

PCB 03-54,56,105,179, 04-02:
Exhibits to Electronic Filing of April 8, 2005

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STATE OF ILLINOIS
Pollution Control Board

Exhibit 1

Howard & Howard

law for business

Direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

March 5, 2003

Via Facsimile – (217) 524-7740

**James L. Morgan, Assistant
Attorney General**
Office of the Attorney General
500 S. Second Street
Springfield, IL 62706

Via Facsimile – (217) 782-9807

John Kim, Esq.
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 N. Grand Avenue East
Springfield, IL 62702

Via Facsimile – (217) 782-9807

John Waligore, Esq.
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 N. Grand Avenue East
Springfield, IL 62702

Re: Freedom Oil Company
401 S. Main Street, Paris, Illinois – Edgar County
Our File No. 17273-1

Gentlemen:

Enclosed is a copy of the OSFM's February 26, 2003 letter approving Tanks 1 and 6 for Fund Eligibility. As you know, IEPA considered receipt of this eligibility approval letter necessary to include Tanks 1 and 6 in the proportion of approved cleanup costs. They previously were considered by IEPA to be Fund Ineligible due to the lack of an OSFM eligibility determination. The proportion of reimbursable costs was correspondingly reduced.

We currently have a large reimbursement request pending. Would you please ensure the amount approved for reimbursement includes Tanks 1 and 6 in the Fund eligible proportion. I have asked MacTec to make sure Mike Heaton, who is handling the technical review, has a copy of the Eligibility Determination. We also were previously denied reimbursement for the proportion of costs allocated to these tanks in the prior reimbursement request. This denial is the subject of the pending Board appeal. To eliminate further unnecessary legal costs, would you also please have the amount denied for these tanks in the earlier request approved for payment.

Howard & Howard

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Diana M. Jagiella

email: djagiella@howardandhoward.com

June 30, 2003

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East, P. O. Box 19276
Springfield, IL 62794-9276

*Via Facsimile (217) 782-9807
and Regular U.S. Mail*

**Re: Freedom Oil Company, Paris, Illinois
LUST Fund Reimbursement Denial
Our File No. 17273-1**

Dear John:

As you know, two release incidents occurred at the Freedom Oil Company station in Paris, Illinois ("Property") in 2002. In April, 2002 a shear valve leaked. This was discovered after vapors were noted in the sewer connected to Paris High School across the street from the Property. (Incident 20020433) In August 2002, a tank liner failure occurred. This was discovered after vapors were reported in the southern sewer. (Incident 2002112)

IEPA has denied LUST Fund reimbursement to Freedom Oil Company ("Freedom") in the amount of \$293,733.95. Specifically, on December 18, 2002, \$102,122.04 was denied. On March 19, 2003, \$169,051.90 was denied. On May 28, 2003, \$22,559.71 was denied. Freedom has appealed denial of these costs to the Illinois Pollution Control Board. We seem to be in agreement that a discussion prior to a Board hearing to determine if settlement can be reached would be appropriate. As promised, set forth below is a summary of the costs denied, and our basis for requesting IEPA to reconsider its denial.

I. Handling Costs

IEPA denied \$24,638.82 in handling costs. As illustrated in the chart below, based on handling charges allowable under the law, Freedom is entitled to an additional \$9,643.95 in handling charges.

ESE Invoice 0369674		
	Invoice Amount	Allowable Handling Charges Based on Per Subcontract/ Field Cost
Equipment rental	520.69	62.40
Field Supplies	355.31	42.64
Photo	21.24	2.54
Printing	1.00	.12
Total	\$280,054.95	\$15,354.08
Amount Paid by IEPA		\$10,988.58
Amount Still Owed to Freedom		\$ 4,365.50

II. \$362.84 for Cell Phone and Mileage Handling Costs

- \$226.76 was deducted for cell phone rental from 10/28/2002 - 11/27/2002. Apparently, IEPA made this deduction based on a belief ESE staff were on site for five days, not nine days. A similar deduction of \$103.96 was made for the period 09/28/2002 - 10/27/2002. Attached are time sheets verifying ESE staff were on site for these time periods.
- \$23.39 was deducted as a handling charge on mileage costs. This should have been allowable.

