

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE BREAKING POINT, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB 25-
	)	(LUST – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION	)	Extension)
AGENCY,	)	
Respondent.	)	

NOTICE

Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

The Breaking Point, Inc. dba The Breaking Point Shell
c/o Michael Rosenthal
1855 West Willow Road
Northfield, IL 60093

Pinnacle Environmental Management Support
c/o Jana Langnickel, Project Manager
1255 S. Military Trail, Suite 210-A
Deerfield Beach, FL 33442
nanalangnickel@pinnacleems.com

PLEASE TAKE NOTICE that I have today caused to be filed a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
melanie.jarvis@illinois.gov
Dated: January 14, 2025

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

THE BREAKING POINT, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB 25-
	)	(LUST – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION	)	Extension)
AGENCY,	)	
Respondent.	)	

REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board ("Board") grant an extension of the thirty-five (35) day period for petitioning for a hearing to April 17, 2025, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On or about December 10, 2024, the Illinois EPA issued a final decision to the Petitioner.
2. On January 10, 2025, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five-day period for filing a petition by ninety days. Upon information and belief, Petitioner received the final decision on or about December 13, 2024.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five-day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
866/273-5488 (TDD)
melanie.jarvis@illinois.gov
Dated: January 14, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 14, 2025, I served true and correct copies of a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** by the method(s) and to the persons identified below:

Electronic and Mail Service

Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

The Breaking Point, Inc. dba The Breaking Point Shell
c/o Michael Rosenthal
1855 West Willow Road
Northfield, IL 60093

Pinnacle Environmental Management Support
c/o Jana Langnickel, Project Manager
1255 S. Military Trail, Suite 210-A
Deerfield Beach, FL 33442
nanalangnickel@pinnacleems.com

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
Division of Legal Counsel
1021 North Grand Avenue East
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1255 S Military Trail
Suite 210-A
Deerfield Beach, FL 33442

OFFICE 954.977.3775
FAX 866.209.4401
PinnacleEMS.com

January 10, 2025

Illinois Environmental Protection Agency
Bureau of Land
1021 North Grand Avenue East
Springfield, IL 62794-9276
Attn: Brian Bauer

RE: **Request for Extension on Deadline for Appeal**
LPC #0312105023 – Cook County
Northfield / Breaking Point Shell
1855 W. Willow Road
IEMA Incident 20230265 - 75020
Queue Date: 08/23/2024

Dear Mr. Bauer:

Attached please find the Agency's decision letter for the above referenced claim related to stage one costs. Could you please submit the necessary form to the Pollution Control Board that will allow discussions of this review letter to exceed the 35 day deadline to file an appeal.

Should you have any questions or require additional information, you may contact me at (954) 361-0099 or at JanaLangnickel@PinnacleEMS.com. Thank you.

Sincerely,
PINNACLE ENVIRONMENTAL MANAGEMENT SUPPORT, INC.

A handwritten signature in cursive script, appearing to read "Jana Langnickel".

Jana Langnickel
Program Manager



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

JB PRITZKER, GOVERNOR

JAMES JENNINGS, ACTING DIRECTOR

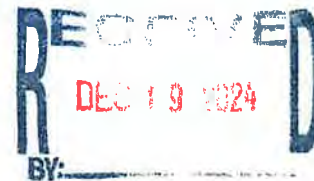
(217) 524-3300

CERTIFIED MAIL #

9589 0710 5270 0389 6312 74

DEC 10 2024

The Breaking Point, Inc. dba The Breaking Point Shell
c/o Michael Rosenthal
1855 West Willow Road
Northfield, Illinois 60093



Re: 0312105023 -- Cook County
Northfield / The Breaking Point Shell
1855 West Willow Road
Incident-Claim No.: 20230265 -- 75020
Queue Date: August 23, 2024
Leaking UST Fiscal File

Dear Mr. Rosenthal:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated August 20, 2024, and was received by the Illinois EPA on August 23, 2024. The application for payment covers the period from June 5, 2023, to September 30, 2024. The amount requested is \$18,366.93.

