

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 17 2007

STATE OF ILLINOIS
Pollution Control Board

Interstate Oil, Inc., with respect)
to NPDES Permit IL0072702)

Petitioner)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent)

PCB08-38

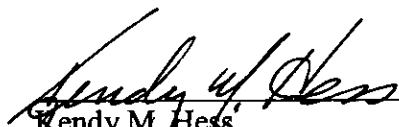
ORIGINAL

NOTICE OF FILING

TO: Alec Messina, Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

CC: Connie Tonsor
Managing Attorney Water Programs, at Mail Code 21
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276, Mail Code 21
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, the attached PETITION FOR APPEAL OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DETERMINATION REGARDING NPDES PERMIT IL0072702.


Kendy M. Hess
for Richmond Breslin LLP

Date: December 13, 2007

Kendy M. Hess
RICHMOND BRESLIN LLP
2273 Canyon Boulevard
Boulder, CO 80302
(303) 442-0311

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PCB 08-38

**PETITION FOR APPEAL OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DETERMINATION REGARDING
NPDES PERMIT IL0072702**

Petitioner, Interstate Oil, Inc. hereby submits this Petition For Appeal of the Illinois Environmental Protection Agency Determination Regarding NPDES Permit IL0072702 ("Permit") and Hearing to appeal the Illinois Environmental Protection Agency's ("Agency") final determination that Petitioner owes certain fees in connection with the Permit. This Petition is submitted pursuant to 415 ILCS 5/12.5(b) and 35 Ill. Admin. Code §105.100 *et seq.* Petitioner requests that the Board find that (a) the Agency failed to give proper notice to Petitioner of the fees associated with the Permit, in direct violation of 415 ILCS 5/12.5(b), (b) that Petitioner was harmed by this failure to give notice, and (c) that Petitioner is therefore not liable for said fees, and hold a hearing with respect to the issues discussed in this Petition.

I. Procedural History

Petitioner initially obtained the Permit for use at 312 East Jefferson Street in Shorewood, Illinois. Petitioner made no use of the Permit, and it expired on April 30,

2003. Petitioner submitted an application for renewal of the Permit on April 29, 2003 (partial copy attached hereto as Attachment 1). In the application, Petitioner provided its current address and identified Petitioner's consultant, Pioneer Engineering and Environmental Services ("Pioneer"), as the primary contact for all correspondence with respect to the Permit. Both Petitioner and Pioneer then received from the Agency a July 22, 2005 notice regarding the public fact sheet for the permit application, an August 22, 2005 copy of the draft permit, and a September 28, 2005 copy of the approved permit at their respective addresses as identified in the Permit application.

Illinois law (415 ILCS 5/12.5(b)) expressly stipulates that the Agency "shall send a fee notice by mail to each existing permittee subject to a fee under this Section at his or her address of record" – *i.e.* at the address identified in the permit application. None of the Agency's correspondence with Petitioner or with Pioneer regarding the Permit made any mention of fees.

In February 2007 the Agency sent a fee notice to the current owner of the Shorewood property, BP, and BP forwarded it to Petitioner in March 2007. This was the first notice that Petitioner received of the fees associated with the Permit: a demand for \$50,507.20 (inclusive of penalties for non-payment of earlier invoices). It was at this point that Petitioner discovered that the Agency had been sending fee notices associated with the Permit to an old address for Petitioner, rather than using either the address identified in the Permit application or the address for Pioneer, whom Petitioner had designated as the primary point of contact for all matters related to the Permit. Petitioner promptly contacted the Agency to inform the Agency of its correct address, only to

discover that the Agency already had the correct address on file (but for a minor error in suite number) (see Attachment 2).

Petitioner filed an official protest with the Agency on August 23, 2007, citing both (1) the lack of notice to itself and its designated point of contact, and (2) inappropriate invoicing for 2004, 2005, and a portion of 2006, during which time Petitioner was not in possession of a valid permit (copy attached hereto as Attachment 3). The Agency issued an October 24, 2007 letter designated as its “final action” (copy attached hereto as Attachment 4). In this letter, the Agency acknowledged that it had inappropriately invoiced Petitioner for those time periods and reduced its demand to \$38,750.00. The Agency did not acknowledge its failure to notify, and made no concession on those grounds. On November 20, 2007 the Agency granted Petitioner’s request to extend the time available to Petitioner for appeal, so that Petitioner and Agency could attempt to settle without filing. The Agency issued its second “final action” denying Petitioner’s protest on December 12, 2007.

