

KAVANAGH,  
SCULLY,  
SUDOW, &  
WHITE  
FREDERICK, P.C.  
*Attorneys & Counselors at Law*

September 24, 2018

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PHILLIP B. LENZINI

KAREN M. STUMPE

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LUCAS B. YOUNG

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*Of Counsel*

JAMES L. HAFELE

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*Also licensed in  
\* Missouri*

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*Founded in 1883 as  
Worthington & Page*

RICHARD J. KAVANAGH  
(1894-1963)

RICHARD C. KAVANAGH  
(1924-2010)

J. CHASE SCULLY, JR.  
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JOSEPH Z. SUDOW  
(1914-2012)

EUGENE L. WHITE  
(1917-2008)

WILLIAM McD. FREDERICK  
(1907-1991)

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***Via Registered Mail, Return Receipt Requested***

Attorney Melanie Jarvis  
Division of Legal Counsel  
IEPA  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

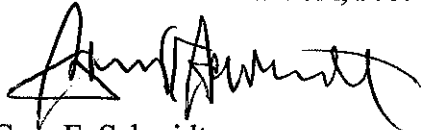
RE: LPC #1790455007 – Tazewell County  
PCB 18-83 (UST Appeal)  
Minier/Warsaw, Howard; Warsaw Itco/Rt. 122  
Our File No. 15932.2

Dear Ms. Jarvis:

In accordance with the Order from the Illinois Pollution Control Board on September 20, 2018, please find enclosed an Amended Petition from myself, as attorney for John D. Warsaw, the Owner and Petitioner, for appeal of the Order of June 12, 2018 entered by the IEPA. Specifically, Petitioner is appealing from that Order non-payment of the invoice from Tazewell County Asphalt Co., Inc. in the amount of \$5,780 for replacement of the blacktop surface which was required to be replaced as part of the remedial activities to close the incident referenced hereinabove.

Very truly yours,

KAVANAGH, SCULLY, SUDOW,  
WHITE & FREDERICK, P.C.



Gary E. Schmidt  
GES/nls

Encls.

cc: Ms. Carol Webb, Hearing Officer, Illinois Pollution Control Board with Encl.;  
e-mail: [Carol.Webb@illinois.gov](mailto:Carol.Webb@illinois.gov)

Mr. Don Brown, Clerk, Illinois Pollution Control Board, Chicago, IL, online  
portal

**KAVANAGH,  
SCULLY,  
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Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601

RE: LPC #1790455007 -- Tazewell County  
Minier/Warsaw, Howard  
Warsaw Itco./Rt. 122  
Incident-Claim No.: 981987-69111  
APPEAL OF DECISION RENDERED JUNE 12, 2018  
Our File 15932.2

Dear Sir or Madam:

This is an Amended Petition.

From your decision rendered June 12, 2018 by the Illinois Environmental Protection Agency, my client, John D. Warsaw, the Owner and Petitioner, desires to appeal non-payment of the invoice from Tazewell County Asphalt Co., Inc. in the amount of \$5,780, for excavation, removal of a drain, filling-in the hole and compacting, and re-blacktopping.

A copy of the final decision dated June 12, 2018 is attached.

This part of the gasoline service station was blacktopped prior to remediation. The grounds for the appeal is that re-blacktopping the area which was remediated is an in-kind, replacement matter. It was required to be replaced as part of the remedial activities to close the incident.

A copy of the Invoice of Tazewell County Asphalt Co. for the excavation, removal of an existing drain, filling the hole with peal gravel, shaping and compacting the base, and re-asphalting, is attached. It is Invoice No. 20110006403. The cost was \$5,780, and the Invoice is dated 7/20/2017.

There was some additional area which was blacktopped by Tazewell County Asphalt Co., for Owner, at Owner's expense. That cost was \$1,880, as shown by Invoice of

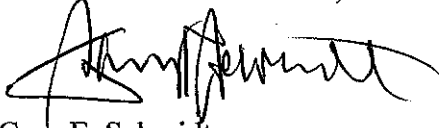
KAVANAGH,  
SCULLY,  
SUDOW,  
WHITE  
FREDERICK, P.C.