On August 23, 2024, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$16,594.81, will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA 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 Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$5,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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

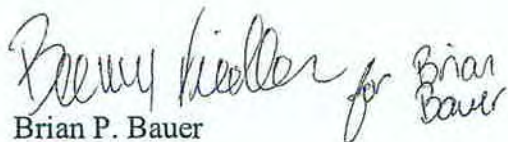
595 S. State Street, Elgin, IL 60123 (847) 608-3131
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

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.

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

If you have any questions or require further assistance, please contact Beth Gorsich of my staff at (217) 558-8141 or at Elizabeth.Gorsich@illinois.gov.

Sincerely,

Handwritten signature of Brian P. Bauer in cursive script.

Brian P. Bauer

Unit Manager

Special Projects and Financial Unit

Leaking Underground Storage Tank Section

Bureau of Land

Attachments: Attachment A
Appeal Rights

cc: Pinnacle Environmental Management Support
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 0312105023 -- Cook County
Northfield / The Breaking Point Shell
1855 West Willow Road
Incident-Claim No.: 20230265 -- 75020
Queue Date: August 23, 2024
Leaking UST Fiscal File

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

Item # Description of Deductions

1. \$238.56, deduction for drilling costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

For costs approved by the Illinois EPA in writing prior to the date the costs are incurred, the applicable maximum payment 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 a cost, the applicable maximum payment amount for the cost must not be increased (e.g., by proposing the cost in a subsequent budget). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.870(d)(1). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The Stage 1 Plan and Budget was received by the Illinois EPA on June 20, 2023. Therefore, drilling and monitoring well installation rates exceeding the applicable maximum amounts were reduced to the maximum reimbursable rate. The direct push drill rate was reduced to \$25.36 per foot. The monitoring well installation rate was reduced to \$23.26 per foot.

2. \$78.44, deduction for consulting personnel costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

For costs approved by the Illinois EPA in writing prior to the date the costs are incurred, the applicable maximum payment 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 a cost, the applicable maximum payment amount for the cost must not be increased (e.g., by proposing the cost in a subsequent budget). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.870(d)(1). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The Stage 1 Plan and Budget was received by the Illinois EPA on June 20, 2023. Therefore, personnel rates exceeding the applicable maximum amount were reduced to the maximum reimbursable rate. The following rates were reduced:

- The rate for a Senior Account Technician was reduced from \$84.47 per hour to \$77.49 per hour.
 - The rate for a Senior Professional Engineer was reduced from \$200.03 per hour to \$183.17 per hour.
 - The rate for a Senior Project Manager was reduced from \$147.95 per hour and \$147.96 per hour to \$140.90 per hour.
3. \$1,350.00, deduction for costs for consultant's materials, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o) because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

In addition, a deduction of \$1,350.00, has been made for site investigation or corrective action costs for consultant's materials that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

Furthermore, a deduction of \$1,350.00, has been made for costs for activities and related services or materials that are unnecessary, inconsistent with generally accepted engineering practices or principles of professional geology, or unreasonable costs for justifiable activities, materials, or services. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(aa). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable and/or will be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

A total of \$1,350.00 was submitted for the use of an air knife at the drilling site. Its use

has been determined to be unreasonable, unnecessary, and inconsistent and lacks documentation. As a result, \$1,350.00 has been deducted from the amount reimbursed for materials costs.

4. \$21.00, deduction for costs for consultant's materials, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o) because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

In addition, a \$14.00, deduction has been made for site investigation or corrective action costs for materials that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The cost for 7.0 disposable bailers was submitted at a rate of \$10.00 item. That rate lacks documentation and has been determined as unreasonable. The rate per bailer was reduced to \$7.00 per bailer, which was agreed to in electronic correspondence dated December 6, 2024.

5. \$84.12 deduction for costs for consultant's materials, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o) because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

In addition, a \$64.12, deduction has been made for site investigation or corrective action costs for materials that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The cost of a water sampling package totaling \$297.00 was submitted for reimbursement. Based on additional information provided and additional communications with Pinnacle Environmental Management Support, the cost for a "Water Sampling Package" was reduced to \$212.88.

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
60 East Van Buren Street, Ste. 630
Chicago, IL 60605
(312) 814-3461

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
(217) 782-5544