The Agency’s failure to provide notice to Petitioner is in direct violation of 415 ILCS 5/12.5(b) and harmed Petitioner by denying Petitioner the opportunity to terminate the Permit and avoid incurring the fees. Consequently, Petitioner is submitting this timely Petition for Hearing and Appeal of that portion of the Agency’s determination.

II. Grounds for Appeal

The grounds for appeal in this matter are quite simple. The Agency has a statutory obligation to notify permittees of the fees associated with their permits. The Agency failed to provide this notice to Petitioner or Pioneer (Petitioner’s designated point of contact) despite repeated correspondence with Petitioner and Pioneer regarding other

matters associated with the Permit. The Agency's failure to notify Petitioner of the fees harmed Petitioner: Petitioner has made no use of the Permit, and would have immediately terminated the Permit if the Agency had fulfilled its obligation to notify Petitioner of the fees that would be incurred. The Agency's failure to fulfill its obligation denied the Petitioner this opportunity. The Agency then exacerbated the harm by failing to use either the address Petitioner provided in its permit application or the address Petitioner provided for Pioneer for invoicing, despite the Agency's continued use of both those addresses for other correspondence. As a result, Petitioner incurred three years worth of fees, plus interest and penalties, before ever having the opportunity to address the issue.

The Agency does not deny that it failed to notify Petitioner regarding the fees, in violation of 415 ILCS 5/12.5(b). Instead, the Agency has taken the position that it is not responsible for the harm to Petitioner because Petitioner did not notify the Agency of a change in Petitioner's address. However, Petitioner did in fact notify the Agency of its new address in 2003, as evidenced by the Permit application itself and the Agency's continued and successful use of that address. There has been no significant change to Petitioner's address since that time – only a change of suites. The Agency acknowledged in a November 30, 2007 email that this was not a significant change to Petitioner's address, and it has had no effect on the Agency's ability to contact Petitioner. Again, the Agency has made consistent and effective use of Petitioner's address in all matters unrelated to the fees.

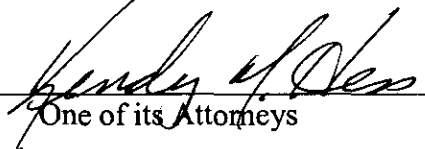
III. Conclusion and Prayer for Relief

The Agency's failure to fulfill its statutory obligation to notify Petitioner of the fees associated with the Permit harmed Petitioner by denying Petitioner the opportunity to avoid incurring the fees by simply terminating the Permit, which Petitioner was not using. Similarly, the Agency's use of a defunct address for invoices associated with the Permit, instead of the current address used for all other correspondence, exacerbated the harm by causing Petitioner to accumulate three years worth of fees and penalties with no opportunity to avoid them by terminating the Permit.

WHEREFORE, for the foregoing reasons and the reasons set forth in correspondence with the Agency, the Petitioner respectfully petitions the Board for a hearing to address the issues raised in this Appeal or to find that the Agency's determination was in error and that Petitioner has no obligation to pay the \$38,750.00 fees that it incurred without its knowledge or consent. Alternatively, as of summer 2007 the Agency's website regarding NPDES fees (<http://www.epa.state.il.us/fees/npdes.html>) provided that "[if] the termination request is received after July 1 [2003], but the permit holder can demonstrate that the discharge had ceased prior to that date, they are not liable for the fee." The website has since been altered, but this was the Agency's public position at the time of Petitioner's protest. As there has been no discharge since July 1, 2003 (or indeed, ever), Petitioner respectfully requests that it be allowed to terminate the Permit and be absolved of any obligation with respect to these charges.

