

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JEET SINGH d/b/a)
AMAN FOOD & GAS,)
Petitioner,)
v.) PCB _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, 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 13th day of September, 2019.

Respectfully submitted,
JEET SINGH d/b/a AMAN FOOD & GAS,
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

JEET SINGH d/b/a AMAN FOOD & GAS,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, JEET SINGH d/b/a AMAN FOOD & GAS, 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, modifying the budget for the corrective action plan, stating as follows:

1. Petitioner owns a service station in Moline, County of Rock Island, Illinois, which has been assigned LPC #1610455194.
2. On March 3, 2014, Petitioner reported releases from three underground storage tanks at the site, which were subsequently removed. Incident Number 2014-0247 was assigned to the releases.
3. After performing early action and site investigation, available soil and groundwater tests indicated that applicable site remediation objectives could be met with a combination of institutional controls, specifically by a land use restriction to industrial/commercial use, a municipal groundwater ordinance, a construction worker inhalation caution, and an engineered barrier.
4. Following site investigation, a neighboring property owner who had previously denied access to conduct off-site investigation agreed to provide access.

5. On April 9, 2019, Petitioner submitted a Corrective Action Plan and Budget to the Illinois Environmental Protection Agency (hereinafter “the Agency”), which proposed additional off-site drilling pursuant to the new access agreement, execution of the aforementioned institutional controls, and performance of a vapor intrusion assessment. The budget accounted for the associated costs of the aforementioned activities, as well as the costs of preparing the associated plans and budgets necessary to obtain a No Further Remediation letter.

6. On August 6, 2019, the Agency issued its decision letter, modifying the plan and budget. A true and correct copy of which is attached hereto as Exhibit A.

7. The plan was modified to add additional work without providing additional cost reimbursement.

8. Petitioner objects to the budget cuts:

- a. \$2,320.74 for “Budget Preparation” by a Senior Project Manager. The Illinois Environmental Protection Act requires Petitioner to prepare and submit a budget to the Agency. (415 ILCS 5/57.7(b)(3)) Yet, the Agency rejected any reimbursement to perform legally required work. The Agency is also acting in disregard of a recent Board decision. See Abel v. IEPA, PCB 16-108, slip op. at p. 9 (Dec. 15, 2016) (reversing Agency’s reduction of consultants costs to conduct budget preparation and calculations).
- b. \$2,062.88 for “Groundwater Ordinance Verifications/ Property owner I.D. Verifications” by a Senior Project Manager. Board regulations authorize use of a groundwater ordinance as an institutional control only if the groundwater ordinance meets regulatory requirements and all owners of

potentially impacted property are identified and notified. (35 Ill. Adm. Code § 742.1015). Yet, the Agency denied any reimbursement to perform legally required work.

- c. \$1,289.30 for “Eng[ineered] Barrier Construction / Verification” by an Engineer III. Board regulations require that the consultant verify that all work has been performed in accordance with the technical plan approved by the Agency. (E.g., 35 Ill. Adm. Code § 734.605(b)) Yet, the Agency denied any reimbursement to perform legally required work.
- d. \$1,005.66 for “Reimbursement Review and Certifications” by a Senior Professional Engineer. Board regulations require that the application for payment be certified by a licensed professional (35 Ill. Adm. Code § 734.605(b)) Yet, the Agency denied any reimbursement to perform legally required work.
- e. \$464.16 for “Reimbursement Compilation, Assembly, and Distributions” by a Senior Administrative Assistant. Board regulations provide for reimbursement for such “administrative or secretarial services” at rates set forth in the regulations. (35 Ill. Adm. Code § 734.APPENDIX E) Yet, the Agency denied any reimbursement to perform necessary work.
- f. \$1,815.36 for “Reimbursement Development / Input Parameters / Budget Coordination” by a Geologist III. Board regulations require that the application for payment be certified by a licensed professional (35 Ill. Adm. Code § 734.605(b)) Tthe associated technical work can be delegated

to geologists under the licensed professional's oversight, but to to accounting staff. Abel v. IEPA, PCB 16-108, slip op. at p. 9 (Dec. 15, 2016) (Agency erred in preventing an unlicensed geologist from performing budget and accounting work and in assigning the work to a Senior Account Technician). Yet, the Agency denied any reimbursement to perform the technical work for the payment application in violation of recent Board precedent.

