

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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MAR 07 2006

STATE OF ILLINOIS
Pollution Control Board

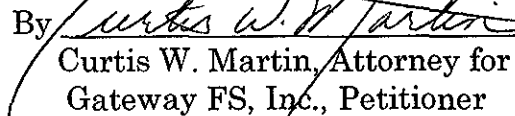
GATEWAY FS, INC.,)	
)	
Petitioner,)	
)	
vs.)	PCB No. 06-76
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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
Gateway FS, Inc., 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

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

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STATE OF ILLINOIS
Pollution Control Board

GATEWAY FS, INC.,)	
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Petitioner,)	
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vs.)	PCB No. 06-76
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Gateway FS, Inc., ("Gateway"), 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, Gateway respectfully states as follows:

1. On October 27, 2005, the Agency issued a final decision to Gateway, a copy of which is attached hereto as Exhibit A.

2. On November 4, 2005, Gateway, through its environmental consultant, PSC Environmental Services, made a written request to the Agency for an extension of time by which to file a petition for review to ninety days, a copy of which is attached hereto as Exhibit B.

3. On November 10, 2005, the Agency joined in Gateway's request that the Board extend the thirty-five day period for filing a petition to ninety days, a copy of which is attached hereto as Exhibit C.

4. On November 17, 2005, the Board entered an Order extending the time by which Pioneer could file a Petition to and including March 3, 2005, a copy of which is attached hereto as Exhibit D.

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

On June 29, 2005, Gateway, through its environmental consultant, submitted to the Agency a High Priority Corrective Action Plan ("Plan") and Budget ("Budget") with regard to remediation of its site located at Columbia, Illinois under Incident Number 20000566. By letter dated August 15, 2005, the Agency approved the Plan but rejected the Budget for including costs that were not reasonable as submitted due to what the Agency deemed as excessively high personnel costs compared to similar projects performed by other consulting firms. No further explanation for the rejection of the Budget was provided by the Agency.

By letter dated September 13, 2005, Gateway provided additional information regarding the basis for the personnel costs sought to be approved within the Budget. Among the additional information was that a portion of the personnel costs were associated with additional work in response to the Agency's letter dated July 12, 2002 regarding Gateway's Site Classification Completion Report. In that July 12, 2002 letter, the Agency indicated that additional investigation activities may be necessary to determine the full extent of soil and/or

groundwater contamination, that additional groundwater monitoring wells may be necessary to delineate the extent of groundwater contamination, and that groundwater monitoring wells should be monitored for BTEX constituents. Further, the Agency suggested in its July 12, 2002 letter that any eventual remedial method chosen should include soil excavation and off-site disposal combined with groundwater remediation either through "pump and treat" or bioremediation. The Agency also noted that any additional investigation activities subsequent to site classification could be completed without submitting a work plan or receiving prior approval from the Agency if such activities were technically necessary and consistent with generally accepted engineering practices.

In its September 13, 2005 letter, Gateway further explained that it had added MTBE as an indicator constituent on June 30, 2004 after substantial evaluation for the BTEX-based Plan had been performed which then required modification. Further, after substantial development of the BTEX and MTBE based Plan, Gateway was approached with an opportunity to sell its facility to a church which raised additional issues of substantial risks that had not heretofore been an issue for Gateway's use of the facility. Gateway also explained that near the time of the completion of its Plan the Agency had posted new plan forms which required further modification through new information or different combinations of data, thereby causing Gateway to incur additional personnel costs.