Respectfully submitted,

Interstate Oil, Inc. with respect to
NPDES Permit IL0072702

By: 
One of its Attorneys

Kendy M. Hess
RICHMOND BRESLIN LLP
2273 Canyon Boulevard
Boulder, CO 80302
(303) 442-0311

ATTACHMENT 1

April 29, 2003 Application for Permit Renewal
(partial copy)

April 29, 2003

Illinois Environmental Protection Agency
Division of Water Pollution Control
Permit Section
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
Attn: Rick Pinneo

RE: NPDES Permit Renewal Application
NPDES Permit No. IL0072702
Former Gas Center (Interstate Oil)
312 East Jefferson Street
Shorewood, Illinois
Pioneer Project No. 97760B

Dear Mr. Pinneo:

Pioneer Engineering & Environmental Services, Inc. (Pioneer) is providing the attached NPDES permit forms (US EPA Forms 1 and 2C) in order to renew NPDES Permit No. IL0072702. A dual-phase extraction system was proposed to the Illinois EPA's Leaking Underground Storage Tank (LUST) Section and approved to remediate petroleum-impacted soil, bedrock, and groundwater associated with two LUST incidents (#930099 and #971400). However, due to redevelopment plans, the full system has not been installed to date. The impacted groundwater (outfall 001) that will be recovered will be treated by air stripping and will be discharged to the *Dupage River via an IDOT storm sewer*. Please note that a brief pilot study (one day – March 8, 1999) was conducted, and Pioneer did not collect samples of the recovered water during the pilot test. Therefore, information regarding pollutant concentrations was either not available (oils and grease and lead) for inclusion in the attached applications or were estimations based on modeling results of the air stripper performance (benzene, toluene, ethylbenzene, and total

NPDES Permit Renewal Application
NPDES Permit No. IL0072702
Former Gas Center (Interstate Oil)
312 East Jefferson Street
Shorewood, Illinois
Pioneer Project No. 97760B
April 29, 2003
Page 2 of 2

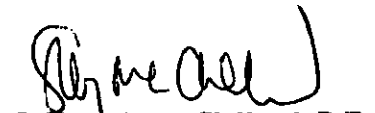
xylene). The air stripper design information and modeling results are provided as an attachment to the permit forms.

Please note that Pioneer performs all current NPDES DMR reporting on behalf of the owner/operator and documentation regarding this permit renewal should also be directed to Pioneer at the address listed above.

Pioneer appreciates your time with this matter and please contact me at (312) 587-1021 with any questions or comments.

Sincerely,
PIONEER ENGINEERING & ENVIRONMENTAL SERVICES, INC.


Lisa A. Bongioyanni, P.E.
Project Manager


Jeffrey T. McClelland, P.E.
Senior Project Manager

Attachments

FORM 1 GENERAL	U.S. ENVIRONMENTAL PROTECTION AGENCY GENERAL INFORMATION <i>Consolidated Permits Program</i> <i>(Read the "General Instructions" before starting.)</i>	I. EPA NUMBER <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:10%; text-align: center;">B</td> <td style="width:70%; text-align: center;">1970955023</td> <td style="width:10%; text-align: center;">A C</td> </tr> <tr> <td style="width:10%; text-align: center;">1</td> <td style="width:70%; text-align: center;">2</td> <td style="width:10%; text-align: center;">D</td> </tr> </table>	B	1970955023	A C	1	2	D
B	1970955023	A C						
1	2	D						
LABEL ITEMS		GENERAL INSTRUCTIONS						
EPA I.D. NUMBER		If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate fill-in area below. Also, if any of the preprinted data is absent (the area to the left of the label space lists the information that should appear), please provide it in the proper fill-in area(s) below. If the label is complete and correct, you need not complete items I, III, V, and VI (except VI-B which must be completed regardless). Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorizations under which this data is collected.						
III. FACILITY NAME								
V. FACILITY MAILING ADDRESS								
VI. FACILITY LOCATION								
II. POLLUTANT CHARACTERISTICS								
INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold-faced terms.								
SPECIFIC QUESTIONS	MARK 'X' YES NO FORM ATTACHED	SPECIFIC QUESTIONS						
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.?	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">X</td> <td style="width:33%;"></td> </tr> <tr> <td style="font-size: x-small;">16</td> <td style="font-size: x-small;">17</td> <td style="font-size: x-small;">18</td> </tr> </table>		X		16	17	18	B. Does or will this facility (either existing or proposed) include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.?
	X							
16	17	18						
C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A or B above?	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">X</td> <td style="width:33%; text-align: center;">2C</td> </tr> <tr> <td style="font-size: x-small;">22</td> <td style="font-size: x-small;">23</td> <td style="font-size: x-small;">24</td> </tr> </table>		X	2C	22	23	24	D. Is this a proposed facility (other than those described in A or B above) which will result in a discharge to waters of the U.S.?
	X	2C						
22	23	24						
E. Does or will this facility treat, store, or dispose of hazardous wastes?	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">X</td> <td style="width:33%;"></td> </tr> <tr> <td style="font-size: x-small;">28</td> <td style="font-size: x-small;">29</td> <td style="font-size: x-small;">30</td> </tr> </table>		X		28	29	30	F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water?
	X							
28	29	30						
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons?	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">X</td> <td style="width:33%;"></td> </tr> <tr> <td style="font-size: x-small;">34</td> <td style="font-size: x-small;">35</td> <td style="font-size: x-small;">36</td> </tr> </table>		X		34	35	36	H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy?
	X							
34	35	36						
I. Is this facility a proposed stationary source which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area?	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">X</td> <td style="width:33%;"></td> </tr> <tr> <td style="font-size: x-small;">40</td> <td style="font-size: x-small;">41</td> <td style="font-size: x-small;">42</td> </tr> </table>		X		40	41	42	J. Is this facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area?
	X							
40	41	42						
III. NAME OF FACILITY								
1	2	3						
13	14	15						
Former Gas Center (Interstate Oil)								
IV. FACILITY CONTACT								
A. NAME & TITLE (last, first, & title)		B. PHONE (area code & no.)						
1	2	3						
13	14	15						
Torbati Emanuel President		619 238 2393						
V. FACILITY MAILING ADDRESS								
A. STREET OR P.O. BOX								
1	2	3						
13	14	15						
625 Broadway Ste 700								
B. CITY OR TOWN		C. STATE						
1	2	3						
13	14	15						
San Diego		CA 92101						
VI. FACILITY LOCATION								
A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER								
1	2	3						
13	14	15						
312 East Jefferson Street								
B. COUNTY NAME								
1	2	3						
13	14	15						
Will								
C. CITY OR TOWN		D. STATE						
1	2	3						
13	14	15						
Shorewood		IL 60435						

