

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOV 30 2009
STATE OF ILLINOIS
Pollution Control Board

PARADIGM PROPERTIES, INC.,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 10- 38
(LUST Appeal – Ninety Day
Extension)

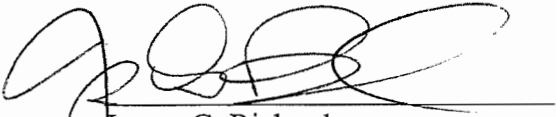
NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Michael Keebler
Environmental Management Inc.
1154 North Bradforton Road
Springfield, Illinois 62711

PLEASE TAKE NOTICE that I have today caused to be filed a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


James G. Richardson
Assistant Counsel

Dated: November 24, 2009
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD NOV 30 2009

STATE OF ILLINOIS
Pollution Control Board

PARADIGM PROPERTIES, INC.,)
Petitioner,)
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v.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 10-38
(LUST Appeal – Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to March 4, 2010, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

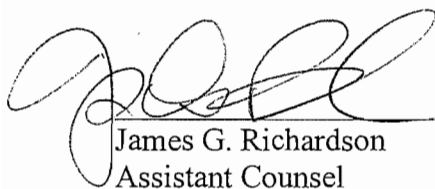
1. On October 28, 2009, the Illinois EPA issued a final decision to the Petitioner.
 2. On November 18, 2009, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days.
- Upon information and belief the Petitioner did receive the final decision on October 30, 2009.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
Assistant Counsel

Dated: November 24, 2009

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

OCT 28 2009

CERTIFIED MAIL #

7007 2560 0003 2090 1196

Paradigm Properties, Inc.
c/o Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, Illinois 62711

Re: LPC 0290105114—Coles County
Charleston/ Paradigm Properties, Inc.
1102 Madison Street
Incident-Claim No.: 20090183—56957
Queue Date: June 30, 2009
Leaking UST FISCAL FILE

Dear Sir or Madam:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code 734.Subpart F. This application for payment is dated June 26, 2009 and was received by the Illinois EPA on June 30, 2009. It covers the period from February 24, 2009 to June 15, 2009. The amount requested is \$153,625.19.

As a result of the Illinois EPA's review of the application for payment, a voucher for \$1,277.99 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received the application for payment. Subsequent applications for payment that have been or are submitted will be processed based upon the date of receipt by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application for payment.

The deductible amount of \$15,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land — Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

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

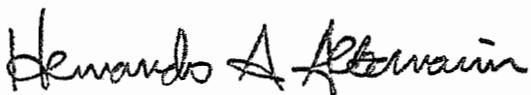
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Costs that are not approved for payment and the reasons the costs are not approved are listed in Attachment A:

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Brad Dilbaitis of my staff at (217) 785-8378 or via email at Bradley.Dilbaitis@illinois.gov.

Sincerely,

A handwritten signature in black ink that reads "Hernando A. Albarracin". The signature is written in a cursive style with a large initial 'H'.

Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BJD

Attachment: Attachment A
Appeal Rights

c: Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: LPC 0290105114—Coles County
Charleston/ Paradigm Properties, Inc.
1102 Madison Street
Incident-Claim No.: 20090183—56957
Queue Date: June 30, 2009
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$99,966.59, deduction for costs incurred as a result of the destruction of, or damage to, any equipment, fixtures, structures, utilities, or other items during corrective action activities, except as otherwise provided in 35 Ill. Adm. Code 734.625(a)(16) or (17). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(pp). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs..

Based on information in the Illinois EPA's possession, all costs associated with the one 10,000 gallon and two 6,000 gallon gasoline USTs associated with this release will not be paid as the release from these USTs was the result of contractor error during removal activities for the USTs . The following amounts were deducted from the approved total:

- a. \$4,321.66 from Analytical Costs
 - b. \$39,044.88 from Excavation, Transportation and Disposal Costs
 - c. \$16,110.36 from Backfill Costs
 - d. \$6,558.62 from Groundwater Disposal Costs
 - e. \$10,305.21 from UST Removal Costs
 - f. \$11,242.97 from Paving Costs
 - g. 17,024.16 from Consulting Personnel Costs
 - h. \$1,663.94 from Consultant's Materials Costs
2. \$4,241.41, deduction for costs that require an apportionment of costs pursuant to 35 Ill. Adm. Code 734.640. Pursuant to Section 57.8(m) of the Act, the Illinois EPA may apportion payment of costs for plans submitted under Section 57.7of the Act if:
 - a. The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and

- b. The owner or operator failed to justify all costs attributable to each underground storage tank at the site.