Gateway had also prepared the Plan to propose three (3) major corrective action approaches, including tier 2 remedial objectives, conventional

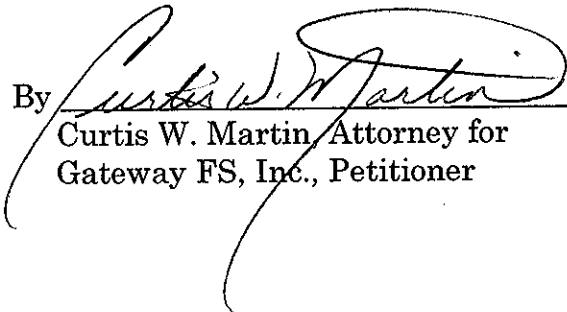
technology, and/or in-site chemical oxidation, two of which options were originally requested by the Agency. The presentation of the three (3) corrective action approaches was to allow flexibility depending upon the Agency's response regarding restrictions and/or reimbursement eligibility, issues relating to the pending sale of the facility, and the liability associated with any future use of the property by Gateway and/or its prospective purchaser. The further intent of the corrective action options contained within the Plan was to serve as an overall project cost reduction by avoiding the multiple performance of personnel functions and to avoid duplicate site classification efforts that would increase later closure costs.

Rather than an outright rejection of the Budget a second time, the Agency, by its October 27, 2005 letter, modified the Budget proposed by Gateway. The modification was in the form of a reduction in personnel costs of \$36,497.25, indicating that these costs were for activities in excess of those necessary to meet the minimum requirements of the Act and the regulations as they are not "corrective action costs" as defined therein. The Agency further deemed the personnel costs, specifically the \$18,075.75 in "Pre-MTBE BTEX-based HPCAP Activities" and the \$18,075.75 in "Post-MTBE/Pending Property Sale HPCAP Development" each were not reasonable. Based upon the foregoing reasons, the Agency's modification of the Budget was without technical justification and was therefore arbitrary and capricious. Gateway therefore requests that this Board order the Agency to approve Gateway's Budget as proposed.

WHEREFORE, Petitioner, Gateway FS, Inc., prays for reversal of the Agency's decision of October 27, 2005, that its 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
Gateway FS, Inc., 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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8648 2516

OCT 27 2005Gateway FS, Inc.
Attention: Mr. Greg Birchler
3631 Old State Route 3
Red Bud, Illinois 62778Re: LPC #1330055033 - Monroe County
Columbia / Gateway FS, Inc.
219 N. Rapp St.
LUST Incident No. 20000566, 20001052, and 20001169
LUST Technical File

Dear Mr. Birchler:

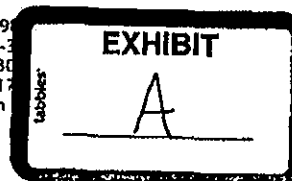
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated June 29, 2005, was received by the Illinois EPA on June 30, 2005. This budget had previously been denied per an Illinois EPA letter dated August 15, 2005, it is being re-reviewed based upon additional information provided in a letter dated September 13, 2005 and received by the Illinois EPA on September 16, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

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) 998-3300
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3300
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3397
MARION - 2309 W. Main



Harrison St., Des Plaines, IL 60016 - (847) 294-4000
St., Peoria, IL 61614 - (309) 693-5463
South First Street, Champaign, IL 61820 - (217) 278-5800
Mall Street, Collinsville, IL 62234 - (618) 346-5120
993-7200

Page 2

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.

If you have any questions or need further assistance, please contact Michael A. Heaton at 217/524-3312.

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:mh\000566f6.doc

Attachment: Attachment A
Appeal Rights

cc: Mr. Kenneth D. Olson - PSC Environmental Services (Columbia, Illinois)
Division File

Attachment A

Re: LPC #1330055033 – Monroe County
Columbia / Gateway FS, Inc.
219 N. Rapp St.
LUST Incident No. 20000566
LUST Technical File

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

SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved for High Priority Corrective Action:

\$7,497.05	Investigation Costs
\$1,935.00	Analysis Costs
\$18,493.00	Personnel Costs
\$5,870.00	Equipment Costs
\$29,162.60	Field Purchases and Other Costs
\$2,985.58	Handling Charges

SECTION 2

1. \$36,497.25 for Personnel Costs. These costs are:
 - a. for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act) and 35 Ill. Adm. Code 732 (Section 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund (35 Ill. Adm. Code 732.606(o)). In addition, these costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action." (Section 57.9(a)(7) of the Act)
 - b. not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). 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)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

Attachment A
Page 2

Specifically, two portions of the proposed Personnel budget are denied at this time:

- i. "Pre-MTBE BTEX-based HPCAP Activities" for \$18,075.75; and
- ii. "Post-MTBE/Pending Property Sale HPCAP Development", for \$18,075.75.

