

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEDEX GROUND PACKAGE SYSTEM, INC, )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

PCB 07-12  
(UST Fund Appeal)


**RECEIVED**  
CLERK'S OFFICE  
DEC 18 2006  
STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING AND PROOF OF SERVICE

TO: Dorothy M. Gunn, Clerk                      Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board              Illinois Pollution Control Board  
100 W. Randolph St., Ste 11-500              100 W. Randolph St., Ste 11-500  
Chicago, Illinois 60601                          Chicago, Illinois 60601

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

PLEASE TAKE NOTICE that on December 18, 2006, I hand delivered to the Clerk of the Illinois Pollution Control Board the original and nine (9) copies of the attached CROSS MOTION FOR SUMMARY JUDGMENT, and MOTION TO SUPPLEMENT ADMINISTRATIVE RECORD for filing in this action, with one (1) copy for delivery to Hearing Officer Halloran. I hereby certify that true and accurate copies of these documents and this Notice are being served upon attorney for the Respondent at the address shown above, by depositing it in the U.S. Mail in Chicago, Illinois, with First Class Postage prepaid, on this date.

  
Thomas W. Daggett  
Attorney for Petitioner FedEx Ground

DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 North Clark Street  
Chicago, Illinois 60601  
(312) 960-1600

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEDEX GROUND PACKAGE SYSTEM, INC., )  
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**MOTION TO SUPPLEMENT ADMINISTRATIVE RECORD**

Petitioner, FEDEX Ground Package System, Inc. ("Petitioner"), by its attorney, Thomas W. Daggett of the Daggett Law Firm, respectfully submits this Motion To Supplement Administrative Record to the Board, in accordance with Board rules at 35 Ill. Adm. Code 101.508 and 35 Ill. Adm. Code 105.212, for the reasons set out below.

1. Petitioner filed its Petition for Review of Underground Storage Tank Fund Reimbursement Determination in this matter on August 21, 2006, and the Board accepted it for hearing on September 7, 2006.
2. Respondent IEPA filed a motion for summary judgment in this matter on September 1, 2006; Petitioner filed its Response in Opposition on September 18, 2006. Petitioner stated its intent to the Hearing Officer at that time to file its own cross-motion for summary judgment after seeking additional documents from Respondent, and the supplementation of the Administrative Record.

3. Petitioner sent a letter to Respondent on October 24, 2006, requesting that certain items from the IEPA file on this matter be added to the Administrative Record. (see Attachment 1.)


4. On November 2, 2006, Petitioner filed a Motion for Leave to Supplement the Administrative Record, citing previous Board precedents for doing so. Petitioner incorporates by reference herein those arguments and precedents from the Respondent's Motion.

5. Three letters to Petitioner from Respondent were not included in Respondent's motion. (see Attachments 3, 4, and 5.) These three letters are relevant and material to legal arguments made by Petitioner in its Cross Motion for Summary Judgment.

FOR THESE REASONS, Petitioner requests that the Board Order that they be included in the Administrative Record for this appeal.

Respectfully submitted,

FEDEX Ground Package System, Inc.  
By DAGGETT LAW FIRM

  
Thomas W. Daggett

Thomas W. Daggett  
DAGGETT LAW FIRM  
Chicago Title Tower, Suite 4950  
161 N. Clark Street  
Chicago, IL 60601  
(312) 960-1600

**Thomas W. Daggett**  
**Daggett Law Firm**  
*Suite 4950 - Chicago Title Tower*  
*161 North Clark Street*  
*Chicago, Illinois 60601*  
*312-960-1600*

*email:* [TWDaggett@Comcast.net](mailto:TWDaggett@Comcast.net)  
*facsimile:* 312 332-0515  
[www.DaggettLawFirm.com](http://www.DaggettLawFirm.com)

October 24, 2006

*Via email and US Mail*

Melanie A. Jarvis, Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**Re: FedEx Ground Package System v. IEPA**  
**Lust Fund Appeal, PCB 07-012**  
**Supplementing the Administrative Record**

Dear Ms. Jarvis:

In our 9/21/06 status call with Hearing Officer Halloren, you agreed to supplement the administrative record that IEPA filed with the Board in this matter if I informally wrote you and identified the additional document(s) I wanted. First, I request that you add the "Corrective Action Completion Report" for this project, which was submitted to IEPA by FedEx Ground approximately April 20, 2006. I also request that you add all documents in IEPA files concerning the request for partial payment for the initial studies related to this matter, and EPA's response. It is my understanding that both this request from FedEx and IEPA's response occurred in early 2005, or possibly late 2004.

Thanks in advance for your cooperation.

