

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

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NOV 17 2005

STATE OF ILLINOIS
Pollution Control Board

TELZROW OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 06-26
)	(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 November 17, 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: November 17, 2005

Respectfully submitted,

Telzrow Oil Company

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
305132

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 17th Day of November, 2005.



Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

TELZROW OIL COMPANY,)
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Petitioner,)
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v.) PCB 06-26
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Telzrow Oil Company, 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. Telzrow Oil Company ("Telzrow") is the owner of underground storage tanks (USTs) at a gasoline service station located at 605 South State Street, Jerseyville, Jersey County, Illinois (the "Station"). The USTs stored gasoline and used oil.
2. LUST Incident Number 20031133 was assigned to the release. The site has also been assigned LPC #0830255041-Jersey County.
3. On March 2, 2005, the Agency received an application for payment dated February 18, 2005. The application for payment covers the period from December 1, 2003 to December 31, 2004. The amount requested is \$40,165.78.

4. The work for which payment was sought was performed pursuant to an approved Site Investigation Plan (“SIP”) and SIP Budget (“Budget”).
5. By letter dated July 14, 2005 (the “Letter”), the Agency rejected certain costs for which payment was requested. (*See Exhibit A.*)
6. The Letter stated that a complete application for payment was received on April 26, 2005.
7. Information on the Agency’s website regarding the Telzrow site indicates that bills were received for the site on March 2, 2005. (*See Exhibit B.*)
8. The Letter also advises Telzrow of its right to appeal this final Agency decision.
9. The Agency’s Letter includes as reasons for denying certain payments comments that are contradictory to the information previously provided, are internally inconsistent, exceed the Agency’s authority and are in violation of the Act and regulations at 35 IL Admin Code 732.
10. In Item #1 of Attachment A to the Letter, the Agency stated that the certain billings exceeded the approved Budget amounts.
11. The billings referenced in Item #1 did not exceed the approved Budget amounts.
12. In Item #2 of Attachment A to the Letter the Agency stated that certain costs lacked supporting documentation.
13. Adequate supporting documentation was provided with the request for payment and the Agency’s refusal to approve payment by claiming lack of supporting documentation exceeds the Agency’s authority and is a

violation of the Environmental Protection Act and the regulations at 35 Ill. Adm. Code 732.

14. Section 57.8 (a)(1) (from P.A. 92-554) of the Act provides as follows:

In the case of any approved plan budget for which payment is being sought, the Agency shall make a payment determination within 120 days of receipt of the application. Such determination shall be considered a final decision. The Agency's review shall be limited to generally accepted auditing and accounting practices. In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal. If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application. However, in no event shall the Agency reimburse the owner or operator an amount greater than the amount approved in the plan.

415 ILCS 5/57.8 (a)(1) (Emphasis added).

15. The term "Plan" is defined at Section 57.7(c)(5) to include site investigation plan budgets. 415 ILCS 5/57.7(c)(5) (P.A. 92-554).
16. The Agency did not make a payment determination within 120 days of receipt of the application on March 2, 2005. The payment determination was made on July 14, 2005, 134 days after the payment request was submitted.
17. By operation of law, the full amount Telzrow requested for payment is deemed approved.
18. The regulations that apply to IEPA's review of applications for payment are found at 35 Ill. Admin. Code 732.602. Section 732.602 (a) states:

The Agency shall conduct a review of any application for payment submitted pursuant to this Part. Each application for payment shall be reviewed to determine whether the application contains all of the elements and supporting documentation required by Section 732.601(b) of this Part and whether the amounts sought for payment have been certified in accordance with Section 732.601(b)(2) of this Part as equal to or less than the amounts approved in the corresponding budget plan.

19. The circumstances under which the agency may conduct a full review of any application for payment are listed at 35 Ill. Admin. Code 732.602(b).

These circumstances in which the Agency may conduct a full review are limited to the following:

- (1) If the amounts sought for payment exceed the amounts approved in the corresponding budget plan;
- (2) If the Agency has reason to believe that the application for payment is fraudulent; or
- (3) If the application for payment includes costs for early action activities . . . and either of the following circumstances exist:
 - (A) The application for payment is solely for early action costs that have not been approved as part of a prior budget plan; or
 - (B) The application for payment includes early action costs that have not been approved as part of a prior budget plan, except that only the portion of the application for the unapproved early action costs may be given a full review.

In other words, the Agency may not conduct a full review of a reimbursement package submitted pursuant to an approved budget unless one of the listed circumstances has been met.

