

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WATERTOWER MARINA, INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 07-138
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.8(i) of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.8(i), to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the Board's Order entered June 21, 2007 a copy of which is attached hereto as Exhibit 1, petitioner Watertower Marina, Inc. ("Watertower") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Watertower reimbursement for \$1,049.19 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Water Tower further requests the Board to order the Agency to pay Watertower's legal costs for seeking payment in this appeal.

I. THE AGENCY'S FINAL DECISION

The Decision of which review is sought is contained in Exhibit 2 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed May 11, 2007. It was received by Watertower May 14, 2007. This appeal is timely pursuant to the Board's Order entered June 21, 2007, a copy of which is attached as Exhibit 1.

III. GROUNDS FOR APPEAL

A. The Agency's contention that Watertower's analysis costs "lack supporting documentation" is erroneous, arbitrary and capricious. Watertower submitted appropriate documentation, which was ignored by the Agency.

B. The Agency's contention that it cannot determine if the \$1,049.19 for analysis costs will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" and/or are "not reasonable" is erroneous, arbitrary and capricious. The application at issue was not for a budget but for reimbursement. The activities already have been performed and the conjecture by the Agency is both illogical and erroneous.

IV. CONCLUSION.

For the foregoing reasons, petitioner Watertower Marina, Inc. respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$1,049.19 and order the Agency to pay Watertower's attorneys' fees for this appeal.

September 14, 2007

WATERTOWER MARINA, INC.

By: 
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner Watertower Marina, Inc.

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

WATERTOWER MARINA, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-138
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

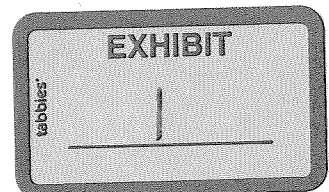
On June 11, 2007, the Board received a joint notice to extend the 35-day period within which Watertower Marina, Inc. (Watertower) may appeal a May 11, 2007 determination of the Illinois Environmental Protection Agency (Agency). According to the joint notice, Watertower received the Agency determination on May 14, 2007. The joint request was therefore timely filed. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b)(2), 105.406. The Agency's determination concerns Watertower's leaking underground storage tank site located at 3112 West Lincoln Road in McHenry County. In the determination, the Agency accepted Watertower's Corrective Action Plan but modified the budget.

The Board extends the appeal period until September 16, 2007, as the parties request, based on the May 14, 2007 decision receipt date. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If Watertower 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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board



1805002 - TKd



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

217/782-6762

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

MAY 14 2007

CERTIFIED MAIL #

MAY 11 2007

BY: MT/DO

7004 2510 0001 8623 6720

Water Tower Marina, Inc.
Attn: John Galway c/o Jennifer Vescogni
Southwest Bank Acct. #0032713725
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

308/30 - \$30,514.24
SC/NS - # 2,733.41 - (#2085.85) = \$647.56
Rem - \$1049.19
NR - #1030.60
\$31,141.00

Re: LPC #1110605146 -- McHenry County
McHenry/Watertower Marina, Inc.
3112 West Lincoln Road
Leaking UST Incident No. 990656
Leaking UST FISCAL FILE

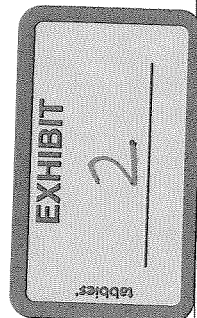
Vendor - \$6,810.73
(1) Waste Mgt - # 0031504 - 6006 - 1

Dear Mr. Galway:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 11, 2006 and was received by the Agency on December 14, 2006. The application for payment covers the period from August 1, 2006 to October 7, 2006. The amount requested is \$40,058.37.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on September 23, 1999 for \$25,080.59. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On December 14, 2006, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$37,972.52 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.



Page 2

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 applicant 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, Illinois 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
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Doug Tolan of my staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
Leaking UST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:DMT:m\072377.doc

Attachment

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #1110605146 -- McHenry County
McHenry/Watertower Marina, Inc.
3112 West Lincoln Road
Leaking UST Incident No. 990656
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$1,049.19, deduction for costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; therefore, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

RCM
#014109 - #1247

a. Analytical Costs-lack of documentation-no invoices

2. \$1,036.66, deduction for corrective action costs that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Deduction for costs associated with corrective action. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(g) and 732.606(m).

a. Analytical-unreasonable and beyond the high priority budget in regard to the itemized costs larger than the amounts in the approved budget = \$25.53:
BTEX = \$87.37/each; \$85/each approved; \$2.37/each x 9 = \$21.33
Sample shipment = \$51.40/each; \$50/each approved; \$1.40/each x 3 = \$4.20

NR-Rate
#014109 →

b. Remediation & Disposal - unreasonable & beyond the high priority budget in regard to the itemized costs larger then the amounts in the approved budget = \$654.82

