

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PIONEER OIL COMPANY,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. _____
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

NOTICE OF FILING

To:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

September 7, 2007

PIONEER OIL COMPANY

By:   
Mandy L. Combs  
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 – 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Pioneer Oil Company*

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

PIONEER OIL COMPANY,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. 07-127
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

**PETITION FOR REVIEW**

Pursuant to §§ 40 and 57.8(i) of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.8(i), to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the Board's Order entered June 21, 2007 a copy of which is attached hereto as Exhibit 1, petitioner Pioneer Oil Company ("Pioneer") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Pioneer reimbursement for \$1,656.98 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Pioneer further requests the Board to order the Agency to pay Pioneer's legal costs for seeking payment in this appeal.

**I. THE AGENCY'S FINAL DECISION**

The Decision of which review is sought is contained in Exhibit 2 hereto.

**II. SERVICE OF THE AGENCY'S FINAL DECISION**

The Decision indicates it was mailed May 3, 2007. It was received by Pioneer May 7, 2007 and this appeal is timely pursuant to the Board's Order entered June 21, 2007 a copy of which is attached as Exhibit 1.

**III. GROUND'S FOR APPEAL**

A. The Agency's contention that Pioneer's analysis costs and shipping costs "lack supporting documentation" is erroneous, arbitrary and capricious. 35 Ill. Adm. Code 732.601(b)(9) and 734.605(b)(9) state that a complete application for payment consists of "an accounting of costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed." Pioneer submitted appropriate documentation, which was ignored by the Agency.

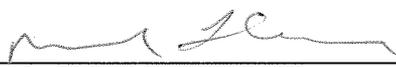
B. The Agency's contention that it cannot determine if the \$1,554.18 for analysis costs and \$102.80 for shipping costs will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" is erroneous, arbitrary and capricious. The application at issue was not for a budget but for reimbursement. The activities already have been performed and the conjecture by the Agency is both illogical and erroneous.

**IV. CONCLUSION.**

For the foregoing reasons, petitioner Pioneer Oil Company respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$1,656.98 and order the Agency to pay Pioneer's attorneys' fees for this appeal.

September 6, 2007

PIONEER OIL COMPANY

By:   
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 – 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Pioneer Oil Company*

MandyCombsUS\Pioneer\Pet for Review.wpd

7/6/07  
cc Beller  
7/6/07

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

PIONEER OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 07-127
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	(90-Day Extension)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On June 6, 2007, the Board received a joint notice to extend the 35-day period within which Pioneer Oil Company (Pioneer) may appeal a May 3, 2007 determination of the Illinois Environmental Protection Agency (Agency). According to the joint notice, Pioneer received the Agency determination on May 5, 2007. The joint request was therefore timely filed. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b)(2), 105.406. The Agency's determination concerns Pioneer's leaking underground storage tank site located at 9093 Illinois Route 127 in Montgomery County. In the determination, the Agency accepted Pioneer's Corrective Action Plan but modified the budget.

*Mr. Clark*

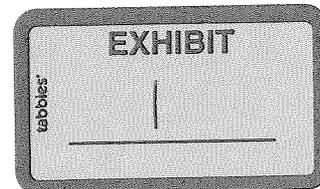
The Board extends the appeal period until September 7, 2007, as the parties request, based on the May 5, 2007 decision receipt date. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If Pioneer fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2007, by a vote of 4-0.

*John T. Therriault*

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board



1899098-BG



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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

RECEIVED

CERTIFIED MAIL #

MAY 03 2007

MAY 07 2007

7004 2510 0001 8623 9202

BY: \_\_\_\_\_

Pioneer Oil Company  
Attn: Southwest Bank-Acct. #0032713725  
#2 Carlyle Plaza Drive  
Belleville, Illinois 62221

Re: LPC #1350655005 -- Montgomery County  
Taylor Springs/O'Guinn's Service  
9093 Illinois Route 127  
Leaking UST Incident No. 991616  
Leaking UST FISCAL FILE

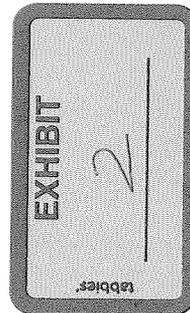
Dear Mr. Tompkins:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST 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 8, 2006 and was received by the Agency on January 3, 2007. The application for payment covers the period from January 1, 2006 to November 11, 2006. The amount requested is \$9,520.36.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated April 14, 2000. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On January 3, 2007, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$4,689.47 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,



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the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

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

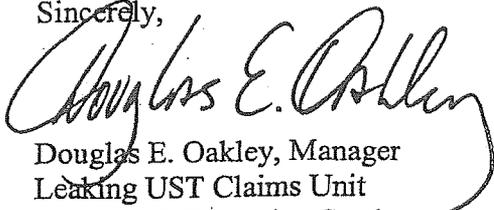
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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  
Leaking UST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:CSE:mls\072421.doc

Attachment

cc: United Science Industries

Attachment A  
Accounting Deductions

Re: LPC #1350655005 -- Montgomery County  
Taylor Springs/O'Guinn's Service  
9093 Illinois Route 127  
Leaking UST Incident No. 991616  
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

- 1. \$2,850.29, deduction for costs associated with free product removal, site investigation or corrective action. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(g) and 732.606(m).

Investigation costs exceeded the approved budget - \$2,696.87. ✓

Handling charges exceeded the approved budget - \$118.66. ✓

Personnel costs for Senior Technician, Scientist II and Administrative Assistant billed at higher rate than approved in the budget - \$34.76. ✓

- 2. \$1,656.98, deduction for costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; therefore, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Analysis costs do not have invoices from Teklab and Holcomb Foundation Engineering Company stating the amounts paid for analysis costs - \$1,554.18. ✓

Field Purchases do not have invoices for sample shipping - \$102.80. ✓

- 3. \$323.62, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(f) of the Act and 35 Ill. Adm. Code 732.607.

Handling charges on ineligible investigation costs.

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4830.89  
142

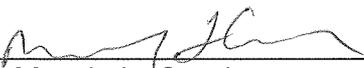
**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14<sup>th</sup> & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

September 7, 2007

  
\_\_\_\_\_  
Mandy L. Combs

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 – 1115 Harrison  
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*Counsel for Pioneer Oil Company*