

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

DEC 1 2003

STATE OF ILLINOIS  
Pollution Control Board

KNAPP OIL COMPANY, )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

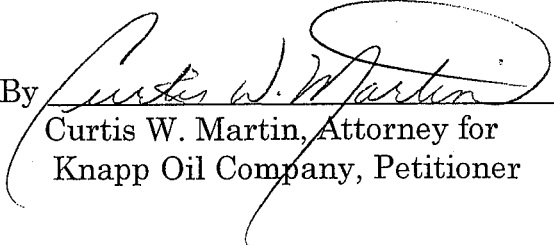
PCB No. 04- 87  
(UST Appeal)

NOTICE

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, a copy of which is herewith served upon you.

By   
Curtis W. Martin, Attorney for  
Knapp Oil Company, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

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PETITION FOR REVIEW OF FINAL AGENCY  
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Knapp Oil Company, ("Knapp"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, pursuant to Sections 57.7(c)(4)(D) and 40 of the Illinois Environmental Protection Act (415 ILCS 5/57.7(c)(4)(D) and 40) and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Knapp respectfully states as follows:

1. On October 24, 2003, the Agency issued a Final Decision to Knapp, a copy of which is attached hereto as Exhibit A.

2. The grounds for the Petition herein are as follows:

Knapp submitted to the Agency, through its consultant, United Science Industries, Inc., ("UST") a Revised High Priority Site Investigation Corrective Action Plan ("Plan") and corresponding Budget ("Budget"). By its letter dated October 24, 2003, the Agency rejected the Budget pursuant to Section 57.7(c)(4) of the Act and

35 Ill. Adm. Code 732.405(c) and 732.503(b) on the basis that the Budget included an additional \$17,025.75 in personnel costs that the Agency deemed unreasonable as exceeding costs already budgeted and Agency approved.

By letter dated March 3, 2003, the Agency had modified Knapp's High Priority Corrective Action Plan dated January 20, 2003 and modified the Budget associated with this Plan by eliminating in excess of \$13,000.00 in personnel costs, well materials costs, PID meter costs, and handling charges. The March 3, 2003 Agency letter also indicated that additional information and supporting documentation could be provided by Knapp to demonstrate the costs cut by the Agency were in fact reasonable and subject to reimbursement.

In response to the March 3, 2003 Agency letter, Knapp submitted an Amended Budget dated May 1, 2003, but the Agency rejected the Amended Budget alleging Knapp's failure to provide justification for the additional personnel hours requested within the Amended Budget. Accordingly, on June 12, 2003, Knapp submitted a M-1 Justification for Budget Amendments form for the Agency's re-evaluation of the costs requested in the Budget.

As the M-1 Justification shows, the Knapp site is being remediated pursuant to 35 Ill. Adm. Code 742, tiered approach corrective action ("TACO"). This method of corrective action has required minimal field work, but has involved intensive Project Manager labor in that the Project Manager has taken on additional tasks not typically associated with conventional technology remediation such as excavation and removal.

The additional Project Manager tasks have included exposure route evaluations for soil and groundwater, current and future land use analysis, Tier 3 evaluations, and negotiation and preparation of engineered barriers/highway authority agreements involving both the Illinois Department of Transportation ("IDOT") and the City of Metropolis. In association with such tasks, additional correspondence by the Project Manager to and from Knapp and various other parties such as IDOT and Metropolis has been required in order to adequately address the issues, concerns and questions that naturally arise with the TACO remediation efforts.

The Agency then, in response to Knapp's submission of the M-1 Justification, by letter dated June 30, 2003, rejected the Budget again alleging Knapp had failed to provide adequate justification for the additional personnel hours outlined in the Budget. This Agency letter, however, indicated that Knapp could have the personnel costs re-evaluated during the reimbursement process. Accordingly, Knapp submitted the additional personnel costs in the reimbursement packet submitted with Amended High Priority Corrective Action Plan Budget which is the subject of this appeal.

