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JAN 03 2005

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board


HAROLD HART SERVICE,)	
)	
Petitioner,)	
)	
v.)	PCB 05-61
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

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

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a NOTICE OF APPEAL, copies of which are herewith served upon you.

Respectfully submitted,
BY: 
PENNI S. LIVINGSTON
Attorney for the Plaintiffs
Attorney #06196480
4972 Benchmark Centre, Suite 100
Swansea, IL 62226
Phone: 618/628-7700; Fax: 618/628-7710

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STATE OF ILLINOIS
Pollution Control Board

Before the Pollution Control Board
State of Illinois

Harold Hart Service,)	
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Petitioner,)	
)	
v.)	PCB 05-61
)	(LUST Appeal)
Illinois Environmental)	
Protection Agency,)	
)	
Respondent.)	

Notice of Appeal

NOW COMES Harold Hart Service, by and through his attorney, Penni S. Livingston and hereby files Notice of Appeal of the Illinois Environmental Protection Agency decision regarding application for payment from the Underground Storage Tank Fund for LUST Incident # 981766 at LPC#119-0105-061 pursuant to Section 40 and Section 57.8 of the Illinois Environmental Protection Act, 415 ILCS 5/40, 57.8 and 35 Ill. Adm. Code 732. In Support of its filing of Notice of Appeal, the Petitioner states as follow:

1. Application for reimbursement from the Underground Storage Tank Fund was applied for on September 14, 1999. Application for payment covers the period of August 26, 1998 to November 17, 1998. The amount requested was \$31,024.20 with a deductible determined at \$15,000.

2. Application was deemed complete on July 14, 2004 and was promptly denied on August 19, 2004.

3. On September 28, 2004, the parties filed a joint notice of extension of appeal period which was granted on October 7, 2004 with the deadline for appeal being December 27, 2004.

4. This appeal follows and is timely filed on the deadline date. Petitioner appeals the Agency's denial of reimbursement from the Underground Storage Tank Fund as denial of reimbursement was improper. Harold Hart is entitled to reimbursement.

5. While Mr. Hart holds hope to resolve differences with the Agency and provide additional information, this being the last day for appeal, appeal had to be filed for reservation of rights. Petitioner does not object to an Agency continuance for time of the filing of the record for this reason.

6. Petitioner appeals the Agency's denial of reimbursement for costs of activities associated with early action pursuant to Section 57.6(b) of the Act. Other relevant provisions include Section 57.7(a)(1)(B) of the Act and 35 Ill. Adm. Code 732.305(b)(1) and (c) and 732.602.

7. Issues may also exist with respect to the Agency's determination concerning the budget associated with a corrective action plan submitted for a high priority site pursuant to Section 57.7(c)(1)(B) of the Act and 35 Ill. Adm. Code 732.405(b) and 732.503(b) and (f).

WHEREFORE, for all these reasons, appeal is hereby filed.

Respectfully submitted,

BY: 

PENNI S. LIVINGSTON

Attorney for the Plaintiffs

Attorney #06196480

4972 Benchmark Centre, Suite 100

Swansea, IL 62226

Phone: 618/628-7700; Fax: 618/628-7710



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

RECEIVED

AUG 23 2004

AUG 19 2004

Harold Hart Service
2605 College Avenue
Alton, Illinois 62002

Re: LPC #1190105061 -- Madison County
Alton/Harold Hart Service
2605 College Avenue
LUST Incident No. 981766
LUST FISCAL FILE

Dear Mr. Hart:

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 July 12, 2004 and was received by the Agency on September 14, 1999. The application for payment covers the period from August 26, 1998 to November 17, 1998. The amount requested is \$31,024.20.

The deductible amount to be assessed on this claim is \$15,000.00, 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 July 14, 2004, 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 from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the

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 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

Page 2

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:

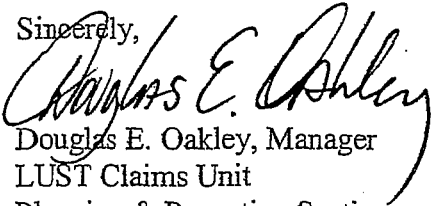
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Lieura Hackman of my staff at 217/782-6762.

Sincerely,


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

DEO:LH:ct\041443.doc

Attachment

cc: Safety Partners, Inc.
Christina E. Manuel

Attachment A
Accounting Deductions

Re: LPC #1190105061 -- Madison County
Alton/Harold Hart Service
2605 College Avenue
LUST Incident No. 981766
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. None of the costs incurred from September 11, 1998 to November 17, 1998 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release. The costs in question were not incurred within the time allowed for such reimbursement. (35 Ill. Adm. Code 732.202(g))

Personnel Costs in the amount of \$6,927.50 for work done from September 11, 1998 to November 17, 1998:

W. Watt	\$650.00	September 11, 1998
T. Dixon	\$360.00	September 11, 1998
W. Watt	\$585.00	September 17, 1998
T. Dixon	\$360.00	September 17, 1998
W. Watt	\$650.00	September 21, 1998
J. Brown	\$405.00	September 21, 1998
T. Eisenberg	\$200.00	September 21, 1998
W. Watt	\$617.50	September 22, 1998
J. Brown	\$360.00	September 22, 1998
T. Eisenberg	\$120.00	September 22, 1998
T. Eisenberg	\$400.00	September 28, 1998
T. Eisenberg	\$560.00	September 29, 1998
B. Miller	\$560.00	September 30, 1998
B. Miller	\$320.00	October 5, 1998
B. Miller	\$400.00	October 9, 1998
M. Trgovich	\$110.00	October 9, 1998
M. Trgovich	\$110.00	October 12, 1998
T. Eisenberg	\$160.00	November 17, 1998

Stock Items in the amount of \$230.15 were made for items used from September 11, 1998 to November 17, 1998.

