

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ABEL INVESTMENTS, LLC,	)	
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 2<sup>nd</sup> day of June, 2016.

Respectfully submitted,  
ABEL INVESTMENTS, LLC, 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  
pdshawllaw@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ABEL INVESTMENTS, LLC,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, ABEL INVESTMENTS, LLC (hereinafter "ABEL"), pursuant to Sections 57.7(c)(4) and 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4) & 57.8(i), and hereby appeals the Agency's final decision, refusing to approve payment of actual costs incurred performing stage one site investigation, and the budget for stage two site investigation, and in support thereof states as follows:

1. This appeal arises at a former service station in Carbondale, County of Jackson, Illinois, owned by ABEL, and assigned LPC #0770155096.
2. On July 9, 2013, a release was reported from underground storage tanks at the site, which were subsequently removed.
3. After performing early action and reporting the results, the Illinois Environmental Protection Agency (hereinafter "IEPA") approved the Stage 1 Site Investigation Plan and Budget.
4. Thereafter, ABEL performed the Stage 1 Site Investigation Plan, and on January 11, 2016, submitted a Stage 2 Site Investigation Plan and Budget, as well as the actual costs for Stage 1 of Site Investigation for payment. The application expressly indicated that personnel time in the budget had been calculated by the same method approved by the Agency for other incidents, such as 2011-0575, 2012-0695, 2013-0450 and 2012-1125.

5. On April 29, 2016, eleven days before the decision deadline, the IEPA called ABEL's consulting to firm to investigate the company's organizational structure.

6. On May 10, 2016, exactly 120 days from the submittal, the IEPA made its determination, modifying the plan, budget and costs. A true and correct copy of said determination is attached hereto as Exhibit A.

7. With respect to the actual costs incurred performing the Stage 1 Site Investigation Plan, the IEPA wrongfully and illegally cut personnel costs of \$2,442.12 that it "assumes" could have been performed by some other person. To the extent the IEPA complains about a lack of documentation, all of the required forms were completed. To the extent that the IEPA complains that the costs exceed the minimum requirements of the Act, there are no such requirements identified in the denial letter. To the extent the IEPA complains about the costs being unreasonable, the personnel costs were billed as they had in the past, and the rate charged is only one component of costs.

8. Furthermore, certain costs (\$54.00) were improperly deducted as indirect costs based upon a new position taken by the IEPA that it not supported by the regulations.

9. With respect to the budget of the Stage II Site Investigation Plan, \$2,852.06 in personnel costs were wrongfully and illegally deducted for the same reasons set forth in paragraph 7 supra.

10. Furthermore, certain costs (\$21.00) were deducted from the budget as indirect costs based upon a new position taken by the IEPA that is not supported by the regulations.

11. The IEPA also deducted \$797.93 in costs for travel time under the erroneous belief that the consultant has an office in the vicinity that necessarily has the personnel sufficient

to perform the work.

12. Finally, \$19.00 was eliminated from the budget for PID rental based upon costs in previous years, whereas costs have increased, and in any event this is insufficient to conclude that a modest increase is unreasonable for purposes of budgeting.

13. In all cases, 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.

14. The purpose of a budget is to account for all costs 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.

15. The subject Illinois EPA letter was received by certified mail on May 14, 2016, which is less than 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, ABEL INVESTMENTS, LLC, 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.

ABEL INVESTMENTS, LLC,  
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

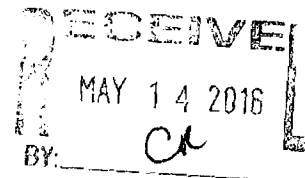
217/524-3300

CERTIFIED MAIL

MAY 10 2016

7014 2120 0002 3288 0615

Abel Investments, I.J.C.  
Attn: Sarabraj Singh  
20226 Hemmingway Street  
Canoga Park, California 91306



Re: IJC #0770155096 -- Jackson County  
Carbondale/ Abel Investments, I.J.C.  
2101 South Illinois Avenue  
Leaking UST Incident No. 20130781  
Leaking UST Technical File

Dear Sir:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Stage 2 Plan (plan) submitted for the above-referenced incident. This plan, dated January 8, 2016, was received by the Illinois EPA on January 11, 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 requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The Illinois EPA has determined that the following modifications are necessary to demonstrate compliance with Title XVI of the Act (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

The Illinois EPA has modified the plan by revising the locations of two of the proposed soil borings and/or monitoring wells based on previous investigatory results. Based on observation of the Proposed Soil Boring Location Map located in the plan, the following revisions are necessary:

- Due to the results of sample location L-3 located under the canopy adjacent to a pump island, boring PSB proposed adjacent to L-3 should be relocated approximately 20 feet west of sample location WC-2 or the property boundary, whichever is less in order to investigate contamination that may have migrated west of sample location WC-2 at the tank pit.
- Proposed boring location PSBMW located in the grass southeast of the tank pit should be relocated approximately 20 feet west of the proposed location in order to investigate contamination that may have migrated south of sample location L at the tank pit.

In addition, the actual costs budget for Stage 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). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

In addition, the proposed budget for Stage 2 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 2 of Attachment A. Costs must be incurred in accordance with the approved plan. The maximum amounts

Page 2

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)).

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 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 note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek payment from the Underground Storage Tank Fund.

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 Shirlene south at 217/558-0347.

