

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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NOV 18 2004

HENSON OIL CO.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-⁹⁷
(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
Henson Oil Co., 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
OF THE STATE OF ILLINOIS

HENSON OIL CO.,)
)
Petitioner,)
)
vs.) PCB No. 05-97
) (UST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Henson Oil Co. ("Henson"), 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, Henson respectfully states as follows:

1. On October 8, 2004, the Agency issued a final decision to Henson which was received by Henson on October 12, 2004 and a copy of which is attached hereto as Exhibit A.

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

Henson submitted to the Agency, through its consultant United Science Industries, Inc. ("USI"), a High Priority Corrective Action Plan ("CAP") and corresponding budget ("Budget") dated July 31, 2003. The Agency, by letter dated December 19, 2003, did not approve the proposed groundwater remediation

activities and modified the Plan and Budget accordingly. The Agency further modified the soil remediation activities by reducing the volume of cubic yards of contaminated soil to be excavated and disposed. The Budget modifications associated with the groundwater remediation activities that were not approved resulted in substantial adjustments in analysis costs, personnel costs, equipment costs, field purchases and other costs, and handling charges.

Henson did not dispute the Agency's modifications to its CAP or Budget and proceeded with the approved soil excavation and disposal during a three week period in April, 2004. Upon completion of these soil remediation activities, Henson determined that its actual personnel costs associated with such activities exceeded those approved by the Agency in its December 19, 2003 decision. Specifically, Henson discovered that the Budget modified and approved by the Agency did not by oversight include a line item allowance for an environmental technician on site during the soil excavation and disposal activities approved by the Agency.

Therefore, Henson, through USI, submitted an Amended Corrective Action Plan Budget ("Amended Budget") dated July 9, 2004. This Amended Budget detailed the costs associated with the environmental technician on site during the soil remediation activities which had not been included in the original approved CAP and Budget. The Amended Budget also includes costs associated with the preparation of the Amended CAP and Amended Budget as well as other unforeseen costs associated with the soil remediation activities under the Agency approved CAP.

The Amended Budget includes the M-1 Justification for Budget Amendments and the B-1 Proposed Budget Summary and Budget Total, and the G-1 and G-3 Personnel Costs with regard to the soil excavation and disposal originally approved by the Agency. These costs, which have now actually been incurred by Henson, include environmental technician, project manager, environmental specialists, professional engineer, professional geologists, project coordinator, draftsmen and clerical time amounting to \$11,119.50.

In response to Henson's submittal of the Amended CAP and Amended Budget, the Agency, by letter dated October 8, 2004, referencing only the "High Priority Corrective Action Plan Budget" and indicated that it had previously notified Henson of its "final action", evidently referring to its December 19, 2003 letter. The Agency apparently takes the position that any appeal with regard to this project should have been timely filed in response to its December 19, 2003 letter. Henson does not dispute the Agency modifications to the original CAP and Budget with regard to the non-approval of the groundwater remediation activities and costs associated therewith. Henson does, however, dispute the Agency's position that it is precluded from submitting to the Agency proposed amendments to the CAP and Budget in order to properly address the reasonable and necessary costs associated with the soil remediation activities already approved by the Agency.

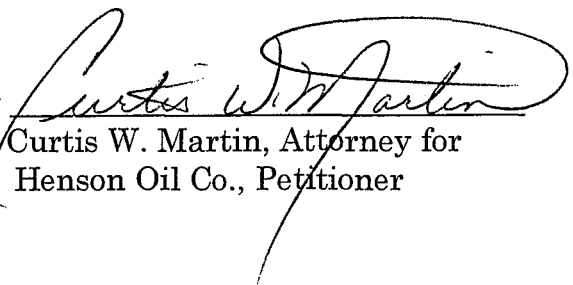
The original CAP and Budget, simply by oversight, did not include a line item for technician time associated with the soil remediation activities, which costs have now actually been incurred by Henson and which are reasonable, necessary, within

generally accepted engineering practices, and consistent with the CAP originally approved by the Agency. The Agency's failure to now approve of these costs is arbitrary and capricious.

WHEREFORE, Petitioner, Henson Oil Co., for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for approval of its Amended CAP and Amended Budget as being reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST Fund, and that Petitioner recover its 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
Henson Oil Co., 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



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

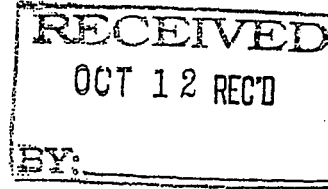
217/782-6762

CERTIFIED MAIL

OCT 08 2004

7002 3150 0000 1113 1122

Henson Oil Company
Attn: Jerry Henson
P.O. Box 712
Bloomington, IL 61702



Re: LPC #1131055007 -- McLean County
Towanda/Henson Oil Co.
Old Highway 66
LUST Incident No. 20001913
LUST Technical File

Dear Mr. Henson:

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 9, 2004, was received by the Illinois EPA on July 12, 2004. 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

PRINTED ON RECYCLED PAPER

EXHIBIT A

If you have any questions or need further assistance, please contact Chris Covert at 217/785-3943.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Henninger', with a long horizontal flourish extending to the right.

Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:CC\

Attachment: Attachment A
Appeal Rights

cc: United Science Industries, Inc.
Division File

Attachment A

Re: LPC # 1131055007 -- McLean County
Towanda/Henson Oil Co.
Old Highway 66
LUST Incident No. 20001913
LUST Technical File

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

1. In accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b), any action by the Illinois EPA to disapprove or modify a plan or budget submitted pursuant to Title XVI of the Act shall be provided to the owner or operator in writing within 120 days of receipt.

The Illinois EPA previously notified the owner or operator of its final action. Further, in accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f), the Illinois EPA's action to reject or require modification of the plan or budget, or the rejection of any plan or budget by operation of law, was subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action.

TAH:CC\

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:

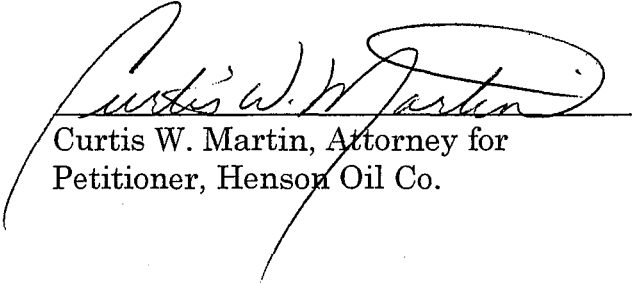
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 16, 2004, 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, Henson Oil Co.