Sincerely,

  
Thomas W. Daggett

CHICAGO RECEIVED



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY MAY 05 2005

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-1359 ENVIRONMENTAL SERVICES  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENE E. CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8653 2563

MAY 02 2005

FedEx Ground Package System, Inc.  
Attention: Jerry Swart  
1000 FedEx Drive  
Moon Township, PA 15108

Re: LPC #0310125219 -- Cook County  
Bedford Park/Federal Express Ground  
6767 West 75th Street  
LUST Incident No. 20030468  
LUST FISCAL FILE

Dear Mr. Swart:

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 January 24, 2005 and was received by the Agency on February 25, 2005. The application for payment covers the period from April 3, 2003 to May 15, 2003. The amount requested is \$11,327.77.

The deductible amount to be assessed on this claim is \$15,000.00. The costs from this claim; \$11,327.77 will be applied to the deductible. The balance of the deductible; \$3,672.23 will be deducted from future claims.

On February 25, 2005, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the

Page 2

applicant wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

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

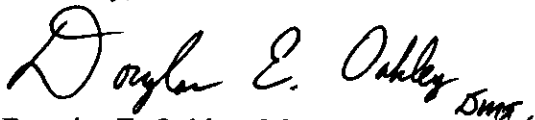
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217/782-6762.**

Sincerely,

Handwritten signature of Douglas E. Oakley in cursive script.

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

DEO:CSE:bjh\052507.doc

cc: MACTEC Engineering & Consulting



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

**RECEIVED**

217/782-6762

OCT 21 2005

CERTIFIED MAIL # ENVIRONMENTAL SERVICES  
7004 2510 0001 8646 3423

OCT 21 2005

Fed Ex Ground Package Systems, Inc.  
Attention: Jerry Swart  
1000 FedEx Drive  
Moon Township, PA 15108

Re: LPC #0310120014 -- Cook County  
Bedford Park/Fed Ex Ground  
6767 West 75th Street  
LUST Incident No. 20040575  
LUST FISCAL FILE

Dear Mr. Swart:

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 10, 2004 and was received by the Agency on February 25, 2005. The application for payment covers the period from May 8, 2004 to June 10, 2004. The amount requested is \$3,865.19.

The deductible amount to be assessed on this claim is \$15,000.00. The eligible costs from this claim; \$3,864.77 will be applied to the deductible. The balance of the deductible, \$11,235.23 will be applied to future claims. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On June 26, 2005, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice

Page 2

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:

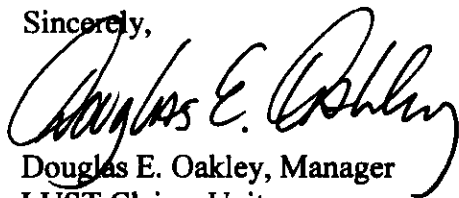
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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 Catherine S. Elston of my staff at 217/782-6762.**

Sincerely,



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

DEO:CSE:bjh\057314.doc

Attachment

cc: MACTEC Engineering & Ground



Attachment A  
Accounting Deductions

Re: LPC #0310120014 -- Cook County  
Bedford Park/Fed Ex Ground  
6767 West 75th Street  
LUST Incident No. 20040575  
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. \$.42, 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

Handling charges on courier charges exceeded the sliding scale.

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6000

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

JAN 13 2006

ENVIRONMENTAL SERVICES

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8653 8824

JAN 11 2006

Mr. Jerry Swart  
FedEx Ground Package Systems, Inc.  
1000 FedEx Drive  
Moon Township, PA 15108

Re: LPC #0310120014 -- Cook County  
Bedford Park/Federal Express Ground  
6767 West 75<sup>th</sup> Street  
LUST Incident No. 20030468, 20040575  
LUST Technical File

Dear Mr. Swart:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended Corrective Action Plan Budget(budget) submitted for the above-referenced incident. This plan, dated October 4, 2005, was received by the Illinois EPA on October 24, 2005. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The total budget is approved for the amounts listed in Section 1 of Attachment A. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 732.606(s) and 732.611.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 732.100 and 732.105, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

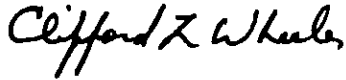
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Page 2

Please note that, if within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

If you have any questions or need further assistance, please contact Jennifer Rossi at 217-782-9285.

Sincerely,



Clifford L. Wheeler  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

CLW:jjr\

Attachment: Attachment A

c: Carmen Yung, MACTEC Engineering & Consulting  
Division File

Attachment A

Re: LPC # 0310120014 -- Cook County  
Bedford Park/Federal Express Ground  
6767 West 75<sup>th</sup> Street  
LUST Incident No. 20030468, 20040575  
LUST Technical File

The budget was previously approved for:

\$2,409.00	Investigation Costs
\$6,950.00	Analysis Costs
\$52,703.00	Personnel Costs
\$2,405.00	Equipment Costs
\$246,548.56	Field Purchases and Other Costs
\$14,135.81	Handling Charges

The following amounts have been approved:

\$2,033.00	Investigation Costs
\$1,350.00	Analysis Costs
\$4,890.00	Personnel Costs
\$55.00	Equipment Costs
\$79.30	Field Purchases and Other Costs
\$422.00	Handling Charges

Therefore, the total cumulative budget is approved for:

\$4,442.00	Investigation Costs
\$8,300.00	Analysis Costs
\$57,593.00	Personnel Costs
\$2,460.00	Equipment Costs
\$246,627.86	Field Purchases and Other Costs
\$14,557.81	Handling Charges

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEDEX GROUND PACKAGE SYSTEM, INC., )  
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 v. )  
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 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
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 Respondent. )

PCB 07-012  
(UST Fund Appeal)

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Pollution Control Board

**PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Petitioner, FEDEX Ground Package System, Inc. ("Petitioner"), by its attorney, Thomas W. Daggett of the Daggett Law Firm, respectfully submits its Cross-Motion for Summary Judgment (Motion), as authorized by Board rules at 35 Ill. Adm. Code 101.504 & 101.516. The legal issue presented appears to be a matter of first impression for the Board, based upon searches of cases on the Board's website. Respondent Illinois Environmental Protection Agency's (Respondent's) misinterpretation of a single phrase from the Board's Rules and its position that it prohibits IEPA's approval of certain budget amendments are prejudicing the statutory rights of the Petitioner and other businesses and local governments to reimbursement from the Underground Storage Tank (UST) Fund. Other independent appeals are currently pending before the Board challenging essentially the same IEPA misinterpretation of regulatory language that is at issue here, see, e.g., *Broadus Oil v. IEPA*, PCB 04-31 and 05-43 (consolidated), and *Village of Wilmette v. IEPA*, PCB 7-27. Due to the importance of this legal issue to the broader regulated community,

Petitioner here, and the one in *Broadus Oil*, have filed motions to consolidate these two matters for purposes of decision only.

### **ISSUES BEFORE THE BOARD**

The issues before the Board are whether Respondent's sole reason for denying Petitioner's Budget Amendment was a misinterpretation of 35 Ill. Adm. Code 734.335(d) and related law, for some or all of the following reasons:

1. Rule 734.335(d) does not apply here, where an original corrective action plan and budget were approved before the work was performed;
2. Even if Rule 734.335(d) did apply here, the phrase relied upon by Respondent is a limitation on its authority for the "payment for any related costs or the issuance of a No Further Remediation Letter" until an initial corrective action plan and budget are submitted, *not* an immediate limitation upon Petitioner's reimbursement rights if it successfully obtains a NFR Letter or an early partial payment;
3. Rule 734.335(e) is the Board rule that Respondent should have followed in reviewing and approving Petitioner's Budget Amendment, which incorporates by reference the review requirements of Subpart E (35 Ill. Adm. Code 734.500, 734.505, & 734.510); none of these or other applicable Rules justifies any limitation upon Petitioner's statutory reimbursement rights triggered by successfully obtaining a NFR Letter, or even mentions NFR Letters.

Finally, if the Board overrules the legal misinterpretation relied upon by Respondent, it must decide the scope of relief to grant to Petitioner.

## STANDARD OF REVIEW

Summary judgment is proper only when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516; see also, *Waste Management of Illinois v. IEPA*, PCB 94-153 (July 21, 1994) at p. 2; *Solomon v. American Nat'l Bank & Trust Co.*, 243 Ill.App.3d 132, 612 N.E.2d 3 (1st Dist. 1993).

The IEPA's denial letter frames the issues on this appeal; therefore, in deciding this motion for summary judgment, the Board must determine as a matter of law whether the Agency's denial reasons contained in its letter of July 17, 2006, require the disapproval of Petitioner's May 30, 2006 Budget Amendment. See *Kathe's Auto Service Center v. IEPA*, PCB 96-102 (Aug. 1, 1996) at p. 27.

## UNDISPUTED MATERIAL FACTS

The facts are not in dispute in this matter, in which both parties are moving for summary judgment. Petitioner listed several undisputed facts in its September 18, 2006 Response and Memorandum Opposing IEPA's Motion for Summary Judgment, and incorporates them herein by reference. While the parties generally agree on the facts, they disagree on which of those undisputed facts are material, as explained below.

Under Respondent's proposed legal theory, the only fact that would be material is the relationship of two dates: (1) the May 10, 2006 date of its NFR Letter approving Petitioner's satisfactory completion of its previously approved Corrective Action Plan, and (2) the May 30, 2006 date of Petitioner's proposed Budget Amendment and reimbursement request. Respondent argues that once Petitioner successfully obtained

the May 10, 2006 NFR Letter, its right to submit any amendment to its corrective action budget or obtain reimbursement based on such an amendment immediately ended. Under Respondent's theory, the fact that Petitioner's May 30, 2006 budget amendment and reimbursement request was submitted twenty (20) days after the May 10<sup>th</sup> NFR Letter would be the only fact that is material.

