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**FEB 22 2005**

**STATE OF ILLINOIS  
Pollution Control Board**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FREEDOM OIL COMPANY,	)	
	)	
Petitioner,	)	PCB 03-54
	)	PCB 03-105
vs.	)	PCB 03-179
	)	PCB 04-02
ILLINOIS ENVIRONMENTAL	)	(LUST Fund)
PROTECTION AGENCY,	)	PCB 03-56
	)	(UST Appeal)
Respondent.	)	(Consolidated)

**MOTION FOR DISCOVERY RELIEF**

NOW COMES the Petitioner, FREEDOM OIL COMPANY, an Illinois corporation, by its attorneys, Howard and Howard Attorneys, P.C., and for its Motion for Discovery Relief, states as follows:

1. On November 17, 2004, Petitioner submitted discovery requests to the Illinois Environmental Protection Agency ("IEPA") (Exhibit 1).
2. Under Illinois Pollution Control Board ("Board") Procedural Rule 101.620(b), the IEPA's responses were due within twenty-eight (20) days on December 14, 2004.
3. At the Board status hearing on January 4, 2005, hearing officer Webb granted IEPA until January 27, 2005, to submit its discovery responses. The hearing was also set for March 2, 2005.
4. As of February 21, 2005, IEPA's discovery responses had not been received by Petitioner notwithstanding Petitioner's inquiries into the status of discovery. (Exhibit 2).

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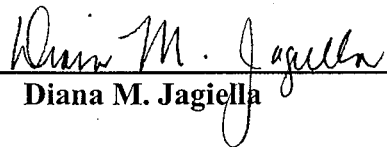
5. Under Board Procedural Rule 101.616, discovery must be complete at least ten (10) days prior to the scheduled hearing unless the hearing officer orders otherwise. As the hearing is nine days from today's date and discovery has not been received, this deadline cannot be satisfied.

6. Based on IEPA's failure to provide discovery in a timely manner prior to hearing, Petitioner requests relief under Board Procedural Rule 101.800. In particular that the IEPA be barred from introducing into evidence any testimony, information or document not disclosed to Petitioner as of January 27, 2005 (the date indicated in the January 4, 2005, Order).

WHEREFORE, the Petitioner, FREEDOM OIL COMPANY, asks the Board to grant this Motion for Discovery Relief.

**Respectfully submitted,**

**HOWARD & HOWARD ATTORNEYS, P.C.**

By:   
Diana M. Jagiella

Dated: February 21, 2005

Diana M. Jagiella  
Attorney for Petitioner  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602-1350

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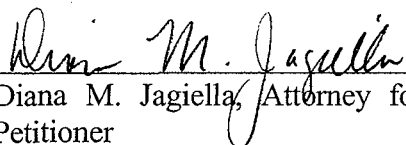
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 21<sup>st</sup> day of February, 2005, I have served the attached *Motion for Discovery Relief* by facsimile and by depositing same via first-class U.S. mail delivery to:

Dorothy M. Gunn, Clerk (312/814-3669)  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-3218

John J. Kim, Assistant Counsel (217/782-9807)  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P. O. Box 19276  
Springfield, IL 62794-9276

Hon. Carol Webb (217/524-8509)  
Hearing Officer  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield, IL 62704

  
\_\_\_\_\_  
Diana M. Jagiella, Attorney for  
Petitioner

Diana M. Jagiella  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602  
(309) 672-1483

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FREEDOM OIL COMPANY,	)	
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Petitioner,	)	PCB 03-54
	)	PCB 03-105
vs.	)	PCB 03-179
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ILLINOIS ENVIRONMENTAL	)	(LUST Fund)
PROTECTION AGENCY,	)	PCB 03-56
	)	(UST Appeal)
Respondent.	)	(Consolidated)

**FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT**

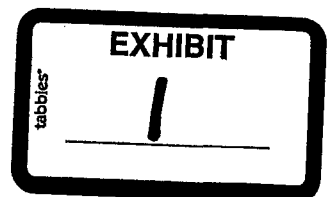
Pursuant to the General Rules of the Illinois Pollution Control Board (hereafter "Board"), specifically Section 101.620(a) (35 Ill. Admin. Code 101.620(a)), Petitioner serves the attached Interrogatories and Requests for Production of Documents upon the Respondent. Answer the attached separately, fully, in writing, and under oath. Deliver a true copy of your answers or objections to the undersigned attorney within twenty-eight (28) days of service.

**INSTRUCTIONS FOR INTERROGATORIES**

Petitioner, by and through the undersigned attorney, propound the attached questions to you under the provisions of Section 101.620(a) (35 Ill. Admin. Code 101.620(a)). The answers may be offered in evidence at the hearing in this case.

In answering these Interrogatories, furnish all information available to you, including information in the possession of your attorneys or their investigators and all persons acting in your behalf and not merely such information known of you or of your own personal knowledge. If you cannot answer the Interrogatories in full after exercising due diligence to secure the information, so

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state in your answer and, to the extent possible, answer stating whatever information or knowledge you have.

The questions which follow are to be considered as continuing, and you are requested to provide by way of supplemental answers hereto such additional information as you or any other person acting on your behalf may hereafter obtain which will augment or otherwise modify your answers given below. Such supplemental responses are to be filed and served upon this party immediately upon receipt of such information.

