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CLERK'S OFFICE

AUG 25 2005

STATE OF ILLINOIS  
Pollution Control Board

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

MIDWEST PETROLEUM COMPANY, )

Petitioner, )

vs. )

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY, )

Respondent. )

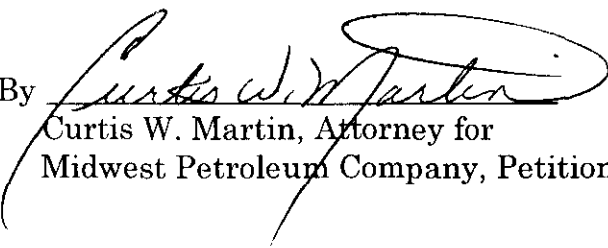
PCB No. 06- 28  
(UST Appeal)

**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

**BEFORE THE POLLUTION CONTROL BOARD**  
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MIDWEST PETROLEUM COMPANY, )

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ILLINOIS ENVIRONMENTAL  
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STATE OF ILLINOIS  
Pollution Control Board

PCB No. 06-28  
(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 July 18, 2005, the Agency issued a final decision which was received by Midwest on July 19, 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"), submitted a Corrective Action Plan and Budget ("Budget") which was approved by the Agency in a letter dated September 1, 2004. The Budget

approved by the Agency estimated that soil removal and backfilling would require twenty-five (25) days to complete. An estimate of twenty-seven (27) days at 10 hours per day for an environmental technician was included within the approved Budget for performance of “excavation and overburden screening, manifesting, sampling, surveying, and sample shipment.” However, the Budget also provided for the removal of clean overburden but inadvertently failed to include an estimate of the time required to remove the clean overburden. Based upon the approved Budget, the resulting allowance for the completion of excavation and replacement of clean overburden was only two (2) days, i.e. twenty-seven (27) total days less twenty-five (25) days for excavation, transportation and backfilling.

The time actually incurred by Midwest to perform the contaminated soil excavation, transportation, disposal, and backfilling and overburden excavation and replacement (“field activities”) totaled forty-three (43) days. As a result, Midwest presented an Amended Corrective Action Plan and Budget (“Amended Budget”) dated March 29, 2005. The Amended Budget contained an M-1 Justification which demonstrated that the production rates for the actual field activities time were reasonable and Midwest requested in the Amended Budget additional time for the environmental technician, environmental specialists, and senior project manager for the provision of the oversight and management of the field activities.

By the Agency’s letter dated July 18, 2005, it rejected the Amended Budget as including costs that are not reasonable. In particular, the Agency suggests that the amount of time to excavate, transport, dispose and backfill contaminated soils

from Midwest's site continued over a span of approximately five (5) months and the approved Plan does not include any soil remediation over such a span of time.

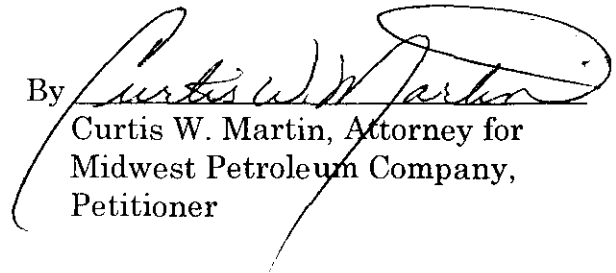
Contrary to the Agency's contention, the original approved Budget did not specify that field activities would be completed over any specific period of time. The approved Budget simply underestimated the amount of time required to complete the field activities. Thus, Midwest requested the approval of an Amended Budget that consisted of the actual field time required to complete such remedial activities. Midwest contends that the reasonable costs for the field activities is best demonstrated by the field production rates and the M-1 Justification for the Amended Budget demonstrates the field production rates achieved reasonable goals, particularly when compared to the Agency production proposals in R04-22 (UST proposed rule making).

WHEREFORE, for the foregoing reasons, Petitioner, Midwest Petroleum Company, prays for reversal of the Agency's decision of July 18, 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

A handwritten signature in black ink, appearing to read "Curtis W. Martin", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Curtis W. Martin, Attorney for  
Midwest Petroleum Company,  
Petitioner

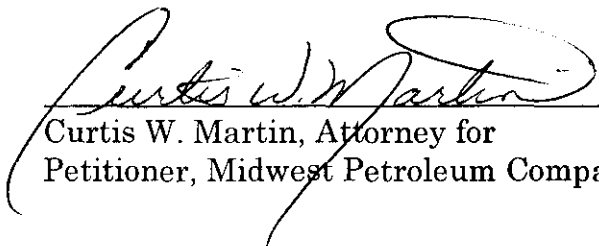
Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on August 22, 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



1804844-AP

## 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

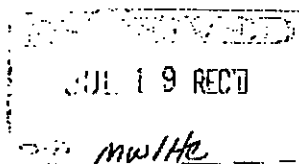
217/782-6762

CERTIFIED MAIL

JUL 18 2005

7002 3150 0000 1106 8921

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 #982804  
LUST Technical File

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 March 29, 2005, was received by the Illinois EPA on March 30, 2005. Citations in this letter 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).

In addition, the budget is rejected for the reason(s) listed below (Sections 57.7(b)(3) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

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)(3) of the Act and 35 Ill. Adm. Code 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The budget indicates that the amount of time to excavate, transport, dispose and backfill contaminated soils from this site continued over a span of approximately five (5) months. The approved plan does not include approval for soil remediation to include a span of approximately 5 months. Therefore, the request for additional personnel costs to remediate the contaminated soils from this LUST site is not reasonable.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

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 - 395 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

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Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 732.100 and 732.105, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan 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

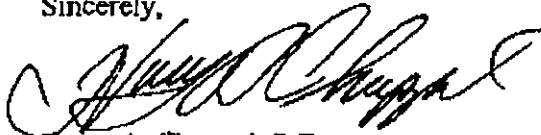
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Please note that, if within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

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\982804-12.DOC

cc: Bob Pulfrey, USI, Inc.  
Division File

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### 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