Sincerely,



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

MTI.:sls:jab\

Attachment: Attachment A  
Appeal Rights

c: CWM  
BOL file

Attachment A

Re: LPC #0770155096 -- Jackson County  
Carbondale/ Abel Investments  
2101 South Illinois Avenue  
Leaking UST Incident No.20130781  
Leaking UST Technical File

EC  
MAY 7 2016  
on

**SECTION 1**

STAGE 1 Actual Costs

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A the following amounts are approved:

\$6,055.23	Drilling and Monitoring Well Costs
\$8,671.67	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$21,796.02	Consulting Personnel Costs
\$1,249.10	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

STAGE 2 Proposed Budget

Costs must be incurred in accordance with the approved plan and must be determined in accordance with 35 Ill. Adm. Code 734.Subpart H, Appendix D, and Appendix E.

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.



SECTION 2

STAGE 1 Modifications

1. \$218.70 for costs for drilling, which 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).

The Illinois EPA finds the placement of SB-2 to exceed the minimum requirements and to have been unnecessary in delineating the extent of contamination.

In addition, for site investigation or corrective action costs for SB-2 that 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).

2. \$575.84 for costs for analysis, which 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).

The Illinois EPA finds the analysis costs in relation to SB-2 to exceed the minimum requirements and to have been unnecessary in delineating the extent of contamination.

In addition, costs for site investigation or corrective action costs for analysis of SB-2 that 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).

3. \$984.24 for costs for Engineer III, which 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).

The Illinois EPA has determined that the following personnel costs are unreasonable and lack supporting documentation. Therefore, reduction of the hourly rate from \$121.49 for an Engineer III to \$66.81 rate for a Senior Account Technician as submitted for the Stage 1 Budget Calculations/Preparation

In addition, costs for site investigation or corrective action costs for the Stage 1 Budget Calculations/Preparation that 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).

Pursuant to Section 734.850, personnel costs must be based upon the work being performed, regardless of the title of the person performing the work.

- 4. \$1,457.88 for costs for technical oversight/ compliance/ reimbursement review, which 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).

In addition, for costs for technical oversight/ compliance/ reimbursement review, 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, for site investigation or corrective action costs for technical oversight/ compliance/ reimbursement review that 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).

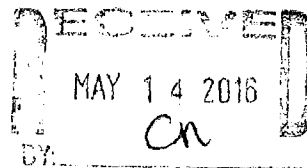
Per phone conversation between the Illinois EPA and Rob Stanley of CWM Company, Inc. on April 29, 2016, it was explained that Carol Rowe of CWM or in some instances another person, reviewed ongoing work on a project to see if it was staying on track. The Illinois EPA would assume that these are the duties of the project manager assigned to the site.

- 5. \$54.00 for indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

The Illinois EPA considers a measuring wheel to be an indirect cost of doing business.

STAGE 2 Modifications

- 1. \$991.28 for costs for technical oversight/ compliance, which 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).



In addition, for costs for technical oversight/ compliance, 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.

Per phone conversation between the Illinois EPA and Rob Stanley of CWM Company, Inc. on April 29, 2016, it was explained that Carol Rowe of CWM or in some instances another person, reviewed ongoing work on a project to see if it was staying on track. The Illinois EPA would assume that these are the duties of the project manager assigned to the site.

2. \$660.52 for costs for Professional Geologist, which 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).

The Illinois EPA has determined that the following personnel costs are unreasonable and lack supporting documentation. Therefore reduction of the hourly rate from \$113.99 for a Professional Geologist to \$66.81 rate for a Senior Account Technician as submitted for the Stage 2 Budget Preparations/Calculations

In addition, costs for site investigation or corrective action costs for the Stage 2 Budget Calculations/Preparation 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).

Pursuant to Section 734.850, personnel costs must be based upon the work being performed, regardless of the title of the person performing the work.

3. \$456.80 for costs for Engineer III, which 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).

The Illinois EPA has determined that the following personnel costs are unreasonable and lack supporting documentation. Therefore reduction of the hourly rate from \$123.91 for an Engineer III to \$66.81 rate for a Senior Account Technician as submitted for the Stage 2 Budget Development.

In addition, costs for site investigation or corrective action costs for the Stage 2 Budget Development 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).

4. \$797.93 for costs for travel time, which 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).

The costs appear to exceed the minimum requirements since there is an office located in the vicinity of the site.

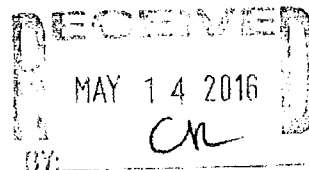
In addition, for costs for travel time, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities 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, for site investigation or corrective action costs for travel time that 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).

5. \$743.46 for costs for SICR technical compliance/oversight, which 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).

In addition, for costs for technical compliance/oversight, 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.

Per phone conversation between the Illinois EPA and Rob Stanley of CWM Company, Inc. on April 29, 2016, it was explained that Carol Rowe of CWM or in some instances another person, reviewed ongoing work on a project to see if it was staying on track. The



Illinois EPA would assume that these are the duties of the project manager assigned to the site.

6. \$19 for costs for PID Rental, 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.

The Stage 1 cost for a PID was listed as \$129.00; therefore, the rate has been reduced from \$148.00 to \$129.00 as requested in the previous budget.

7. \$21.00 for indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

The Illinois EPA considers a measuring wheel to be an indirect cost of doing business.

sls:jab\

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