*Attorneys & Counselors at Law*

the same date as Invoice No. 20110006404. Owner does not seek reimbursement for that cost.

Very truly yours,

KAVANAGH, SCULLY, SUDOW,  
WHITE & FREDERICK, P.C.



Gary E. Schmidt

GES/nls

Encls.

cc: Mr. John D. Warsaw



TAZEWELL COUNTY ASPHALT CO. INC. PCB 2018-083 \*\*  
 Received, Clerk's Office 6/26/2018  
 23497 RIDGE ROAD  
 EAST PEORIA, IL 61611  
 Phone:(309)698-8404  
 Fax:(309)698-8431

# INVOICE

DATE	INVOICE NO.
07/20/2017	20110006403

BILL TO
WARSAW ITCO

TERMS	DUE DATE
UPON REC	

DESCRIPTION	TICKET	QUANTITY	UNIT PRICE	EXT. PRICE
EPA WORK				
EXCAVATED 64 SQ YDS 3" IN DEPTH SHAPED & COMPACTED BASE INSTALLED 3" OF ASPHALT ON 64 SQ YDS (2 LIFTS)				\$3,200.00
CORRECTIVE ACTION PLAN - WATER RECLAMATION				
EXCAVATED 27 SQ YDS 3" IN DEPTH REMOVED EXISTING DRAIN AND FILLED WITH PEA GRAVEL SHAPED & COMPACTED WITH ADDITIONAL BASE INSTALLED 3" OF ASPHALT (2 LIFTS)				\$2,580.00
			TOTAL:	\$5,780.00
			Subtotal:	5,689.35
			State Tax:	90.65
			<b>Total</b>	<b>5,780.00</b>



TAZEWELL COUNTY ASPHALT CO. INC.  
 Received, Clerk's Office 8/26/2018  
 23497 RIDGE ROAD  
 EAST PEORIA, IL 61611  
 Phone:(309)698-8404  
 Fax:(309)698-8431

PCB 2018-083 \*\*

# INVOICE

DATE	INVOICE NO.
07/20/2017	20110006404

BILL TO
WARSAW ITCO

TERMS	DUE DATE
UPON REC	

DESCRIPTION	TICKET	QUANTITY	UNIT PRICE	EXT. PRICE
RE: MINIER				
MILLED & INSTALLED REMAINING ASPHALT				\$1,880.00
Subtotal:				1,880.00
			<b>Total</b>	1,880.00



Electronic Filing Received, Clerk's Office 6/26/2018 \*\* PCB 2018-083 \*\*  
**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397  
BRUCE RAUNER, GOVERNOR ALEC MESSINA, DIRECTOR

217/524-3300

CERTIFIED MAIL #

JUN 12 2018

7014 2120 0002 3283 7466

John Warsaw  
c/o Midwest Environmental Consulting & Remediation Services, Inc.  
P.O. Box 614  
Tremont, IL 61568

Re: LPC #1790455007—Tazewell County  
Minier / Warsaw, Howard  
Warsaw Itco. / Rt. 122  
Incident-Claim No.: 981987—69111  
Queue Date: March 13, 2018  
Leaking UST Fiscal File

Dear Mr. Warsaw:

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 Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated February 12, 2018 and was received by the Illinois EPA on March 13, 2018. The application for payment covers the period from November 24, 2014 to February 28, 2018. The amount requested is \$30,783.67.

On March 13, 2018, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$9,540.71 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.

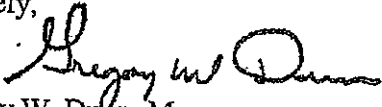
The deductible amount of \$10,000 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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 Brad Dilbaitis of my staff at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,



Gregory W. Dunn, Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

GWD:BD 

Attachment: Attachment A  
Appeal Rights

c: John Warsaw  
Leaking UST Claims Unit

Attachment A  
Accounting Deductions

Re: LPC #1790455007—Tazewell County  
Minier / Warsaw, Howard  
Warsaw Iico. / Rt. 122  
Incident-Claim No.: 981987—69111  
Queue Date: March 13, 2018  
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$7,660.00, deduction Paving Costs that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a). In addition, the costs 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. Furthermore, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Moreover, the costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Paving Costs requests 120 square feet of asphalt at 3" thickness at a rate of \$63.83 per Square foot for a total of \$7,660.00. There is one invoice included in the application for payment to document the cost of the asphalt. The invoice from Tazewell County Asphalt Co., Inc. (invoice 20110006403) indicates that a total of 91 square yards (819 square feet) of asphalt were installed at the site for a total cost of \$5,780.00.