Petitioner disagrees. Under its legal arguments in Issue #1, above, Rule 734.335(d) does not apply where an original corrective action plan and budget were approved before the work was performed. The undisputed facts that are material therefore also include: (1) On June 22, 2005, Petitioner submitted to IEPA a proposed corrective action plan (AR. 2 – 20) and a proposed Budget with a budget certification by a licensed professional engineer (AR. 21-56); (2) On July 17, 2005, IEPA approved Petitioner's proposed corrective action plan without modification, and approved Petitioner's Budget for six categories of costs totaling \$325,151.37. (AR. 57-61.); and (3) Petitioner performed the work implementing the Corrective Action Plan *after* IEPA's July 17, 2005 approval, as detailed in Petitioner's April 20, 2006 Corrective Action Completion Report (Supplemental AR. 1-166), with a certification from a L.P.E. that the corrective action had been completed in compliance with the corrective action plan and all legal requirements. (Supplemental AR. 167.) It is therefore undisputed that the corrective action work was *not* performed before the submittal and approval of Petitioner's original corrective action plan and budget.

Under Petitioner's Issue #2, above, the phrase in Rule 734.335(d) relied upon by Respondent, that is, "prior to payment for any related costs or the issuance of a No Further Remediation Letter," is a limitation on Respondent's authority to make any



payment for related costs or issue NFR Letters, not a prohibition on the submission or approval of budget amendments after a NFR Letter has been issued or partial payments have been made. The additional undisputed facts that are material therefore include: (1) on May 2, 2005, IEPA approved and made a payment to Petitioner of \$11,327.77 for certain costs related to this UST cleanup, and applied that payment to cover part of the deductible amount on Petitioner's claim (see Attachment 2); (2) on June 22, 2005, Petitioner submitted a proposed corrective action budget for Respondent's review and approval, which Respondent received on June 27, 2005 (A.R. 21-23, *et seq.*); (3) Respondent reviewed the proposed budget and approved it on July 14, 2005, (A.R. 57-61), notwithstanding the fact that it was submitted after the May 2, 2005 partial payment; (4) on October 21, 2005, IEPA approved and made a payment to Petitioner of \$3,865.19 for certain costs related to this UST cleanup, and applied that payment to cover part of the deductible amount on Petitioner's claim (see Attachment 3); and (5) on January 11, 2006, Respondent approved a proposed corrective action budget that was received by Respondent for review and approval on October 24, 2005, and was dated October 4, 2005 (see Attachment 4). Petitioner therefore believes it is undisputed that Respondent reviewed and approved certain budgets and budget amendments in this very case after it made "payment for any related costs" for Petitioner's cleanup of this leaking UST.

Under Petitioner's Issue #3, above, 734.335(e) is the applicable rule for this Budget Amendment. The undisputed facts that are material include the same facts as those under Petitioner's Issue #1, above. It is also material that the Petitioner's May 30, 2006 reimbursement request, submitted with its proposed Budget Amendment, was

submitted only 20 days after the May 10, 2006 NFR Letter, which is less than the one year period allowed by 35 Ill. Adm. Code 734.600 (j).

Finally, it is material to the Board's determination of the scope of the relief to provide to Petitioner in this appeal, that it is undisputed that all costs covered in Petitioner's May 30, 2006 proposed Budget Amendment and reimbursement request were for work that was necessary, were not for corrective actions in excess of the minimum requirements of 415 ILCS 5/57, did not include costs for work not described in the IEPA approved Corrective Action Plan, and did not include any costs that are ineligible under applicable laws and regulations. These facts are certified in the record under the sworn and notarized signature of Petitioner's licensed professional engineer on the last page of Petitioner's May 30, 2006 Budget Amendment (A.R. 71-99), and on the last page of Petitioner's April 20 Corrective Action Completion Report (Supplemental A.R. 1 - 167). Respondent's rejection of Petitioner's May 30, 2006 Budget Amendment and reimbursement request did not take issue with or dispute any part of these certifications. Respondent did not cite any reason for rejecting any part of this submittal other than the fact that it was submitted after the May 10, 2006 NFR Letter, which it asserted was in violation of 734.335(d). (A.R. 107-110).

#### **RELEVANT LAW**

##### **35 Ill. Adm. Code 734.335**

\* \* \*

**734.335(d)** Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or

modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

**734.335(e)** If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all corrective action plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part. (emphasis added)

-----  
**415 ILCS 5/57.7.** (As amended by P.A. 92-574, P.A. 92-651 and P.A. 92-735)  
Leaking underground storage tanks; physical soil classification, groundwater investigation, site classification, and corrective action.

\* \* \*

(e) (1) Notwithstanding the provisions of this Section, an owner or operator may proceed to conduct physical soil classification, groundwater investigation, site classification or other corrective action prior to the submittal or approval of an otherwise required plan. If the owner or operator elects to so proceed, an applicable plan shall be filed with the Agency at any time. Such plan shall detail the steps taken to determine the type of corrective action which was necessary at the site along with the corrective action taken or to be taken, in addition to costs associated with activities to date and anticipated costs.

