

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 27 2003

RANDALL INDUSTRIES, INC

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

ORIGINAL

STATE OF ILLINOIS  
Pollution Control Board

Case No. 03-219  
(UST Appeal)

Ref.: LPC #0430355036

Lust Incident No. 922987, 942519

Gentlemen:

I wish to appeal the decision of Trent Benanti concerning the number of deductibles applied to the tank removal project at 741 S. Rte. 83 in Elmhurst, IL. I initiated this LUST project in 1992. When I had purchased my 1.62-acre lot from the larger 6-acre property purchased by Cantore Development, he gave me the right to use the diesel tank even though it was not on my land. The gas tank was located on my property and the fuel dispensing pumps were located on the lot line. After becoming aware of the potential problems caused by leaking fuel tanks, I decided to test the tanks for leaks. The tests, conducted by an outside engineering firm and in compliance with the State Fire Marshal and the Illinois EPA indicated that the tanks were sound and without leaks.

I made a voluntary decision to remove the tanks before the tanks became a problem to the environment. I investigated the process and contacted the State Fire Marshal and a licensed contractor to remove the tanks. The trucking company that purchased the adjacent parcel where the diesel tank was located agreed that although he needed a diesel tank that we had been sharing, it made good sense to remove the tanks while they were good. Neither of us had knowledge of the history of the tanks and could not verify the age of each tank. The State Fire Marshal indicated that the project should be conducted under my business name since only one hole would be dug and any cleanup would be conducted in one excavation and therefore would be classified as one incident if a problem developed (See Jan 26,1994 Apec letter)

The smaller gas tank was removed first with the fire marshal in attendance. As it was lifted out of the ground and opened up with a power chisel, rust particles fell off the bottom of the tank exposing small holes. The owner of Apec/Aares, the tank removal

*Handwritten signature/initials*

contractor, the Fire Marshal and I were surprised since the tank had passed the required pressure tests. The contractor filed the necessary 45-day report and then effectively dragged this project out for the next three years, only occasionally showing up. My neighbor and I continued to use the diesel tank while waiting for the contractor to remove the diesel tank. I could not understand why or how this project would drag on. At first the contractor blamed the response time of the EPA to proceed with the project. Ultimately, he did remove the diesel tank and removed 252 cubic yards of soil leaving a hole the size of an in-ground pool. Needless to say this left a very dangerous situation for our companies that needed access because the excavation was in the center of the driveway both of the companies had been using for access. My neighbor and I advanced moneys to the original contractor, Apec/Aares, and he completed work worth in excess of \$30,000 (calculated by Trent Benanti, EPA project mgr.). Even though the Illinois EPA did not reimburse Apec or Aares for the completed work, he wants to access two deductibles against this project. His claim is that he is justified because the tanks were removed two years apart and the second tank was assigned another incident number. At this time, it is difficult to know who was behind the delays during that period, was it the contractor or the Illinois EPA who was having difficulty funding the LUST fund at the time or a combination of both parties. This delay should not be used by the Illinois EPA to access two deductibles.

Sometime in 1995-96, having not heard from the contractor, I tried to track him down to see when our project would resume, only to find out that he had closed his business. After contacting the Illinois EPA about this abandonment of the project by the contractor, they sent a representative, Kyle Blumquist, to inspect the site. He asked that three soil samples be taken from around the excavation so he could expedite a plan of action. At this time no contractor was involved, I searched out a testing laboratory that could analyze the samples and send a report to the EPA. As I was gathering bids to drill the holes, Kyle contacted me to state that his boss wanted eleven holes samples. Considering that the Illinois EPA appeared to care less whether this LUST incident was closed, I dropped it. At no time was I aware of the potential of two deductibles being assigned to this project or that the significance of assigning two incident numbers had any bearing on the number of deductibles charged. The Fire Marshall had always indicated that this project should be dealt with as one incident because the tank removal and cleanup were from one excavation and many contaminants in both gasoline and diesel fuels are the same. It would be virtually impossible to determine from which tank contaminants originated. There is only one hole to clean.

In the fall of 2001, again with no instruction or direction from the Illinois EPA, I again started the process of closing out these incidents. We are now over a year and half into this project this time (eleven years since the start). My current environmental contractor, Marlin Environmental, has submitted to me several properties with projects similar to mine. That is, multiple tank removal on a property that were treated as a single or multiple incidents with one deductible.

Marlin Environmental also contacted the Illinois EPA about Trent's decision that they felt was inappropriate. Doug Oakley, the mgr of the LUST department of the Illinois EPA told my contractor that the decision is left up to Trent Benanti, the project manager. Enclosed is a list of projects that indicate that the project managers are not consistent with their decisions. I am looking for fairness in this decision and this project.