ATTACHMENT 2

July 30, 2007 Richmond Breslin letter to Agency re: change of address

July 30, 2007

Via Fax and First Class Mail

Illinois Environmental Protection Agency
Bureau of Water – Division of Water Pollution Control
Permit Section
1021 N. Grand Avenue East
PO Box 19276
Springfield, Illinois 62794-9276
Attn: Richard Pinneo

**Re: Interstate Oil
NPDES Permit No: IL0072702
Change of Address**

Mr. Pinneo:

As we discussed on July 27, 2007, I am writing to notify the IEPA-DWPC of a change of address for my client, Interstate Oil (which holds the referenced permit). When we spoke on the phone you gave the following address for my client:

Interstate Oil
625 Broadway, Suite 700
San Diego, CA 92101

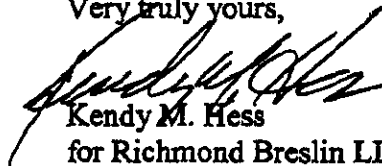
This is slightly incorrect: mailings should be addressed to Suite 915, not to Suite 700.

Upon my review of the file for this permit, however, I see that you have had and have been using the San Diego address for my client since at least July 2005. It was at that point that you notified my client (and his consultant, Pioneer) that you had reviewed his application and planned to begin the public notification process prior to issuing the permit. With this, I am a little confused by the IEPA's inability to locate my client and notify him of the fees associated with that permit. I had understood that you had and were using the old Chicago address: 4701 S. Central, Chicago, IL 60638. That would explain why we never received notification, but it's clear from the file that that was not the case.

In the future, please use the San Diego address for *all* mailings directed to my client – this is the address identified on the April 29, 2003 application for permit renewal. Additionally, we would appreciate it if you would continue with your standard process of including our consultant, Pioneer, in all correspondence. The April 29, 2003 renewal application explicitly states that “Pioneer performs all current NPDES DMR reporting on behalf of the owner/operator and documentation regarding this permit renewal should also be directed to Pioneer at the address listed above.” All of the correspondence other than the fee notices followed this practice, with good results.

Thank you.