III. \$20,000 Deductible Assessed

IEPA denied reimbursement of \$20,000 as deductible amounts owed. Although no reason for this deduction was specified, it appears the adjustment was made because an additional deductible was anticipated to be owed with respect to a subsequent incident number assigned at the facility for the release caused by tank liner failure in August 2002. (Incident 20021122) It also appeared IEPA was unaware the \$10,000 deductible for Incident 20020433 was already paid by Freedom. Accordingly, Freedom should be reimbursed for the \$10,000 deductible for Incident 20020433 which had already been paid.

IV. \$27.76 – Tracer Dye / \$140.00 – Notice of Smoke Testing

IEPA denied \$27.76 for dye for tracer testing the sewer on the basis it “has been determined to not be related to Early Action Activities. Therefore, it is not reasonable”

MACTEC completed dye tracer testing of sewer in order to determine if a sewer connection existed between the Freedom Oil station and sewers in the vicinity of the site. The dye testing of the

UST #	Volume (gallons)	Product	Status/ Incident #
4	4,000	Gasoline	Registered. 20020433; 20021122
5	1,000	Gasoline	Registered. 930540, tank removed prior to April 1, 2002; incident closed
6	1,000	Kerosene	Registered. 20021122
Total	18,000 gallons		

The following table lists the Old Tanks subsequently discovered at the site during the clean up. These tanks were apparently taken out of service prior to 1974. The Old Tanks were located on the east side of the property. Although there were no releases from these tanks, IEPA assigned Incident No. 20021420 to these tanks.

Unregistered/Previously Unknown Tanks ("Old Tanks")

UST #	Volume (gallons)	Product
7	500	Heating Oil
8	1,000	Gasoline
9	1,000	Gasoline
10	1,000	Gasoline
11	500	Heating Oil
Total	4,000 gallons	

Reimbursement Application 1. Corrective Action costs in the amount of \$185,644.12 were incurred between April 3, 2002 and August 2, 2002 in connection with Incident 20020433. These costs were incurred based on activities ordered by OER for the purpose of identifying the migration pathway from the shear value release to a conduit causing vapors in the school. In summary, these costs included trench excavation to halt migration and sewer exploration to identify the conduit of the free product entering the sewer purported to have caused gasoline vapors in the school. On December 18, 2002, IEPA denied \$81,954.58 of the requested costs based on the presence of tanks ineligible for reimbursement.

IEPA reimbursed 55.814% of the costs. In reaching this amount, IEPA decided a total of 21,500 gallons of tank product storage was present at the site. Twelve thousand gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 2, 3 and 4) and 9,500 gallons to be associated with Fund ineligible tanks (Tanks 1, 5, 6, 7, 8, 9 and 10). According to IEPA, in evaluating this application, it considered the following tanks with the registration/eligibility status noted below:

As noted, 17,000 gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 1, 2, 3, 4, and 6) and 4,500 gallons to be associated with Fund ineligible tanks (Tanks 5, 7, 8, 9, and 10). Based on this ratio, IEPA reached an 80.95% reimbursement allocation.

Reimbursement Application 3 - February 11, 2003. The next reimbursement submission, dated February 11, 2003, requested \$116,848.37. On May 28, 2003, IEPA denied \$22,189.00 for similar reasons.