1. Campbell Auto Service-156 N. Lathrop Ave. Forest Park, IL.  
Incident numbers 20021403& 20021795 One deductible was issued for two incident numbers. First incident number was about 2 months before second one.

2. Flossmoor Service Station-2733 Flossmoor Road, Flossmoor, IL.  
Three separate incident numbers 20020800, 20021182 & 982832. Two filed in 2002 and one filed in 98. Same excavation, three incident numbers and one deductible was charged.

3. J&C Central, Inc. 420 S. Main St. Wheaton, IL. 891372, 20000499 & 20000914 two filed in 2000 and one in 89 and was assessed one deductible for tanks in the same excavation.

4. Bridgeview Lands 7124-7200 S. Ferdinand Bridgeview, IL. Three incident numbers 982194, 982195 & 982283. were filed at in 1998 at three different addresses owned by the same company. One deductible was assessed.

All of these examples would require a more liberal interpretation of the regulations than Trent Benanti is willing to use. Apparently, these interpretations are more common than Trent's philosophy. If I was assigned the project manager that assigned deductibles for these projects, I would not have the need to file this appeal. That is not equitable justice. In reviewing our documents, you will see where the Illinois EPA has sent two different letters on the same incident number using two different deductible amounts (see letters dated June 11,2002 and July 30, 2003). Doug Oakley signed both letters. I am not sure if Doug or Trent created them. I think they realized that if Marlin Environmental cleaned up one incident, it would be hard not to automatically clean the second one. If all the invoices were directed against one incident number, they wouldn't be able to charge the second deductible because there would be no invoices to clear it against. This is a rotten thing to do to a businessman who is trying to voluntarily cleanup a LUST site.

In trying to find out more about the environmental laws in Illinois, I came across the enclosed website of the Illinois EPA featuring an environmental justice office. The website clearly states that Environmental Justice is the protection of the health of the people of Illinois and it's environment, **equity in the administration of the State's environmental programs**, and the provision of adequate opportunities for meaningful involvement of all people ..... I have enclosed a copy of that page from the Illinois EPA website. Trent's decision is not fair and equitable. Apparently, the agency is aware of these injustices created by project manager decisions. I was directed to the Illinois Pollution Control Board rather than an internal investigations officer in the decision letter. Maybe, this is the right place but not sure why I should need an attorney to solve an administrative issue that Doug Oakley should be overseeing.

I hope you will consider giving us credit for work completed with money already advanced, which Trent estimated at \$30,000, and Marlin estimated at \$17,138. Currently, we have only seen a check for \$13,935. (Received 8/20/03) after 11 years of dealing with this mess. They already assessed two deductibles against invoices presented by Marlin. Trent has not explained why he won't give us credit for the completed work or why he is

charging two deductibles, except that he can. I am enclosing copies of manifests for the soil delivered to landfills. The validity of these manifests have not been questioned so why shouldn't they count. The EPA knows what they allow in a budget for this work.

The following documents are enclosed for your review:

- January 26, 1994 letter from APEC explaining that the State Fire Marshall said that both tanks could be handled as a single incident. Marlin agreed with this statement.
- The November 30, 2001 State Fire Marshall letter where someone decided to charge us with two deductibles. This letter comes ten years after the site was opened.
- June 11, 2002 letter from Illinois EPA denying previous charges of \$15,456 for reimbursement on incident # 922987 and assessing \$10,000 deductible.
- April 21, 2003 letter from Illinois EPA assessing a \$20,000 deductible on incident # 942519. Why would there be a \$20,000 deductible referencing **one** incident number. This letter conflicts with the November 30, 2001 letter. This isn't consistent with Illinois EPA practice. It also illustrates that the Illinois EPA doesn't know how to differentiate these incidents. There is only one hole to clean. When you take into account the June 11, 2002 letter, is the Illinois EPA assessing \$30,000 in deductibles?
- Marlin Environmental's 5/14/03 letter explaining the APEC/AARES situation and a request for those amounts to be applied against one deductible. This package contains manifests from early excavation by Apec of 252 cubic yards of contaminated soil. Why would the Illinois EPA deny placing any value on \$15,456 of previous work that was completed and not reimbursed?

I started this most recent request to close this project two years ago. It is holding up my ability to get financing on our building. It is my only source of capital now and the only way I can finance the ongoing operations of our business. I will lose this opportunity by the end of this year. I would appreciate it very much if you could expedite this decision on a hearing. Every time paper passes between the state and the contractor, they reserve the right to take four months to answer. Is this incident going to take another eleven years to close?

Please schedule a hearing so I can move this along. I am contacting the small business advocate and the Equal Justice Officer to see if they will intervene on this to avoid the expense of a hearing.

Thanks for your interest in this case.

Respectfully submitted,



Randall R. Truckenbrodt  
President

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please contact the Clerk's Office

at

312/814-3629

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