

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 11 2008

STATE OF ILLINOIS
Pollution Control Board

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

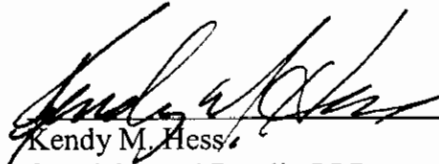
PCB 08-38
(NPDES Fee Appeal)

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached AMENDED PETITION FOR APPEAL OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DETERMINATION REGARDING NPDES PERMIT IL0072702 in the captioned matter 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
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: February 6, 2008

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

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PCB 08-38
(NPDES Fee Appeal)

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

Petitioner, Interstate Oil, Inc. hereby submits this Amended Petition for appeal of the Illinois Environmental Protection Agency ("Agency") determination regarding NPDES Permit IL0072702 ("Permit"), petitioning the Pollution Control Board ("Board") to reverse its dismissal of the previously filed Petition and again requesting a hearing to appeal the Agency's determination that Petitioner owes certain fees in connection with the Permit. This Amended Petition is submitted pursuant to a Board Order dated January 10, 2008 ("Order", copy attached hereto as Attachment 1) in which the Board refused Petitioner's appeal, requesting further information about the ability of Petitioner's counsel to practice in Illinois and the timeliness of the filing. Petitioner requests that the Board find (a) that the Agency issued a "final determination" on December 12, 2007 when it terminated negotiations with Petitioner, (b) that Petitioner's December 17, 2007 petition ("Petition", copy attached hereto as Attachment 2) was thus timely filed, and (c) that the Board is thus properly authorized to review the Petition on

its merits, and Petitioner respectfully requests that the Board then proceed with its review of the Petition.

I. Procedural History

Petitioner first received notice of the fees associated with the Permit in March 2007, when the current owner of Petitioner's former property forwarded a notice it received from the Agency. 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 Petitioner's consultant, 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 had had the correct address since the second term of the Permit (to which the fees related). Petitioner filed an official protest with the Agency on August 23, 2007 and the Agency issued an October 24, 2007 response (copy attached hereto as Attachment 3), which Petitioner received on October 29, 2007. In this response, the Agency reduced its demand but did not acknowledge its failure(s) 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 the parties could discuss the possibility of settlement (as documented in a November 20, 2007 email, copy attached hereto as Attachment 4). Petitioner explicitly requested the extension in an effort to resolve the dispute without filing an appeal with the Board, while making it clear that Petitioner intended to file an appeal with the Board if it was not possible to resolve the dispute via

negotiation. In granting the extension to allow further discussion, the Agency necessarily agreed to reconsider its position. The Agency never suggested that it did not have the authority to grant the requested extension.

Over the next three weeks Petitioner contacted the Agency repeatedly, requesting a brief phone call to discuss the matter. The Agency responded sporadically to emailed requests, engaging in substantive discussion of the matter, but never made itself available for a call. On December 12, 2007 the Agency issued its final decision (copy attached hereto as Attachment 5): unmoved by the considerations raised by Petitioner in the email dialogue, the Agency opted to litigate. Petitioner submitted its appeal with the Board on December 14, 2007, with a final filing date of December 17, 2007.

On January 10, 2008 the Board issued the Order refusing Petitioner's appeal, citing concerns about the ability of Petitioner's counsel to practice in Illinois and the timeliness of the filing. The Board requested that Petitioner file an Amended Petition by February 13, 2008, curing these informational deficiencies. Consequently, Petitioner is submitting this timely Amended Petition for Hearing and Appeal.

II. Grounds for Appeal

The grounds for Appeal of the Agency's determination remain the same as those addressed in the Petition, attached hereto as Attachment 1; the purpose of this Amended Appeal is to address the informational deficiencies noted in the Board's Order.

With respect to counsel's ability to practice in Illinois, counsel has been licensed to practice in Illinois continuously since November 1993. Counsel filed an

Appearance with the Board on February 1, 2008 (attached hereto as Attachment 6) which included documentation in support of this assertion.

With respect to the timeliness of the Appeal, as noted above, Petitioner filed an official protest with the Agency in August 2007. The Agency issued its first response in October 2007. This response was identified as a “final action”, but the Agency nonetheless agreed to reconsider its position at the request of Petitioner’s counsel and then engaged in discussion with regard to the same. Petitioner’s counsel corrected certain factual errors in the Agency’s understanding of the case and pointed out statutory provisions that the Agency had not taken into consideration in its issuance of the October 2007 response. The Agency nonetheless opted for an administrative appeal process rather than a negotiated settlement, and communicated this final decision to Petitioner’s counsel on December 12, 2007. Despite the informality of this final decision, it is clear that the October 2007 was not in fact a “final action” by the Agency because the Agency itself agreed to reconsider it and in fact did so. The December 2007 decision was in fact a “final action” in that it was the Agency’s final conclusion on the matter after discussion and reconsideration of the institial action. Petitioner respectfully requests that the Board recognize it as such. As Petitioner filed its appeal within five days of being informed of this “final action”, the appeal was timely filed.

