

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

Dixie Travel Plaza,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	PCB No. _____
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Petition for Review
PROTECTION AGENCY,	)	and Hearing/Appeal)
	)	
Respondent.	)	

**PETITION FOR REVIEW AND HEARING/APPEAL**

NOW COMES Dixie Travel Plaza, by its attorneys, Robert M. Riffle, Esq. and Anne L. Mergen, Esq., of Riffle & Associates LLC, and as and for its Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency’s final decision with respect to the Corrective Action Plan (“CAP”) Budget and the Corrective Action Completion Report (“CACR”) for Payment regarding a certain leaking underground storage tank (LUST) site, states as follows:

**BACKGROUND**

1. Dixie retained Midwest Environmental Consulting & Remediation Services, Inc. (“Midwest”) to remediate the property located at 501 South Main St., McLean, in McLean County, IEPA Site ID #1130855002, LUST Incident-Claim Nos. 20040350 and 20090015 (the “Property” or the “Project”).
2. On July 8, 2019, the Dixie Travel Plaza submitted a Budget Request to the Illinois Environment Protection Agency (“IEPA”). Dixie Travel Plaza’s Budget Request sought approval in the amount of \$31,102.79, which was the amount that was reasonably and necessarily expended to complete the work on the Project.

3. By letter dated September 10, 2019, the IEPA rejected the Budget Request submitted on July 8, 2019. (the "Denial Letter"). True and accurate copies of this Denial Letter and its attachment are attached hereto as Exhibit 1. The Denial Letter rejected payment of certain costs, as listed in Attachment A thereto, totaling \$26,688.96. Attachment A states the reasons these costs were purportedly not paid.

4. The Denial Letter was designated as a final and appealable order (the Final Decision). (See Exhibit 1).

### **ARGUMENT**

The IEPA rejected the Budget Request based upon the reasons stated on Attachment A to the Denial Letter (Exhibit 1). Dixie Travel Plaza and Midwest disagree with the IEPA's determinations, and affirmatively state that the reimbursement amounts expended were reasonable, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on that Attachment A to Exhibit 1 were actually and legitimately expended and performed. The expenditures rejected by the IEPA were reasonable and necessary due to the complexities of the "Property" and the "Project", including: (1) large size of the site, (2) the history of the site (which includes seven total incident numbers dating back to 1996), and (3) various complex issues relating to the Project such as off-site access issues, ELUC issues, and groundwater ordinance issues.

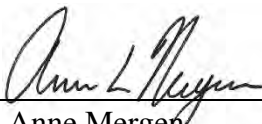
### **CONCLUSION**

For all of the foregoing reasons, Dixie respectfully requests a hearing in this matter, which will provide it the opportunity to establish the propriety of the costs. Dixie Travel Plaza also requests that the Final Decision be reversed or modified by requiring payment of the amounts denied in Attachment A to Exhibit 1, thereby requiring payment to Dixie Travel Plaza of the

additional amount of \$26,688.96 and for such other and further relief as is deemed necessary or appropriate in the circumstance.

Respectfully submitted,

Dixie Travel Plaza, Petitioner

By:   
Anne Mergen  
One of Its Attorneys

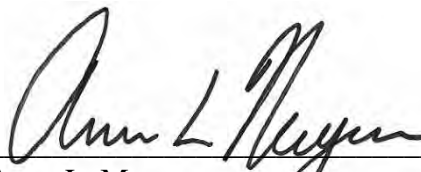
Riffle & Associates LLC  
ROBERT M. RIFFLE, ESQ.  
ANNE L. MERGEN, ESQ.  
133A S. Main Street  
Morton, IL 61550  
(309) 321-8365  
[amergen@rmrenterprises.net](mailto:amergen@rmrenterprises.net)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on Monday, October 14, 2019 the foregoing document was electronically filed with the Illinois Pollution Control Board using the electronic filings system, which will send notification of such filing to the following:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street  
Suite 11-500  
Chicago, IL 60601

James G. Richardson  
Deputy General Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276



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Anne L. Mergen  
Rifle & Associates LLC  
133A S. Main Street  
Morton, IL 61550  
(309) 321-8365  
[amergen@rmrenterprises.net](mailto:amergen@rmrenterprises.net)



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL

7018 1830 0000 5289 0046

SEP 10 2019

**Exhibit 1**

Ben Gulley  
P.O. Box 133  
Le Roy, IL 61752

Re: 1130855002 -- McLean County  
McLean/Dixie Travel Plaza  
501 South Main Street  
Leaking UST Incidents 20040350 and 20090015  
Leaking UST Technical File

Dear Mr. Gulley:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incidents. This budget, dated May 14, 2019, was received by the Illinois EPA on July 8, 2019. 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 budget is modified pursuant to Sections 57.7(b)(3) 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. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 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.

All future correspondence must be submitted 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

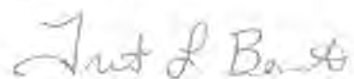
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

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If you have any questions or need further assistance, please contact Steve Putrich at (217) 524-4827.

Sincerely,



Trent L. Benanti, P.E.  
Unit Manager  
Leaking Underground Storage Tank Program  
Remedial Project Management Section  
Bureau of Land

Attachments: A  
Appeal Rights

c: Midwest Environmental Consulting & Remediation Services (electronic copy)  
BOL File

Attachment A

Re: 1130855002 -- McLean County  
McLean/Dixie Travel Plaza  
501 South Main Street  
Leaking UST Incidents 20040350 & 20090015  
Leaking UST Technical File

**SECTION 1**

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

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$1,112.83	Paving, Demolition, and Well Abandonment Costs
\$3,251.00	Consulting Personnel Costs
\$50.00	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.

**SECTION 2**

1. \$8,564.85 for costs stated to have been omitted from budgets submitted between February 5, 2015 and September 8, 2015, 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, these 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 costs associated with the tasks in question were approved in previous budgets. These costs were deducted from Consulting Personnel Costs.

2. \$8,134.20 for costs stated to have been omitted from budgets submitted between May 15, 2018 and June 30, 2018, 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, these 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 costs associated with the tasks in question were approved in previous budgets. These costs were deducted from Consulting Personnel Costs.

3. \$2,338.00 for costs associated with responding to the IEPA letter dated July 16, 2018 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, these 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).

These costs were deducted from Consulting Personnel Costs.

4. \$1,960.00 for costs associated with developing a groundwater ordinance 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, these 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 costs associated with these tasks were approved in previous budgets. These costs were deducted from Consulting Personnel Costs.

5. \$3,558.60 for completing CACR and final budget 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, these 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 costs associated with these tasks were approved in previous budgets. These costs were deducted from Consulting Personnel Costs.

6. \$1,176.00 for costs for updating tables and maps, assembling supporting documentation and financial closure 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, these 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 costs associated with these tasks were approved in previous budgets. These costs were deducted from Consulting Personnel Costs.

7. The costs associated with locating/marketing wells for abandonment are not approved as part of this budget. These charges are included in the well abandonment rate, for which a maximum rate of \$12.64 per foot applies. 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.

Based upon the above deduction, a total of \$473.76 was deducted from Consulting Personnel Costs.

8. \$451.75 for site investigation or corrective action costs for well abandonment costs 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).

The costs for abandoning monitoring wells MW-6 and MW-7 were approved in the Illinois EPA's letter dated July 26, 2018.

9. \$31.80 for costs for mileage for final site inspection, 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, these costs 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).

These costs were deducted from Consulting Materials Costs.

### 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 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

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

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276  
(217) 782-5544