

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GBL PROPERTIES, INC.)	
(6020 STATE STREET))	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Division of Legal Counsel
	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 26th of February, 2015.

Respectfully submitted,
GBL PROPERTIES, INC., Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
Telephone: 217/299-8484

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GBL PROPERTIES, INC.,)	
(6020 STATE STREET))	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, GBL PROPERTIES, INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Illinois Environmental Protection Agency’s final decision, modifying a plan and budget, and in support thereof states as follows:

1. This appeal arises from underground storage tanks formally located at a service station at 6020 State Street, East St. Louis, St. Clair County, Illinois and assigned LPC #1630455417.
2. In 2012, an incident was reported from the two underground storage tanks on the property, which were subsequently removed.
3. Subsequently, Petitioner performed various site investigation activities pursuant to approved plans and budgets. On November 14, 2014, Petitioner submitted the third Stage 3 Site Investigation Plan and Budget.
4. On January 22, 2015, the Illinois Environmental Protection Agency (hereinafter “the Agency”), issued a final decision approving the plan subject to the modification that a project labor agreement will be required. A true and correct copy of the final decision is attached

hereto as Exhibit A.

5. The relevant provisions governing project labor agreements under the Illinois Environmental Protection Act are found in Section 57(c)(3) of the Act:

In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(415 ILCS 5/57.7(c)(3) (emphasis added))

6. Pursuant to the express provisions of Section 57.7(c)(3) of the Act, the Agency is not authorized to require a project labor agreement for site investigation activities.

7. Furthermore, the Board has not promulgated a procedure pursuant to Section 57.14A of the Act governing the administration of project labor agreements, nor do the existing rules provide standards for the Agency to exercise any discretionary power as required by the Administrative Procedure Act. (5 ILCS 100/5-20)

8. Furthermore, the Agency has not made “a statement of specific reasons” that it determined a project labor agreement is necessary (415 ILCS 5/57.7(c)(4)), and “advances the

State's interests of costs, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment." (30 ILCS 571/10 (Project Labor Agreements Act)) Nor has the Agency complied with the requirement of a "written, publicly disclosed finding . . . setting forth the justification for use of the project labor agreement." (30 ILCS 571/30)

9. The Agency's determination was made on January 22, 2015, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, GBL PROPERTIES, 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 plan and budget absent any requirement to use a project labor agreement, (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.

GBL PROPERTIES, INC.,
Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
Telephone: 217/299-8484

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
BRUCE RAUNER, GOVERNOR LISA BONNETT, DIRECTOR

217/524-3300

CERTIFIED MAIL

JAN 22 2015

7012 0470 0001 2968 8447

GBL Properties, Inc.
Ms. Julie Keebler
522 Worthington Chase
Sherman, IL 62684

Re: LPC# 1630455417—St. Clair County
East St. Louis/ GBL Properties, Inc.
6020 State Street
Leaking UST Incident No. 20121030
Leaking UST Technical File

Dear Ms. Keebler:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Stage 3 Site Investigation Plan (plan) submitted for the above-referenced incident. This plan, dated November 12, 2014, was received by the Illinois EPA on November 14, 2014. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

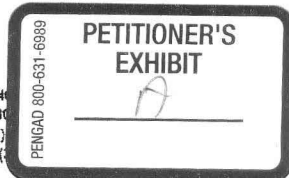
The Illinois EPA has determined that the activities proposed in this plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 734 (Sections 57.7(a)(1) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the plan is approved.

Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. The model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). Please submit a signed copy of a PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President
Illinois AFL-CIO
534 South Second Street, Suite 200
Springfield, IL 62701-1764

4302 N. Main St., Rockford, IL 61103 (815) 987-7760
595 S. State, Elgin, IL 60123 (847) 608-3131
2125 S. First St., Champaign, IL 61820 (217) 278-5800
2009 Mall St., Collinsville, IL 62234 (618) 346-5120

9511 Harrison St., Des Plaines, IL 60016 (847) 294-4
412 SW Washington St., Suite D, Peoria, IL 61602 (30
2309 W. Main St., Suite 116, Marion, IL 62959 (618)
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (



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Once the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

In addition, the proposed budget for Stage(s) 3 is approved for amounts determined in accordance with Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 734 (35 Ill. Adm. Code 734.310(b)). Costs must be incurred in accordance with the approved plan. Please be advised 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 Subpart H, Appendix D, and Appendix E of Part 734 (Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.510(b)).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

In the event that the use of a PLA will impact the project costs set forth in the approved or modified budget, a revised budget may be submitted for Illinois EPA review and decision. As set forth at 35 Ill. Adm. Code 734.800(a)(2), if the revised costs exceed the maximum payment amounts at 35 Ill. Adm. Code 734.Subpart H (Subpart H amounts), bidding is required in order for payment from the UST Fund to exceed the Subpart H amounts. Any bidding must be done in accordance with 35 Ill. Adm. Code 734.855, and the requirement for a PLA must be part of the invitation for bid.

In addition, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least three (3) working days prior to the scheduled field activities. In addition to providing at least a three day notice to Brad Dilbaitis at (217) 785-8378 or at Bradley.Dilbaitis@illinois.gov, notification must be provided to Rob Mileur either by telephone at (618) 933-7223 or by email at Robert.Mileur@illinois.gov.

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires submittal of a Site Investigation Completion Report within 30 days after completing the site investigation to:

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Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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 need further assistance, please contact Brad Dilbaitis at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:BD\SIP3(2)appBUDapp.docx

Attachment: Attachment A
Appeal Rights

c: Environmental management, Inc.
BOL File

Attachment A

Re: LPC #1630455417—St. Clair County
East St. Louis/ GBL Properties, Inc.
6020 State Street
Leaking UST Incident No. 20121030
Leaking UST Technical File

NOTICE OF PROJECT LABOR AGREEMENT REQUIREMENT

Please be advised that, pursuant to Section 57.7(c)(3) of the Environmental Protection Act (415 ILCS 5/57.7(c)(3)), the Illinois EPA has determined that a project labor agreement (PLA) is required for the work included in the plan for which the UST owner or operator is seeking payment from the Underground Storage Tank (UST) Fund. The basis for the Illinois EPA's determination that a PLA is required for the project is set forth, as follows:

The project presents safety concerns, including but not limited to the threat to human health and the environment, and the use of a PLA will advance the State's interest in promoting safety.

Use of a PLA will advance the State's interest in labor continuity and stability in completing the project work in accordance with the plan approved by the Illinois EPA.

Use of a PLA will advance the State's interest of advancing minority-owned and women-owned business and minority and female employment.

A PLA is not required for project work for which no payment from the UST Fund is being requested.

Pursuant to Section 57.8 of the Environmental Protection Act (415 ILCS 5/57.8), applications for payment from the UST Fund must include a certification signed by the UST owner or operator stating that the work was (i) performed under a PLA that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act (820 ILCS 130).

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