Sample Jars in the amount of \$38.75 (these items were denied based on the dates the analyses were conducted).

Samples Gloves in the amount of \$11.40 (these items were denied based on the dates the analyses were conducted).

Mileage in the amount of \$108.00, this deduction was based on the number of days worked prior to the early action completion date.

Barricades in the amount of \$72.00, this deduction was based on the number of days worked prior to the early action completion date.

Equipment in the amount of \$445.25 was denied for items used from September 11, 1998 to November 17, 1998.

A deduction of \$250.25 was made on the amount requested for Trucks (cute 38.5 hours @ \$6.50 per hour).

A deduction of \$135.00 was made for tool rental (3 days @ \$45.00)

A deduction of \$60.00 was made for sample probe this deduction was based on the dates the analyses were conducted.

Field Purchases in the amount of \$82.80 were denied for items purchased beyond the early action completion date of September 10, 1998:

Photosheets on October 6, 1998 in the amount of \$18.00

Photosheets on October 9, 1998 in the amount of \$12.00

Jackhammer rental on September 11, 1998 in the amount of \$42.80

Aerial maps on September 22, 1998 in the amount of \$10.00

Subcontractors: deductions in the amount of \$12,125.36 was made for costs incurred beyond the early action completion date of September 10, 1998:

ATAS invoice #S21440 in the amount of \$127.40

ATAS invoice #S21485 in the amount of \$1,548.00

ATAS invoice #S21329 in the amount of \$1,194.00

Gateway Petroleum invoice #1420 in the amount of \$435.00

VB Construction invoice #9996 in the amount of \$480.00

VB Construction invoice #2014 in the amount of \$815.76

VB Construction invoice #2021 in the amount of \$358.88

Bluff City Minerals Co. invoice #6794 in the amount of \$64.93

Bluff City Minerals Co. invoice #6980 in the amount of \$87.22

Bluff City Minerals Co. invoice #6981 in the amount of \$63.32

Bluff City Minerals Co. invoice #7241 in the amount of \$316.53
Milan Recycling invoice #318-005126 in the amount of \$1,967.00
River Bend Contractors invoice #973439 in the amount of \$678.58
River Bend Contractors invoice #973459 in the amount of \$3,988.74

2. \$2,730.84, 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)).

The following deductions were made because the dates of the costs were not included in the certified billing period:

Personnel costs for:

T. Eisenberg	\$160.00	on November 18, 1998
T. Eisenberg	\$640.00	on January 14, 1999
W. St. Peters	\$1,360.00	no date
N. Volentine	\$560.00	no date

Field Purchases:

Film & development	\$10.84	July 27 & July 30, 1998
--------------------	---------	-------------------------

3. \$100.00, 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)).

This deduction was made on the amount requested for the OSFM permit, there was no receipt submitted as documentation of the cost.

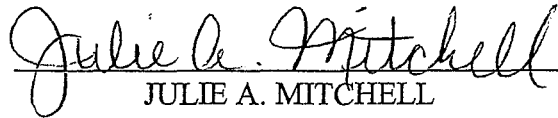
4. \$1,320.85, adjustment in the handling charges due to the deduction(s) of ineligible costs (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607).

A deduction of \$23.24 for handling charges were made on the ineligible Field Purchases.

A deduction of \$1,297.61 for handling charges were made on the ineligible Subcontractors costs.

CERTIFICATE OF SERVICE

I, Julie A. Mitchell, do hereby certify that I caused to be mailed this 27th day of December, 2004, the foregoing Notice of Filing and Notice of Appeal to the persons listed below by depositing the same with the Swansea or O'Fallon, Illinois, branch of the United States Postal Service with first class postage in place.


JULIE A. MITCHELL

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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Chicago, IL 60601
312/814-6931

John J. Kim
Assistant Counsel
Special Assistant Attorney General
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Springfield, IL 62794-9276
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217/782-9143 (TDD)



ATTORNEYS AT LAW

Penni S. Livingston

LIVINGSTON LAW FIRM

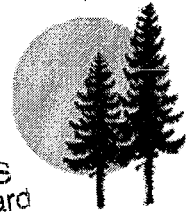
Concentrating in Environmental Law

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JAN 03 2005

STATE OF ILLINOIS
Pollution Control Board



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penni@livingstonlaw.biz

ORIGINAL

December 30, 2004

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

Re: PCB 05-61 (LUST Appeal)
Harold Hart Service v. IEPA

Dear Ms. Gunn:

Enclosed herein you will find a check in the amount of \$75.00 to cover the filing fee for the above referenced matter. I am also enclosing two additional copies of the Notice of Appeal, as per our discussion.

Thank you for your help in this matter. Have a safe and happy New Year.

Sincerely,

Julie A. Mitchell

/jam
Enclosures