In addition, Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The Paving Costs were not approved in a budget and are therefore ineligible for payment.

2. \$27.55, deduction for Well Abandonment Costs that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m). 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 are not eligible for payment. The monitoring well abandonment rate has been reduced to \$12.52 per foot. 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.

The Well Abandonment Costs requests a total of 72.5 feet for monitoring well abandonment at a rate of \$12.90 per foot for a total of \$935.25. This amount exceeds the applicable Subpart H rate and the \$12.52 per square foot rate approved in the corresponding budget.

3. \$2,347.07, deduction for Consulting Personnel Costs that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m). In addition, the costs 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. Furthermore, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Moreover, the costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 42.73 hours for a Senior Project Manager for "site closure, final paperwork and Project Management" at a rate of \$103.25 per hour for a total of \$4,412.07. The Corrective Action Budget that was received by the Illinois EPA on June 27, 2017 included a request for 20 hours for a Senior Project Manager for "site closure, final paperwork and Project Management," which was approved on September 12, 2017. In addition, the request for 42.73 hours is not supported by the documentation included. This request for the Senior Project Manager to complete these tasks is approved for 20 hours at the requested rate of \$103.25 per hour for a total of \$2,065.00.

4. \$8,028.36, deduction for Consulting Personnel Costs that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m). In addition, the costs 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. Furthermore, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Moreover, pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. 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 and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 68.47 hours for a Senior Project Manager for "final reimbursement and documentation of closure" at a rate of \$121.49 per hour for a total of \$8,318.41. The Corrective Action Budget that was received by the Illinois EPA on June 27, 2017 included a request for 5 hours for a Senior Administrative Assistant for "final reimbursement and documentation of closure" at a rate of \$58.01 per hour, which was approved on September 12, 2017. In addition, the request for 68.47 hours is not supported by the documentation included. This request for the Senior Project Manager for "final reimbursement and documentation of closure" is approved for 5 hours at a rate of \$58.01 per hour

5. \$2,247.57, deduction 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. In addition, the costs were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a). Furthermore, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Moreover, the costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 19.5 hours for a Geologist III for "CAP & Budget 2015" at a rate of \$115.26 per hour for a total of \$2,247.57. The Corrective Action Plan and Budget that were submitted and approved in 2015 were submitted on May 15, 2015 and were approved on June 3, 2015. Neither the Corrective Action Budget received by the Illinois EPA on May 15, 2015, nor any other Corrective Action Budget, included any Consulting Personnel Costs for a Geologist III.

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The Consulting Personnel Costs associated with a Geologist III were not approved in a budget and are, therefore, ineligible for payment.

6. \$44.88, deduction for Consultant's Materials Costs associated with copy charges that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act

and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734. Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734. Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The Consultant's Materials Costs associated with copies were not approved in a budget and are, therefore, ineligible for payment.

7. \$693.03, deduction for Handling Charges, which violates 35 Ill. Adm. Code 734.635. Costs associated with activities that violate any provision of the Act or Illinois Pollution Control Board, Office of the State Fire Marshal, or Illinois EPA regulations are ineligible for payment from the Fund pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.630(i).

The Handling Charges were not determined in accordance with 35 Ill. Adm. Code 734.635.

8. \$172.66, deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630 (ii). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The application for payment does not include adequate proof of payment for Professional Engineer review or for the Analytical Costs.

9. \$21.84, 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.

The Handling Charges need to be adjusted for previous deductions made to Drilling Costs (\$240.00) and the Paving, Demolition & Well Abandonment Costs (\$33.00).

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:

Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

*Rec*  
*35 Admin Code*  
*(05-d)*

*see rules 400 - 412*

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

*file filing (Don Review)*  
*for IICB - other cases*