(2) Upon receipt of a plan submitted after activities have commenced at a site, the Agency shall proceed to review in the same manner as required under this Title. In the event the Agency disapproves all or part of the costs, the owner or operator may appeal such decision to the Board. The owner or operator shall not be eligible to be reimbursed for such disapproved costs unless and until the Board determines that such costs were eligible for payment.

-----  
**415 ILCS 5/57.8.** Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective action upon availability of funds

If an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9, the owner or operator may submit a complete application for final or partial payment to the Agency for activities taken in

response to a confirmed release. An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days.

(a) Payment after completion of corrective action measures. The owner or operator may submit an application for payment for activities performed at a site after completion of the requirements of Sections 57.6 and 57.7, or after completion of any other required activities at the underground storage tank site.

\* \* \*

(5) In the event that costs are or will be incurred in addition to those approved by the Agency, or after payment, the owner or operator may submit successive plans containing amended budgets. The requirements of Section 57.7 shall apply to any amended plans. (emphasis added)

-----

### ARGUMENT

The Illinois Environmental Protection Act establishes programs to cleanup leaking UST sites, and gives the regulated community significant rights to reimbursement for cleanup costs to promote the statute's cleanup goals. 415 ILCS 5/57. The Board has promulgated regulations that the IEPA must follow in administering the regulated community's rights to reimbursement under this statute, primarily found at 35 Ill. Adm. Code Part 734. The Respondent has adopted a misinterpretation of one sentence in these Board rules that does not make sense based on the plain language of the particular rule or in the context of the UST rules read as a whole. It has cited this misinterpretation as its sole justification for denying Petitioner's request to amend its budget and be reimbursed based upon that amendment. Respondent is currently applying its misinterpretation of this Board rule in a way that undermines the intent of the statute, by selective prejudicing the reimbursement rights only of those who have successfully cleaned up a leaking UST sufficiently to obtain a NFR Letter. The Board should issue an Opinion correcting Respondent's misinterpretation of Rule 734.335(d), and reversing its rejection of Petitioner's May 30, 2006 Budget Amendment and reimbursement request.

## ARGUMENT I.

### **RESPONDENT'S SOLE REASON FOR REJECTING PETITIONER'S BUDGET AMENDMENT IS BASED UPON ITS MISINTERPRETATION OF 734.335(d), WHICH DOES NOT APPLY HERE**

The sole reason Respondent cited for its July 17, 2006 rejection of Petitioner's May 30, 2006 Budget Amendment and reimbursement request was its interpretation of rule 734.335(d) to require that rejection, because Petitioner's May 30, 2006 Budget Amendment was submitted 20 days after Respondent's May 10, 2006 NFR Letter. (A.R. 107-110). By its express terms, however, 734.335(d) only applies when "an owner or operator [elects to] proceed to conduct corrective action activities ... prior to the submittal or approval of an otherwise required corrective action plan or budget." Those are not the facts in this case, where Petitioner submitted its corrective action plan and budget on June 22, 2005 (see AR. 2 – 20 and AR. 21-56, respectively), before conducting the approved corrective action over the following 9 months. (see Petitioner's April 20, 2006 Corrective Action Completion Report, Supplemental AR. 1-167). The factual conditions in its first sentence did not happen, so subsection 734.335(d) does not apply. Notably, 734.335(d) never mentions *amended* budgets at all. By contrast, amendments to corrective action budgets are explicitly addressed in the immediately following subsection 734.335(e), which is discussed in Argument III., below.

### **ARGUMENT II. EVEN IN CASES WHERE 734.335(D) DOES APPLY, IT'S SECOND SENTENCE LIMITS AUTHORITY TO ISSUE NFR LETTERS, NOT THE RIGHT TO SUBMIT OR APPROVE BUDGET AMENDMENTS**

Even where 734.335(d) is triggered because an owner has elected to conduct its corrective action before it submits any corrective action plan or budget (which are not

the facts here), the second sentence of 734.335(d) does not prohibit IEPA from reviewing a budget amendment. Instead, it prohibits IEPA from paying any costs related to the UST Incident or issuing a NFR Letter until the owner submits its initial corrective action plan and budget after-the-fact.

Subsection 734.335(d) reads:

“Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.” (emphasis added).

The reference to “*such*” plan and budget in the second sentence refers back to the previous sentence; that is, to any plan or budget submitted by an owner that elected to conduct its corrective action without submitting a corrective action plan or budget in advance. The most straightforward interpretation of these two sentences is that an owner can proceed with the corrective action work without its paperwork, but it will not receive any related payment or a NFR Letter until it submits a written plan and budget for the IEPA to review, approve, reject or modify. Respondent argues that it should be interpreted the other way around, that is, as a limitation on submitting and approving plans or budgets once an owner has received any related payments or a NFR Letter. But if Respondent’s interpretation is applied to the owners that are explicitly addressed in the preceding sentence, that is, owners that have conducted the cleanup before submitting their plan and budget, it makes no sense. Under Respondent’s

interpretation, Rule 734.335(d) first authorizes an owner to conduct corrective action before submitting any plan or budget, then warns the owner that if IEPA sends it a NFR Letter or partial payment before seeing the owner's plan or budget, the owner will be prohibited from submitting them. This logical extension of Respondent's interpretation of the second sentence simply does not make sense in the context of this subsection.