To the extent that the Agency did not have the authority to reconsider its own position, the Agency misled Petitioner in agreeing to an “extension” that it did not have authority to grant. If the Agency had refused Petitioner’s request for an extension, either on the grounds that it was not willing to reconsider its position or that it lacked the authority to do so, Petitioner would have filed its appeal immediately. As demonstrated,

Petitioner was able to file its appeal within five days of receiving notice of the Agency's final action. In that case, Petitioner would have filed by November 25, 2007 – well in advance of the December 3, 2007 deadline (counting from Petitioner's receipt of the initial determination on October 29, 2007).

Petitioner sought only to save both the parties and the Board a time-consuming and expensive appeal for a matter that seemed easily resolved by discussion. If the Board finds that the Agency's December 12, 2007 decision is not a "final action", it necessarily finds that the Agency (willfully or otherwise) misrepresented its own authority and abused that apparent authority in a way that denied Petitioner the possibility of appealing an Agency decision. Such an interpretation of the facts slights the competence and good intent of the Agency, and penalizes Petitioner for the entirely reasonable and arguably generous effort to avoid unnecessary expenditure of Agency and Board resources (as well as Petitioner's own). Further, when the facts of a case are not determinative, there is an established practice of interpreting the facts so as to maximize the access of petitioners to the judicial process, and to minimize the likelihood that substantive decisions will be made on procedural grounds. While the facts speak for themselves, considerations of justice and public policy also militate in favor of the Board recognizing the December 12, 2007 decision as a final action.

III. Conclusion and Prayer for Relief

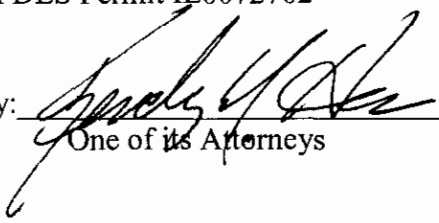
For the foregoing reasons, Petitioner respectfully requests that the Board find that (a) the Agency's decision to litigate this matter, reached after substantive discussion with Petitioner and documented in its December 12, 2007 email to Petitioner's

counsel, constitutes a “final action” such that the 35-day period to appeal began on that day, (b) that Petitioner’s December 17, 2007 Petition was thus timely filed, and (c) that the Board is thus properly authorized to review the Petition on its merits, and Petitioner respectfully requests that the Board then proceed with its review of the Petition.

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

January 10, 2008 Order of the Board
denying Petitioner's appeal and requesting an Amended Petition

ILLINOIS POLLUTION CONTROL BOARD

January 10, 2008

INTERSTATE OIL, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 08-38
)	(NPDES Fee Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 17, 2007, Interstate Oil, Inc. (Interstate Oil) filed a petition (Pet.) asking the Board to review a final determination of the Illinois Environmental Protection Agency (Agency). The determination concerns the Agency's assessment of fees associated with the National Pollutant Discharge Elimination System (NPDES) permit issued for Interstate Oil's facility in Shorewood, Will County. See 415 ILCS 5/5(d), 12.5, 13, 13.3, 40(a)(1) (2006); 35 Ill. Adm. Code 105.204(f). Interstate Oil filed the requisite \$75 filing fee on December 20, 2007. See 415 ILCS 5/7.5 (2006); 35 Ill. Adm. Code 101.302(e)(3). For the reasons below, the Board declines to accept Interstate Oil's petition for hearing but grants Interstate Oil leave to file an amended petition.

In its petition, Interstate Oil requests a hearing on the Agency's final determination that the company "owes certain fees" totaling \$38,750 in connection with NPDES permit No. IL0072702. Pet. at 1, 3. The petition asserts that its is "submitted pursuant to 415 ILCS 5/12.5(b) and 35 Ill. Admin. Code §105.100 *et seq.*" Pet. at 1. Interstate Oil claims that the Agency violated Section 12.5(b) of the Environmental Protection Act (415 ILCS 5/12.5(b) (2006)) by failing to give the company proper notice of the NPDES permit fees. Pet. at 1. Section 12.5(b) states 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." Pet. at 2, quoting 415 ILCS 5/12.5(b) (2006). This failure of the Agency to comply with its statutory obligation, according to Interstate Oil, harmed the company, which would have otherwise sought to terminate the permit and thereby avoid the demanded \$38,750 in fees. Pet. at 1, 3-5. Interstate Oil seeks a Board ruling that the company is not liable for these charges. Pet. at 1, 5.

