

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

R.W. SHERIDAN OIL CO., INC.,)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(UST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
60 E. Van Buren St., Ste. 630	1021 North Grand Avenue East
Chicago, IL 60605	P.O. Box 19276
	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (h), a PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION, a copy of which is herewith served upon Respondent.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon Respondent by enclosing same in envelopes addressed as above with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 8th day of August, 2024.

R.W. SHERIDAN OIL CO., INC.,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

R.W. SHERIDAN OIL CO., INC.,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(UST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, R.W. SHERIDAN OIL CO., INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Illinois EPA's final decision, denying a corrective action budget amendment, stating as follows:

1. Petitioner owns a former self-service fueling station in Farmer City, County of DeWitt, Illinois, assigned LPC #0390155019.
2. On November 29, 1999, a release was reported from ten underground storage tanks at the site, and the incident was assigned Incident Number 99-2648. These tanks were located in three separate basins located on the west, east and north side of the main building.
3. Subsequently, the tanks were removed as a part of early action, and site classification activities were performed.
4. In a 2002 High Priority Corrective Action Plan, excavation of contaminated soil and installation of institutional controls were proposed, which were rejected for the need to further delineate the presence of contamination.
5. In September of 2021, a corrective action plan and budget proposed excavating contaminated soil identified through previous investigation, which was denied.

6. In April of 2022, a corrective action plan and budget proposed resampling, which was approved.

7. After the areas were resampled, a corrective action plan and budget was submitted for excavation of contaminated soil, which was substantially approved on October of 2022.

8. Thereafter, Petitioner's consultant was unable to find a licensed contractor willing to perform the excavation and backfilling work approved in the corrective action plan within the maximum payment amounts approved in the budget, and so the approved work was put out for bid.

9. On March 8, 2024, Petitioner submitted an amended corrective action plan budget to the Illinois EPA based upon the lowest bid received, which was \$59,505.03 above the previously approved budget for that work. The budget amendment requested approval of \$65,289.61, which is the sum of the increased costs reflected in the lowest bid as well as the consultant's cost in preparing and conducting the bid pursuant to Board regulations.

10. On May 21, 2024, the Illinois EPA rejected the budget amendment in total claiming that bidding could not be used to alter previously approved amounts. A true and correct copy of the decision letter is attached hereto as Exhibit A.

11. The Illinois EPA explained its position as follows:

Pursuant to 35 Ill. Adm. Code 734.870(d)(1), for costs approved by the Illinois EPA in writing prior to the date the costs are incurred, the applicable maximum amounts must be the amounts in effect on the date the Illinois EPA received the budget in which the costs were proposed. Once the Illinois EPA approves costs, the applicable maximum amounts must not be increased, e.g., by proposing the costs in a subsequent budget.

(Exhibit A)

12. As an initial matter, the approach taken herein is entirely consistent with that

taken in Singh v. IEPA, PCB 23-90 (Sept. 21, 2023) (approving budget amendment for concrete placement based upon competitive bid after budget had previously been approved pursuant to Subpart H rates).

13. As a matter of law, Section 734.870(d)(1) does not apply to competitive bidding. As narrated in the Agency's decision letter, there are three methods for determining maximum payment amounts, but only the first method, the one based upon the maximum amounts set forth in Subpart H, incorporates Section 734.870. (35 Ill. Adm. Code 734.800(a)(1)) The second and third method omit Section 734.870 from the provisions listed as being applicability to competitive bidding and unusual or extraordinary circumstances. (35 Ill. Adm. Code 734.800(a)(2) & (3)) This is not surprising because Section 734.870 contains the inflation factor used to increase maximum payment amounts yearly and has no relevancy to the second and third methods. Pursuant to the maxim *expressio unius est exclusio alterius*, the express inclusion of Section 734.870 for the first method, but not for the other two methods, indicates the intention to exclude that Section from consideration for the other two methods.

14. The Illinois EPA determination was received on July 8, 2024, which is less than thirty-five days from today and therefore this appeal is timely.

WHEREFORE, Petitioner R.W. SHERIDAN OIL CO., INC., prays that: (a) the Illinois EPA produce the Record; (b) a hearing be held; (c) the Board find the Illinois EPA erred in its decision, (d) the Board direct the Illinois EPA to approve the budget amendment as submitted, (e) the Board award payment of attorney's fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

R.W. SHERIDAN OIL CO., INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 · (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL

9589 0710 5270 0389 6476 64

JUL 05 2024

R.W. Sheridan Oil Company, Inc.
Attention: Mr. Bill Sheridan
306 East Virginia
Normal, Illinois 61761

Re: 0390155019 -- DeWitt County
Farmer City/R.W. Sheridan Oil Company, Inc.
Rt. 54 & Rt. 150
Leaking UST Incident 992648
Leaking UST Technical File

Dear Mr. Sheridan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended Corrective Action Plan Budget (budget) and Supplemental Information submitted for the above-referenced incident. This budget, dated March 8, 2024, was received by the Illinois EPA on March 8, 2024. The Supplemental Information, dated December 28, 2023, was received by the Illinois EPA on April 12, 2024. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed in Attachment A (Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)).