20. None of the listed circumstances at Section 732.602(b) exist.
21. The Agency may require the owner or operator to submit a full accounting (i.e. invoices) supporting all claims only when conducting a full review of any application for payment. 35 Ill. Admin. Code 732.602(c).

A full review may include review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims.

35 Ill. Admin. Code 732.602(d).

22. The Agency's denial of certain costs as lacking documentation demonstrates that IEPA performed a full review of Telzrow's reimbursement claims which is in violation of section 732 602(b).
23. Section 57.8 (a)(3) (from P.A. 92-554) of the Act provides as follows:

In the case of insufficient funds, the Agency shall form a priority list for payment and shall notify persons in such priority list monthly of the availability of funds and when payment shall be made. Payment shall be made to the owner or operator at such time as sufficient funds become available for the costs associated with site investigation and corrective action and costs expended for activities performed where no proposal is required, if applicable. Such priority list shall be available to any owner or operator upon request. Priority for payment shall be determined by the date the Agency receives a complete request for partial or final payment. Upon receipt of notification from the Agency that the requirements of this Title have been met, the Comptroller shall

make payment to the owner or operator of the amount approved by the Agency, if sufficient money exists in the Fund. If there is insufficient money in the Fund, then payment shall not be made. If the owner or operator appeals a final Agency payment determination and it is determined that the owner or operator is eligible for payment or additional payment, the priority date for the payment or additional payment shall be same as the priority date assigned to the original request for partial or final payment.

415 ILCS 5/57.8 (a)(1).

24. The requirements for a complete application for payment are listed at 35

Ill. Admin. Code 732.601(b).

(b) A complete application for payment shall consist of the following elements:

- (1) A certification from a Licensed Professional Engineer acknowledged by the owner or operator that the work performed has been in accordance with a technical plan approved by the Agency or, for early action activities, in accordance with Subpart B of this Part;
- (2) A statement of the amounts approved in the corresponding budget plan and the amounts actually sought for payment along with a certified statement by the owner or operator that the amounts so sought have been expended in conformance with the elements of a budget plan approved by the Agency;
- (3) A copy of the OSFM or Agency eligibility and deductibility determination;
- (4) Proof that approval of the payment requested will not exceed the

limitations set forth in the Act and Section 732.604 of this Part;

- (5) A federal taxpayer identification number and legal status disclosure certification;
 - (6) A Private Insurance Coverage form;
 - (7) A Minority/Women's Business Usage form; and
 - (8) Designation of the address to which payment and notice of final action on the application for payment are to be sent.
25. There are no other listed items that must be included in order for an application for payment to be considered complete. As long as all of the information listed in Subsection 732.601(b) is provided, the application for payment is complete.
26. The application for payment dated February 18, 2005 that the Agency's Letter states was received on March 2, 2005 was complete.
27. The Agency's statement in the Letter that the application was not complete until April 26, 2005 is in error and the Agency's alteration of the date it received the application is arbitrary and capricious, exceeds the Agency's authority and is in violation of the Act and regulations.
28. Telzrow's request for payment is reasonable and consistent with the Act and regulations at 35 Ill. Admin. Code 732.
29. The Agency's rejection of the request for payment was arbitrary, and capricious, violates the Act and regulations at 35 Ill. admin. Code 732, and is for the sole purpose of harassing Telzrow and its consultant.

30. Petitioner is appealing the Agency's decision Letter dated July 14, 2005.
31. On August 19, 2005, the parties timely filed a joint notice to extend the 35 day period to appeal the Agency's July 14, 2005 decision. On September 1, 2005 the Board issued an order extending the time to appeal to November 17, 2005. (See Exhibit C.)

Wherefore, Telzrow Oil Company, respectfully requests that the Board enter an Order:

That Telzrow is owed by operation of law the full amount of the requested payment;

That the Agency violated the Act and regulations and require the Agency comply with the Act and regulations;

That the Agency approve the request for payment submitted on March 2, 2005;

That the Agency must correct the queue date for priority of payment from April 26, 2005 to March 2, 2005; and

For Petitioner's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Telzrow Oil Company

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
CHDS01 CSH 30506.3v2



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

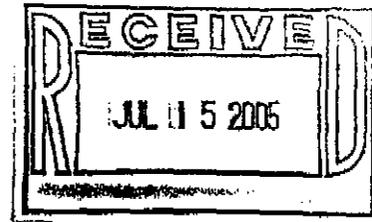
217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8645 8368

JUL 14 2005

Telzrow Oil Company
Attn: Jim Telzrow
P.O. Box 571
Carlinville, Illinois 62626



Re: LPC #0830255041 - Jersey County
Jerseyville/Telzrow Oil Company
605 South State Rd.
LUST Incident No. 20031133
LUST FISCAL FILE

Dear Mr. Telzrow:

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 18, 2005 and was received by the Agency on March 2, 2005. The application for payment covers the period from December 1, 2003 to December 31, 2004. The amount requested is \$40,165.78.