9. Other than the last cut, the Agency provided no "explanation of the specific type of information, if any, that the Agency needs to complete its review," nor any "statement of specific reasons why the cited Sections of the Act." (35 Ill. Adm. Code § 734.505(b))

10. 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.

11. The subject Illinois EPA letter was received by certified mail on August 10, 2019, which is less than 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, JEET SINGH d/b/a AMAN FOOD & GAS, 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.

JEET SINGH d/b/a AMAN FOOD & GAS,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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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

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AUG 06 2019

Aman Food & Gas
Attn: Balbir Kaur
5048 Country Court
Davenport, IA 52807

Re: 1610455194 – Rock Island County
Moline / Aman Food & Gas
1830 5th Avenue
Leaking UST Incident 20140247
Leaking UST Technical File

Dear Mr. Kaul:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated April 9, 2019, was received by the Illinois EPA on April 9, 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).

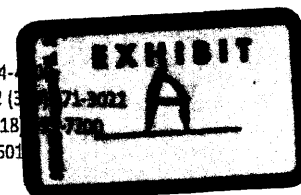
The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

1. The proposed construction worker caution shown in Drawing 0011, should be a rectangle with identifiable points, so that the boundaries of the proposed construction worker caution can be more easily identified.
2. The proposed engineered barrier shown in Drawing 0016 should be a rectangle with identifiable points, so that the boundaries of the proposed engineered barrier can be more easily identified.
3. The groundwater modelling area shown in Drawing 0012, should be increased to ninety degrees (90°) perpendicular to the direction of groundwater flow to more accurately identify those property owners that should be notified.

Plus, the owner or operator needs to discuss the potential impact to the private water supply well, ISGS well 00328, which is approximately 375 feet northwest of the site.

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

9511 Harrison Street, Des Plaines, IL 60016 (847) 294-
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 691-7300
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 992-7300
100 W. Randolph Street, Suite 4-500, Chicago, IL 60601



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4. One (1) additional vapor boring with soil gas sampling should be drilled in the area adjacent to monitoring well MW-6 which had the highest groundwater contamination.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

In addition, 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 have been 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.

If the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c) of the Act).

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 that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

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 and shall be made to EPA.FieldNotifications@illinois.gov. This notification of field activities must be provided at least two weeks prior to the scheduled field activities.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan 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

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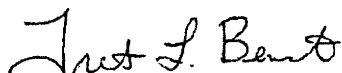
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

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 Eric Kuhlman at (217) 785-5715.

Sincerely,



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

Attachments: Attachment A
Appeal Rights

c: Carol Rowe, CWM Company, Inc. (electronic copy)
BOL File

Attachment A

Re: 1610455194 – Rock Island County
Moline / Aman Food & Gas
1830 5th Avenue
Leaking UST Incident 20140247
Leaking UST Technical File

SECTION 1

Based on the modifications in Section 2, the following amounts are approved:

\$2,253.19	Drilling and Monitoring Well Costs
\$593.38	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$2,008.40	Paving, Demolition, and Well Abandonment Costs
\$23,155.48	Consulting Personnel Costs
\$850.00	Consultant's Materials Costs

The Illinois EPA will determine the handling charges when an application for payment is reviewed. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

1. \$7,142.74 for costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc).

Without supporting documentation, the Illinois EPA cannot determine if the costs are for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act. Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are ineligible 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, without supporting documentation, the Illinois EPA cannot determine if the costs are reasonable. Costs that are unreasonable 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 amount deducted includes

- \$2,320.74 for a senior project manager for budget preparation.

- *\$2,062.88 for a senior project manager for groundwater ordinance verifications/property owner ID verifications.*
 - *\$1,289.30 for an engineer III for engineered barrier construction/verification.*
 - *\$1,005.66 for a senior professional engineer for reimbursement review and certification.*
 - *\$464.16 for a senior administrative assistant for reimbursement compilation/assembly/distribution.*
2. \$1,815.36 for costs that are not based on the work performed. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.850(b).

The Illinois EPA believes that reimbursement development/input parameters/budget coordination is a task befitting an account technician, and the Illinois EPA approved 30 hours for a senior account technician for reimbursement preparations.

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

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