All future correspondence must be submitted to:

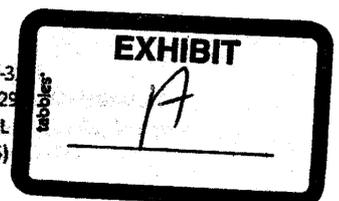
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
115 S. LaSalle Street, Suite 2203, Chicago, IL 60603
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000

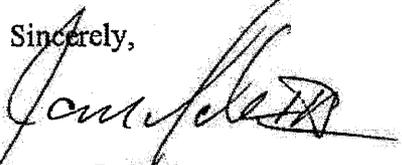
595 S. State Street, Elgin, IL 60123 (847) 608-3
2309 W. Main Street, Suite 116, Marion, IL 629
412 SW Washington Street, Suite D, Peoria, IL
4302 N. Main Street, Rockford, IL 61103 (815)



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If you have any questions or need further assistance, please contact the undersigned at (217) 524-9140 or at James.Malcom@Illinois.Gov.

Sincerely,



James R. Malcom, III
Project Manager
Leaking Underground Storage Tank Section
Bureau of Land

JD
Attachments: Attachment A
Appeal Rights

c: CWM Company, Carol Rowe (electronic copy), CWM@CWMcompany.com
BOL File

Attachment A

Re: 0390155019 -- DeWitt County
Farmer City/R.W. Sheridan Oil Company, Inc.
Rt. 54 & Rt. 150
Leaking UST Incident 992648
Leaking UST Technical File

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

1. Remediation Costs That Exceed the Subpart H rates and are Considered Unreasonable.

The budget includes the following excavation, transportation, and disposal costs, backfilling costs, and UST removal costs that were determined via bidding:

1. Remediation and Disposal Costs Form > A. Conventional Technology > Excavation, Transportation, and Disposal of Contaminated Soil – 493.00 cubic yards @ \$64.68 per cubic yard = \$31,887.17
2. Remediation and Disposal Costs Form > A. Conventional Technology > Backfilling the Excavation – 493.00 cubic yards @ \$45.63 per cubic yard = \$22,497.26
3. Remediation and Disposal Costs Form > A. Conventional Technology > Overburden Removal and – 1,040.00 cubic yards @ \$4.92 per cubic yard = \$5,120.60

The Illinois EPA cannot approve these costs for the reasons described below.

Pursuant to 35 Ill. Adm. Code 734.800(a), Subpart H of 35 Ill. Adm. Code 734 provides three methods for determining the maximum amounts that can be paid from the Fund for eligible corrective action costs. The first method for determining the maximum amount that can be paid for each task is to use the maximum amount for each task set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870. The second method for determining the maximum amount that can be paid for each task is bidding in accordance with 35 Ill. Adm. Code 734.855. The third method for determining the maximum amount that can be paid for each task is to determine the maximum amount for unusual or extraordinary circumstances in accordance with 35 Ill. Adm. Code 734.860.

Pursuant to 35 Ill. Adm. Code 734.870(d)(1), for costs approved by the Illinois EPA in writing prior to the date the costs are incurred, the applicable maximum amounts must be the amounts in effect on the date the Illinois EPA received the budget in which the costs were proposed. Once the Illinois EPA approves costs, the applicable maximum amounts must not be increased, e.g., by proposing the costs in a subsequent budget.

Pursuant to 35 Ill. Adm. Code 734.870(d)(3), the owner or operator must have the burden of requesting the appropriate maximum amounts.

The owner or operator previously requested approval of the maximum amounts set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870, i.e., the owner or operator selected the first method for determining the maximum amounts that can be paid for each task. In a letter dated March 17, 2023, the Illinois EPA approved the maximum amounts set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870. The owner or operator is attempting to increase the applicable maximum amounts by proposing the costs in a subsequent budget. This is a violation of 35 Ill. Adm. Code 734.870(d)(1). Pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(i), costs associated with activities that violate any provision of the Act or Board, Office of the State Fire Marshal (OSFM), or Illinois EPA regulations are ineligible for payment from the Fund.

It is noted that these excavation, transportation, and disposal costs, backfilling costs are in addition to the maximum amounts set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870. If the Illinois EPA were to approve these costs, the total approved costs would exceed the maximum amounts set forth in Subpart H of 35 Ill. Adm. Code 734. Pursuant to 35 Ill. Adm. Code 734.630(zz), costs that exceed the maximum amounts set forth in Subpart H of 35 Ill. Adm. Code 734 are ineligible for payment from the Fund.

