

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

JUL 29 2005

STATE OF ILLINOIS
Pollution Control Board

Q&E PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 06-14
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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 29, 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 29, 2005

Respectfully submitted,

Q&E Properties, Inc.

By: Carolyn S. Hesse
One of Its Attorneys

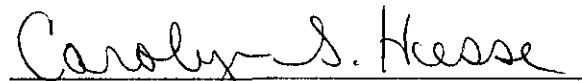
Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
283087v1

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 29th Day of July, 2005.



Carolyn S. Hesse

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CLERK'S OFFICE

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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STATE OF ILLINOIS
Pollution Control Board

Q&E PROPERTIES, INC.,)	
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Petitioner,)	
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v.)	PCB 06- <u>14</u>
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

Q&E Properties, Inc., 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. Q&E Properties, Inc. ("Q&E") is the owner of underground storage tanks (USTs) at a former gasoline service station located at 1100 Stevenson Drive, Springfield, Sangamon County, Illinois (the "Station"). The USTs stored gasoline.
2. LUST Incident Number 20041229 was assigned to the release on August 31, 2004. The site has also been assigned LPC #1671205701-Sangamon County.
3. On May 6, 2005, the Agency received a complete application for payment for the period of September 1, 2004 to January 31, 2005. The amount requested is \$276,873.39.

4. By letter dated July 1, 2005 (the "Letter"), the Agency applied the deductible amount of \$10,000.00 and approved for payment the amount of \$228,772.68. *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 Q&E of its right to appeal this final Agency decision.
6. Accounting and technical deductions are listed in Attachments A to the letter. *See* Exhibit A.
7. The Letter provides no additional information regarding why the accounting and technical deductions were made or the bases for those deductions.
8. The costs for which Petitioner seeks reimbursement are reasonable costs and are consistent with previously approved amounts.
9. Petitioner is appealing the Agency's decision Letter dated July 1, 2005.

Wherefore, Q&E Properties, Inc., 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.

Respectfully submitted,

Q&E Properties, Inc.

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
283053v1



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

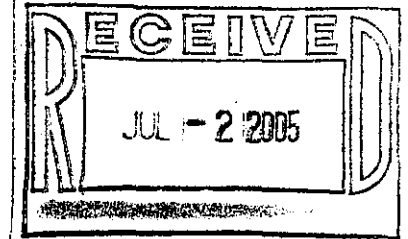
217/782-6762

CERTIFIED MAIL #

JUL 01 2005

7004 2510 0001 8645 7682

Q & E Properties, Inc.
Attn: Grady Chronister
c/o CW3M Company, Inc
P.O. Box 571
Carlinville, IL 62626



Re: LPC #1671205701 -- Sangamon County
Springfield/Q & E Properties, Inc.
1100 Stevenson Drove
LUST Incident No. 20041229
LUST FISCAL FILE

Dear Mr. Chronister:

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 March 8, 2005 and was received by the Agency on March 10, 2005. The application for payment covers the period from September 1, 2004 to January 31, 2005. The amount requested is \$276,873.39.

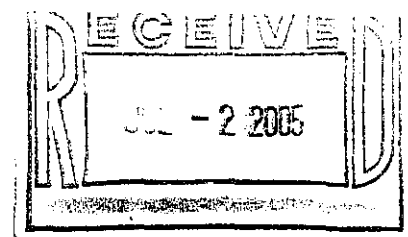
The deductible amount to be assessed on this claim is \$10,000.00, which is being deducted from this payment. In addition to the deductible, there are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On May 6, 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 \$228,772.68 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 60018 - (708) 441-7400
Evanston - 593 South State, Elgin, IL 60123 - (847) 608-3131 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 691-7462
E. Moline - 1420 S. Phoenix - 7620 N. University St., Peoria, IL 61614 - (309) 691-7462 • Champaign - 2125 South First Street, Champaign, IL 61820 - (217) 244-6892
Springfield - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 788-6892 • Collinsville - 2009 Mall Street, Collinsville, IL 62234 - (618) 993-7200
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER





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 Clayton Bloome of Hernando Albarracin's staff at 217/782-6762.

Sincerely,

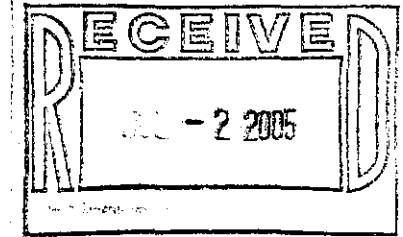
Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:NM:me\051925.doc

Attachment A

cc: CW3M Company

Attachment A
Accounting Deductions



Re: LPC #1671205701 -- Sangamon County
Springfield/Q & E Properties, Inc.
1100 Stevenson Drive
LUST Incident No. 20041229
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

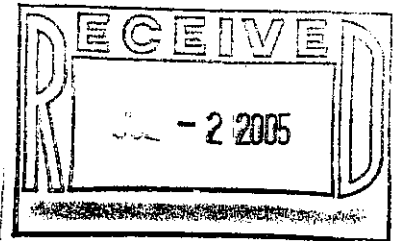
1. \$83.50, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).
 - A. During the time period from December 1, 2004 to December 31, 2004, there is mileage billed for B.A. Beavers on December 12, 2004. However, this person has no personnel hours on that day (\$1.52).
 - B. There are some Per Diem charges being denied on the following Martinsville Warehouse and Logistics invoices, based on the hourly information on the hauling tickets.
 1. Four quarters on Invoice #1001 for G. Duniphan, P. Ruder and C. Ruder on December 20, 2004 (one quarter each) and one quarter for P. Rideout on December 21, 2004 (\$28.00).
 2. Three quarters on Invoice #1002 for C. Ruder and D. Gosnell on December 27, 2004 (one quarter each) and one quarter for G. Duniphan on December 28, 2004 (\$21.00).
 3. Two quarters on Invoice #1003, one quarter each for C. Ruder on January 3, 2005 and for G. Duniphan on January 4, 2005 (\$14.00).
 - C. The Handling Charges associated with the charges from Casey Stone Co. on Martinsville Warehouse and Logistics Invoices #1001 and #1002 are denied. No invoices could be provided from Casey Stone Co., per the response from CW3M received on May 5, 2005. Handling Charges can be considered only on costs with accompanying invoices/receipts (\$18.98).
2. \$5.70, 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))

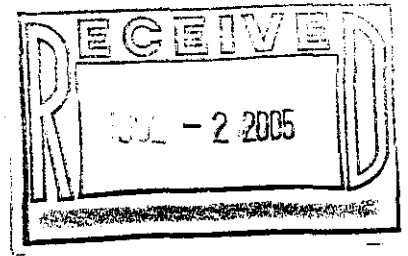
The handling Charges applied to the IEPA Demolition Notification fee are denied.

3. \$1.26, 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 Handling Charges associated with the deductions for Per Diem on Martinsville Warehouse and Logistics Invoices #1001, #1002 and #1003 are denied.

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Attachment A
Technical Deductions

Re: LPC #1671205701 -- Sangamon County
Springfield/Q & E Properties, Inc.
1100 Stevenson Dr.
LUST Incident No. 20041229
LUST Technical 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. \$2610.00, 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.

2. \$31,200.25, 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)).
3. \$4,200.00, 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))

HAA:CTB