

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

CHRONISTER OIL CO.,	)	
Petitioner,	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 3rd day of August, 2011.

Respectfully submitted,  
CHRONISTER OIL COMPANY, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHRONISTER OIL COMPANY,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, CHRONISTER OIL COMPANY, pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued on a April 27, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency denied payment, and in support thereof states as follows:

1. The subject clean-up involves a site commonly known as the Pana Qik-N-Ez, located at 301 South Poplar, Pana, Christian County, Illinois, and assigned LPC #0210505046.
2. A release was reported from the site in 1999, which was assigned incident number 99-0351. Another release was reported from the site in 2009, which was assigned incident number 2009-0722. The Agency determined on September 18, 2009, that the 2009 incident "is considered a re-reporting of incident No. 990351 [and] should be addressed under No. 990351."
3. On March 7, 2011, Petitioner, through its consultants, submitted an application for payment of corrective action costs of \$12,187.17 incurred pursuant to approved budgets. A true

and correct copy of an acknowledgment that the Agency received the reimbursement request on March 7, 2011, is attached hereto as Exhibit A.

4. One-hundred and twenty-two days later, on July 7, 2011, the Agency made a payment determination, finding that the application was complete, but denying any payment. A true and correct copy of said determination is attached hereto as Exhibit B, also stating that the Agency received the application on March 7, 2011.

5. The Agency's denial was untimely and the application for payment was approved by operation of law:

**If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of the law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application.**

(415 ILCS 5/57.8(a)(1))

6. While the issue of the proper deductible should not be reached given the untimeliness of the Agency's action, the Agency's application of any deductible was improper. The \$10,000 deductible for the 1999 incident has already been applied to previous payments in this clean-up, and the Agency determined that the 2009 incident was to be considered a re-reporting of the 1999 incident and thus not the proper source of an additional deductible.

WHEREFORE, Petitioner, CHRONISTER OIL COMPANY, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the application for payment in full (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

CHRONISTER OIL COMPANY,  
Petitioner

By its attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Ste. 325  
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Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER

**CW<sup>3</sup>M Company**

701 W. South Grand Avenue  
Springfield, IL 62704

**Environmental Consulting Services**

Phone: (217) 522-8001  
Fax: (217) 522-8009

## ACKNOWLEDGEMENT OF RECEIPT

The undersigned hereby acknowledges that the document(s) listed below were received by the Illinois Environmental Protection Agency, Bureau of Land.

UST FUND REIMBURSEMENT CLAIM 3/1/09 - 11/30/10

Name of Document

QIK-N-EZ PANA #99-0351

Document Reference Number

Hernando Albarracin, Manager, LUST Section

Document Addressee

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Received

projects\General\receipt.doc

MAR 07 2011  
SECURITY DESK  
3:55 PM





**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

**JUL 07 2011**

CERTIFIED MAIL #

7009 3410 0002 3750 7581

Chronister Oil Company  
CW<sup>3</sup>M Company  
P.O. Box 571  
Carlinville, Illinois 62626

Re: LPC 0210505046—Christian County  
Pana/ Qik-N-Ez  
301 South Poplar  
Incident-Claim No.: 990351—59920  
Queue Date: March 7, 2011  
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) in effect prior to June 24, 2002 and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.Subpart F.

This information is dated March 1, 2011 and was received by the Illinois EPA on March 7, 2011. The application for payment covers the period from March 1, 2009 to November 30, 2010. The amount requested is \$12,187.17.

On March 7, 2011, the Illinois EPA received your complete application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

A portion of the deductible for incident #20090722, \$669.44, was withheld from your payment, leaving a balance of \$9,330.56 to be met from future submittals. 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.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

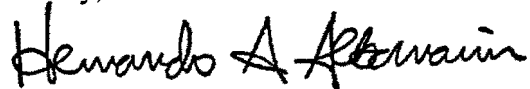
**EXHIBIT**  
**B**  
**PG 3 OF 4**

Page 2

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 at Bradley.Dilbaitis@illinois.gov.

Sincerely,



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

HAA:BD ~~✗~~

Attachment: Attachment A  
Appeal Rights

c: Leaking UST Claims Unit



ATTACHMENT A  
Accounting Deductions

Re: LPC 0210505046—Christian County  
Pana/ Qik-N-Ez  
301 South Poplar  
Incident-Claim No.: 990351—59920  
Queue Date: March 7, 2011  
Leaking UST FISCAL FILE

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

Item # Description of Deductions

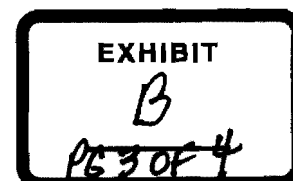
1. \$11,409.93, deduction for Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; therefore, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The Illinois EPA has not received any technical documentation to support any of the requested personnel costs with the exception of \$669.44 associated with the submittal of the Office of the State Fire Marshal Eligibility and Deductible application in March 2010. All other costs were associated with a plan and budget that was never submitted, a Corrective Action Completion Report that was never submitted, applications for payment that were rejected, status reports associated with the rejected applications for payment and costs associated with field preparations for field work for which the Illinois EPA has no technical documentation.

2. \$107.80, deduction for Field Purchases and Other Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; therefore, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The 39 requested photocopies associated with the March 2010 Office of the State Fire Marshal Eligibility and Deductible application were approved for payment.

BD





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 57.7(c)(4) 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 filing of an appeal, please contact:

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

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

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