**INSTRUCTIONS FOR REQUESTS FOR PRODUCTION OF DOCUMENTS**

You are required to serve upon Petitioner, by and through the undersigned attorney, a written response which shall state, with respect to each item or category of items, that inspection and copying will be permitted as requested. The documents shall be produced as they are kept in the regular course of business, or shall be organized and labeled by you to correspond to any items or categories of items in this request. All objections to any item or categories of items or parts thereof, and the reasons for such objection, shall be specifically stated in your response.

With respect to any documents responsive to this request which you have declined to produce by reason of any claim of privilege or immunity, please state (1) the author and recipient, if any, of such document; (2) the date of the document; (3) a description of the nature and subject matter of the document; (4) the grounds upon which the privilege is asserted; and (5) the name and address of the present custodian of the document.

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## DEFINITIONS

As used herein, the following terms shall have the meaning indicated below.

A. "Persons" means natural persons, corporations, partnerships, sole proprietorships, associations or any other kind of entity or its agents, servants, and employees.

B. "You" and "your" means the parties to whom these questions are directed as well as agents, employees, attorneys, investigators, subsidiaries, affiliates and all other "persons" acting for said party. Provided, however, the inclusion of attorneys is not meant to and does not seek any information or documents protected by the attorney-client privilege or the work product doctrine.

C. "Respondent" is defined as the Respondent named in this administrative proceeding, and any of its agents, servants, employees, subsidiaries, or affiliates.

D. The term "documents" shall mean writings of every kind, source, and authorship, both originals and all non-identical copies thereof, in your possession, custody, or control, known by you to exist irrespective of whether the writing is intended for or transmitted to any other person or entity, including without limitation any government agency, department, administrative entity, or personnel. The term shall include handwritten, typewritten, printed, photocopied, photographic, or recorded pictures, sound recordings, films, tapes, calculations, permit reviewer notes, and information stored in, or accessible through, computer or other information storage or retrieval systems, together with the codes and/or programming instructions and other materials necessary to understand that use such systems. For purposes of illustration and not limitation, the term shall include: Affidavits, agendas, agreements, analyses, announcements, bills, statements and other records of obligations and expenditures, books, brochures, bulletins, calendars, canceled checks, vouchers, receipts and other records of payment, charts, drawings, checkbooks, circulars, collateral files and contents, contracts,

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corporate by-laws, corporate charters, correspondence, credit files and contents, deeds of trust, deposit slips, diaries, drafts, files, guaranty agreements, instructions, invoices, ledgers, journal balance sheets, profit and loss statements, and other sources of financial data, letters, logs, notes, or memoranda of telephonic or face-to-face conversations, manuals, memoranda of all kinds, to and from any persons, agencies, or entities; minutes, minute books, notes, notices, parts, lists, papers, press releases, printed matter (including published books, articles, speeches, and newspaper clippings); purchase orders, records of administrative, technical, and financial actions taken or recommended; reports, safety deposit boxes and contents and records of entry, schedules, security agreements, specifications, statement of bank accounts, statements, interviews, stock transfer ledger, technical and engineering reports, evaluations, advice, recommendations, commentaries, conclusions, studies, test plans, manuals, procedure, data, reports, results, and conclusions; summaries, notes, and other records and recordings of any conferences, meetings, visits, statements, interviews or telephone conversations; telegrams, teletypes and other communications sent or received, transcripts of testimony, UCC instruments, work papers and all other writings, the contents of which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested. The term shall also include data or information that exists in electronic or magnetic form. To the extent that such information exists in electronic or magnetic form, this information shall be produced in hard copy form (printed on regular paper).

The term "documents" also includes all such documents, as defined above, whether in the actual possession or under the actual or constructive control of the individual who is requested to produce such documents.

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The term "documents" also includes documents which are considered privileged. If a "document" is considered privileged, such document shall be identified by the type of the document, its subject matter, its author, its date, present location of the custodian of document, and the grounds alleged for the claim of "privilege."

E. In those instances when requested information is stored only on computer hardware or software or other data compilations, the responding party should either produce the raw data along with all codes and programs for translating it into usable form, or produce the information in a finished usable form that includes all necessary glossaries, keys, and indices for interpretation of the material.

F. The conjunctions "and" and "or" are interchangeable and the meaning is always "and/or."

G. "Including" shall mean "including, but not limited to."

H. "Communication" shall mean any method or means by which information, oral or written, is exchanged, including, but not limited to, any telephone conversation, meeting, discussion, letter, facsimile, telex, telegram, electronic mail or any other means by which information was received by you, or transmitted by or to you.

I. "Constructive Control" is defined to include, but not be limited to, all documents (as defined above) in the possession or under the control of other individuals or entities other than the party requested to produce same, when such other individuals are subcontractors, other state agencies, attorneys, relatives, corporations or partnerships owned or controlled by the party, banks, safety-deposit boxes and other places designed for the safe-keeping of records or personal property.

J. "Identify" should be interpreted as requiring the following: with respect to persons, the person's full name, last known address and telephone number; with respect to non-natural

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persons (e.g. a corporation), its name, registered agent, address of its principal place of business, registered address (if different from principal place of business) and principal business activity. With respect to documents or things, the term "Identify" should be interpreted as requiring sufficient information regarding the item so that the party seeking discovery can locate and identify the object as readily as the party from whom it is being sought.

K. "Reference to Documents" In those instances when the responding party chooses to answer a request for information by referring to a specific document or record, it is requested that the specification be in sufficient detail to permit the requesting party to locate and identify the records and/or documents from which the answer is to be ascertained, as readily as can the party served with the request.