Further, if the second sentence of 734.335(d) prohibits the submission and review of any budget amendment after issuance of a NFR Letter, then it follows logically that it must also prohibit the submission and review of any budget amendment after "payment for any related costs," which is referenced in the same clause. Such an interpretation would put 734.335(d) in direct conflict with the Act. Section 57.8 explicitly authorizes an owner to submit amended budgets after receiving payment for parts of the corrective action work, as follows:

"(a)(5) In the event that costs are or will be incurred in addition to those approved by the Agency, *or after payment, the owner or operator may submit successive plans containing amended budgets...*" (emphasis added)

415 ILCS 5/57.8(a)(5). Related provisions of the Act clearly provide owners the right to submit successive requests for partial payments as the work proceeds, stating, for example, that "An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days." 415 ILCS 5/57.8 (excerpt.)

The Respondent routinely reviews and approves partial payments for costs related to UST corrective actions starting early in the projects, then subsequently

reviews and approves budget amendments for those projects notwithstanding its currently argued interpretation of 734.335(d). Respondent has even done so in Petitioner's UST cleanup action that is before the Board: (1) on May 2, 2005, Respondent approved a payment to Petitioner of \$11,327.77 for a part of the costs related to its UST cleanup and applied it to pay part of the deductible amount on Petitioner's claim (see Attachment 2)<sup>1</sup>; (2) on June 22, 2005, Respondent submitted a proposed corrective action budget for Respondent's review and approval, which Respondent received on June 27, 2006 (A.R. 21-23, *et seq.*); (3) Respondent reviewed the proposed budget and approved it on July 14, 2005, (A.R. 57-61), notwithstanding the fact that it was submitted after the May 2, 2005 partial payment; (4) on October 21, 2005, IEPA approved and made a payment to Petitioner of \$3,865.19 for certain costs related to this UST cleanup, and applied it to pay part of the deductible amount on Petitioner's claim (see Attachment 3); and (5) on January 11, 2006, Respondent approved a proposed corrective action budget amendment that was received by Respondent for review and approval on October 24, 2005, and was dated October 4, 2005 (see Attachment 4). Respondent has provided no logical explanation for how "issuance of a NFR Letter" could prohibit further budget amendments while "payment for any related costs" does not, despite their identical treatment in the language of 734.335(d).

---

<sup>1</sup> Petitioner is also filing today a motion to supplement the Administrative Record by adding the four attachments to this motion. Petitioner requested that IEPA supplement the Administrative Record, including "...all documents in IEPA files concerning the request for partial payment for the initial studies related to this matter, and EPA's response..." see Attachment 1. Respondent moved to supplement the Administrative Record on November 2, 2006, but did not include the Attachments to this motion, all of which are correspondence between Respondent and Petitioner.



**ARGUMENT III. SUBSECTION 734.335(E) EXPLICITLY CONTROLS RESPONDENT'S REVIEW OF PETITIONER'S BUDGET AMENDMENT, AND IT PROVIDES NO BASIS TO CUT OFF PETITIONER'S RIGHT TO AMEND ITS BUDGET UPON ISSUANCE OF A NFR LETTER**

The subsection relied upon by IEPA, 734.335(d), does not mention budget amendments. The immediately following subsection explicitly addresses them:

*734.335(e) If, following approval of any corrective action plan or associated budget, an owner or operator determines that a revised plan or budget is necessary in order to mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release, the owner or operator must submit, as applicable, an amended corrective action plan or associated budget to the Agency for review. The Agency must review and approve, reject, or require modification of the amended plan or budget in accordance with Subpart E of this Part.*

BOARD NOTE: Owners and operators are advised that the total payment from the Fund for all corrective action plans and associated budgets submitted by an owner or operator must not exceed the amounts set forth in Subpart H of this Part. (emphasis added.)

There is nothing in 734.335(e), nor in Subpart E (comprised of Board regulations at 734.500, 734.505, and 734.510), that would *require* IEPA to reject Petitioner's Budget Amendment based upon issuance of the May 10, 2006 NFR Letter, or even *allow* it to consider the issuance of a NFR Letter in reviewing Petitioner's Budget Amendment. Neither IEPA's July 17, 2006 letter, its motion for summary judgment, nor its September 25, 2006 Reply brief in this matter provides any legitimate justification under 743.335(e), and Subpart E referenced therein, for its rejection of Petitioner's May 30, 2006 Budget Amendment and reimbursement request.