The Corrective Action Plan (CAP) & Budget received August 19, 2022, proposed to remove 493 cubic yards of contaminated soil as soil analytical data showed this soil exceeded the calculated Tier 2 soil saturation limit for Total Xylenes. The budget proposed to use the Subpart H rates for soil removal, backfill and overburden to complete the soil removal activities. The CAP & Budget were approved with modifications on October 25, 2022. The CAP Budget received March 8, 2024, documents that a contractor could not be retained to perform the soil excavation, transportation, and disposal costs, backfilling costs at the approved Subpart H rates, thus bidding in accordance with 35 Ill. Adm Code 734.855 was utilized to bid the soil excavation, transportation, and disposal costs, backfilling costs required for the site. The lowest bid is \$59,505.03 above what was previously approved by the Illinois EPA. Therefore, the entire budget received March 8, 2024, is being denied.

2. The budget includes the following consulting personnel costs and consultant's materials costs that are associated with bidding, preparation of Amended CAP Budget and reimbursement preparation and review:
 - a. Consulting Personnel Costs Form > CCA-Field > Senior Project Manager > Bid Awards/IEPA Reporting/Documentation – 2 hours @ \$147.95 per hour = \$295.90
 - b. Consulting Personnel Costs Form > CCA-Field > Senior Project Manager > Bid Process/Advertising/Bid Letting – 4 hours @ \$147.95 per hour = \$591.80

- c. Consulting Personnel Costs Form > CCA-Field > Senior Project Manager > Bid Specifications/Contacting Contractors for Quotes – 13 hours @ \$147.95 per hour = \$1,923.35
- d. Consulting Personnel Costs Form > CCA-Field > Senior Project Manager > Bid Opening/Selection – 1 hour @ \$147.95 per hour = \$147.95
- e. Consulting Personnel Costs Form > CCA-Field > Senior Admin. Assistant > Bid Process/Advertising/Bid Letting – 2 hours @ \$66.58 per hour = \$133.16
- f. Consulting Personnel Costs Form > CCA-Field > Senior Admin. Assistant > Bid Awards/IEPA Reporting/Documentation – 3 hours @ \$66.58 per hour = \$199.74
- g. Consulting Personnel Costs Form > Budget Preparation > Senior Project Manager > Budget Amendment Design and Development – 7 hours @ \$147.95 per hour = \$1,035.65
- h. Consulting Personnel Costs Form > Budget Review > Senior Professional Engineer > Budget Amendment Review and Certification – 1 hour @ \$147.95 per hour = \$147.95
- i. Consulting Personnel Costs Form > Budget Compilation & Distribution > Senior Administrative Assistant > Budget Amendment Compilation & Distribution – 1 hour @ \$66.58 per hour = \$66.58
- j. Consulting Personnel Costs Form > Reimbursement Claim Certification > Senior Professional Engineer > Reimbursement Claim Certification – 2 hours @ \$192.33 per hour = \$384.66
- k. Consulting Personnel Costs Form > Reimbursement Claim Preparation > Senior Account Technician > Reimbursement Claim Preparation – 8 hours @ \$81.36 per hour = \$650.88
- l. Consulting Personnel Costs Form > Reimbursement Claim Distribution > Senior Administrative Assistant > Reimbursement Claim Distribution – 1 hour @ \$66.58 per hour = \$66.58
- m. Consultant's Materials Costs Form > Claim Distribution > Postage > – 2 @ \$16.00 each = \$32.00
- n. Consultant's Materials Costs Form > Budget Amendment Distribution > Postage > – 2 @ \$8.00 each = \$16.00
- o. Consultant's Materials Costs Form > Bidding/IEPA Corr. And Submittal/Bidder Corr./Bid Distribution > Postage > – 8 @ \$6.00 each = \$48.00

The Illinois EPA cannot approve these costs because the Illinois EPA cannot be sure the bidding was completed in accordance with the Act and 35 Ill. Adm. Code 734.855. Secondly, the Amended Budget was associated with the bidding as well as the proposed personnel costs for the reimbursement claim.

In addition, bidding costs for which the Illinois EPA approved the maximum amounts set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870 exceeds the minimum requirements necessary to comply with the Act. Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

Furthermore, bidding costs for which the Illinois EPA approved the maximum amounts set forth in 35 Ill. Adm. Code 734.810 through 734.850 and 734.870 violates a provision of the Act or Board, OSFM, or Illinois EPA regulations. See budget modification #2. Costs associated with activities that violate any provision of the Act or Board, OSFM, or Illinois EPA regulations are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(i).

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

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

Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 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
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544