L. "Document Destruction" It is requested that all documents and/or other data compilations that might impact on the subject matter of this litigation be preserved and that any ongoing process of document destruction involving such documents cease. In the event a responsive document has been destroyed or is no longer in the possession or control of the Respondent, it is requested that the Respondent identify the document and explain any such circumstances.

M. "Petitioner" is defined as the Freedom Oil Company, its representatives, agents, servants, employees, subsidiaries, or affiliates.

N. The abbreviation "IEPA" or "agency" shall refer to the Illinois Environmental Protection Agency.

O. References to "Freedom Facility" and "Facility" shall mean the buildings, equipment and ancillary equipment located at the common address of 401 S. Main St., Paris, Illinois, Edgar County.

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P. "Clean Up Costs" shall mean the costs incurred by Petitioner to remediate and address petroleum releases at the Facility under Incidents 20020433 and 2021122 for which Petitioner requested reimbursement from the Lust Fund.

Q. "Underground Storage Tank," "Tank" or "UST" shall have the meaning set forth in 41 Ill. Admin. Code §170.400.

R. "Ineligible Tanks" shall mean underground storage tanks designated by the state as tank Nos. 7 through 11 which were not registered with the Illinois Office of the State Fire Marshall under 41 Ill. Admin. Code §170.440.

S. "Eligible Tanks" shall mean underground storage tanks No. 1 through 6 which were registered with the Illinois Office of the State Fire Marshall under 41 Ill. Admin. Code §170.440.

T. "Lust Fund" shall mean the underground storage tank fund as described in 415 ILCS 5/57.8.

If Respondent finds the meaning of any term in these Interrogatories unclear, then Respondent should assume a reasonable meaning, state what that assumed meaning is, and answer the Interrogatory on the basis of that assumed meaning.

### **INTERROGATORIES AND REQUEST TO PRODUCE**

**INTERROGATORY NO. 1:** Please identify each person who participated in preparing the answers to these Interrogatories.

**ANSWER:**

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**INTERROGATORY NO. 2:** Please list the name, address, and telephone number of any person who is expected to be called to testify at hearing.

**ANSWER:**

**INTERROGATORY NO. 3:** Please list the anticipated subject matter of testimony to be given by the persons identified in the above stated INTERROGATORY NO. 2.

**ANSWER:**

**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:**

**REQUEST TO PRODUCE NO. 1:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 4.

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**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:**

**REQUEST TO PRODUCE NO. 2:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 5.

**INTERROGATORY NO. 6:** Please state the basis for the agency's decision in its March 19, 2003, correspondence to apportion 20.93% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

**ANSWER:**

**REQUEST TO PRODUCE NO. 3:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 6.

**INTERROGATORY NO. 7:** Please state the basis for the agency's decision in its May 28, 2003, correspondence to apportion 19.05% of the clean up costs to tanks not eligible to access the LUST Fund for reimbursement purposes.

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**ANSWER:**

**REQUEST TO PRODUCE NO. 4:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 7.

**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:**

**REQUEST TO PRODUCE NO. 5:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 8.

**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 §57.8(m).

**ANSWER:**

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**REQUEST TO PRODUCE NO. 6:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 9.

**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. (See Attachment 1)

**ANSWER:**

**REQUEST TO PRODUCE NO. 7:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 10.

**INTERROGATORY NO. 11:** Does the state contend any of the corrective action costs were associated with or necessitated by the presence of the Ineligible Tanks? If so, state the factual basis for this contention. Also, identify what specific corrective action was necessitated by the Ineligible Tanks.

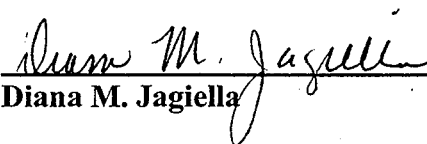
**ANSWER:**

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**REQUEST TO PRODUCE NO. 8:** Please produce all documents relating to or evidencing your answer to the above stated INTERROGATORY NO. 11.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS, P.C.**

By:   
**Diana M. Jagiella**

Dated: November 17, 2004

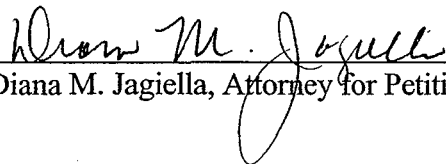
Diana M. Jagiella  
Attorney for Petitioner  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602-1350

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 17<sup>th</sup> day of November, 2004, I have served the attached *FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT*, by depositing same via first-class U.S. mail delivery to:

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

  
Diana M. Jagiella, Attorney for Petitioner

Diana M. Jagiella  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602  
(309) 672-1483

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# Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

September 3, 2002

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

Via Facsimile - (217) 524-7740

Re: **Freedom Oil, Paris, Illinois**  
**Our File No. 17273-1**

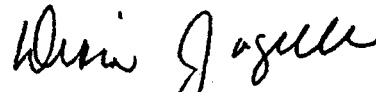
Dear Jim:

In response to your September 3, 2002 letter, we do request that the actual costs be reviewed by the IEPA Underground Storage Tank Section and that you ask for an expedited review of the costs. Confirmation of reimbursement will be necessary to obtain financing for the project.

Thanks for your cooperation.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.

