

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 7 2003

SWIF-T FOOD MART,
Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,
Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB 03-185
(UST appeal)

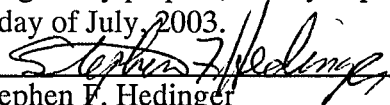
NOTICE OF FILING AND PROOF OF SERVICE

To: Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, IL 60601-3218

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on the 3rd day of July, 2003, we sent via U.S. first class mail to the Clerk of the Pollution Control Board the original and nine copies of the PETITION FOR REVIEW for filing in the above entitled cause.

The undersigned certifies that a true and correct copy of the PETITION FOR REVIEW was served upon each of the above-identified individuals via U.S. mail, by enclosing the same in envelopes properly addressed, with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mail box, on the 3rd day of July, 2003.



Stephen V. Hedinger

Hedinger Law Office
2601 S. Fifth St.
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SWIF-T FOOD MART,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

RECEIVED

CLERK'S OFFICE

JUL 7 2003

PCB 03-185

(UST appeal)

STATE OF ILLINOIS
Pollution Control Board

PETITION FOR REVIEW

NOW COMES Petitioner, SWIF-T FOOD MART, through its undersigned attorney, and pursuant to Section 40(a)(1) of the Environmental Protection Act, 415 ILCS 5/40(a)(1), and Section 105 Subpart D of this Board's procedural regulations, 35 Ill. Adm. Code 105.400-105.412, hereby seeks review of the final decision of Respondent ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA) dated March 3, 2003 (a true and correct copy of which is attached hereto, and incorporated herein, as Exhibit A), deducting \$22,084.04 from Petitioner's LUST reimbursement application, and applying a \$10,000.00 deductible. In support of this Petition, Petitioner states as follows:

1. Petitioner is owner/operator of a facility located at 1100 Belvidere Road, Waukegan, Lake County, Illinois, at which leaking underground storage tanks were located, and remediation has taken place.

2. On November 7, 2002, Petitioner submitted to the IEPA its LUST reimbursement package for work performed between December 1, 1995 and November 20, 2001, requesting \$203,644.16 in reimbursement from the LUST Fund. The IEPA's final decision letter, issued March 3, 2003, granted less than that amount.

3. On April 17, 2003, this Board entered an order in this case acknowledging the parties' joint notice to extend the 35-day period for Petitioner to seek review of the IEPA's final decision, and extending the date for Petitioner to file its petition for review until July 7, 2003.

4. Among other things, the IEPA's final decision letter deducted \$10,000 for a deductible for the site, although in reimbursing Petitioner pursuant to a previous application the IEPA had already applied a \$10,000 deductible; therefore, the IEPA has applied a \$20,000 deductible for the Petitioner's site, in violation of statute.

5. Also among other things, the IEPA's final decision letter deducted \$13,808.86 for field purchases and other costs by a subcontractor, Peter J. Hartmann Company, as unreasonable, on the basis that a percentage markup and/or handling charges were both requested and no handling charges were approved in the budget. This determination is also in error as a matter of law and fact.

6. Accordingly, the IEPA's final decision letter in total resulted in erroneous reimbursement determinations in the amount of \$23,808.86, which Petitioner seeks in this LUST Fund reimbursement appeal.

WHEREFORE, Petitioner, SWIF-T FOOD MART, requests that this Board reverse the IEPA's denial of \$23,808.86 in LUST Fund reimbursement, and award to Petitioner that amount in additional LUST Fund reimbursement, and award to Petitioner such other and further relief as may be within this Board's jurisdiction and authority.

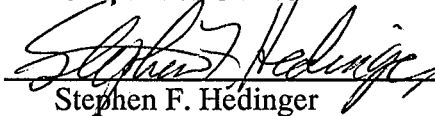
Respectfully submitted,

SWIF-T FOOD MART,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

By


Stephen F. Hedinger

Hedinger Law Office
2601 S. Fifth St.
Springfield, IL 62703
(217) 523-2753 phone
(217) 523-4366 fax



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

EXHIBIT

tabbles

A

217/782-6762

MAR 03 2003

Swif-T-Food Mart
Attn: Isam Saed
314 South Lewis Avenue
Waukegan, Illinois 60085

Re: LPC #0971905268 -- Lake County
Waukegan/Swif-T-Food Mart
1100 Belvidere Road
LUST Incident No. 951716
LUST FISCAL FILE

Dear Mr. Saed:

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 November 7, 2002 and was received by the Agency on November 18, 2002. The application for payment covers the period from December 1, 1995 to November 20, 2001. The amount requested is \$203,644.16.

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 November 18, 2002, 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 \$171,560.12 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 • COLLINGSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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:

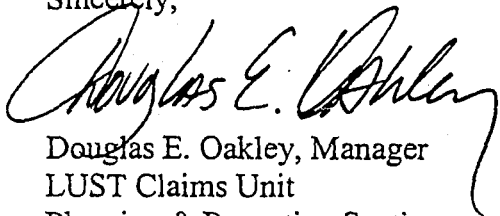
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 at 217/782-6762.

Sincerely,



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

DEO:NW:ct\033074.doc

Attachment

cc: AES Consultants, Ltd.