IEPA reimbursed 80.95% of the costs. In reaching this amount, IEPA found a total of 20,000 gallons of tank product had been present at the site. According to IEPA, in evaluating this application, it considered the following tanks with the registration/eligibility status noted below:

Tank 1	4,000 gallon diesel	Eligible
Tank 2	4,000 gallon gasoline	Eligible
Tank 3	4,000 gallon gasoline	Eligible
Tank 4	4,000 gallon gasoline	Eligible
Tank 5	Excluded from consideration by IEPA	
Tank 6	1,000 gallon kerosene	Eligible
Tank 7	500 gallon heating oil	Ineligible
Tank 8	1,000 gallon petroleum	Ineligible
Tank 9	1,000 gallon petroleum	Ineligible
Tank 10	1,000 gallon petroleum	Ineligible
Tank 11	500 gallon heating oil tank	Ineligible
Total	20,000 Gallons	17,000 Gallons Eligible/4,000 Gallons Ineligible

As noted, 17,000 gallons was considered by IEPA to be associated with Fund eligible tanks (Tanks 1, 2, 3, 4, and 6) and 4,500 gallons to be associated with Fund ineligible tanks (Tanks 5, 7, 8, 9, and 10). Based on this ratio, IEPA reached a 80.95% reimbursement allocation.

There is No Scientific Evidence Whatsoever Connecting the Old Tanks at the Site to the Work Undertaken

With respect to the corrective action amounts denied, denial of these costs is contrary to law. While Section 57.8(m)(l) of the Act allows the Agency to apportion reimbursement costs to eligible and ineligible tanks, this apportionment must be based on the corrective action actually necessitated by the Old Tanks and the owner's failure to justify the costs as related to the eligible tanks. In this case, there is no relationship between the costs incurred and the Old Tanks at the site. The presence of the Old Tanks did not necessitate any of the work conducted.

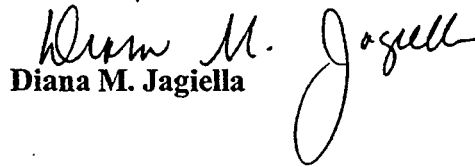
John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
June 30, 2003
Page 9

Conclusion

We hope this information is helpful to explain Freedom's position it should not have been denied the requested Fund reimbursement. We look forward to hearing from you.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.


Diana M. Jagiella

Enclosures

cc: A. Michael Owens
Michael J. Hoffman

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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:

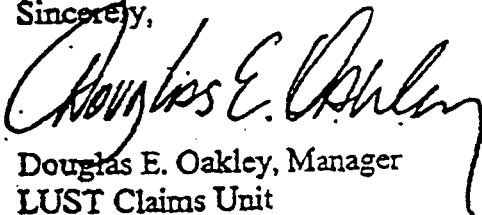
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Michael Heaton of Michael Lowder's staff at 217/782-6762.

Sincerely,



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

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Attachment

cc: Harding ESE

The total gallonage of tanks eligible to access the LUST Fund is 12,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund is 9,500 gallons. Therefore, 55.814% of costs are apportioned to the tanks eligible to access the LUST Fund, and 44.186% of costs are apportioned to the tanks not eligible to access the LUST Fund.

With regard to \$81,954.58 deduction, \$40,014.29 was deducted from Personnel, \$27.40 was deducted from Equipment, \$857.23 was deducted from Materials and Expendable (in stock items), \$2,866.22 was deducted from Materials & Expendables (field purchases, after the \$140 and \$27.76 deductions listed on lines a and b above), and \$38,189.44 was deducted from Subcontractors.

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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:

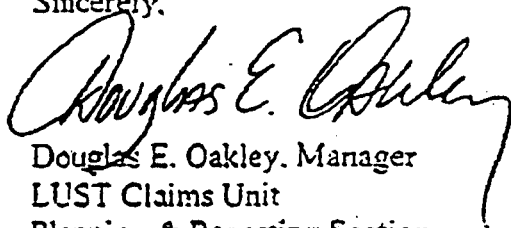
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100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 or Michael Heaton of Michael Lowder's staff at 217/782-6762.

Sincerely,



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

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Attachment

cc: Harding ESE

deductions

A deduction in the amount of \$359.66 was made because the Jones & Son invoice submitted with the claim was less than the amount requested by Bodine.

