

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 01 2004

STATE OF ILLINOIS
Pollution Control Board

HORTENSE SINGER,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 04-149
(UST Appeal)

NOTICE

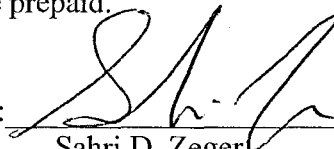
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

John Kim, Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
PO Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on May 28, 2004 I mailed for filing with the office of the Clerk of the Pollution Control Board a **PETITION FOR HEARING**, a copy of which is herewith served upon you.

PROOF OF SERVICE BY MAIL

I, Sahri D. Zeger, an attorney, certify that I served this notice by mailing a copy to the above named parties and depositing the same in the U.S. mail at Oak Brook, Illinois 60523, before 5:00 P.M. on May 28, 2004, with proper postage prepaid.

By: 
Sahri D. Zeger

Charles C. Snyder P.C.
2803 Butterfield Rd.
Suite 380
Oak Brook, IL 60523
T 630-368-0050
F 630-368-0054

JUN 01 2004

STATE OF ILLINOIS
Pollution Control Board

HORTENSE SINGER,)
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PETITION FOR HEARING

NOW COMES the Petitioner, HORTENSE SINGER, through her attorneys, Charles C. Snyder P.C., and pursuant to 415 ILCS 5/57.8 hereby requests a hearing to review the Illinois Environmental Protection Agency ("IEPA") denial of payment from the Underground Storage Tank Fund and, in support thereof, states as follows:

1. On January 27, 2004 the IEPA issued a final decision letter ("Letter") to the Petitioner, denying reimbursement for remediation costs in the amount of \$65,816.84. (Exhibit A)
2. On March 5, 2004, the parties timely filed a joint for a 90-day extension of appeal period. The request was granted on March 18, 2004, extending the appeal period to June 1, 2004. (Exhibit B)
3. The grounds for this appeal are as follow:
 - a. The Letter denied \$65,816.84 in costs as being in excess of those necessary to meet the minimum requirements of Title XVI of the Environmental Protection Act ("Act").

Petitioner contends that the sum denied, which represents, among other things, the costs for removal of six USTs, liquid removal and soil remediation was reasonable, does not exceed applicable requirements, and is properly reimbursed as submitted.

b. The Letter further denied \$65,816.84 in costs on the grounds that such costs were incurred for activities conducted after the 20-day and 45-day reporting requirements and not approved in a budget.

Petitioner contends she submitted these costs as part of Petitioner's Early Action Billing Package, as such remediation activities are consistent with the activities prescribed in 35 IL Adm. Code Sections 731.162, 731.163 and 732.202. The costs submitted in the Petitioner's Early Action Plan, therefore, are properly reimbursed as submitted.

Petitioner further contends that she submitted these costs as part of Petitioner's Early Action Billing Package after consulting with the IEPA and pursuant to IEPA advice. Therefore, in the alternative, Petitioner is properly granted leave to amend her budgets and billing packages consistent with the Act as interpreted by the Pollution Control Board.

c. Of the \$65,816.84 denied above, the Letter further denied \$42,662.40 on the grounds that the costs lacked supporting documentation. The Letter specifically requires receipts for various supplies and subcontractor services.

The Petitioner contends that she has provided supporting documentation for the costs listed in detail in the Letter in the form of invoices, manifests and other various records. The Petitioner further contends that the costs submitted are reasonable and consistent with corrective action of a site containing six USTs and extensive soil and water contamination. The IEPA's position that only receipts can constitute "supporting documentation", as required by 35 IL Adm. Code Section 732.606(gg) is arbitrary, capricious and without statutory authority.

WHEREFORE, Petitioner, HORTENSE SINGER, respectfully requests that the Pollution Control Board find that the \$65,816.84 in costs are properly reimbursed as submitted, or in the alternative, that the Petitioner be granted leave to amend her submissions to correct any defects found by this Board.

Petitioner respectfully requests that all related proceedings take place in Chicago, Illinois.

Respectfully Submitted,

HORTENSE SINGER,
Petitioner

By: 

One of her Attorneys

Charles C. Snyder P.C.
2803 Butterfield Rd.
Suite 380
Oak Brook, IL 60523
T 630-368-0050
F 630-368-0054

Dated: May 28, 2004



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

217/782-6762

JAN 27 2004

CERTIFIED MAIL #

70023150000012283431

Hortense Singer
Attn: Charlie Snyder
2803 Butterfield Road, Suite 380
Oak Brook, Illinois 60523

Re: LPC #0430833004 -- DuPage County
Warrenville/Hortense Singer
3 South 338 Rt. 59
LUST Incident No. 942631
LUST FISCAL FILE

Dear Mr. Snyder:

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 December 18, 2003 and was received by the Agency on December 23, 2003. The application for payment covers the period from November 23, 1994 to June 23, 1995. The amount requested is \$65,816.84.