  
Diana M. Jagiella

cc: John Waligore, Esq.  
Richard Pletz  
Tod Rowe  
Michael Owens

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Exhibit

1



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

September 3, 2002

Diana Jagiella  
Howard & Howard  
One Technology Plaza  
211 Fulton Street, Suite 600  
Peoria, IL 61602-1350

Richard S. Pletz  
Project Manager  
Harding ESE, Inc.  
8901 North Industrial Road  
Peoria, IL 61615-1509

Re: Freedom Oil, Paris, Illinois, UST System Removal

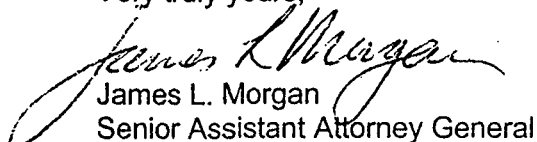
Greetings:

I have reviewed Mr. Pletz's letter of August 28, 2002, with representatives of IEPA's Emergency Response Unit. We can confirm that the 13 items listed on the first page of the letter are eligible for reimbursement from the LUST Fund. Neither I nor the ERU staff can weigh in on whether the estimated costs will actually be approved. That is the province of IEPA's UST Section and is typically done on the basis of actual bills submitted with a reimbursement application.

If necessary, I can forward the estimate to the UST Section and ascertain whether they could provide any additional feedback. I cannot gauge how quickly they could respond but would relay your desire for a quick turnaround.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,

  
James L. Morgan  
Senior Assistant Attorney General

JM:jm  
emc: John Waligore  
Tod Rowe



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

August 23, 2002

Diana Jagiella  
Howard & Howard  
One Technology Plaza  
211 Fulton Street, Suite 600  
Peoria, IL 61602-1350

Re: Freedom Oil, Paris, Illinois, Your file no. 17273-1

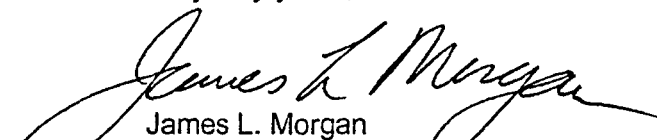
Dear Ms. Jagiella:

I am writing to follow up on our discussion of the afternoon of August 23rd. I immediately spoke with representatives of IEPA ORU and they agreed that expedited action by the Office of State Fire Marshal on a request by Freedom to remove the entire tank system to address gross subsurface contamination is called for here. Tod Rowe left our conference to immediately contact Bill Alderson of the Fire Marshal's Office to ask for such expedited action.

I can also confirm that removal of the tank system and demolition of the building as part of the effort to eliminate gross subsurface contamination would be reimbursable from the fund, subject to the standard caveat regarding reasonable and customary costs. Requests for reimbursement would have to satisfy the other applicable requirements set forth in Subpart F. It is our intent that Freedom be reimbursed for appropriate response measures and we will work to assure that.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,

  
James L. Morgan  
Senior Assistant Attorney General

JM:jm  
emc: John Waligore  
Tod Rowe



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

August 16, 2002

Diana Jagiella  
Tracy C. Litzinger  
Howard & Howard  
One Technology Plaza  
211 Fulton Street, Suite 600  
Peoria, IL 61602-1350

Re: Freedom Oil, Paris, Illinois, Your file no. 17273-1

Dear Ms. Jagiella:

I am writing to confirm discussions at the August 15th hearing regarding Freedom's concern about avoiding expenses for removal of contaminated soil beyond 4 feet from the outside diameter of the leaking underground storage tank as an early action measure because those costs may not be reimbursed by the LUST Fund without an approved budget for corrective action. As was stated, because of the documented threat to human health and the environment, IEPA's OER and LUST Section have determined that OER should take the lead and direct performance by Freedom of both early action and corrective action measures pursuant to 35 Ill. Adm. Code 732.105. It is the Agency's practice that any action directed by OER as necessary to abate an emergency situation will be reimbursed by the Fund if it does not exceed the reasonable and customary charges for such activity. Furthermore, 732.405(d) authorizes an owner/operator to elect to proceed with corrective action activities prior to the submittal or approval of "an otherwise required" "corrective action plan or budget."

Thus, we sought to overcome Freedom's reluctance to provide its neighbors and the City of Paris with the significant protection that removal of the grossly contaminated soil would provide because that removal could include contaminated soil from beyond 4 feet from the outside diameter of the leaking underground storage tank by combining early action and corrective action (hence the use of the phrase grossly contaminated soil rather than just visibly contaminated soil, the term previously used in Section 57.7(a)(1)(B) and now used in Section 57.6 prior to the pronouncement of the four-foot rule) since the contamination is likely to exceed the four foot limit. OER's characterization as of the soil removal effort as both early action and corrective action should smooth over Freedom's monetary concerns.

Requests for reimbursement would have to satisfy the other applicable requirements set forth in Subpart F. It is our intent that Freedom be reimbursed for appropriate response measures and we will work to assure that.

Please call me at 217-524-7506 if you have any questions.

Very truly yours,

  
James L. Morgan  
Senior Assistant Attorney General

JM:jm

emc: John Waligore  
Tod Rowe

# Howard & Howard

law for business

direct dial: 309.999.6309

Diana M. Jagiella

email: djagiella@howardandhoward.com

February 4, 2005

*Via Facsimile and U.S. Mail*

**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


**Re: Freedom Oil Company, Paris, Illinois  
Freedom Discovery  
Our File No. 17273-1**

Dear John:

Last week you indicated the Freedom discovery would be in my office early this week. I still do not have the materials. Would you please advise as to the status.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.