Interstate Oil attaches to its petition an Agency letter of October 24, 2007, stating that "[t]his determination of fee amount constitutes final action by the Agency regarding your dispute." Pet., Attachment 4. According to the petition, the Agency on November 20, 2007, "granted Petitioner's request to extend the time available to Petitioner for appeal," so that *settlement could be pursued*. Pet. at 3. However, continues Interstate Oil, the Agency "issued its second 'final action' denying Petitioner's protest on December 12, 2007." *Id.*

The Board cannot accept Interstate Oil's petition as filed. Any appeal of a final Agency determination must be filed within 35 days after service. The appeal period may be extended only by Board order if a joint request for extension is filed with the Board within the original 35-day period. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.206(a), (c), 105.208(a). If a petition is not timely filed, the Board lacks jurisdiction to hear the appeal. See, e.g., Illinois Ayers Oil Co. v. IEPA, PCB 05-48 (Mar. 17, 2005) ("The Board has consistently held that the Board cannot and does not accept petitions for review filed outside the statutory time deadline."). In addition, a petition for review must attach the final Agency determination being appealed and state when the determination was served on petitioner. See 35 Ill. Adm. Code 105.210(a), (b).

Here, the Board did not receive a request from the Agency and Interstate Oil to extend the 35-day period for appealing the Agency's October 24, 2007 final determination. Accordingly, any appeal of that determination was due 35 days after Interstate Oil was served with the determination. Interstate Oil's petition, however, does not state when the October 24, 2007 determination was served on the company. Further, Interstate Oil asserts that the Agency issued a "second 'final action'" on December 12, 2007, but the petition fails to attach that determination. The Board directs Interstate Oil to file an amended petition by February 13, 2008, curing these informational deficiencies. Failure to do so will subject this appeal to dismissal. See 35 Ill. Adm. Code 105.108.

In addition, Interstate Oil's petition was filed by a Boulder, Colorado attorney without an appearance and without any indication that she is licensed and registered to practice law in Illinois. By February 13, 2008, counsel for Interstate Oil must file either an appearance documenting that she is licensed and registered to practice law in Illinois or an appearance accompanied by a motion to appear *pro hac vice*. See 35 Ill. Adm. Code 101.400(a).

The 120-day statutory period for the Board to render a final decision will commence upon the filing of the amended petition. See 35 Ill. Adm. Code 105.114(b). The Agency record must be filed within 30 days after Interstate Oil files the amended petition. See 35 Ill. Adm. Code 105.116, 105.212.

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 January 10, 2008, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

ATTACHMENT 2

Petitioner's December 17, 2007 petition ("Petition")

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**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

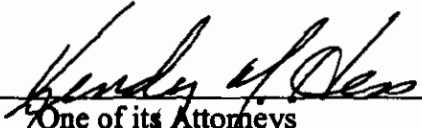
The Agency's failure to fulfill its statutory obligation to notify Petitioner of the fees associated with the Permit harmed Petitioner by denying Petitioner the opportunity to avoid incurring the fees by simply terminating the Permit, which Petitioner was not using. Similarly, the Agency's use of a defunct 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

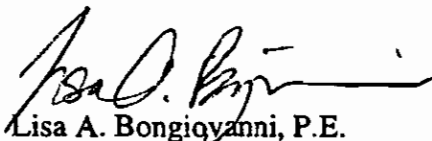
NPDES Permit Renewal Application
NPDES Permit No. TL0072702
Former Gas Center (Interstate Oil)
312 East Jefferson Street
Shorewood, Illinois
Pioneer Project No. 97760B
April 29, 2003
Page 2 of 2

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

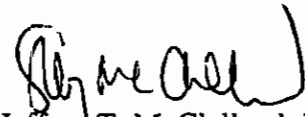
Please note that Pioneer performs all current NPDES DMR reporting on behalf of the owner/operator and documentation regarding this permit renewal should also be directed to Pioneer at the address listed above.

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	EPA	U.S. ENVIRONMENTAL PROTECTION AGENCY GENERAL INFORMATION <i>Consolidated Permits Program</i> <small>(Read the "General Instructions" before starting.)</small>	I. EPA NUMBER F 1970955023
LABEL ITEMS EPA I.D. NUMBER III. FACILITY NAME V. FACILITY MAILING ADDRESS VI. FACILITY LOCATION		GENERAL INSTRUCTIONS 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.	