A deduction in the amount of \$5.98 was made for a meal for R. Pletz on September 27, 2002.

- 3. \$0.27, deduction for costs due to a mathematical error. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(ff))

This deduction was made because the amount requested on the Subcontractors form dated August 23, 2002 and October 15, 2002 is incorrect. The amounts listed on the form total \$302,409.85.

- 4. \$29.74, 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 \$17.83 was made on the ineligible costs of \$890.66 requested on ESE invoice 0000369674.

A deduction of \$11.91 was made on the ineligible cell phone costs in the amount of \$342.15.

- 5. \$24,638.82, deduction for handling charges in the billing(s) exceed the handling charges set forth in Section 57.8(f) of the Act. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost	Eligible Handling Charges as a Percentage of Cost
\$0-\$5,000	12%
\$5,001-\$15,000	\$600 + 10% of amount over \$5,000
\$15,001-\$50,000	\$1600 + 8% of amount over \$15,000
\$50,001-\$100,000	\$4400 + 5% of amount over \$50,000
\$100,001-\$1,000,000	\$6900 + 2% of amount over \$100,000

A deduction in the amount of \$13,223.01 was made on the Harding ESE invoice numbered 0000383876.

A deduction in the amount of \$11,415.81 was made on the Harding ESE invoice numbered 369674.



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

MAY 28 2003

Freedom Oil Co.
Attention: Gene Adams
Post Office Box 3697
Paris, IL 61944

Re: LPC #0450305043 -- Edgar County
Paris/Freedom Oil
401 South Main
LUST Incident No. 20020433
LUST FISCAL FILE

Dear Mr. Adams:

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 February 11, 2003 and was received by the Agency on February 20, 2003. The application for payment covers the period from March 1, 2002 to January 24, 2003. The amount requested is \$116,848.37.

The deductible amount for this claim is \$20,000.00, which was previously deducted from the Invoice Voucher dated January 17, 2003. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On March 3, 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 for \$94,288.66 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 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 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
DEPT. 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

Attachment A
Technical Deductions

Re: LPC# 0450305043 -- Edgar County
Paris / Freedom Oil Company
401 South Main Street
LUST Incident No. 20020433, 20021122, and 20021420
LUST File

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

Item #

Description of Deductions

\$33.25 for VHS copies. This cost has been determined to not be related to Early Action activities, therefore is not reasonable (35 IAC 732.606(jj)).

\$22,189.00, for deductions for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the fund (Section 57.8(n)(1) of the Act and 35 IAC 732.608).

Specifically, there were ten tanks at the subject facility, each of which was determined by the Office of State Fire Marshal to have had a significant release. Tank Nos. 1, 2, 3, 4, and 6 were deemed eligible to access the LUST Fund for reimbursement purposes, Tanks 5, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes. Since Tank 5 was addressed under IEMA Incident No. 930540, it is not included in the gallonage total for Tanks for which an eligibility determination has not been made by Illinois Office of State Fire Marshall (OSFM).

Tank #	Description
1	4,000-gallon diesel tank
2	4,000-gallon gasoline tank
3	4,000-gallon gasoline tank
4	4,000-gallon gasoline tank
5	1,000-gallon gasoline tank
6	1,000-gallon kerosene tank
7	500-gallon heating oil tank
8	1,000-gallon gasoline and/or diesel tank
9	1,000-gallon gasoline and/or diesel tank
10	1,000-gallon gasoline and/or diesel tank
11	500-gallon heating oil tank

Exhibit 2

Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

December 18, 2003

John J. Kim, Esq.
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Mr. Mike Heaton
Illinois Environmental Protection Agency
Bureau of Land #24
P.O. Box 19276
Springfield, IL 62794-9276

Mr. Mike Lowder
Illinois Environmental Protection Agency
Bureau of Land #24
P.O. Box 19276
Springfield, IL 62794-9276