The deductible amount to be assessed on this claim is \$100,000.00 which will be assessed on future claim. 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 December 23, 2003, 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 cannot be prepared for submission to the Comptroller's office 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 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60018 - (708) 596-1000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 212
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • COLLINSVILLE - 200
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 992-1000

EXHIBIT A

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:

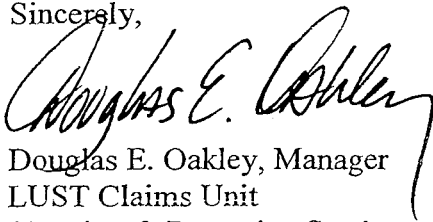
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Bill Richards of my staff at 217/782-6762.

Sincerely,



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

DEO:WWR:bjh\043453.doc

Attachment

cc: K-Plus Environmental Services

Attachment A
Accounting Deductions

Re: LPC #0430833004 -- DuPage County
Warrenville/Hortense Singer
3 South 338 Rt. 59
LUST Incident No. 942631
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. \$65,816.84, none of the costs incurred from January 13, 1995 to June 23, 1995, are eligible for reimbursement. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; were conducted after the 20- and 45-day reporting requirements of 35 Ill. Adm. Code 732.202(c), 732.202(e), 731.162(b) and 731.163(b); and were not approved in a budget. (Sections 57.5(a) and 57.8(a)(1) of the Act; 35 Ill. Adm. Code 732.505(c), 732.601(f), and 732.606(o))

All costs submitted in this claim incurred after (1/12/95) 52 days of notifying IEMA, therefore are deemed ineligible.

The following costs are included in the above deduction, but are also being denied for other reasons.

2. \$42,662.40, 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)).

Need Camera & Film receipts for \$125.00, asked for on the Equipment Form.
Need a more detailed breakdown of costs for the Canopy Demolition for \$1,600.00 on the Equipment form.
Need Photograph Development receipts for \$68.70, asked for on the Field Purchases form.
Need EVOC Analytical Laboratories Invoice for \$291.20, asked for on the Subcontractors form.
Need Drum Disposal Invoice for \$2,120.00, asked for on the Subcontractors form.
Need R. Carlson & Sons Invoice for \$5,488.00, asked for on the Subcontractors form.
Need Northbranch Environmental Invoice for \$2,529.50, asked for on the Subcontractors form.

Need Van Hoesen Industries Invoice for \$18,800.00, asked for on the Subcontractors form.

Need RW Collins Invoice for \$11,300.00, asked for on the Subcontractors form.

Need K-Plus Invoice for \$340.0, asked for on the Personnel Summary Sheet.

3. \$1,860.60, 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))

Vehicle mileage exceeds reasonability by \$50.16.

Vehicle mileage exceeds reasonability by \$6.44.

Sample jars exceeds reasonability by \$4.00.

OSFM Registration & Penalty fees for \$1,800.00 for ineligible costs.

4. \$3,680.54, 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).

Reduction of Handling Charges are due to the above items lacking documentation and the deduction of costs for being unreasonable.

DEO:WWR:bjh\043453.doc

ILLINOIS POLLUTION CONTROL BOARD

March 18, 2004

HORTENSE SINGER,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

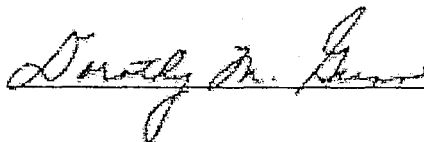
PCB 04-149
(UST Appeal)
(90-Day Extension)

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

On March 5, 2004, the parties timely filed a joint notice to extend the 35-day period within which Hortense Singer may appeal a January 27, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency approved portions of petitioner's request for reimbursement from the UST Fund, but denied reimbursement because the approved portions did not exceed the applied deductible, for Hortense Singer's leaking underground petroleum storage tank facility located at 3 South 338 Route 59, Warrenville, DuPage County. The Board extends the appeal period until June 1, 2004, as the parties request. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Hortense Singer 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 March 18, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

EXHIBIT B