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'			SPECIFIC QUESTIONS	MARK 'X'		
	YES	NO	FORM ATTACHED		YES	NO	FORM ATTACHED
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.?		X		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	
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?	X		2C	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	
E. Does or will this facility treat, store, or dispose of hazardous wastes?		X		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	
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?		X		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	
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?		X		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	

III. NAME OF FACILITY

1	SKIP	Former Gas Center (Interstate Oil)
---	------	------------------------------------

IV. FACILITY CONTACT

2	A. NAME & TITLE (last, first, & title)	B. PHONE (area code & no.)
	Torbati Emanuel President	619 238 2393

V. FACILITY MAILING ADDRESS

3	A. STREET OR P.O. BOX		
	625 Broadway Ste 700		
4	B. CITY OR TOWN	C. STATE	D. ZIP CODE
	San Diego	CA	92101

VI. FACILITY LOCATION

5	A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER				
	312 East Jefferson Street				
6	B. COUNTY NAME		F. COUNTY CODE (if known)		
	Will				
7	C. CITY OR TOWN	D. STATE	E. ZIP CODE		
	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

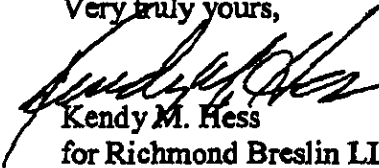
This is slightly incorrect: mailings should be addressed to Suite 915, not to Suite 700.

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

ATTACHMENT 3

October 24, 2007 Agency letter re: denial of request



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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217 / 782-0610

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

October 24, 2007

Kendy M. Hess

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Sincerely,

Alan Keller, P.E.

Manager, Permit Section

Division of Water Pollution Control

cc: Interstate Oil
Gina Hamlin

SAK:LRL:72702fd.wpd

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MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

ATTACHMENT 4

November 20, 2007 email documenting extension

Kendy M. Hess

From: Kendy M. Hess
Sent: Tuesday, November 20, 2007 12:33 PM
To: 'connie.tonsor@illinois.gov'
Cc: 'Leslie Lowry'; 'Martha Romanenko'; Jeffrey McClelland; 'alan.keller@illinois.gov'
Subject: Interstate/Shorewood -- fee dispute for NPDES Permit IL0072702
Attachments: 2007-08 letter to IEPA re second fee notice and extension.doc; 2007-07 letter to IEPA re change of address.doc; 2007-07 letter to IEPA re extension.doc; 2007-08 letter to IEPA re protesting fee.doc; IL EPA Permit Fees.PDF

Hi, Connie --

Alan Keller and Leslie Lowry over at the IEPA-DWPC suggested that I contact you about the captioned matter, as I thought it might be helpful to speak to a lawyer at this point before taking the final step of filing a formal appeal with the PCB. My client and I would really prefer to avoid taking that step, but feel we have little choice at this step -- maybe you can help.

I've soft copies of the recent correspondence (let me know if you need hard copies, for some reason) -- the August 23, 2007 letter contains an uncontested account of the events leading up to the current situation. The Agency had originally given us until November 30 to either pay the amount due or file for appeal, but in response to my request they've generously granted an extension until December 14 in hopes that we can resolve this. I'd appreciate it if you could give these a quick skim and then contact me at your earliest convenience to discuss this situation. Again, the August 23 letter contains a complete statement of the facts (I believe) and our position.

Thanks in advance for your time.

Kendy

PS Alan and Leslie, please take this as the promised email documenting the extension we discussed on Tuesday, November 20, 2007.

Kendy M. Hess
Richmond Breslin LLP
2273 Canyon Boulevard
Boulder, Colorado 80302

(o) 303/442-0311
(f) 303/546-0110
khess@rb-llp.com

ATTACHMENT 5

December 12, 2007 email from the Agency
issuing its final decision, in which it opted to litigate

Kendy M. Hess

From: khess@rb-llp.com
Sent: Wednesday, December 12, 2007 2:36 PM
To: Connie Tonsor; Kendy M. Hess
Cc: Al Keller; Martha Romanenko; Jeff McClelland
Subject: Re: FW: Call tomorrow?

Well, I wasn't really asking for advice -- just a response. You still haven't addressed the issue I raised, so I guess we'll go ahead and appeal. I was just hoping to avoid that for the sake of all involved.