Very truly yours,



Kendy M. Hess
for Richmond Breslin LLP

cc: Emanuel Torbati (Interstate Oil)
Jeffrey McClelland (Pioneer Environmental)

ATTACHMENT 3

August 23, 2007 Richmond Breslin letter to Agency re: protest of fees

August 23, 2007

Via Fax and First Class Mail

Illinois Environmental Protection Agency
Bureau of Water – Division of Water Pollution Control
Permit Section
1021 N. Grand Avenue East
PO Box 19276
Springfield, Illinois 62794-9276
Attn: Brian Cox

**Re: Interstate Oil
NPDES Permit No: IL0072702
Permit fees**

Dear Mr. Cox:

I represent Interstate Oil, the permittee under the captioned permit. The permit was issued September 28, 2005, but my client was not notified of the fees required by the permit until BP (the current property owner) contacted us in March 2007. While the regular correspondence regarding the permit application was addressed to my client at its current address and included the consultant (consistent with the permit application), the Agency used an old address for my client for separate correspondence regarding the fees. I believe we've straightened out the confusion about the addresses at this point, but the two (or three, or four) year delay in notification for the fees has led to a rather complicated situation.

To review, we submitted our application for this permit on April 29, 2003, providing the current address for my client and asking that Pioneer Environmental act as the primary contact for all correspondence. We received a July 22, 2005 notice regarding the public fact sheet for the permit application, an August 22, 2005 copy of the draft permit, and a September 28, 2005 copy of the approved permit. None of this correspondence mentioned the fees associated with the permit, despite the fact that 415 ILCS 5/12.5(b) expressly stipulates that the Agency must notify each existing permittee of the fees associated with its permit. The permit authorizes the discharge of industrial waters impacted by toxic or hazardous substances (in connection with a remediation) in

an amount of less than 250,000 gpd, so the fee is \$15,000/year. In March 2007, BP forwarded to us an IEPA demand for \$50,507.20 (inclusive of penalties for non-payment of earlier invoices, which were sent to the wrong address and never received by my client). The Agency has since agreed to waive the penalties, which we very much appreciate, but that still leaves my client with a bill for \$45,000. We have already requested an extension from the Agency in order to resolve the confusion over these fees. There are three problems.

First, even assuming that my client is responsible for any payment at all, the amount is incorrect. The permit was issued effective October 2005. With that, the most that my client could possibly be asked to pay is \$30,000 (for 2006 and 2007) together with the appropriate proration for the three months of 2005. While the current permit is technically a renewal of a previous permit, more than two years lapsed between our request to renew that permit and the Agency's approval. During that time we were forbidden to discharge, so we can't really be said to have been in possession of a valid permit. Holding my client responsible for permit fees for the time prior to permit approval would essentially put the Agency in the odd position of charging \$15,000/year for reviewing permit renewal applications. I'm sure that isn't the position that the Agency wishes to take, or the position that the Agency wishes to force upon its applicants. It would certainly establish some unfortunate incentives for the Agency.

Second, given the Agency's failure to notify my client of the fees associated with this project (in direct violation of 415 ILCS 5/12.5(b)), it is inappropriate to hold my client responsible for *any* of the fees associated with this permit. The provisions at 415 ILCS 5/12.5(b) expressly stipulate that the Agency "shall send a fee notice by mail to each existing permittee subject to a fee under this Section at his or her address of record" – *i.e.* at the address identified in the permit application. Instead of using the address identified on the permit application – the same address the Agency used for all other correspondence regarding the permit – the Agency used an invalid address. By this action the Agency harmed my client, denying my client the opportunity to reconsider its decision to make use of a NPDES permit or to reconsider the timing on the application. We have yet to make use of this permit. Had we had any idea of the costs associated with an inactive permit, we would not have applied for it when we did or would have promptly terminated it as soon as it became apparent that we would not be able to make use of it. Without notification of the fees, neither of those opportunities was available to my client. Frankly, it seems profoundly inappropriate that the Agency benefit to the tune of \$50,000 for its use of an invalid address, especially when the application for the permit in question identified an appropriate address (paired with the fail-safe mechanism of including the consultant on all correspondence) and the Agency made use of that address and fail-safe with good results for all other correspondence. As a policy, again, this would establish some decidedly unfortunate incentives for the Agency.

