

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

BERNIE'S WOOD RIVER GAS,)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(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 31st of August, 2011.

Respectfully submitted,
BERNIE'S WOOD RIVER GAS, 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

BERNIE'S WOOD RIVER GAS,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Bernie's Wood River Gas, to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/40 & 5/57.8(i), and hereby appeals the LUST decision issued on January 7, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected an application for payment for costs previously approved, stating further as follows:

1. The subject facility is located at 303 East Ferguson, Wood River, Madison County, Illinois, and assigned LPC #1191155022.
2. Until 2010, the subject facility was operated as a gasoline service station for many years and contained several registered underground storage tanks.
3. On June 24, 2010, a suspected release was reported from the three tanks, which were subsequently removed.
4. On September 7, 2010, the Office of the State Fire Marshal determined that the Petitioner was eligible for reimbursement from the LUST Fund, subject to a \$5,000 deductible.
5. Subsequently, Petitioner has performed corrective action, and received reimbursement from three payment applications, totaling in excess of \$100,000, from which the \$5,000 deductible has been assessed.

6. On June 7, 2011, Petitioner submitted an additional application for payment of \$21,030.64 for approved site investigation work.

7. On August 3, 2011, the Agency approved half of the payment application, finding for the first time that costs must be apportioned on the alleged basis that “Lust incident number 900231 is not eligible.” A true and correct copy of said decision is attached hereto as Exhibit A, which was received August 5, 2011.

8. While the Agency’s reasoning is not clear to Petitioner, the apportionment is erroneous. First, the application for payment was for a plan and budget submitted for Lust incident number 2010-0682. Second, the Agency had previously approved the sufficiency of the OSFM eligibility determination for the work performed, and was without regulatory authority to reject the full eligibility of costs at the payment application stage. Finally, to the extent the Agency needed more information, it violated Petitioner’s due process right to prior notice and opportunity to respond prior to the final, appealable determination.

WHEREFORE, Petitioner, BERNIE’S WOOD RIVER GAS, 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 payment in full, (e) the Board award payment of attorney’s fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

BERNIE’S WOOD RIVER GAS

Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

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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

AUG 03 2011

CERTIFIED MAIL #

7009 3410 0002 3750 8083

Bernard Geist, Sr. dba Bernie's Wood River Gas
Attn: CWM Company
PO Box 571
Carlinville, IL. 62626

Re: LPC #1191155022 -- Madison County
Wood River / Bernie's Wood River Gas
303 East Ferguson
Incident-Claim No.: 20100682 -- 60211
Queue Date: June 7, 2011
Leaking UST Fiscal File

Dear Mr. Geist:

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 (35 Ill. Adm. Code) 734.Subpart F.

This information is dated June 7, 2011 and was received by the Illinois EPA on June 7, 2011. The application for payment covers the period from August 1, 2010 to March 31, 2011. The amount requested is \$21,030.64.

On June 7, 2011, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$10,515.32 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$5,000.00, which was previously withheld from your payment(s). 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

EXHIBIT

A

Page 2

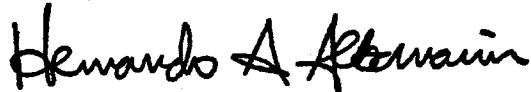
accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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.

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 Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



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

HAA:CSE 

ATTACHMENT

c: Leaking UST Claims Unit
Cathy Elston

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

Attachment A
Accounting Deductions

Re: LPC #1191155022 -- Madison County
Wood River / Bernie's Wood River Gas
303 East Ferguson
Incident-Claim No.: 20100682 -- 60211
Queue Date: June 7, 2011
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. \$10,515.32, deduction for costs that require a 50% 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 57.7 of 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.

Lust incident number 900231 is not eligible.

cse