As you'll note from all of my emails and letters as well as from the Agency's own correspondence and files, we haven't changed our address since obtaining the permit the fees are related to. The Agency has been making regular and effective use of the proper address since we applied for that permit. Only the bills have gone to the wrong address.

Thanks for your time.

-----Original Message-----

From: "Connie Tonsor" <Connie.Tonsor@illinois.gov>

Date: Wed, 12 Dec 2007 15:12:39

To: "Kendy M. Hess" <khess@rb-llp.com>

Cc: "Al Keller" <Al.Keller@illinois.gov>

Subject: Re: FW: Call tomorrow?

Kendy: I cannot advise you on your course of conduct with regard to the fee dispute. You will need to make this decision based on many factors including the costs of the appeal vis-a-vis the cost of paying the fee.

However, as a standard condition of your client's NPDES permit, condition 12(g), your client has an affirmative obligation to notify the Agency whenever any of the information presented in a permit application becomes incorrect. This obligation kicks in as soon as the permittee knows that the information is inaccurate or incorrect. The Agency then modifies the permit if needed to make it reflect the correct information. Here it may be presumed that your client knew that its mailing address had changed, when it moved. The permittee's correct address is relevant to any correspondence, submission or DMR's and all reporting necessary to ensure business practice and accurate reports. The correct address became an issue with your client when the fee issue arose. Since the permittee had an affirmative obligation to notify the Agency of a change of information and your client did not apparently do so until the fee issue arose it is unlikely that an Illinois court will be inclined to bar the Agency from collecting the fee.

The Agency should litigate this issue.

Connie

This e-mail, and any documents attached or included hereto, is a confidential attorney-client, attorney work product and/or pre-decisional FOIA-exempt document intended solely for the use of the individual to whom it is addressed, and should be handled accordingly.

If you are not the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited. If you have received this e-mail in error, please notify:

Connie Tonsor
Associate Counsel
Illinois EPA
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
(217) 782-5544
(217) 782-9807 (Fax)
E-mail address: Connie.Tonsor@epa.state.il.us

>>> "Kendy M. Hess" <khess@rb-llp.com> 12/9/2007 7:30 PM >>>
Hi, Connie -- just following up on this again. To recap, here's the deal: If you know some reason why I'm going to lose this appeal, I'd like to hear it so I can save myself and my client the time, hassle, and expense of an appeal. If you agree with me that I'm going to win this on appeal, I'd be just as happy to settle the matter with you. That saves me said time, hassle, and expense of an appeal, and it save you and the agency the unfavorable precedent AND the time, hassle, etc. If you just don't know, then I'll just file the appeal and we'll find out that way. Either way, again, I'd appreciate your thoughts.

Please let me know when you'd have a half-hour (max) to discuss. I have to file by Friday.

Thanks,
K

-----Original Message-----
From: khess@rb-llp.com [mailto:khess@rb-llp.com]
Sent: Wednesday, December 05, 2007 1:38 PM
To: Connie Tonsor
Subject: Call tomorrow?

Hi, Connie -- I'm just following up on our email exchange from earlier this week. Are we still planning on a call tomorrow, since we didn't manage to get anything set up for today? As I said, I'm available before 11 and after 2 Mountain, but will be out of the office and away from my files for most of that time.

Please let me know, and thanks.

Kendy

ATTACHMENT 6

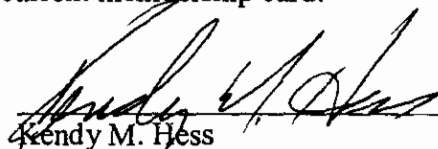
Petitioner's Counsel's February 1, 2008 Appearance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Interstate Oil, Inc., with respect to NPDES Permit IL0072702)	
)	
Petitioner)	
)	
v.)	PCB 08-38
)	(NPDES Fee Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent)	

APPEARANCE

I hereby file my appearance in this proceeding, on behalf of Petitioner, Interstate Oil, Inc. with respect to NPDES Permit IL0072702, and assert that I am licensed and registered to practice law in the state of Illinois. My ARDC registration number is 6216237, and I have attached a copy of my current membership card.


Kendy M. Hess
for Richmond Breslin, LLP

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

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION

of the

20 SUPREME COURT OF ILLINOIS **08**

REGISTRATION NO. STATUS ADMITTED

6216237

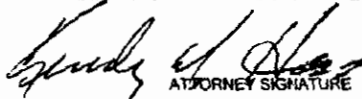
Active

11/4/1993

Kendy Michelle Hess

8446

INACTIVE MEMBERS ARE NOT ENTITLED TO PRACTICE LAW


ATTORNEY SIGNATURE