

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GALLAHER'S SHELL,)	
<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 12, 2007

GALLAHER'S SHELL

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 Gallaher's Shell

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GALLAHER'S SHELL,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 07-130
)	(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 Gallaher's Shell ("Gallaher's") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Gallaher's reimbursement for \$1,431.88 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Gallaher's further requests the Board to order the Agency to pay Gallaher'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 8, 2007. It was received by Gallaher's May 10, 2007. This appeal is timely pursuant to the Board's Order entered June 21, 2007, a copy of which is attached as Exhibit 1.

III. GROUNDS FOR APPEAL

A. The Agency's contention that Gallaher's analysis costs "lack supporting documentation" is erroneous, arbitrary and capricious. Gallaher's submitted appropriate documentation, which was ignored by the Agency.

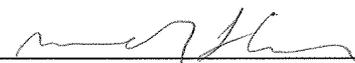
B. The Agency's contention that it cannot determine if the \$1,431.88 for analysis costs will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" is erroneous, arbitrary and capricious. The application at issue was not for a 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 Gallaher's Shell respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$1,431.88 and order the Agency to pay Gallaher's attorneys' fees for this appeal.

September 12, 2007

GALLAHER'S SHELL

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 Gallaher's Shell

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ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

GALLAHER'S SHELL,)	
)	
Petitioner,)	
)	
v.)	PCB 07-130
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

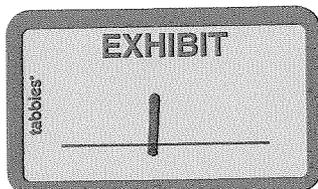
On June 8, 2007, the Board received a joint notice to extend the 35-day period within which Gallaher's Shell (Gallaher) may appeal a May 8, 2007 determination of the Illinois Environmental Protection Agency (Agency). According to the joint notice, Gallaher received the Agency determination on May 10, 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 Gallaher's leaking underground storage tank site located at 1580 Mulholland Street in Hancock County. In the determination, the Agency accepted Gallaher's Corrective Action Plan but modified the budget.

The Board extends the appeal period until September 12, 2007, as the parties request, based on the May 10, 2007 decision receipt date. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If Gallaher 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, Assistant Clerk
Illinois Pollution Control Board



1800145 JT

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 08 2007

MAY 10 2007

7004 2510 0001 8623 6331

BY: SA/NO

Gallaher's Shell
Attention: Southwest Bank/Commercial Lending
Attn: Jennifer Vescogni, Acct. #0032713725
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

38/NS-#9,021.19 - (#1473.73) = #7547.46
Poss Rem

Re: LPC #0670505005 -- Hancock County
Nauvoo/Gallaher's Shell
1580 Mulholland Street
Leaking UST Incident No. 20002137
Leaking UST FISCAL FILE

no vendor

Dear Mr. Gallaher:

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 28, 2006 and was received by the Agency on January 3, 2007. The application for payment covers the period from May 1, 2006 to November 11, 2006. The amount requested is \$9,021.19.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated September 21, 2001. 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 \$7,547.46 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5462
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 244-2125
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 993-7200
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

EXHIBIT
2

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:

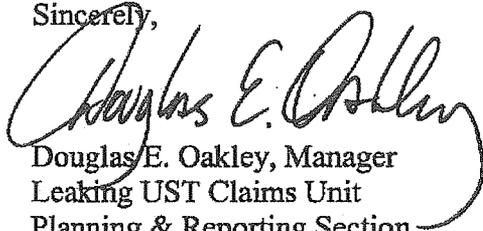
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Bambi Redpath of my staff at 217/782-6762.

Sincerely,



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

DEO:BR:bjh\072425.doc

Attachment

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #0670505005 -- Hancock County
Nauvoo/Gallaher's Shell
1580 Mulholland Street
Leaking UST Incident No. 20002137
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

- # 014148
P's
P's
1. \$1,431.88, 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.

Need lab invoices for analytical costs.

- # 013536
2. \$41.85, 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).

Drilling & Monitoring Well costs are over the approved budget.

DEO:BR:bjh\072426.doc

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 14th & 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
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September 12, 2007



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