**Re: Freedom Oil Company, Paris, Illinois
LUST Fund Reimbursement Denial
Our File No. 17273-1**

Dear Gentlemen:

At our August meeting, we agreed to focus our LUST Fund reimbursement discussions on the big ticket item – the costs deducted based on the presence of four unregistered tanks, Tanks 7, 8, 9 and 10 (“Ineligible Tanks”). At the meeting, we argued the remediation costs incurred had no connection to the Ineligible Tanks. The costs were necessitated by two significant events - an April 2002 shear valve leak and an August 2002 tank liner failure.

All of the costs incurred were associated with work ordered by IEPA-OER before the Ineligible Tanks were even discovered. In particular, IEPA-OER had ordered excavation and removal of soil from property line to property line prior to discovery of the tanks. Thus, the discovery of the tanks did not give rise to an obligation for remedial activities - that obligation already existed. Further, the nature of the work conducted and the analytical results obtained confirm the Ineligible Tanks did not contribute to the need for site cleanup or emergency response activities. Thus, apportionment of cleanup costs to the Ineligible Tanks has no basis in fact or law.

You requested that we present our technical information in support of this point for further consideration and evaluation by you. This information is presented below.

included investigation of the school vapors and efforts to abate any related threat (including air monitoring). Freedom also investigated to determine if a conduit from the pump to the school could be identified. These activities included sewer investigation (via smoke and remote controlled camera), installation of two interceptor/collection trenches on Crawford Street and sampling from the trench, an exploratory excavation along Crawford Street, sampling from seven soil borings, installation of four new wells and sampling of all wells.

August 2002 Vapors were discovered in the sewer lines in the southern alley and homes to the south. The vapors were caused by a release from one of the active tanks found to have a tank liner failure. Emergency response activities included installation of an interceptor/collection trench along the southern alley. In addition, the USTs were removed, along with approximately 11,811 tons of soil and on-site structures to allow removal of underlying soil. The extent of soil removal was determined and dictated by IEPA-OER before actual excavation began. The Ineligible Tanks were discovered and removed as part of the soil excavation previously ordered by IEPA-OER. The site was backfilled.

Summary of Relevant Facts

The following facts underscore the conclusion the Ineligible Tanks did not contribute to the need for any site cleanup or emergency response activities for which cost reimbursement was requested.

- The Ineligible Tanks are located slightly north and west of the center of the site. They are approximately 40 feet due north of the UST bed of eligible tanks. The Pump Islands are in between the eligible and Ineligible Tanks. (See Exhibit 1)
- IEPA-OER ordered removal of the on-site structures and excavation of soil from property line to property line prior to the discovery of the pre-74 tanks. Their discovery did not expand the work already ordered by IEPA-OER.
- The Ineligible Tanks were discovered and removed on October 1, 2002. Both field observations and analytical results, as documented in the attachments, demonstrate the tanks did not give rise to a remediation obligation. Analytical results confirm the absence of soil and groundwater contamination from the Ineligible Tanks. Specifically:
 - PID readings taken around the pre-74 tanks during the removal and excavation in October 2002 were very low indicating no releases requiring remediation from these tanks. The PID readings were 0.0, 1.0, 1.6, 1.8, 1.8, 3.4, and 8.5. The exact locations at which these PID readings were taken are depicted on the attached map. (See Exhibit 2)

Reimbursement Application 2

Reimbursement of \$709,748.50 was requested. \$143,123.59 was denied based on the presence of Ineligible Tanks. This work was initiated after odors were detected in the sewer and homes southwest of the site. The odors resulted from a release caused by a tank liner failure. The work addressed the odors and contamination caused by the tank liner failure. It also included excavation of soil north of the tank cavity as IEPA-OER believed this work was necessary to address any contamination that might be present from the April shear value release. All work was conducted as ordered by IEPA-OER. The emergency response work is depicted on Exhibit 5 and included:

