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FEB 14 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MCLEAN COUNTY ASPHALT,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

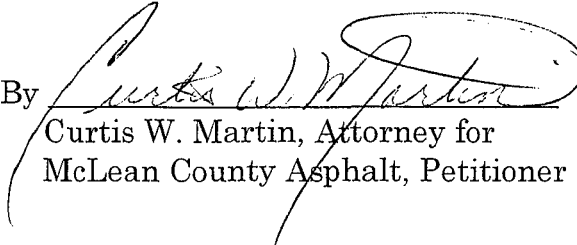
PCB No. 05-154
(UST Appeal)

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
McLean County Asphalt, 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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PCB No. 05-154
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, McLean County Asphalt ("McLean"), 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, McLean respectfully states as follows:

1. On January 6, 2005, the Agency issued a final decision which was received by McLean on January 7, 2005, a copy of which is attached hereto as Exhibit A.

2. The basis for McLean's appeal is as follows:

This appeal's genesis is with McLean's submittal to the Agency, through its consultant, United Science Industries, Inc. ("USI"), of a Site Classification Completion Work Plan ("Plan") and Budget ("Budget") dated

July 31, 2002. By letter dated November 27, 2002, the Agency modified the Plan and Budget by reducing the number of soil borings, including a hydraulic conductivity test, and adjusting investigation costs, analysis costs, personnel and equipment costs by \$9,270.42. Among such adjustment was the number of hours associated with the tasks for the Project Coordinator, Assistant Project Manger, and Project Manager, but no further detail about such adjustments.

In response to the Agency's November 27, 2002 letter, McLean submitted an Amended Site Classification Work Plan ("Amended Plan") and Budget ("Amended Budget") dated February 11, 2003, along with further explanation and detail of the necessity and reasonableness of the costs it proposed in the Amended Budget. On June 17, 2003, the Agency modified the Amended Plan by requiring sample analysis and groundwater investigation, while indicating a total of three (3) borings/monitoring wells would be sufficient to complete the investigation. Based upon these modifications, the Agency adjusted the investigation costs, analysis costs, personnel costs, equipment costs, field purchases and other costs by a cumulative \$20,579.50. No particular breakdown of the costs adjusted was provided other than a list of items affected by the adjustment. The Agency also again modified the Amended Budget with an adjustment of \$7,116.05 in investigation costs, personnel costs and equipment costs. The Agency deemed these costs to be unreasonable as submitted while providing no detail as to what specific costs and tasks were adjusted, except reference to "Number of hours to complete tasks listed

for” environmental technician, project coordinator, assistant project manager, project manager, and professional engineer.

In response to the Agency’s June 17, 2003 modifications to the Amended Plan and Amended Budget, McLean submitted a second Amended Plan and Budget dated September 9, 2004. On January 6, 2005, the Agency completely rejected the second Amended Budget which effectively adjusted another \$8,549.40 in personnel costs, field purchases and other costs, and handling charges associated with project manager, professional engineer, project coordinator, draftsman, and environmental specialists time. The Agency’s position under the January 6, 2005 letter was that it had previously notified McLean of its “final action” which McLean had not timely appealed thereby preventing the Agency from reconsidering or revisiting its final action.

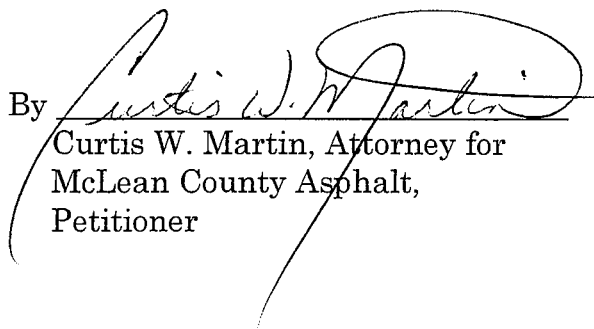
It is unclear on which “final action” the Agency relies for its January 6, 2005 decision and therefore it is McLean’s position that the Agency’s January 6, 2005 letter is the true final action from which McLean’s appeal is timely. Moreover, the Agency’s adjustments and failure to specify which tasks and costs it deems to be unreasonable are arbitrary and capricious.

WHEREFORE, Petitioner, McLean County Asphalt, 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 second Amended Site Classification Work Plan and Budget dated September 9, 2004 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
McLean County Asphalt,
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
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Mt. Vernon, Illinois 62864
Telephone (618) 244-1788



JB

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 1105 6326

JAN 06 2005

McLean County Asphalt Company
Attention: Forrest Kaufman Jr.
1100 West Market Street
Bloomington, Illinois 61702

RECEIVED
JAN 07 REC'D
BY: _____

Re: LPC #1130205069 – McLean County
Bloomington/McLean County Asphalt
1100 West Market Street
LUST Incident No. 20011634 & 20011865
LUST Technical File

Dear Mr. Kaufman:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Site Classification Work Plan Budget (budget) submitted for the above-referenced incident. This budget, dated September 9, 2004, was received by the Illinois EPA on September 10, 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(a)(1) and 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j) 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.

EXHIBIT A

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 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:mw20011634&20011865-7.DOC

Attachment: Attachment.A

cc: Jim Bolin, USI, Inc.
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 # 1130205069 -- McLean County
Bloomington/McLean County Asphalt
1100 West Market Street
LUST Incident No. 20011634 & 20011865
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. The failure to file an appeal of a final action in a timely manner prevents the Illinois EPA from reconsidering or revisiting the final action.

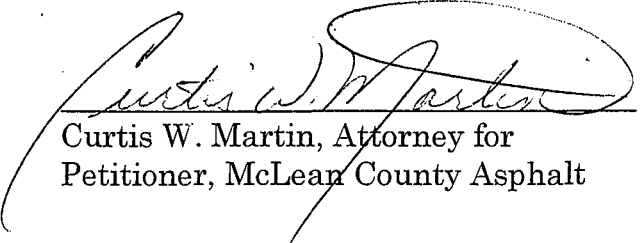
HAC:MW:mw\20011634&20011865-7Attachment A.DOC

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on February 9, 2005, 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, McLean County Asphalt