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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



November 4, 2005
Project 62401550

Illinois Environmental Protection Agency
Division of Legal Counsel, Attention: John Kim
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Dear Sir:

**Subject: LPC#1339055033 – Monroe County
Columbia / Gateway FS, Inc.
219 N. Rapp St.
LUST Incident No. 20000566/20001052/20001169**

On behalf of Gateway FS, Inc., PSC Environmental Services (PSC) is providing this request for obtaining an extension to appeal the decision for the subject site provided in the IEPA's letter dated October 27, 2005, and received on or around October 29, 2005.

PSC understands the IEPA will take the proper actions with the Illinois Pollution Control Board (IPCB) to obtain an extension of 125-days from October 29, 2005, in which, Gateway FS, Inc. will have the right to file an appeal.

A copy of the IEPA's decision in question is attached.

If you have questions regarding this request, please call me at (618) 281-1548.

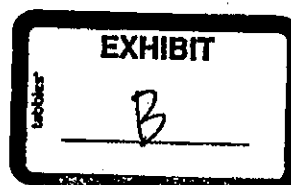
Sincerely yours,

PSC ENVIRONMENTAL SERVICES

Kenneth D. Olson
Kenneth D. Olson, E.I.T., IL RPG 196-000944
Project Manager

KDO/IEPA_Appeal

cc: Mr. Greg Birchler (Gateway FS, Inc. – 3631 Old State Route 3, Red Bud, IL 62278)
p618-282-3454 / f618-282-3428



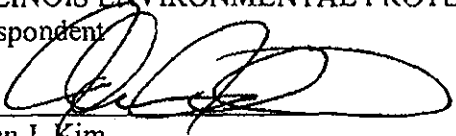
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 10, 2005, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, 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 Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Kenneth D. Olson
PSC Environmental Services
210 West Sand Bank Road
Columbia, IL 62236

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent


John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

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

GATEWAY FS, INC.,)	
)	
Petitioner,)	
v.)	PCB No. 06-
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to March 3, 2006, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 27, 2005, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On November 4, 2005, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner represented that the final decision was received on October 29, 2005. (Exhibit B)
3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

EXHIBIT C

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 10, 2005

This filing submitted on recycled paper.

ILLINOIS POLLUTION CONTROL BOARD

November 17, 2005

GATEWAY FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 06-76
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

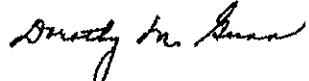
ORDER OF THE BOARD (by J.P. Novak):

On November 14, 2005, the parties timely filed a joint notice to extend the 35-day period within which Gateway FS, Inc. (Gateway FS) may appeal an October 27, 2005 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. The Agency modified the high priority corrective action plan budget for Gateway FS's leaking underground petroleum storage tank facility located at 219 North Rapp Street, Columbia, Monroe County.

The Board extends the appeal period until March 3, 2006, as the parties request. See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. If Gateway FS fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 17, 2005, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

EXHIBIT D

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

MAR 07 2006

GATEWAY FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 06- 76
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

STATE OF ILLINOIS
Pollution Control Board

NOTICE


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Kenneth D. Olson
PSC Environmental Services
210 West Sand Bank Road
Columbia, IL 62236

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

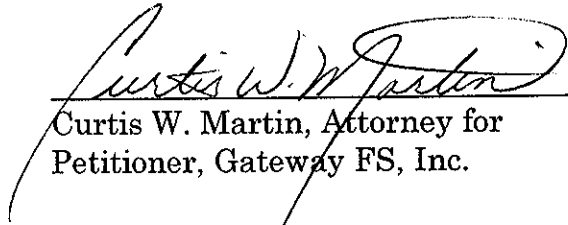

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: November 10, 2005

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 3, 2006, 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

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, Gateway FS, Inc.