**ARGUMENT IV: THE BOARD SHOULD ORDER RESPONDENT TO APPROVE PETITIONER'S MAY 30, 2006 BUDGET AMENDMENT AND REIMBURSEMENT REQUEST AS SUBMITTED**

Since at least 1990, the Board has held that “It is well established that the information in the denial statement frames the issues on review.” *Pulitzer Community Newspapers v. IEPA*, PCB 90-142 (1990) at p. 6; *Centralia Environmental Services, Inc. v. IEPA*, PCB 89-170 at 6 (May 10, 1990); *City of Metropolis v. IEPA*, PCB 90—8(February 22, 1990).

In its July 17, 2006 rejection letter (A.R. 107-110), Respondent inaccurately states that Petitioner has submitted a corrective action plan and budget, then states that Respondent is rejecting them both. In fact, Petitioner submitted only a *reimbursement request* and a Budget Amendment, not an amended plan. Respondent’s rejection letter does not mention the reimbursement request. Its rejection of the Budget Amendment, however, has the effect of denying the reimbursement request, so the Petitioner asked the Board to Order IEPA to approve both its Budget Amendment and its request for reimbursement. See the Aug. 21, 2006 Petition for Review, par. 13.

Respondent’s rejection letter cites a sole reason for its rejection of Petitioner’s entire May 30, 2006 submittal, IEPA’s interpretation of 734.335(d). If the Board reverses IEPA on this sole reason for its rejection, it should Order the approval of both the Budget Amendment and the reimbursement request in Petitioner’s May 30, 2006 submittal. The Administrative Record includes notarized certifications by a licensed professional engineer that all corrective action work was necessary, and that the May 30, 2006 reimbursement request was not for corrective actions in excess of the

minimum requirements of 415 ILCS 5/57, did not include costs for work not described in the IEPA approved Corrective Action Plan, and did not include any costs that are ineligible under applicable laws and regulations. (A.R. 99, & Supplemental A.R. 167). These sworn certifications would fully support a Board Order that IEPA approve the reimbursement request if the Board overrules IEPA's sole reason for rejecting them.

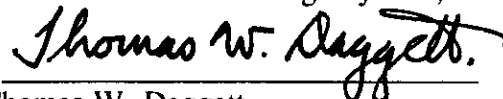
Petitioner incorporates by reference, without repeating them, further arguments that 734.335(d) does not apply under these circumstances, as set out in Petitioner's September 18, 2006 Response and Memorandum Opposing IEPA's Motion for Summary Judgment in this matter. It also incorporates by reference any additional applicable arguments advanced by the petitioner in the similar pending case *Broadus Oil v. EPA*, PCB 04-31 and 05-43 (consolidated), which Petitioner has moved to consolidate with this case for purposes of decision.

### CONCLUSION

The Respondent's review and approval of Petitioner's May 30, 2006 Budget Amendment is controlled by 734.335(e). Respondent's July 17, 2006 rejection of Petitioner's May 30, 2006 Budget Amendment solely based upon its interpretation of 734.335(d) is an error of law, as that subsection does not apply under these facts. For these reasons, the Petitioner's motion for summary judgment should be granted.

Respectfully submitted,

FEDEX Ground Package System, Inc.



Thomas W. Daggett

DAGGETT LAW FIRM  
161 N. Clark Street, Suite 4950  
Chicago, IL 60601  
(312) 960-1600

**Thomas W. Daggett**  
**Daggett Law Firm**  
Suite 4950 - Chicago Title Tower  
161 North Clark Street  
Chicago, Illinois 60601  
312-960-1600

*email:* TWDaggett@Comcast.net  
*facsimile:* 312 332-0515  
[www.DaggettLawFirm.com](http://www.DaggettLawFirm.com)

October 24, 2006

*Via email and US Mail*

Melanie A. Jarvis, Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Re: FedEx Ground Package System v. IEPA  
Lust Fund Appeal, PCB 07-012  
Supplementing the Administrative Record

Dear Ms. Jarvis:

In our 9/21/06 status call with Hearing Officer Halloren, you agreed to supplement the administrative record that IEPA filed with the Board in this matter if I informally wrote you and identified the additional document(s) I wanted. First, I request that you add the "Corrective Action Completion Report" for this project, which was submitted to IEPA by FedEx Ground approximately April 20, 2006. I also request that you add all documents in IEPA files concerning the request for partial payment for the initial studies related to this matter, and EPA's response. It is my understanding that both this request from FedEx and IEPA's response occurred in early 2005, or possibly late 2004.

Thanks in advance for your cooperation.

Sincerely,

  
Thomas W. Daggett

*Attachment 2*



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

CHICAGO RECEIVED

MAY 05 2005

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3500 ENVIRONMENTAL SERVICES  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENE E. CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #

7004 2510 0001 8653 2563

MAY 02 2005

FedEx Ground Package System, Inc.  
Attention: Jerry Swart  
1000 FedEx Drive  
Moon Township, PA 15108

Re: LPC #0310125219 -- Cook County  
Bedford Park/Federal Express Ground  
6767 West 75th Street  
LUST Incident No. 20030468  
LUST FISCAL FILE

Dear Mr. Swart:

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 January 24, 2005 and was received by the Agency on February 25, 2005. The application for payment covers the period from April 3, 2003 to May 15, 2003. The amount requested is \$11,327.77.

