

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

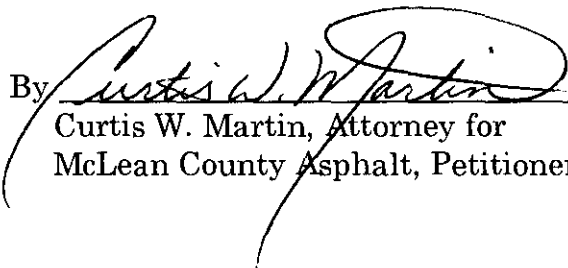
MCLEAN COUNTY ASPHALT,)	
)	
Petitioner,)	
)	
vs.)	PCB No. 05-154
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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 Motion for Summary Judgment, a copy of which is herewith served upon you.

By 
Curtis W. Martin, Attorney for
McLean County Asphalt, Petitioner

Robert E. Shaw
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Curtis W. Martin
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**BEFORE THE POLLUTION CONTROL BOARD
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MCLEAN COUNTY ASPHALT,)
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MOTION FOR SUMMARY JUDGMENT

NOW COMES the Petitioner, McLean County Asphalt ("McLean"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and for its Motion For Summary Judgment, pursuant to 35 Ill. Adm. Code 101.516, states as follows:

1. On February 14, 2004, McLean filed a Petition for Review of Final Agency Leaking Underground Storage Tank Decision.
2. The basis for the Petition is that the Agency, by a January 6, 2005 letter, refused to review a Second Amended Corrective Action Plan and Budget ("Amended Plan") dated September 9, 2004 submitted by McLean, asserting that it provided "final action" to McLean by a previous, yet unspecified, letter. The Agency asserted that such action was subject to appeal within (35) days but McLean failed to timely file an appeal thereby "preventing" the Agency from reconsidering or revisiting such final action.
3. In its January 6, 2005 letter, the Agency cited Sections 57.7(a)(1) and 57.7(c)(4) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/57.7(a)(1) and 57.7(c)(4), and Sections 732.305(c), 732.312(j), 732.503(b) and 732.503(f) of 35

Illinois Administrative Code (“Code”) in support of its position that it provided its “final action” to McLean.

4. Section 57.7(c)(1) of the Act describes a final action on the part of the Agency in the context of its review of any plan and associated budget as follows:

Agency approval of any plan and associated budget, . . . shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with completion of any such plan are less than or equal to the amounts approved in such budget. (emphasis added)

5. Section 57.8(a)(5) of the Act states, in part, as follows:

In the event that costs are or will be incurred in addition to those approved by the Agency, or after payment, the owner or operator may submit successive plans containing amended budgets.

6. Section 732.405(e) of the Code further provides as follows:

If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, object or require modifications of the amended plan in accordance with the procedures contained in Subpart E of this Part. (emphasis added)

7. In the present case, the costs associated with the completion of the Amended Plan actually incurred by McLean were more than the amounts approved in the Budget, and McLean followed Section 57.8(a)(5) of the Act to seek the Agency’s approval of an amended budget reflecting those additional costs.

8. The Agency’s failure to review and approve, reject, or require modification of the Amended Plan submitted by McLean in accordance with Section

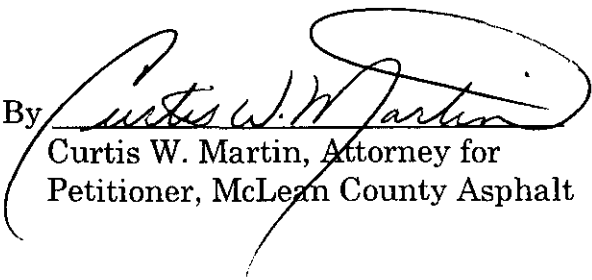
57.8(a)(5) of the Act is in violation of Section 732.405(e) of the Code as the Agency's prior action was not a "final action" as defined by Section 57.7(c)(1) of the Act.

9. There is no genuine issue of material fact from the record in this case such that McLean is entitled to a Judgment as a matter of law requiring the Agency to review and approve, reject or require modifications of the Amended Plan submitted by McLean on September 9, 2004.

WHEREFORE, Petitioner, McLean County Asphalt, prays that this Board enter a Summary Judgment in its favor and against the Agency requiring the Agency to review and approve, reject or require modifications of the Amended Plan submitted by McLean on September 9, 2004, and that this Board award McLean its attorneys fees and costs incurred in this cause pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g), and that it be granted such other and further relief as the Board deems just and equitable.

Respectfully submitted,

SHAW & MARTIN, P.C.

By  Curtis W. Martin, Attorney for
Petitioner, McLean County Asphalt

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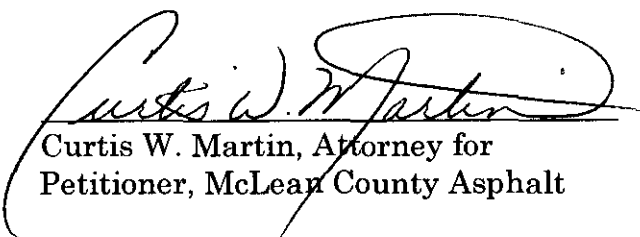
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 11, 2005, I served true and correct copies of a Motion for Summary Judgment, 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 postage affixed thereto, upon the following named persons:

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Curtis W. Martin, Attorney for
Petitioner, McLean County Asphalt