  
Diana M. Jagiella

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **FEB 22 2005**

FREEDOM OIL COMPANY,	)	
	)	
Petitioner,	)	PCB 03-54
	)	PCB 03-105
vs.	)	PCB 03-179
	)	PCB 04-02
ILLINOIS ENVIRONMENTAL	)	(LUST Fund)
PROTECTION AGENCY,	)	PCB 03-56
	)	(UST Appeal)
Respondent.	)	(Consolidated)

**MOTION FOR PARTIAL SUMMARY JUDGMENT  
AND ATTORNEYS' FEES**

NOW COMES the Petitioner, FREEDOM OIL COMPANY, an Illinois corporation, by its attorneys, Howard and Howard Attorneys, P.C., and for its Motion for Partial Summary Judgment and Attorneys' Fees, states as follows:

1. Freedom purchased a gasoline station located at 401 S. Main Street, Paris, Illinois, in 1985 ("Freedom Station").
2. Two release incidents from underground storage tanks ("USTs") occurred at the Freedom Station in 2002. In April 2002 a shear valve on Pump No. 1 leaked. A release was reported on April 3, 2002, and assigned Incident 20020433. In August 2002 a tank liner failure occurred. A release was reported on August 7, 2002, and assigned Incident 20021122.
3. Michael J. Hoffman, Richard Pletz and Terry Dixon of MACTEC, an environmental consulting firm, directed the corrective action on behalf of Freedom in response to Incidents 20020433 and 20021122.

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4. The Illinois Environmental Protection Agency Office of Emergency Response (OER) directed the corrective action on behalf of the state in response to Incidents 20020433 and 20021122.

5. Prior to 2002, eleven (11) USTs were located at the site. Six (6) of the USTs (Tanks 1-6) were registered by Freedom with the Office of the State Fire Marshall (OSFM) under 41 Ill. Admin. Code §170.440. Tank 5 was removed prior to 2002. The presence of tanks 7 through 11 was unknown and the tanks were not registered with the OSFM. Tanks 7 through 11 were discovered during soil excavation in October 2002. The volume, product contents and OSFM registration status of all the tanks is set forth below:

UST #	Volume (gallons)	Product	Notes
1	4,000	Diesel	Registered with the Office of the State Fire Marshall.
2	4,000	Gasoline	Registered with the Office of the State Fire Marshall.
3	4,000	Gasoline	Registered with the Office of the State Fire Marshall.
4	4,000	Gasoline	Registered with the Office of the State Fire Marshall.
5	1,000	Gasoline	Registered with the Office of the State Fire Marshall. Removed prior to 2002.
6	1,000	Kerosene	Registered with the Office of the State Fire Marshall.
7	500	Heating Oil	Not registered with the Office of the State Fire Marshall.
8	1,000	Gasoline	Not registered with the Office of the State Fire Marshall.
9	1,000	Gasoline	Not registered with the Office of the State Fire Marshall.
10	1,000	Gasoline	Not registered with the Office of the State Fire Marshall.
11	500	Heating Oil or Used Oil	Not registered with the Office of the State Fire Marshall.

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6. The Office of the State Fire Marshall issued Fund Eligibility determinations that clean up costs for releases in connection with tank nos. 1, 2, 3, 4, and 6 are eligible for reimbursement from the Underground Storage Tank Fund in connection with Incidents 20020433 and 20021122. (Exhibit 1)

7. Freedom Oil Company submitted three reimbursement applications requesting a total of \$1,012,240.99 in costs incurred to remediate the releases associated with both incidents.

8. IEPA denied LUST Fund reimbursement to Freedom in the total amount of \$293,733.95. On December 18, 2002, \$102,122.04 was denied on Reimbursement Application 1 (Exhibit 2). On March 19, 2003, \$169,051.90 was denied on Reimbursement Application 2 (Exhibit 3). On May 28, 2003, \$22,559.71 was denied on Reimbursement Application 3 (Exhibit 4). (Collectively, the "Denied Costs.")

9. The Denied Costs fall within the following categories:

<b>Amount</b>	<b>Type of Cost</b>
\$24,638.82	handling costs
\$362.84	cell phone and mileage
\$20,000.00	deductible amounts owed
\$27.76	dye for tracer testing
\$140.00	notice of smoke testing costs
\$33.25	VHS tape copies of sewer investigation
\$247,267.17	Corrective action

10. IEPA denied the \$247,267.17 in corrective action costs under 415 ILCS 5/57.8(m)(1) and 35 IAC 732.608 based on the presence of ineligible tanks.

11. The amounts denied and the percentage of costs paid for eligible tanks for each Reimbursement Application is set forth below:

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Application	Date of IEPA Action	Corrective Action Costs Incurred	Amount Denied for Ineligible Tanks	Percentage Paid
Reimbursement Application 1 for costs between April 3, 2002 and August 2, 2002	December 18, 2002	\$185,644.12	\$81,954.58	55.814%
Reimbursement Application 2 for costs between August 2, 2002 and December 24, 2002	March 19, 2003	\$709,748.50	\$143,123.59	79.07%
Reimbursement Application 3 for Costs between December 24, 2002 and February 11, 2003	May 28, 2003	\$116,848.37	\$22,189.00	80.95%
TOTAL		\$1,012,240.99	\$247,267.17	

12. The response activities conducted from April 2002 to August 2, 2002, associated with Incident 20020433 included: (i) emergency response – mitigation of sewer by the high school; (ii) sampling old and new monitoring wells; (iii) investigating the high school; (iv) air monitoring in the high school; (v) investigating the sewer surrounding the high school and Freedom Station; (vi) installation of two interceptor/collection trenches, sampling groundwater from trenches; (vii) exploratory excavation along Crawford Street; (viii) installation of four groundwater monitoring wells and sampling; and (ix) completion of and sampling of seven soil borings.

