

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

**RECEIVED**  
CLERK'S OFFICE

JAN 09 2007

STATE OF ILLINOIS  
Pollution Control Board

GATEWAY FS, INC., )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

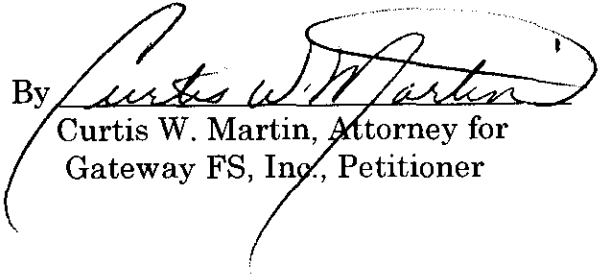
PCB No. 07-**59**  
(UST Appeal)

**NOTICE**

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

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  
117 N. 10<sup>th</sup> Street, Suite 200  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

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

**RECEIVED**  
CLERK'S OFFICE

JAN 09 2007

STATE OF ILLINOIS  
Pollution Control Board

GATEWAY FS, INC., )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

PCB No. 07-  
(UST Appeal)

59

**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 November 30, 2006, the Agency issued a final decision to Gateway, a copy of which is attached hereto as Exhibit A.

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

The Agency in its November 30, 2006 letter rejected Gateway's Amended Site Classification Work Plan Budget dated September 8, 2006 on the basis that the Budget contains costs that were modified by the Agency in a prior letter dated May 3, 2002 regarding an Amended Site Classification Work Plan and Budget dated January 8, 2002. Therefore, according to the Agency, it

previously notified Gateway of its final action which was subject to appeal within 35 days thereafter. Because Gateway did not appeal that prior notification the Agency claims it could take no further action regarding what it deems are the same costs requested in Gateway's September 8, 2006 Budget.

Gateway, however, contends in its Justification for Budget Amendments submitted to the Agency with its Amended Site Classification Plan Budget that the prior budgets provided insufficient personnel costs necessary for the site classification completion due to the Agency's request that Gateway conduct further investigation via additional soil and groundwater investigation and evaluation. The additional scope of work required the additional personnel costs.

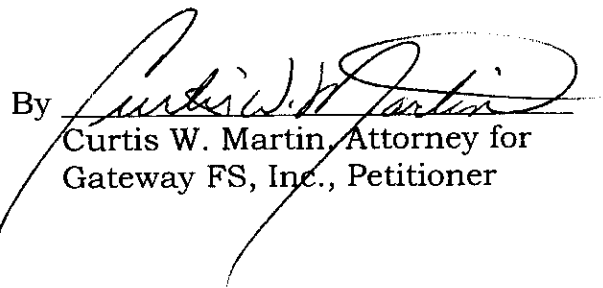
In particular, additional field and office oversight was required due to the addition of a monitoring well, waste sampling and disposal coordination efforts. In addition, extra personnel efforts were incurred associated with an extended groundwater monitoring and purging program, an in-site hydraulic conductivity test. Additional data and documentation acquisition, post 9/11, 2001, was required, and surface body water locations, pathway potential and article sources were researched. The development of a setback distance summary table was also required. Finally, additional personnel time has been required for the preparation of Amended Site Classification Work Plans and Budgets within this project. All such personnel activities and costs were conducted beyond that specified in the originally approved site classification Work Plan Budget.

Therefore, the personnel costs Gateway now requests the Agency to review are beyond the original Plan scope and should be considered and acted upon by the Agency pursuant to 415 ILCS 57.8(a)(5) and 35 Ill. Adm. Code 732.405(e). The Agency's failure and refusal to do so was arbitrary and capricious.

WHEREFORE, Petitioner, Gateway FS, Inc., 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 Amended Site Classification Work Plan and Budget dated September 8, 2006 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  
Gateway FS, Inc., Petitioner

Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
117 N. 10<sup>th</sup> Street, Suite 200  
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 8593 6942

NOV 30 2006

Gateway FS, Inc.  
Attention: Greg Birchler  
221 East Pine Street  
Red Bud, IL 62278

Re: LPC #1570450009 -- Randolph County  
Red Bud / Gateway FS, Inc.  
201 East Pine Street  
Leaking UST Incident No. 980020 and 980391  
Leaking UST Technical File

Dear Mr. Birchler:

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 8, 2006~~, was ~~received~~ by the Illinois EPA on ~~September 11, 2006~~. Citations in this letter ~~are~~ from the Environmental Protection Act (Act) ~~in effect prior to June 24, 2002~~, and 35 Illinois Administrative Code (~~35 Ill. Adm. Code~~).

The budget is ~~rejected~~ for the following reason(s) (~~Section 57.7(a)(1) and 57.7(c)(4)~~ of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(i) and 732.503(b)):

In accordance with ~~Section 57.7(c)(4)~~ of the Act and 35 Ill. Adm. Code ~~732.503(b)~~, and 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 75.7(c)(4)~~ of the Act and 35 Ill. Adm. Code 732.503(f), the Illinois EPA's action to reject or to require modification of a 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 of the Illinois EPA's final action.

The budget contains costs that were ~~modified~~ by the Illinois EPA in a letter dated ~~May 3, 2002~~, regarding the Amended Site Classification work plan and budget dated January 8, 2002, received January 25, 2002.

EXHIBIT A

Page 2

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.

If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry A. Chappel". The signature is fluid and cursive, with a large initial "H" and "C".

Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:CLH

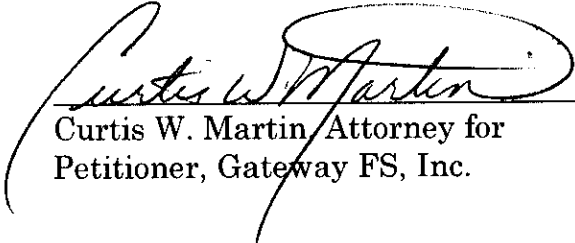
c: Philips Environmental  
BOL File

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on January 3, 2007, 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 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.