

**BEFORE THE POLLUTION CONTROL BOARD**  
**OF THE STATE OF ILLINOIS**

**RECEIVED**  
CLERK'S OFFICE

APR 22 2005

STATE OF ILLINOIS  
Pollution Control Board

MIDWEST PETROLEUM COMPANY, )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

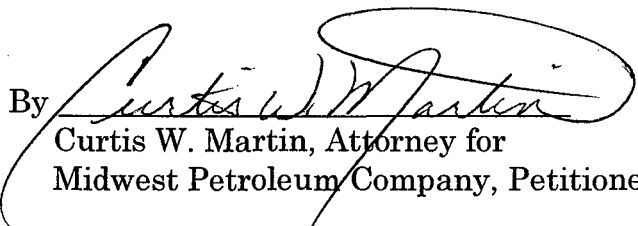
05-186  
PCB No. 06-  
(UST Appeal)

**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  
Midwest Petroleum 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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(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY  
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Midwest Petroleum Company, ("Midwest"), 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, Midwest respectfully states as follows:

1. On March 14, 2005, the Agency issued a final decision which was received by Midwest on March 15, 2005, a copy of which is attached hereto as Exhibit A.

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

On August 13, 2004, Midwest, through its consultant, United Science Industries, Inc. ("USI"), presented to the Agency a Corrective Action Plan ("Plan") and Budget ("Budget"). The Plan and Budget identified a soil plume area of 37,286

square feet to a depth of fifteen (15) feet below ground surface for a total volume of 20,713 cubic yards. The Plan further identified a clean overburden area of 16,697 square feet to a depth of nine (9) feet below ground surface for a total undisturbed volume of 5,565 cubic yards. This clean overburden volume would not be transported and disposed. Therefore, the scope of work for excavation, transportation, disposal and backfill ("ETD&B") was defined in the Plan as 15,158 undisturbed cubic yards (20,713 less 5,565).

Based upon this Agency approved scope of work, Midwest estimated the costs for ETD&B to be \$1,000,000.00. Midwest then applied to the 15,158 cubic yards of ETD&B an engineering/industry standard twenty percent (20%) swell factor to arrive at a budget quantity calculation of 18,178 cubic yards of ETD&B (15,158 x 1.2). Using the budget quantity of 18,178 cubic yards of ETD&B, Midwest determined that the costs per unit of production ("UOP") for the \$1,000,000.00 estimated job costs was \$55.00 per cubic yard for ETD&B ( $\$1,000,000/18,178$ ), which consists of \$45 per cubic yard for excavation, transportation and disposal and \$10.00 per cubic yard for backfill.

In its September 1, 2004 letter, the Agency conditionally approved the Plan and Budget with the condition being the modification of Midwest's proposed swell factor. The Agency modified the swell factor from the twenty percent (20%) proposed by Midwest to five percent (5%), thereby reducing the estimated ETD&B volume to 15,910 cubic yards (15,158 x 1.05). The Agency action also reduced the overall budget associated with the ETD&B from \$1,000,000.00 to \$875,050.00, a reduction of \$124,950.00.

In response to the Agency's September 1, 2004 letter, Midwest accepted the Agency's adjustment in the swell factor and presented an Amended Corrective Action Plan ("Amended Plan") and Budget ("Amended Budget") dated February 17, 2005. Within the Amended Budget's M-1 Justification for Budget and Amendments, Midwest explained that it sought to increase the UOP rate for ETD&B by \$7.84 per cubic yard, consisting of \$6.41 per cubic yard for excavation, transportation, and disposal, and \$1.43 per cubic yard for backfill. This increase would bring the total UOP to \$62.84 per cubic yard, consisting of \$51.41 for excavation, transportation and disposal and \$11.43 for backfill. Midwest based its increased UOP request upon the 15,910 cubic yards calculated by the Agency using its five percent (5%) swell factor over the \$1,000,000.00 proposed budget to arrive at the ETD&B cost of \$62.84. Midwest is not challenging the Agency's reduction in the swell factor, and only submitted the Amended Budget in order to accommodate the reduced volume of contamination soil as approved by the Agency.

The Agency issued a decision letter on March 14, 2005, the decision currently under appeal, in response to Midwest's Amended Plan and Budget. In this letter, the Agency indicated it had notified Midwest of its final action, an action which was then subject to appeal, presumably referring to its letter of September 1, 2004. What Midwest sought by the Amended Plan and Budget, and now by this appeal, is approval from the Agency of reasonable costs for UOP for the same ETB&B scope of work. Since the swell factor is one of the factors utilized in the calculation of determining the UOP rates for ETD&B, Midwest simply seeks to properly apply the Agency's preferred swell factor to calculate the UOP rates. The

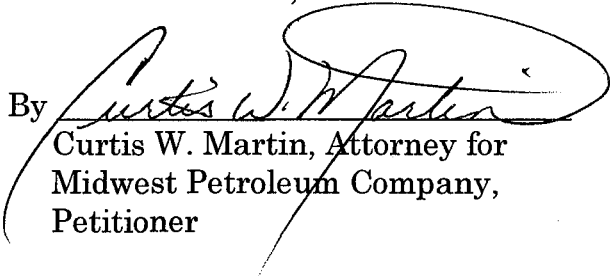
Agency's failure to consider Midwest's Amended Budget is arbitrary and capricious in that the excavation, transportation and disposal rate and the backfill rate sought following the Agency's reduction in the swell factor is still less than the unwritten \$57.00 and \$20.00 per cubic yard, respectively, which have been accepted by the Agency in the past.

WHEREFORE, Petitioner, Midwest Petroleum Company, prays for reversal of the Agency's decision of March 14, 2005, that its Amended Plan and Budget be approved as 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  
Midwest Petroleum Company,  
Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
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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

217/782-6762

MAR 14 2005

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR  
**CERTIFIED MAIL**

**COPY**

7002 3150 0000 1105 8665

Midwest Petroleum  
 Attention: Don McNutt  
 6760 Southwest Avenue  
 St. Louis, Missouri 63143

Re: LPC #1631255004 - St. Clair County  
 Shiloh/Wei Enterprises  
 529 Maple Street  
 LUST Incident No. 982804  
 LUST Technical File

RECEIVED  
 MAR 18 REC'D

Dear Mr. McNutt:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated February 17, 2005, was received by the Illinois EPA on February 22, 2005. Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

1. In accordance with Section 57.7(c)(4) of the Act, 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 operator of its final action. Further, in accordance with Section 57.7(c)(4) of the Act, any action by the Illinois EPA to disapprove or modify a plan or budget, or the rejection of any plan or budget by operation of law, shall be subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action.

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

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) 698-5463  
 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 Rcl., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62238 - (618) 346-5120  
 MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

**EXHIBIT**     A

## 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:

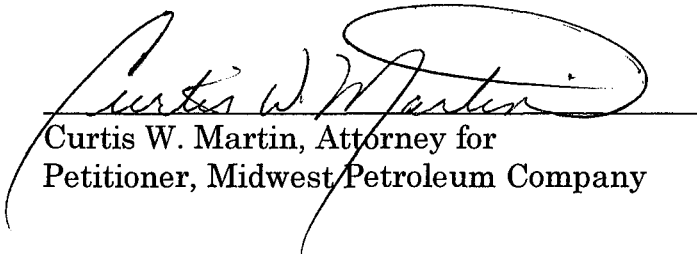
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on April 19, 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, Midwest Petroleum Company