13. Reimbursement Application 1 sought reimbursement of costs for the foregoing activities in the amount of \$185,644.12. On December 18, 2002, IEPA denied \$81,954.58 of the requested costs based on the presence of ineligible tanks. This represented a reimbursement of 55.814% of the correction action costs. In reaching the 55.814%, IEPA found tanks 1, 5, 6, 7, 8, 9 and 10 to be ineligible for fund reimbursement. IEPA applied the ratio of gallons associated with the tanks it determined were fund eligible – 12,000, with the gallons associated with the tanks it determined were not fund eligible – 9,500 – to reach the 55.814% apportionment. (See Exhibit 2)

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14. In August 2003, Petitioner met with IEPA to discuss IEPA's allocation of corrective action costs to the Ineligible Tanks.

15. In particular, Petitioner pointed out the 55.814 percentage paid on Reimbursement Application No. 1 was clearly erroneous, as demonstrated by IEPA's payment of 79.07% and 80.95% of the costs requested for the follow-up Reimbursement Application Nos. 2 and 3. (See Exhibits 2, 3 and 4)

16. IEPA agreed that irrespective of whether an approximately 20% allocation to Ineligible Tanks was appropriate, the 55.814% allocation was erroneous and Freedom was owed an additional \$44,827.76 (representing payment to reach an 80% percentage paid). IEPA indicated the paperwork to address payment of this amount would be addressed. To date, despite numerous requests, IEPA has not processed the paperwork for reimbursement of this amount to Freedom.

17. It is undisputed that Freedom is entitled to a minimum of \$44,827.76 in additional reimbursements regarding Reimbursement Application No. 1. Due to the necessity of Freedom having to file a Motion for Partial Summary Judgment to obtain recovery of an undisputed amount, Freedom is also entitled to its attorneys' fees regarding this issue.

WHEREFORE, the Petitioner, FREEDOM OIL COMPANY, asks the Board to grant its Motion for Partial Summary Judgment and award it attorneys' fees.

Respectfully submitted,

**HOWARD & HOWARD ATTORNEYS, P.C.**

By: *Diana M. Jagiella*  
Diana M. Jagiella

Dated: February 21, 2005

Diana M. Jagiella  
Attorney for Petitioner  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602-1350

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**RECEIVED  
CLERK'S OFFICE**

**FEB 22 2005**

**STATE OF ILLINOIS  
Pollution Control Board**

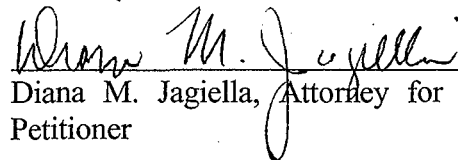
**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this 21st day of February, 2005, I have served the attached *Motion for Partial Summary Judgment and Attorneys' Fees* by facsimile and by U.S. Mail to:

Dorothy M. Gunn, Clerk (312/814-3669)  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-3218

John J. Kim, Assistant Counsel (217/782-9807)  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P. O. Box 19276  
Springfield, IL 62794-9276

Hon. Carol Webb 217/782-9807  
Hearing Officer  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield, IL 62704

  
Diana M. Jagiella, Attorney for  
Petitioner

Diana M. Jagiella  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602  
(309) 672-1483

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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**



Office of the Illinois  
**State Fire Marshal**

General Office  
217-785-0869  
FAX  
217-782-1062  
Divisions  
ACCIDENT INVESTIGATION  
217-782-9116  
BOILER and PRESSURE  
VESSEL SAFETY  
217-782-2696  
FIRE PREVENTION  
217-785-4714  
MANAGEMENT SERVICES  
217-782-9869  
INFIRS  
217-785-5826  
HUMAN RESOURCES  
217-785-1026  
PERSONNEL STANDARDS  
and EDUCATION  
217-782-4542  
PETROLEUM and  
CHEMICAL SAFETY  
217-785-5878  
PUBLIC INFORMATION  
217-785-1021  
WEB SITE  
[www.state.il.us/osfm](http://www.state.il.us/osfm)

CERTIFIED MAIL - RECEIPT REQUESTED #7002 1000 0004 8741 6503

August 1, 2002

Arnold Owens, Inc.  
d/b/a Freedom Oil  
814 W. Chestnut  
P.O. Box 3697  
Bloomington, IL 61701-3697

In Re: Facility No. 4-016564  
IEMA Incident No. 02-0433  
Freedom Oil Co.  
401 S. Main Street  
Paris, Edgar Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on July 11, 2002 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 2 4,000-gallon Gasoline  
Tank 3 4,000-gallon Gasoline  
Tank 4 4,000-gallon Gasoline

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government;
2. The tank does not contain fuel that is exempt from the Motor Fuel Tax Law;
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

EXHIBIT

tabbles

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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

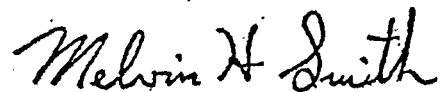
The following tanks are also listed for this site:

Tank 1 4,000-gallon Diesel  
Tank 5 1,000-gallon Gasoline  
Tank 6 1,000-gallon Kerosene

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact our Office at (217) 785-1020 or (217) 785-5878 and ask for Deanne Lock.

Sincerely,

A handwritten signature in cursive script that reads "Melvin H. Smith".

