

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KNAPP OIL COMPANY,)
 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 14th day of April, 2016.

Respectfully submitted,
KNAPP OIL COMPANY, Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, KNAPP OIL COMPANY, pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency’s final decision, refusing to approve the application for payment, and in support thereof states as follows:

1. This appeal arises from two sets of underground storage tank incidents at a self-service station in Metropolis, County of Massac, Illinois, owned and operated by Knapp Oil Company, and assigned LPC #1270155039.
2. In 1999, incidents were reported from the underground storage tanks at the site, for which remediation continues. In 2014, an incident was reported at the site, for which remediation also continues.
3. Petitioner filed a Stage 1 Site Investigation Plan, that was received by the Illinois EPA on February 29, 2016.
4. On March 8, 2016, the Illinois EPA approved the plan, but modified the budget. A true and correct copy of this decision is attached hereto as Exhibit A.

5. There were four modifications to the budget, which to an extent are characterized as requests for additional information:

The cost associated with the camera will not be reimbursable as this is an indirect costs billed as a direct cost.

The rate proposed for the bailer will need supporting documentation as the proposed rate of \$225/bailer is deemed excessive at this time.

Justification is being requested in regards to the cost associated with the survey equipment. What type of survey equipment is being used?

A breakdown of items associated with a sampling kit will need to be submitted to determine if this exceeds the minimum requirements to meet Title XVI.

6. The Illinois EPA's decision should be reversed for the following reasons:
- a. The application was complete, containing all of the information required pursuant to Section 57.7(a)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.7(a)(2)), pursuant to Section 734.135 of the Board's regulations (35 Ill. Adm. Code § 734.135), and in accordance with Illinois EPA forms and instructions existing at the time of the submittal;
 - b. This is a budget, the purpose of which is to account for all costs, including materials, equipment, or field purchases, that may be required to implement the site investigation plan, and unless the Illinois EPA believes such costs cannot be incurred or would necessarily be unreasonable, their removal is not authorized by any statute or regulation;
 - c. The rates proposed are reasonable, and the purported explanation that they are "deemed excessive" or that additional justification or breakdowns are necessary to determine whether they exceed the minimum requirements of the Act indicate that an

improper standard of review is being employed. Costs are excessive when they exceed a regulatory standard, such as Subpart H maximum rates or the applicable remediation objectives, and no such standard is referenced in the Illinois EPA letter;

- d. The costs associated with the camera are direct costs to be incurred in the field, and there are no promulgated definitions of “direct costs” or “indirect costs” that preclude their payment; and
- e. No statutory or regulatory provision would be violated by approving a budget containing the four contested items.

6. The subject Illinois EPA letter was received by certified mail on March 10, 2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, KNAPP 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 budget as submitted, (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.

KNAPP OIL COMPANY,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

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

RECEIVED
03-10-16

#T1406024
Knapp Metropolis

217/524-3300

CERTIFIED MAIL

7014 2120 0002 3287 5710

MAR 08 2016

Knapp Oil Company, Inc.
Attention: Mr. Rick Forth
220 Front Street
Xenia, Illinois 62899

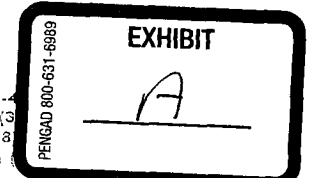
Re: LPC #1270155039 -- Massac County
Metropolis/ Knapp Oil
1117th East 5th Street
Leaking UST Incident No. 991949, 992410, 20141214
Leaking UST Technical File

Dear Mr. Forth:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Stage 1 Site Investigation Plan (plan) submitted for the above-referenced incident. This plan, dated February 25, 2016, was received by the Illinois EPA on February 29, 2016. 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.

In addition, the proposed budget for Stage(s) 1 is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). The modifications are listed in Section 1 of Attachment A. Costs must be incurred in accordance with the approved plan. The maximum amounts that can be paid from the Fund must be determined in accordance with Subpart H, Appendix D, and Appendix E of 35 Ill. Adm. Code 734 (35 Ill. Adm. Code 734.310(b)). 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)).



Further, 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 (14) working days prior to the scheduled field activities.

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 Stage 3 Site Investigation Plan, and budget if applicable, or Site Investigation Completion Report within 30 days after completing the site investigation to:

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.

Page 3

If you have any questions or need further assistance, please contact James Malcom at 217-524-9140 or James.Malcom@Illinois.Gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Lowder", with a long horizontal flourish extending to the right.

Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:jrm

Attachment: Proposed Budget Modification

cc: Chase Environmental
BOL File

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:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson 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

Re: LPC #1270155039 -- Massac County
Metropolis/ Knapp Oil
1117th East 5th Street
Leaking UST Incident No. 991949, 992410, 20141214
Leaking UST Technical File

SECTION 1

STAGE 1 Proposed Costs Modifications:

The cost associated with the camera will not be reimbursable as this is an indirect costs billed as a direct cost.

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Justification is being requested in regards to the cost associated with the survey equipment. What type of survey equipment is being used?

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jrm