by operation of law.

See 35 Ill. Admin. Code 732.602(e).
16. Subpart (f) provides that the owner or operator may waive the 120 day time limit. The estate has not waived the time limit.
17. More than 120 days have passed between when the Agency received the complete application for payment on February 2, 2005 and the date of the Agency’s final decision on June 15, 2005.
18. Thus, the Estate may deem the application for payment approved by operation of law.

Wherefore, the Estate of Gerald Hess respectfully requests that the Board enter an Order requiring the Agency to approve the full amount of the February 2, 2005 application for payment minus the \$10,000.00 deductible and for Petitioner's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

The Estate of Gerald Hess

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
281001v1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

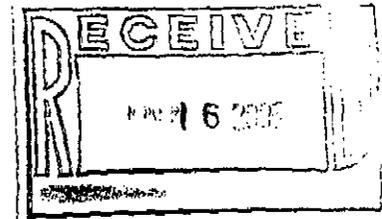
217/782-6762

JUN 15 2005

CERTIFIED MAIL #

7004 2510 0001 8652 9280

The Gerald Hess Estate
Attn: Holly Turner, Attorney for Estate
c/o CW3M Company, Inc.
P.O. Box 571
Carlinville, IL 62626



Re: LPC #1190705011 -- Madison County
Marine/Estate of Gerald Hess
2977 State Route 4
LUST Incident No. 20040820
LUST FISCAL FILE

Dear Ms. Turner:

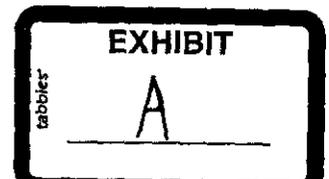
The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732. Subpart F. This information is dated January 22, 2005 and was received by the Agency on February 2, 2005. The application for payment covers the period from June 1, 2004 to November 30, 2004. The amount requested is \$184,702.16.

The deductible amount to be assessed on this claim is \$10,000.00, 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 February 2, 2005, 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 \$140,545.89 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.

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 - 545 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 527 S. University St., Peoria, IL 61614 - (309) 691-5463
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 • COLLINGSVILLE - 2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-2200

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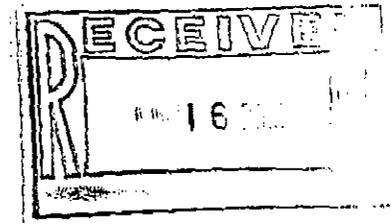


Page 2

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 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 Nancy Moore of my staff or Mindy Weller of Harry Chappel's staff at 217/782-6762.

Sincerely,

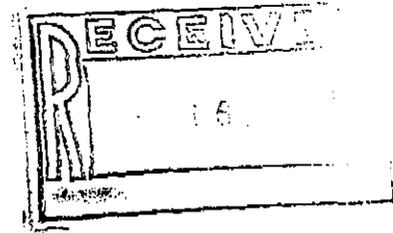
Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:NM:me\052045

Attachment A

cc: CW3M Company

Attachment A
Accounting Deductions



Re: LPC #1190705011 -- Madison County
Marine/Estate of Gerald Hess
2977 State Route 4
LUST Incident No. 20040820
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. \$397.88, 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))

The following deductions are from the period July 1, 2004 to July 31, 2004:

- a. There are 30 quarters eligible for Per Diem (\$63.00).
- b. The handling charges associated with the hotel bills are ineligible (\$10.80).

The following deductions are from the period August 1, 2004 to August 31, 2004:

- a. There are 101 quarters eligible for Per Diem (\$252.00).
- b. The Handling Charges associated with the hotel bills are ineligible (\$34.23).
- c. One quarter of Per Diem is being deducted from Martinsville Warehouse and Logistics Invoice #935 for P. Rideout. Only 13 quarters are eligible, based on the times worked, according to the Driver's Daily Reports (\$7.00).
- d. One quarter of Per Diem is being deducted from Martinsville Warehouse and Logistics Invoice #942 for P. Rideout. Only 6 quarters are eligible, based on the times worked, according to the Driver's Daily Reports (\$7.00).
- e. Three quarters of Per Diem are being deducted from Martinsville Warehouse and Logistics Invoice #953 (one quarter each for C. Ruder, P. Ruder and D. Gosnell). Only 15 quarters are eligible, based on the times worked, according to the Driver's Daily Reports (\$21.00).

The following deduction is from the period September 1, 2004 to September 30, 2004:

- a. The Handling Charges associated with the hotel bills are ineligible (\$2.85).

2. \$38.53, deduction for costs associated with Site Investigation. These costs are 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 deduction is from the period September 1, 2004 to September 30, 2004:

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- a. The Postage for "TEPA SI Forms" is associated with Site Investigation, not Early Action (\$1.79).

The following deductions are from the period October 1, 2004 to October 31, 2004:

- a. The Copies for "TEPA SIP/Attachments" is not associated with Early Action (\$33.90).
 - b. The Postage for "TEPA SI Plan" is not associated with Early Action (\$2.84).
3. \$2.80, 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).

The following deduction is from the period August 1, 2004 to August 31, 2004:

- a. The Handling Charges associated with the deductions from Martinsville Warehouse and Logistics Invoices #935, #942 and #953 for Per Diem are disallowed (\$2.57).

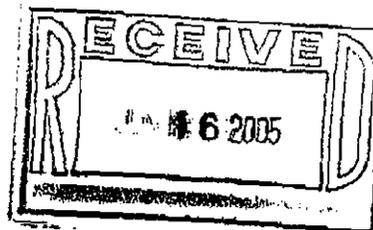
The following deduction is from the period September 1, 2004 to September 30, 2004:

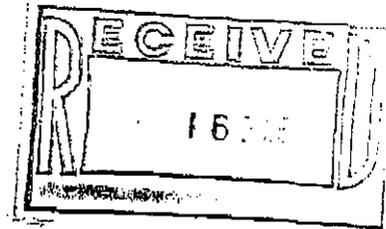
- a. The Handling Charge associated with the deduction for Postage is denied (\$.09).

The following deduction is from the period October 1, 2004 to October 31, 2004:

- a. The Handling Charge associated with the deduction for Postage is denied (\$.14).

NM:me\052046



Attachment A
Technical Deductions

Re: LPC #1190705011 -- Madison County
Marine/Hess, Gerald Estate of
2977 State Route 4
LUST Incident No. 20040820
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. \$1,120.00, deduction for costs associated with the analysis of laboratory samples for constituents other than applicable indicator contaminants or groundwater objectives (35 Ill. Adm. Code 732.606(r)). These costs are 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)).
2. \$3,054.00, deduction for costs that appear to be associated with site investigation activities, not early action activities. These costs are 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)).
3. \$5,130.00, 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 billing package indicates charges for "Operator CAT Trackhoe or Backhoe." The billing package also includes costs for "Operator & CAT Trackhoe or Backhoe." It was indicated by CW3M Company, Inc. that the costs for "Operator CAT Trackhoe or Backhoe" were less than the costs for "Operator & CAT Trackhoe or Backhoe" because the operator was not operating the equipment. Therefore, it is unclear to the Illinois EPA as to the purpose of the costs for "Operator CAT Trackhoe or Backhoe" if the equipment is not being operated.

4. \$22,300.25, deduction for costs due to excessive Personnel and Equipment costs for early action activities (Section 57.6(b) of the Act and 35 Ill. Adm. Code 732.606(o)). In addition, these costs are unreasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)).

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- 5. \$2,112.81, deduction for costs associated with Equipment, Stock Items, materials and Expendables which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh))

HAC:MW:mw\20040820FiscalAttachment A.DOC