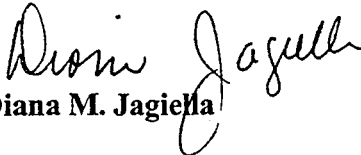
- Construction of an interceptor trench on the south alley boundary to intercept and prevent free product from entering the sewer.
- Free product removal. Free product was observed entering the trench directly south of the UST bed. Fluid removal was initiated twice daily.
- Construction and operation of a vapor extraction system in the sewer.
- Investigation of the UST tank cavity. This investigation revealed the liner in the southernmost tank had failed, causing the release. All tanks were removed (one kerosene, one diesel fuel, and three gasoline USTs). The tanks were in sound condition except for the two gasoline USTs located on the south end of the tank bed which appeared to have internal liner damage. One of these tanks caused the August 2002 release.
- Removal of Southern Contaminated Soil. Soil excavation began in the UST cavity and proceeded south (South Excavation). A clay tile was discovered that may have been the migration pathway for vapor and free product transport into the sewer. Approximately 5-6,000 tons of contaminated soil was excavated as part of the South Excavation. The approximate areas of this excavation are depicted on Exhibit 6. Analysis of samples taken from this excavation revealed significantly contaminated soil.
- Removal of Northern Contaminated Soil. IEPA-OER demanded that the excavation continue from the tank cavity to the north (North Excavation). (Freedom contended this excavation was unwarranted). The excavation proceeded north and an additional 5-6,000 tons of soil was removed. A total of 11,811 tons of soil were removed as part of the South and North Excavation. The full extent of the excavation is depicted on Exhibit 5.
- The five pre-74 tanks were discovered as the soil excavation moved north and removed.

John J. Kim, Esq.
Mr. Mike Heaton
Mr. Mike Lowder
December 18, 2003
Page 7

remediation would have been necessitated by the discovery. For these reasons, we request reconsideration of the costs denied based on the discovery of the Ineligible Tanks.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.


Diana M. Jagiella

cc: Mr. Michael Owens
Mr. Michael J. Hoffman, P.E.
man:G:\F\Freedom Oil\cor\iepa (Kim-Heaton) 12.10.03.doc

Exhibit 3

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

FREEDOM OIL COMPANY,)	
)	PCB No. 03-54
Petitioner,)	PCB No. 03-56
)	PCB No. 03-105
v.)	PCB No. 03-179
)	PCB No. 04-02
ILLINOIS ENVIRONMENTAL)	(LUST Fund/UST Appeal)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to the Illinois Pollution Control Board ("Board") Rules at 35 Ill. Adm. Code 101.616 and 101.620, hereby responds to the Interrogatories propounded by the Petitioner, Freedom Oil Company ("Freedom Oil").

GENERAL OBJECTIONS

The Illinois EPA objects to each of the Petitioner's interrogatories, definitions, and instructions to the extent that, individually or cumulatively, they purport to impose upon the Illinois EPA duties or obligations which exceed or are different from those imposed upon the Illinois EPA by the Board's procedural rules.

The Illinois EPA further objects to each of the Petitioner's interrogatories, definitions, and instructions to the extent that they call for attorney-client communications, communications between or among Illinois EPA's counsel, attorney work product, or any other privileged matters. The Illinois

Interrogatory No. 4: Please state the basis for the assertions in the December 18, 2002, IEPA correspondence that gallonage associated with tanks 1, 5, 6, 7, 8, 9 and 10 were not eligible to access the LUST Fund for reimbursement purposes. Please state whether IEPA continues to assert this contention is factually and/or legally correct.

Answer:

The Illinois EPA objects to this interrogatory in that it seeks, in part, a legal argument or conclusion. Without waiving that objection, the Illinois EPA based its December 18, 2002 final decision in relevant part on a decision issued by the Office of the State Fire Marshal ("OSFM") on August 1, 2002. The Illinois EPA takes the position that based upon information available as of December 18, 2002, its contention was correct.

