

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

S & S INFINITE GROUP, INC.	)	
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 27<sup>th</sup> day of November, 2019.

Respectfully submitted,  
S & S INFINITE GROUP, INC. ,  
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  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

S & S INFINITE GROUP, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, S & S INFINITE GROUP, 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 Agency’s final decision, modifying the budget for the corrective action plan, stating as follows:

1. Petitioner owned a service-station in Peoria, County of Peoria, Illinois, commonly known as Downtown 66, which was been assigned LPC # 1430650114.
2. On August 19, 2014, Petitioner reported releases from two underground storage tanks at the site, for which Incident Number 2014-0963 was assigned.
3. Thereafter, early action activities and site investigation were performed. In July of 2015, a corrective action plan and budget were approved.
4. On November 21, 2016, Petitioner reported releases from the remaining tanks at the site, for which Incident Number 2016-1089 was assigned.
5. Thereafter, early action activities and site investigation were performed. Because the 2014 incident had not been remediated by the time of the 2016 incident, these efforts were intended to bring the second incident up to a situation in which corrective action could be performed for both incidents at the same time.

6. On June 20, 2018, the Agency approved a corrective action plan for both incidents, which included further soil borings to determine the extent of remaining contamination for purposes of delineating further soil excavation.

7. On November 13, 2018, Petitioner's consultant reported that the soil borings identified contamination in excess of site remediation objectives that would need to be excavated. On February 11, 2019, the Agency approved the associated corrective action plan.

8. On September 10, 2019, Petitioner's consultant submitted a corrective action plan budget amendment, covering the costs associated with concrete replacement which had been inadvertently left out of any of the previous budgets.

9. On October 22, 2019, the Agency approved the amendment in part. The Agency approved \$18,144.14 for replacing 3,161.00 square feet of concrete. The Agency cut all consulting personnel costs (\$3,143.08), while authorizing a mileage reimbursement for two round trips by the senior project manager to the site (\$159.00), and copying costs for the budget amendment (\$3.20). A true and correct copy of the decision is attached hereto as Exhibit A.

10. The Agency has elected to take a novel position that the cost of a consultant's oversight of field work is not reimbursable on a time and materials basis, but as a handling charge. This is erroneous as a matter of law:

**Professional Consulting Services**

**Payment for costs associated with professional consulting services will be reimbursed on a time and materials basis pursuant to Section 734.850. Such costs must include, but are not limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation.**

(35 Ill. Adm. Code § 734.845 (emphasis added))

11. Field oversight is necessitated by Section 734.135(d), which requires that a licensed professional certify that all of the work and activities were completed in accordance with the applicable legal requirements. (35 Ill. Adm. Code § 734.135(d)) Without such field oversight, there is a risk that engineered barriers designed to protect human health and the environment from residual spoil contamination will either not be installed or will not be installed as required by applicable regulatory requirements and professional standards.

12. Furthermore, the Agency cut all other consulting personnel costs, primarily the costs of preparing the budget amendment reviewed. That these costs were necessary and did not exceed the minimum requirements is evidenced by the Agency's willingness to reimburse the copying costs for the budget amendment. The cost of preparing the budget amendment and updating the maps were reasonable and did not exceed the minimum requirements necessary to comply with the Act. Furthermore, the Agency failed to provide any "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 . . . or regulations may be violated." (35 Ill. Adm. Code § 734.505(b))

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 subject Illinois EPA letter was received by certified mail on October 28, 2019, which is less than 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, S & S INFINITE GROUP, 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 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.

S & S INFINITE GROUP, INC. ,  
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**

7018 1830 0000 5289 1500

OCT 22 2019

S & S Infinite Group, Inc.  
Attn: Syed Muneeb  
10614 North Alex Drive  
Peoria, IL 61615

Re: 1430650114 -- Peoria County  
Peoria/S & S Infinite Group, Inc.  
400 North East Adams Street  
Leaking UST Incident 20161089  
Leaking UST Technical File

Dear Syed Muneeb:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated September 10, 2019, was received by the Illinois EPA on September 16, 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.



Page 2

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 Scott McGill at (217) 524-5137.

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Program  
Remedial Project Management Section  
Bureau of Land

Attachment: Attachment A  
Appeal Rights

KEK

c: Carol Rowe, CW3M Company (electronic copy)  
BOL File

Attachment A

Re: 1430650114 -- Peoria County  
Peoria/S & S Infinite Group, Inc.  
400 North East Adams Street  
Leaking UST Incident 20161089  
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
\$18,144.14	Paving, Demolition, and Well Abandonment Costs
\$0.00	Consulting Personnel Costs
\$162.20	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. \$1,578.12, deduction for consulting personnel costs associated with the procurement, oversight, or payment of subcontracts or field purchases. Pursuant to 35 Ill. Adm. Code 734.115 "Handling Charges" mean administrative, insurance, and interest costs and a reasonable profit for the procurement, oversight, and payment of subcontracts and field purchases. Therefore, 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) or 734.630(cc). In addition, the Corrective Action Budget must not include handling charges pursuant to 35 Ill. Adm. Code 734.335(b).

Personnel costs in the amount of \$1,578.12, associated with 12 hours for a Senior Project Manager to conduct concrete replacement, set up, form area, completion and verification, are considered handling charges and these costs are not reasonable as submitted.

2. \$789.06 deduction for personnel costs, 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 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).

Costs in the amount of \$789.06, associated with 6 hours for an Engineer III to conduct budget amendment inputs, exceeds the minimum requirements and are not reasonable as submitted.



3. \$341.94 deduction for personnel costs, 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 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).

Cost in the amount of \$341.94, associated with 2 hours for a Senior Professional Engineer to conduct budget amendment review and certification, exceed the minimum requirements and are not reasonable as submitted.

4. \$118.36 for costs for personnel costs, 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 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).

Costs in the amount of \$118.36, associated with 2 hours for a Senior Administrative Assistant to conduct budget amendment compilation, assembly and distribution exceed the minimum requirements and are not reasonable as submitted.

5. \$315.60 for costs for personnel cost, 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).

Personnel cost in the amount of \$315.60, associated with a Senior Draftperson/CAD to conduct editing of maps for concrete replacement and drafting concrete location maps, lack supporting documentation and are not reasonable as submitted.

### 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