

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

SCENIC RIDGE PLAZA, INC.     )  
  )  
                  Petitioner,     )  
          v.                             )  
  )  
ILLINOIS ENVIRONMENTAL     )  
PROTECTION AGENCY,         )  
  )  
                  Respondent.     )

PCB No. \_\_\_\_\_  
(LUST Permit Appeal)

**NOTICE OF FILING AND PROOF OF SERVICE**

To:     John T. Therriault, Acting Clerk                     Legal Division  
          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 26<sup>th</sup> day of July, 2012.

Respectfully submitted,  
SCENIC RIDGE PLAZA, INC., 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

SCENIC RIDGE PLAZA, INC.	)	
Petitioner,	)	
	)	
v.	)	PCB No. _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, SCENIC RIDGE PLAZA, INC., pursuant 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 June 21, 2012, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency authorized only a partial payment, stating further as follows:

1. The subject facility is a former service station located at 3495 Goreville Road, Goreville, Johnson County, Illinois, and assigned LPC number 0870205019.
2. Prior to November 8, 2011, there were four underground storage tanks on the property, consisting of a 12,000 gallon gasoline tank, a 6,000 gallon diesel tank, and two 3,000 gallon gasoline tanks.
3. Each of the tanks were registered independently with the Office of the State Fire Marshal on August 25, 1998, and all registration fees paid independently.
4. On September 29, 2011, releases were reported from all four tanks and incident number 20111047 was assigned to it.
5. On November 8, 2011, all four tanks were removed.
6. On December 29, 2011, the Office of the State Fire Marshal issued a reimbursement eligibility and deductibility determination finding that all four tanks were eligible

for reimbursement from the LUST Fund, subject to a \$5,000 deductible. A true and correct copy of said determination is attached hereto as Exhibit A.

7. Thereafter, Petitioner submitted an application for payment for early action activities conducted in removing the four tanks and the immediately surrounding contaminated soil. The amount requested was \$114,602.27.

8. On June 21, 2012, the Agency approved partial payment of \$89,436.67. A true and correct copy of this determination is attached hereto as Exhibit B.

9. The Agency deducted \$19,967.35 based upon the claim that there were only two tanks removed. Petitioner disputes this claim because the application for payment included a copy of the OSFM determination that there were four tanks. To the extent the Agency made deductions because of the presence of a compartmentalized tank, the Office of the State Fire Marshal treats each compartment of a tank as a separate underground storage tank for all purposes, including requirements for registration, notification, fees, inspection and removal, and it takes no longer to safely remove compartmentalized tanks.

10. Petitioner does not dispute the other (\$198.25) deduction.

11. The Agency determination was received by Petitioner on June 22, 2012, which is 34 days from today, and therefore this appeal is timely.

WHEREFORE, Petitioner, SCENIC RIDGE PLAZA, INC., 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 without the \$19,967.35 deduction, (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.

SCENIC RIDGE PLAZA, INC.,

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  
Springfield, IL 62701  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER



Office of the Illinois  
**State Fire Marshal**

*"Partnering With the Fire Service to Protect Illinois"*

CERTIFIED MAIL - RECEIPT REQUESTED #7011 0110 0001 4649 2814

December 29, 2011

Jackie I. Sullivan  
c/o CW3M Company  
P.O. Box 571  
Carlinville, IL 62626

In Re: Facility No. 7-033700  
IEMA Incident No. 11-1047  
Scenic Ridge Plaza, Inc.  
3495 Goreville Rd  
Goreville, Johnson Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on November 10, 2011 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$5,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 1 12,000 gallon Gasoline  
Tank 2 6,000 gallon Diesel Fuel  
Tank 3 3,000 gallon Gasoline  
Tank 4 3,000 gallon Gasoline

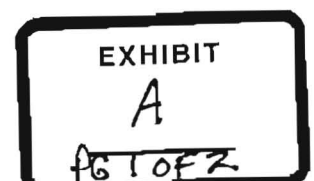
You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel



Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.504(b)).

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

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

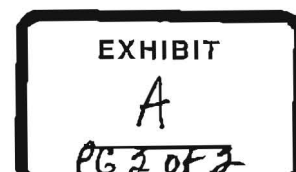
If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,



Deanne Lock  
Administrative Assistant  
Division of Petroleum and Chemical Safety

cc: IEPA  
Facility File





217/524-3300

JUN 21 2012

CERTIFIED MAIL #

7010 2780 0002 1166 1150

Scenic Ridge Plaza, Inc.  
Attn: Jackie Sullivan  
c/o CW3M Co.  
PO Box 571  
Carlinville, Illinois 62626

Re: LPC 0870205019 -- Johnson County  
Goreville/Scenic Ridge Plaza, inc.  
3495 Goreville Road  
Incident-Claim No.: 20111047 -- 61326  
Queue Date: 2/29/2012  
Leaking UST Fiscal File

Dear Mr. Sullivan:

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 January 20, 2012 and was received by the Illinois EPA on February 29, 2012. The application for payment covers the period from September 1, 2011 to December 18, 2011. The amount requested is \$114,602.27.

On February 29, 2012, 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 \$89,436.67 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 of \$5,000.00 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.

EXHIBIT

B  
PG 1 OF 4


Page 2

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 Valerie Davis of my staff at 217/785-7492.

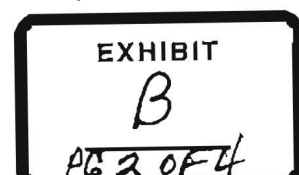
Sincerely,

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

HAA:vad

Attachment: Attachment A  
Appeal Rights

c: Leaking UST Claims Unit





Attachment A  
Technical and Accounting Deductions

Re: LPC 0870205019 -- Johnson County  
Goreville/Scenic Ridge Plaza, inc.  
3495 Goreville Road  
Incident-Claim No.: 20111047 -- 61326  
Queue Date: 2/29/2012  
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. \$ 198.25, 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 analytical rates have been reduced to Subpart H rates for samples received by Prairie Analytical on 10/10/2011 with a 3 day turn around time. 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.
2. \$19,967.35, deduction for costs for removal of 2 tanks, 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.

Documentation demonstrates that only 2 tanks were removed. Costs were adjusted on the Equipment form for billing Period 11/1/11-11/30/11 to reflect Subpart H rates for the removal of 2-12k gallon tanks and the associated ETD and backfill for the corresponding allowed volumes. The tank removal and associated soil costs total \$60,947.10, so an adjustment of \$19,967.35 resulted.

EXHIBIT

B

PG 3 OF 4

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