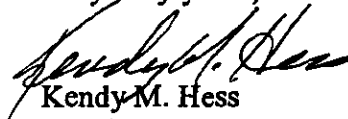
Third, if we cannot find any other way to resolve this difficulty, my client will have little choice but to simply submit a termination notice and reapply for the permit. We have never made use of this permit, we are not in a position to make use of the permit at this time, and cannot say with any surety when we will be in a position to make use of

the permit (as that is dependent on other state actions that we cannot control). We simply cannot afford to pay \$15,000/year for the privilege of waiting for various state approvals, especially when that \$15,000/year comes on top of a bill for \$50,000 (incurred without our consent or even consideration, and without our receiving any benefit in exchange). I understand from our discussions and from the website to which you directed me (<http://www.epa.state.il.us/fees/npdes.html>) that "[if] the termination request is received after July 1 [2003], but the permit holder can demonstrate that the discharge had ceased prior to that date, they are not liable for the fee." As there has been no discharge since July 1, 2003 (or indeed, ever), we can simply terminate the permit and be absolved of any obligation with respect to these charges. We are understandably reluctant to begin the application process all over again, given the two-year turnaround on approvals, and reluctant to ask the Agency to repeat the entire process of reviewing and approving the same permit for no real reason, but as I said we seem to have little choice.

My client respectfully requests that the Agency waive the existing fees in their entirety. The fees were inappropriately allocated to my client in the first place, as the Agency failed to follow its own established and mandated practices with respect to notification, and the Agency's failure to do so deprived my client of the opportunity to make the informed decision that would have allowed it to avoid incurring the fees in the first place. If the Agency refuses to resolve the matter in this way, I see little option but to terminate the permit (effective October 2005) and begin the application process anew. If you see other alternatives, I would certainly be interested in hearing them.

Thank you in advance for your time reviewing and considering this request, and for your assistance with my review of the rules and regulations governing NPDES fees. I look forward to hearing from you.

Very truly yours,



Kendy M. Hess
for Richmond Breslin LLP

cc: Emanuel Torbati (Interstate Oil)
Jeffrey McClelland (Pioneer Environmental)

ATTACHMENT 4

October 24, 2007 Agency letter re: denial of request



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

217 / 782-0610 ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

October 24, 2007

Kendy M. Hess

Richmond Breslin LLP

2273 Canyon Blvd.

Boulder, CO 80302

Re: Interstate Oil
NPDES Permit No. IL0072702
NPDES Fee Dispute

Dear Ms. Hess:

This letter is in response to your letters dated July 30, 2007, August 23, 2007, and August 30, 2007 requesting that the Agency waive the existing fees for NPDES Permit No. IL0072702. After reviewing the permit it has been determined that the annual fee for this facility is \$15,000, which is based on an industrial minor containing limitations for toxic pollutants and discharging less than 250,000 gpd. The Agency has reviewed your request and has the following comments.

The 2004 fee of \$1,000 and 2005 fee of \$15,000 were waived since the facility did not have a valid permit during that time. The 2006 fee of \$15,000 was prorated from the date of issuance, so the new 2006 fee is \$8,750. The fees for 2007 and 2008 are both \$15,000. Therefore, the past due amount for previous years is \$23,750, and the total amount due to the Agency, which includes the fee for 2008 is \$38,750.

Therefore, please submit a payment in the amount of \$38,750 to the Agency by **November 30, 2007**. Payments should be made payable to: Illinois EPA and should be mailed to Illinois EPA, Fiscal Services Section, Cash Receipts #2, P.O. Box 19276, Springfield, IL 62794-9276. Please return a copy of this letter along with your payment to ensure proper credit to your account.

This determination of fee amount constitutes final action by the Agency regarding your dispute. If you have any questions or comments regarding this determination, please call 217 / 782-0610.

Sincerely,

Alan Keller, P.E.

Manager, Permit Section

Division of Water Pollution Control

cc: Interstate Oil
Gina Hamlin

SAK:LRL:72702fd.wpd

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Interstate Oil, Inc., with respect)
to NPDES Permit IL0072702)
)
Petitioner)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent)

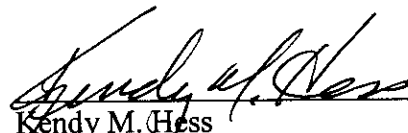
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STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached PETITION FOR APPEAL OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DETERMINATION REGARDING NPDES PERMIT IL0072702 by U.S. Mail, upon the following persons:

Alec Messina, Chief Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Connie Tonsor
Managing Attorney Water Programs, at Mail Code 21
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276, Mail Code 21
Springfield, Illinois 62794-9276


Kendy M. Hess
for Richmond Breslin LLP

Date: December 13, 2007

Kendy M. Hess
RICHMOND BRESLIN LLP
2273 Canyon Boulevard
Boulder, CO 80302
(303) 442-0311