The M-1 Justification for the Budget Amendments and the reimbursement package provide details of the actual time breakdown for the Knapp project, including Project Manager hours of 139.5 beyond the Agency approved amount. These additional hours were incurred and are reasonable due in part to the preparation of three (3) additional amended budgets, the submittal of

information to Metropolis regarding a groundwater ordinance, the submittal of highway authority agreements to IDOT and Metropolis (twice submitted to Metropolis due to a change in the City's administration), substantial client and Agency correspondence, and overall general project management. An additional 25.5 hours of Assistant Project Manager, or Environmental Specialist, labor was also included in the Budget Knapp requested the Agency approve. The Assistant Project Manager prepares the Corrective Action Plan, including tables and appendices thereto, and prepares soil boring logs, monitoring well reports and purge/development forms. Also included was additional professional engineering time of 6.75 hours incurred as a result of additional amended budget certifications along with preparation of reimbursement packages.

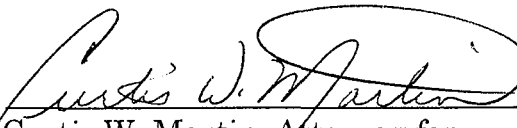
The Agency also eliminated as unnecessary the costs for the hours incurred by the Project Coordinator. The Project Coordinator, however, is responsible for additional tasks associated with the TACO such as budget preparation and breakdown billing procedures as well as general document preparation associated with the reimbursement process, including completion of applications for partial and final payments. The Project Coordinator was also involved heavily in the preparation of the amended budgets submitted to the Agency as a result of the Agency's multiple rejections of the Budgets prepared. All of the costs eliminated by the Agency are justified and eligible for reimbursement pursuant to Section 732.605(a)(15). The Agency's failure to provide for and

reimburse the additional \$17,025.75 sought by Knapp is without merit and is arbitrary and capricious and should be reversed by the Board.

WHEREFORE, Petitioner, Knapp Enterprises, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of the Petitioner's request for preparation of a voucher for submission to the Comptroller's office for payment of its Application for Payment from the Underground Storage Tank Fund and that Petitioner recover its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(1) and 35 Ill. Adm. Code 732.606(1).

Respectfully submitted,

SHAW & MARTIN, P.C.

By   
Curtis W. Martin, Attorney for  
Knapp Oil Company, Petitioner

Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 9758

OCT 24 2003

Knapp Oil Company  
Attention: Rick Forth  
P.O. Box 215  
Xenia, Illinois 62821

Re: LPC #12701.55039 -- Massac County  
Metropolis/ Knapp Oil Company  
• 1117 east 5<sup>th</sup> Street  
• LUST Incident No. 992410&991949  
LUST Technical File

Dear Mr. Forth:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated August 29, 2003 was received by the Illinois EPA on September 5, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed in Attachment A (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

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.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
• MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

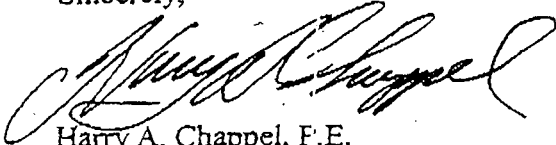
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EXHIBIT A

Page 2

If you have any questions or need further assistance, please contact James R. Malcom, III at 217/524-9140.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry A. Chappel".

Harry A. Chappel, F.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:jrm

Attachment: Attachment A

cc: USI  
Division File



Attachment A

Re: LPC #1270155039 -- Massac County  
Metropolis/ Knapp Oil Company  
1117 east 5<sup>th</sup> Street  
LUST Incident No. 992410&991949  
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). The budget includes costs that are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)).

The amended budget submitted for review was included in the reimbursement packet received September 5, 2003. The amended budget included justification for an additional \$17,025.75 in personnel costs that exceeded the already budgeted approved amount. The Agency has reviewed the justification submitted for review and deems the additional personnel hours unreasonable in association with the amount of work performed to date.

jrm

## 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)(D) 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:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

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

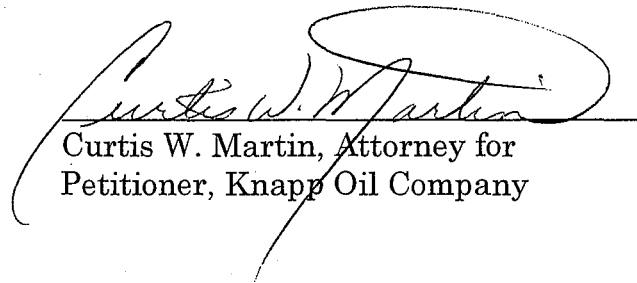
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 26, 2003, I served true and correct copies of a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

• Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
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Curtis W. Martin, Attorney for  
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