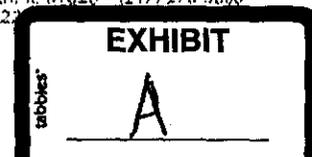
The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on May 18, 2004 for \$90,437.96. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On April 26, 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 \$27,053.03 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 62424
MARION - 2309 W. Main St., Suite 117, Marion, IL 62959 - (618) 993-7200

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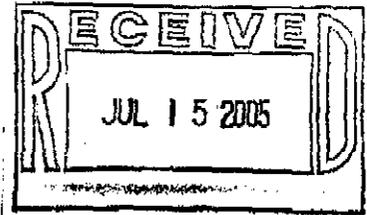


Page 2

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 Niki Weller of my staff or Eric Kuhlman of the technical section at 217/782-6762.

Sincerely,

A handwritten signature in cursive script that reads "Douglas E. Oakley".

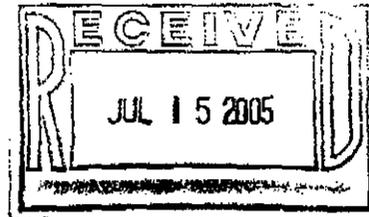
Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:NW:m\051503.doc

Attachment

cc: CW3M

Attachment A
Technical Deductions



Re: LPC #0830255041 – Jersey County
Jerseyville / Telzrow Oil Company
605 South State Street
LUST Incident No. #20031133
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. \$4,040.25, deduction for costs associated with site investigation activities. The billings submitted exceed the approved budget amounts. Therefore, the Illinois EPA is unable to approve billings that exceed the approved budget amounts. (Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(f))

The Illinois EPA has determined that these costs are not reasonable as submitted since their drilling costs exceed the approved budgeted amount for investigation costs.

- 2. \$9,072.50, 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)).

The Illinois EPA has determined that these costs are not reasonable as submitted, and these costs are not consistent with the requirement for a line item estimate of all costs associated with the development, implementation, and completion of site evaluation activities required in 35 Ill. Adm. Code 732.307 (35 Ill. Adm. Code 732.305(b)(2)).

Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

EK:EK\

LIT ; Title XVI



10/11/04 07:07

Rod R. Blagoje

L.I.T. Search

IEMA # 20031133

LPG # 0830255041

Site: Telzrow Oil Co.

Bills Received	Status Code	Amount Requested	Amount Paid	Voucher Date	Deductible
5/18/2004	VOP	90437.96	80437.96	9/9/2004	10000
3/2/2005	ACC	40165.78	0		0

Site (Main)	Tank Operator	General	Title XVI	TACO	Search
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LIT ; Title XVI



10/13/2005

Rod R. Blagoje

L.I.T. Search

IEMA # 20031133

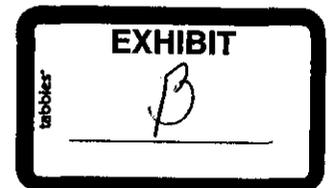
LPC # 0830255041

Site: Telzrow Oil Co.

Bills Received	Status Code	Amount Requested	Amount Paid	Voucher Date	Deductible
5/18/2004	VOP	90437.96	80437.96	9/9/2004	10000
3/2/2005	ACC	40165.78	0		0

Site (Main)	Tank Operator	General	Title XVI	TACO	Search
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ILLINOIS POLLUTION CONTROL BOARD
September 1, 2005

TELZROW OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 06-26
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

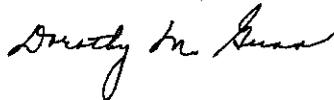
ORDER OF THE BOARD (by J.P. Novak):

On August 19, 2005, the parties timely filed a joint notice to extend the 35-day period within which Telzrow Oil Company may appeal a July 14, 2005 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. The Agency denied reimbursement of certain claimed costs of corrective action plan from the Underground Petroleum Storage Tank (UST) Fund for Telzrow Oil Company's leaking UST facility located at 605 South State Road, Jerseyville, Jersey County.

The Board extends the appeal period until November 17, 2005, as the parties request. See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. If Telzrow Oil Company fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 1, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

