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CLERK'S OFFICE

BEFORE THE POLLUTION CONTROL BOARD DEC - 8 2003
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

SATHER ENTERPRISES, LTD.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

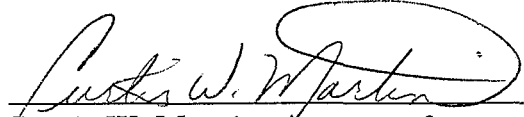
PCB No. 04- 02
(UST Appeal)

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
Sather Enterprises, Ltd., Petitioner

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

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
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SATHER ENTERPRISES, LTD.,)
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Petitioner,)
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vs.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 04-92
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Sather Enterprises, Ltd., ("Sather"), 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, Sather respectfully states as follows:

1. On October 31, 2003, the Agency issued a final decision to Sather, a copy of which is attached hereto as Exhibit A.
2. On November 1, 2003, Sather, through its consultants, United Science Industries, Inc. ("USI"), received the Agency's final decision.
3. The grounds for the Petition herein are as follows:

Sather, through its consultant, USI, on July 3, 2003 submitted to the Agency a High Priority Corrective Action Plan Budget ("Budget"). By the Agency's

letter of October 31, 2003, it adjusted the personnel costs within the Budget submitted by Sather to the extent of \$5,450.00. The Agency claims that these costs are not reasonable as submitted and that these costs were denied with regard to previous submittals due to unreasonableness.

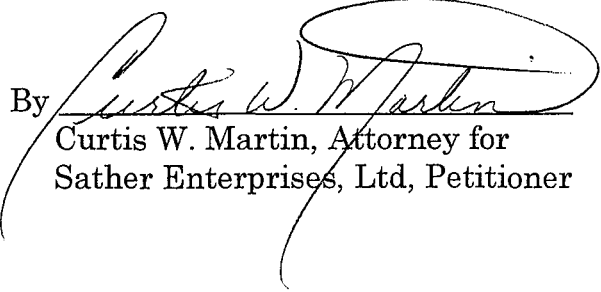
The Agency's adjustment of the personnel costs is arbitrary and capricious in that Sather has provided justification for such costs and they satisfy the requirements of the Illinois Environmental Protection Act and the regulations promulgated thereunder. The costs were budgeted in accordance with generally accepted engineering practices and are consistent with the Act and its regulations.

The Agency has further failed to advise Sather as to which personnel activities associated with the costs adjusted are deemed unreasonable and the Agency has failed to advise Sather as to the basis for its determination that the costs are unreasonable as submitted. The Agency's adjustment is merely on a cost basis without technical justification and it should be reversed by the Board.

WHEREFORE, Petitioner, Sather Enterprises, Ltd., prays that the Agency's decision letter of October 31, 2003 be reversed, that the High Priority Corrective Action Plan Budget submitted by Sather include the \$5,450.00 in personnel costs, and that it recover the attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By 
Curtis W. Martin, Attorney for
Sather Enterprises, Ltd, Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
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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 1227 0172

OCT 31 2003

Sather Enterprises
Attention: Everett Sather
8875 NW Polk City Drive
Ankeny, IA 50021

Re: :LPC #0390155020 -- DeWitt County
Farmer City/Sather Enterprises
Rt. 54 & East Route 150
LUST Incident No. 20000755
LUST Technical File

Dear Mr. Sather:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated July 3, 2003, was received by the Illinois EPA on July 16, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). 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 reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

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

EXHIBIT A


Page 2

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 Mindy Weller at 217/782-6762.

Sincerely,



Harry A. Chappel, P.E.

Unit Manager

Leaking Underground Storage Tank Section

Division of Remediation Management

Bureau of Land

HAC:MW:mw\20000755-5.DOC

Attachment: Attachment A

cc: Jennifer Thogmartin
Division File

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

Attachment A

Re: LPC # 0390155020 -- DeWitt County
Farmer City/Sather Enterprises
Rt. 54 & East Route 150
LUST Incident No. 20000755
LUST Technical File

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

SECTION 1

The budget was previously approved for:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$9,220.00	Personnel Costs
\$640.00	Equipment Costs
\$640.00	Field Purchases and Other Costs
\$76.80	Handling Charges

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

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$5,833.75	Personnel Costs
\$0.00	Equipment Costs
\$10.00	Field Purchases and Other Costs
\$0.00	Handling Charges

Therefore, the total cumulative budget is approved for:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$15,053.75	Personnel Costs
\$640.00	Equipment Costs
\$650.00	Field Purchases and Other Costs
\$76.80	Handling Charges

SECTION 2

1. \$5,450.00 for an adjustment in Personnel Costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). 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)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The budget includes costs that were previously denied due to unreasonableness of costs. The budget also included "justification" of the costs. Illinois EPA has allotted for the costs that were submitted for the additional work performed due to Illinois EPA requests.

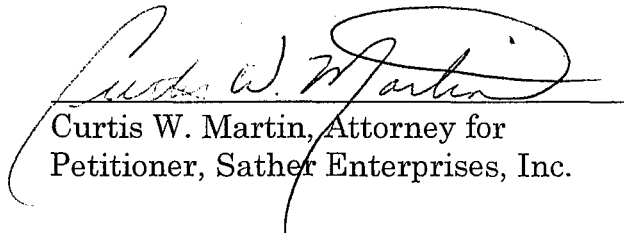
HAC:MW:mw\20000755-5Attachment A.DOC

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 4, 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
P.O. Box 19276
Springfield, IL 62794-9276


Curtis W. Martin, Attorney for
Petitioner, Sather Enterprises, Inc.