Melvin H. Smith  
Division Director  
Division of Petroleum and Chemical Safety

MHS/dl

cc: IEPA  
Facility File





Office of the Illinois  
**State Fire Marshal**

General Office

217-785-0969

FAX

217-782-1062

Divisions

ARSON INVESTIGATION

217-782-9116

BOILER and PRESSURE

VESSEL SAFETY

217-782-2696

FIRE PREVENTION

217-785-4714

MANAGEMENT SERVICES

217-782-9889

INFIRS

217-785-5826

HUMAN RESOURCES

217-785-1026

PERSONNEL STANDARDS

and EDUCATION

217-782-4542

PETROLEUM and

CHEMICAL SAFETY

217-785-5878

PUBLIC INFORMATION

217-785-1021

WEB SITE

[www.state.il.us/sofsm](http://www.state.il.us/sofsm)

CERTIFIED MAIL - RECEIPT REQUESTED #7001 2510 0002 1313 7344

January 10, 2003

Arnold Owens, Inc., d/b/a Freedom Oil  
814 W. Chestnut  
P.O. Box 3697  
Bloomington, IL 61701-3697  
Attn: Mike Owens

In Re:

Facility No. 4-016564  
IEMA Incident No. 02-1122  
Freedom Oil Co.  
401 S. Main Street  
Paris, Edgar Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on December 5, 2002 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 2 4,000 gallon Gasoline  
Tank 3 4,000 gallon Gasoline  
Tank 4 4,000 gallon Gasoline

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

1035 Stevenson Drive • Springfield, Illinois 62703-4259

Printed on Recycled Paper

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

For information regarding the filing of an appeal, please contact:

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

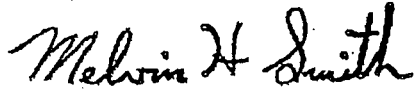
The following tanks are also listed for this site:

Tank 1 4,000 gallon Diesel  
Tank 5 1,000 gallon Gasoline  
Tank 6 1,000 gallon Kerosene  
Tank 7 1,000 gallon Gasoline  
Tank 8 1,000 gallon Gasoline  
Tank 9 1,000 gallon Gasoline  
Tank 10 1,000 gallon Gasoline  
Tank 11 500 gallon Heating Oil

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact our Office at (217) 785-1020 or (217) 785-5878 and ask for Deanne Lock.

Sincerely,



Melvin H. Smith  
Division Director  
Division of Petroleum and Chemical Safety

MHS/dl

cc: IEPA  
Facility File

# 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*

*Via Facsimile – (217) 782-9807*

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

**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.

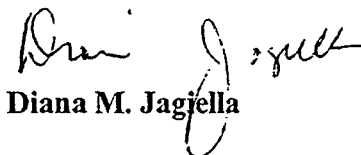
James L. Morgan, Assistant  
Attorney General  
John Waligore, Esq.  
John Kim, Esq.  
March 5, 2003  
Page 2

Also enclosed is a copy of Doug Clay's denial for an early action extension. Based on MacTec's discussion with Mr. Clay, we understand any future work deemed necessary at the site will be handled through the LUST division.

Once you have reviewed the enclosed correspondence, a conference call between us would seem in order. Please let me know your availability.

Sincerely,

HOWARD & HOWARD ATTORNEYS, P.C.

  
Diana M. Jagiella

Enclosure

cc: Michael Owens  
Michael J. Hoffman  
Terry Dixon

mlt:g:\freedom oil\cor\morgan-iepa(kim)2-5-03.doc



**Office of the Illinois  
State Fire Marshal**

CERTIFIED MAIL - RECEIPT REQUESTED #7000 1670 0009 0626 4390

REVISED

February 26, 2003

Freedom Oil Company  
814 W. Chestnut  
P.O. Box 3697  
Bloomington, IL 61701-3697  
Attn: Mike Owens

In Re: Facility No. 4-016564  
IEMA Incident No. 02-1122  
Freedom Oil Co.  
401 S. Main Street  
Paris, Edgar Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on February 5, 2003 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

**Eligible Tanks**

Tank 1 4,000 gallon Diesel  
Tank 2 4,000 gallon Gasoline  
Tank 3 4,000 gallon Gasoline  
Tank 4 4,000 gallon Gasoline  
Tank 6 1,000 gallon Kerosene

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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

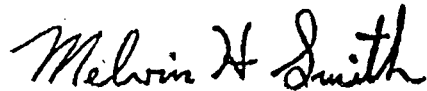
The following tanks are also listed for this site:

Tank 5 1,000 gallon Gasoline  
Tank 7 1,000 gallon Gasoline  
Tank 8 1,000 gallon Gasoline  
Tank 9 1,000 gallon Gasoline  
Tank 10 1,000 gallon Gasoline  
Tank 11 500 gallon Used Oil

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact our Office at (217) 785-1020 or (217) 785-5878 and ask for Deanne Lock.

Sincerely,

A handwritten signature in cursive script that reads "Melvin H. Smith".

Melvin H. Smith  
Division Director  
Division of Petroleum and Chemical Safety

MHS/dl

cc: IEPA  
Facility File



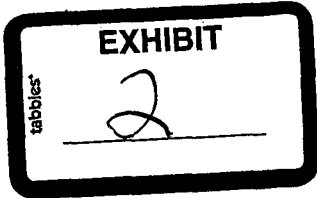


ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

GEORGE H. RYAN, GOVERNOR      RENEE CIPRIANO, DIRECTOR

217/782-6762



DEC 18 2002

Freedom Oil Company  
Attn: Gene Adams  
Post Office Box 3697, 814 W. Chestnut  
Bloomington, Illinois 61702

Re: LPC #0450305043 -- Edgar County  
Paris/Freedom Oil Co.  
401 South Main Street  
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 September 17, 2002 and was received by the Agency on September 18, 2002. The application for payment covers the period from April 3, 2002 to August 16, 2002. The amount requested is \$185,644.12.