The deductible amount to be assessed on this claim is \$15,000.00. The costs from this claim; \$11,327.77 will be applied to the deductible. The balance of the deductible; \$3,672.23 will be deducted from future claims.

On February 25, 2005, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the

Page 2

applicant wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

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

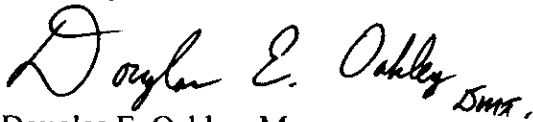
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217/782-6762.**

Sincerely,

Handwritten signature of Douglas E. Oakley in cursive script.

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

DEO:CSE:bjh\052507.doc

cc: MACTEC Engineering & Consulting



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

RECEIVED

217/782-6762

OCT 21 2005

CERTIFIED MAIL # ENVIRONMENTAL SERVICES

7004 2510 0001 8646 3423

OCT 21 2005

Fed Ex Ground Package Systems, Inc.  
Attention: Jerry Swart  
1000 FedEx Drive  
Moon Township, PA 15108

Re: LPC #0310120014 -- Cook County  
Bedford Park/Fed Ex Ground  
6767 West 75th Street  
LUST Incident No. 20040575  
LUST FISCAL FILE

Dear Mr. Swart:

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 10, 2004 and was received by the Agency on February 25, 2005. The application for payment covers the period from May 8, 2004 to June 10, 2004. The amount requested is \$3,865.19.

The deductible amount to be assessed on this claim is \$15,000.00. The eligible costs from this claim; \$3,864.77 will be applied to the deductible. The balance of the deductible, \$11,235.23 will be applied to future claims. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On June 26, 2005, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 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

ATTN: Jerry Swart

Page 2

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:

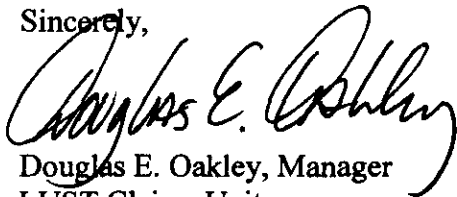
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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 Catherine S. Elston of my staff at 217/782-6762.**

Sincerely,



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

DEO:CSE:bjh\057314.doc

Attachment

cc: MACTEC Engineering & Ground



**Attachment A  
Accounting Deductions**

Re: LPC #0310120014 -- Cook County  
Bedford Park/Fed Ex Ground  
6767 West 75th Street  
LUST Incident No. 20040575  
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.      \$42, 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):

<b>Subcontract or Field Purchase Cost</b>	<b>Eligible Handling Charges as a Percentage of Cost</b>
\$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

Handling charges on courier charges exceeded the sliding scale.

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 875-6000

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

JAN 18 2006

ENVIRONMENTAL SERVICES

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8653 8824

JAN 11 2006

Mr. Jerry Swart
FedEx Ground Package Systems, Inc.
1000 FedEx Drive
Moon Township, PA 15108

Re: LPC #0310120014 -- Cook County
Bedford Park/Federal Express Ground
6767 West 75th Street
LUST Incident No. 20030468, 20040575
LUST Technical File

Dear Mr. Swart:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended Corrective Action Plan Budget(budget) submitted for the above-referenced incident. This plan, dated October 4, 2005, was received by the Illinois EPA on October 24, 2005. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The total budget is approved for the amounts listed in Section 1 of Attachment A. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 732.606(s) and 732.611.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 732.100 and 732.105, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

ATT: ... + 46

Page 2

Please note that, if within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

If you have any questions or need further assistance, please contact Jennifer Rossi at 217-782-9285.

Sincerely,



Clifford L. Wheeler  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

CLW:jjr\

Attachment: Attachment A

c: Carmen Yung, MACTEC Engineering & Consulting  
Division File

Attachment A

Re: LPC # 0310120014 -- Cook County  
Bedford Park/Federal Express Ground  
6767 West 75<sup>th</sup> Street  
LUST Incident No. 20030468, 20040575  
LUST Technical File

The budget was previously approved for:

\$2,409.00	Investigation Costs
\$6,950.00	Analysis Costs
\$52,703.00	Personnel Costs
\$2,405.00	Equipment Costs
\$246,548.56	Field Purchases and Other Costs
\$14,135.81	Handling Charges

The following amounts have been approved:

\$2,033.00	Investigation Costs
\$1,350.00	Analysis Costs
\$4,890.00	Personnel Costs
\$55.00	Equipment Costs
\$79.30	Field Purchases and Other Costs
\$422.00	Handling Charges

Therefore, the total cumulative budget is approved for:

\$4,442.00	Investigation Costs
\$8,300.00	Analysis Costs
\$57,593.00	Personnel Costs
\$2,460.00	Equipment Costs
\$246,627.86	Field Purchases and Other Costs
\$14,557.81	Handling Charges