Interrogatory No. 5: Please state the basis for the agency's decision in its December 18, 2002, correspondence to apportion 44.186% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

Answer:

The Illinois EPA applied the facts as known at the time of the decision (See Answer to Interrogatory No. 4) to Section 57.8(m) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.8(m)) and Section 732.608 of Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code 732.608). The apportionment factor used represents the ratio of volume of tanks eligible to access the Underground Storage Tank Fund ("UST Fund") to the volume of all tanks at the site. The Illinois EPA concedes that the volume of tank 5 was erroneously included in the calculations. Tank 7 was also erroneously thought to be a 500 gallon tank, although the correct volume for that tank is 1,000

Interrogatory No. 8: Does the IEPA contend gallonage or petroleum associated with tanks 7, 8, 9, 10 and/or 11 caused or contributed to the need for clean up at the site with regard to Incidents 20021122, 20020433 and/or 20021420? If so, state the factual and legal basis for this contention.

Answer:

The Illinois EPA objects to this interrogatory in that it is ambiguous and seeks, in part, a legal argument or conclusion. Without waiving that objection, the Illinois EPA states that Freedom Oil has represented to OSFM that tanks 7, 8, 9, 10 and 11 have all experienced releases. The Illinois EPA has not been provided with any information that demonstrates that tanks 7, 8, 9, 10 and 11 did not contribute to the contamination at the site.

Interrogatory No. 9: Please identify the facts in support of and the legal basis for IEPA's conclusion set forth in its December 18, 2002, March 19, 2003, and May 28, 2003, correspondence that apportionment of the clean up costs to tanks 7, 8, 9, 10 and/or 11 is allowed under 415 ILCS sec. 57.8(m).

Answer:

The Illinois EPA objects to this interrogatory in that it seeks, in part, a legal argument or conclusion. Without waiving that objection, see the Answers to Interrogatory Nos. 4 through 8.

Interrogatory No. 10: Please explain the basis for the state's denial of \$247,267.17 in corrective action costs given that correspondence from the state made representations corrective action costs would be reimbursed from the Fund on August 16, 2002, August 23, 2002, and September 3, 2002.

to applicable statutory and regulatory guidelines. The initial action taken at the site was the result of legal action in the form of an Immediate Injunctive Order dated August 15, 2002.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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217/782-9143 (TDD)
Dated: April 6, 2005

Tank #	1	2	3	4	5	6	7	8	9	10	11
Gallons Content	4,000 D	4,000 G	4,000 G	4,000 G	1,000 G	1,000 K	1,000 G	1,000 G	1,000 G	1,000 G	500 G
March 19, 2003 Final Decision:	E	E	E	E	IE*	E	IE**	IE	IE	IE	UK

*: Tank 5 was erroneously included in the calculations.

** : Tank 7's volume was erroneously calculated at 500 gallons instead of the correct 1,000 gallons.

Ratio of total eligible tank volume to total tank volume = $17,000 / 21,500 = 0.7907$

Thus 79.07% of eligible costs were approved.

100% minus 79.07% = 20.93% = percentage of eligible costs deducted from final approval of costs.

Tank #	1	2	3	4	5	6	7	8	9	10	11
Gallons Content	4,000 D	4,000 G	4,000 G	4,000 G	1,000 G	1,000 K	1,000 G	1,000 G	1,000 G	1,000 G	500 G
May 28, 2003 Final Decision:	E	E	E	E	IE	E	IE**	IE	IE	IE	IE

** : Tank 7's volume was erroneously calculated at 500 gallons instead of the correct 1,000 gallons.

Ratio of total eligible tank volume to total tank volume = $17,000 / 21,000 = 0.8095$

Thus 80.95% of eligible costs were approved.

100% minus 80.95% = 19.05% = percentage of eligible costs deducted from final approval of costs.