The deductible amount to be assessed on this claim is \$20,000.00, 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 December 12, 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 \$83,521.78 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 • COLLINSVILLE - 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:

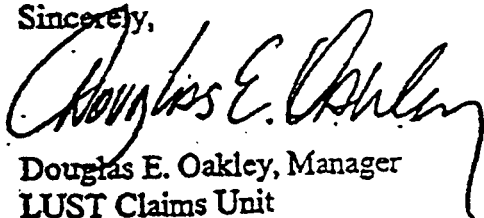
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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 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

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

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Illinois Environmental Protection Act (Act).

- | Item # | Description of Deductions                                                                                                                                                                                                        |
|--------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.     | \$27.76 for USA Bluebook (dye for dye tracing of sewer). This cost has been determined to not be related to Early Action activities; therefore, it is not reasonable (35 IAC 732.606(ii)).                                       |
| 2.     | \$140.00 Parish Beacon Publishing (notice of smoke testing in newspaper). This cost has been determined to not be related to Early Action activities; therefore, it is not reasonable (35 IAC 732.606(ii)).                      |
| 3.     | \$81,954.58 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(m)(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 Marshall to have had a significant release. Tank Nos. 2, 3, and 4 were deemed eligible to access the LUST Fund for reimbursement purposes. Tanks 1, 5, 6, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes.

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

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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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

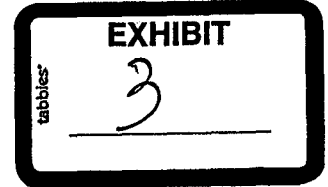
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #



Freedom Oil Co.
Attention: Mike Owens
Post Office Box 3697
Bloomington, IL 61702

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

Dear Mr. Owens:

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 24, 2002 and was received by the Agency on December 30, 2002. The application for payment covers the period from June 30, 2002 to November 22, 2002. The amount requested is \$709,748.50.

The deductible amount for this claim is \$20,000.00, which was previously deducted from the billing submittal received by the Agency on December 12, 2002 for \$185,644.12. 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 February 7, 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 \$540,696.60 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(j) 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,

Page 2

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:

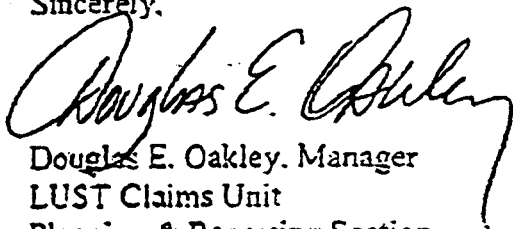
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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 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

Attachment A  
Accounting Deductions

Re: LPC #0450305043 -- Edgar County  
Paris/Freedom Oil Co.  
401 South Main Street  
LUST Incident No. 20020433  
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.            \$362.84, 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))

A deduction in the amount of \$226.76 was made from the cell phone rental for the period of October 28, 2002 to November 27, 2002 (staff was at the site for 5 days of this billing period; the costs have been pro-rated).

A deduction in the amount of \$8.73 was made for late charges on the cell phone rental for the period of October 28, 2002 to November 27, 2002.

A deduction in the amount of \$103.96 was made from the cell phone rental for the period of September 28, 2002 to October 27, 2002 (staff was at the site for 4 days; the costs have been pro-rated).

A deduction in the amount of \$23.39 was made for the request for handling charges on mileage costs.

2.            \$896.64, 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 on the Bodine invoice numbered 014084. The amounts requested on the Bodine invoice were greater than the invoices from the subcontractors:

A deduction in the amount of \$480.00 was made because the Al's Backhoe (invoice #925) submitted with the claim was less than amount requested by Bodine.

A deduction in the amount of \$51.00 was made because the Neals Machinery (invoice #002014) submitted with the claim was less than the amount requested by Bodine.

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.



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

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Illinois Environmental Protection Act (Act).

Item # Description of Deductions

1. \$143,123.59 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.

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

The total gallonage of tanks eligible to access the LUST Fund is 17,000 gallons. the total gallonage of tanks not eligible to access the LUST Fund is 3,500 gallons. Therefore, 79.07% of costs are apportioned to the tanks eligible to access the LUST Fund, and 20.93% of costs are apportioned to the tanks not eligible to access the LUST Fund.



**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

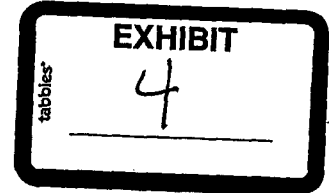
1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

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 - (647) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BEAU 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

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

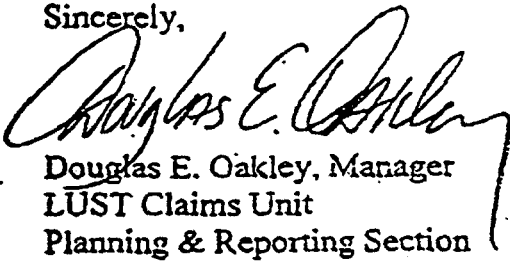
For information regarding the filing of an extension, please contact:

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 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

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

Attachment A  
Technical Deductions  
Page 2

The total gallonage of tanks eligible to access the LUST Fund as determined by OSFM is 17,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund as determined by OSFM is 4,000 gallons. Therefore, 80.95% of costs are apportioned to the tanks eligible to access the LUST Fund, and 19.05% of costs are apportioned to the tanks not eligible to access the LUST Fund.

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