The Office of the State Fire Marshal Eligibility and Deductibility letter for incident #20090183 lists five eligible USTs:

Tank 1	10,000 gallon gasoline UST
Tank 2	6,000 gallon gasoline UST
Tank 3	6,000 gallon gasoline UST
Tank 5	550 gallon gasoline UST
Tank 6	300 gallon kerosene UST

The reimbursement claim states that the release was caused by these five USTs and another 6,000 gallon gasoline UST which was removed on April 21, 2009, listed as Tank 7 by the Office of the State Fire Marshal . Costs associated with the USTs listed above as Tank 1, Tank 2 and Tank 3 will not be paid by the Illinois EPA. Applicable costs were apportioned at 66.67 percent, based on Tank 5, Tank 6 and the 6,000 gallon gasoline UST not declared eligible in the OSFM Eligibility and Deductibility Letter (Tank 7). The following amounts were deducted from the approved total:

- a. \$449.15 from Analytical Costs
 - b. \$681.54 from Groundwater Disposal Costs
 - c. \$1,168.47 from Paving Costs
 - d. \$1,769.31 from Consulting Personnel Costs
 - e. \$172.94 from Consultant's Materials Costs
3. \$7,706.61, deduction for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 734.640.

The following deductions were made in Remediation and Disposal Costs for costs associated with the 6,000 gallon gasoline UST (Tank 7) not declared eligible in the OSFM Eligibility and Deductibility Letter:

- a. \$5,213.04 from Excavation, Transportation and Disposal Costs
- b. \$2,493.57 from Backfill Replacement Costs

The reimbursement claim requested 824 cubic yards for excavation, transportation and disposal of contaminated soil and 969 cubic yards for backfill replacement. The volume of soil eligible for payment is based on the 550 gallon gasoline UST and the 300 gallon kerosene. In accordance with 35 Ill Adm. Code 734.Appendix C, the maximum amount of backfill material to be removed for these two USTs is 112 cubic

yards. The maximum amount of backfill allowed for these two USTs is 116 cubic yards. The above amounts represent the difference between the approved costs and the amount deducted under Item #1. These amounts exclude the transportation costs listed below.

4. \$4,278.82, deduction for Remediation and Disposal Costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The solid waste manifests submitted in the Amended 45-Day Report dated June 8, 2009 indicated that vehicles transporting the contaminated soils were from Donnelly Transportation, Inc., JK-Five Construction Inc., Foster Transportation, Inc. and Henson Trucking. The reimbursement claim contains two invoices for transportation of contaminated soil (#295 and #300) from JK-Five Construction, Inc. totaling \$27,000.00. The transportation costs associated with the disposal of contaminated soil were determined to be \$17,100.00. The transportation costs associated with backfill replacement were determined to be \$9,900.00. However, costs associated with the transportation of contaminated soils or clean backfill material will not be paid until invoices are received from all of the the above-listed transportation companies. The following amounts were determined to be the transportation costs associated with the two eligible USTs and were deducted from the approved total:

- a. \$2,709.92 from Excavation, Transportation and Disposal Costs
 - b. \$1,568.90 from Backfill Replacement Costs
5. \$1,878.19, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The groundwater removal rate has been reduced to \$0.74 per gallon. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
 6. \$3,435.07, deduction for costs for UST Removal Costs for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. Such costs are ineligible for payment from the Fund pursuant to Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 734.640.

UST Removal Costs were approved for payment for the 550 gallon gasoline UST and the 300 gallon kerosene UST. Removal costs associated with the 6,000 gallon gasoline UST not deemed eligible by the OSFM Eligibility and Deductibility Letter will not be paid.

7. \$200.00, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with the OSFM removal permit fee are included in the UST removal rate. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
8. \$3,539.16, deduction for costs for Consulting Personnel Costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The reimbursement claim requests over \$8,000.00 for soil sampling activities performed by Alan Curtiss, a Senior Professional Geologist, while the laboratory chain of custody records contained in the Amended 45-Day Report submitted on June 8, 2009 list an employee named Cody Luckett as performing all sampling. 35 Ill Adm. Code 734.605(b)(9) must be satisfied and proper support documentation for the work performed, including the dates of the tasks performed, must be submitted before these costs will be paid.

9. \$5,796.14, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

bjd

Appeal Rights

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

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

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

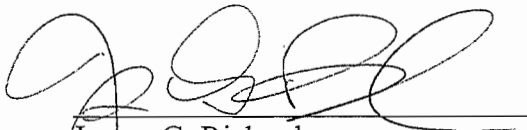
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 24, 2009 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Michael Keebler
Environmental Management, Inc.
1154 North Bradforton Road
Springfield, Illinois 62711

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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