Contaminated backfill = \$58.59/CY; \$57/CY approved; \$1.59/CY x
\$189.19/CY = \$300.82

NR-Rate
#014109 →

NR-Rate
014109 →
NR-Rate
014109 →

Clean backfill = \$20.56/CY; \$20/CY approved; \$0.56/CY x \$196.43/CY = \$110.00

Contaminated water = \$0.70/Gal.; \$0.68/Gal. approved; \$0.02/Gal. X 12,200 Gal. = \$244.00

c. Consultants Fees- unreasonable & beyond the high priority budget in regard to the itemized costs larger then the amounts in the approved budget = \$356.31:

NR-Rates
014109 →

Personnel – Sr. P.M. = \$102.76/hr.; \$100/hr. approved; \$2.76/hr. x 7.25 = \$20.01

Personnel – Acct. Tech III = \$46.24/hr.; \$45/hr. approved; \$1.24/hr. x 2.75 = \$3.41

Personnel – Sr. P.E = \$133.60/hr.; \$130/hr. approved; \$3.60/hr. x 0.5 = \$1.80

Personnel – Sr. Acct. Tech = \$56.52/hr.; \$55/hr. approved; \$1.52/hr. x 0.5 = \$0.76

Personnel – Sr. Tech = \$66.80/hr.; \$65/hr. approved; \$1.80/hr. x 38 = \$68.40

Personnel – Sr. Adm. Asst. = \$46.24/hr.; \$45/hr. approved; \$1.24/hr. x 4.75 = \$5.89

Personnel – Sr. P.E. = \$133.60/hr.; \$130/hr. approved; \$3.60/hr. x 0.75 = \$2.70

Personnel – Sr. P.M. = \$102.76/hr.; \$100/hr. approved; \$2.76/hr. x 86.5 = \$238.74

Materials-Vehicle = \$61.64/DA; \$60/DA approved; \$1.64/DA x 5 = \$8.20

Materials – PID = \$107.92/DA; \$105/DA approved; \$2.93/DA x 2 = \$5.84

Materials – Camera = \$10.28/DA; \$10/DA approved; \$0.28/DA x 2 = \$0.56

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

RAMADA WORLDWIDE INC.,)	
a Delaware corporation,)	
)	
Plaintiff,)	
)	
v.)	06-793-JPG-DGW
)	
LEECO II, L.L.C., an Illinois Limited)	
Liability Company, CHOL CHE)	
“RICHARD” LEE, and BOK CHE)	
“BOB” LEE, individuals,)	
)	
Defendants.)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff Ramada Worldwide Inc. and defendants, Leeco II, LLC, Chol Che “Richard” Lee, and Bok Che “Bob” Lee (collectively the “Parties”), hereby advise the Court that they have reached a Settlement Agreement of the claims in this matter.

Subject to the approval of this Court, the Parties agree to the entry of the attached Order of Dismissal. The Order contains a dismissal of Plaintiff’s Complaint with prejudice and without costs against any party, subject to the terms and conditions of the Settlement Agreement between the parties.

Respectfully submitted,

PLAINTIFF RAMADA WORLDWIDE INC.,
FORMERLY KNOWN AS RAMADA
FRANCHISE SYSTEMS, INC.

DEFENDANTS LEECO II, LLC; CHOL CHE
“RICHARD” LEE; AND BOK CHE “BOB”
LEE

By: s/ John T. Hundley
John T. Hundley
THE SHARP LAW FIRM, P.C.
1115 Harrison – P.O. Box 906
Mt. Vernon, IL 62864
Phone: (618) 242-0246
Fax: (618) 242-1170
Email: jhundley@lotsharp.com

By: s/ David K. Simkins (with consent)
David K. Simkins
WUESTLING & JAMES, LC
720 Olive St., Suite 2020
St. Louis, MO 63101
Phone: (314) 421-6500
Fax: (314) 421-5556
Email: simkins@wuestlingandjames.com

CERTIFICATE OF SIGNATURE

I hereby certify that I have David K. Simkins, counsel for defendants in the above-entitled action, has expressly agreed to both the form and substance of the foregoing *Stipulation Of Dismissal With Prejudice* and to both the form and substance of the *Agreed Order Of Dismissal With Prejudice* which is referenced in said Stipulation, was attached to said Stipulation when approved by Mr. Simkins, and has been e-mailed to the Court pursuant to local rules.

September 14, 2007

THE SHARP LAW FIRM, P.C.

By: s/ John Hundley
John T. Hundley Bar Number: 3123403
Attorney for Plaintiff
THE SHARP LAW FIRM, P.C.
1115 Harrison – P.O. Box 906
Mt. Vernon, IL 62864
Telephone: (618) 242-0246
Fax: (618) 242-1170

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2007, I electronically filed the foregoing **Stipulation of Dismissal with Prejudice** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

David Simkins
simkins@wuestlingandjames.com

September 14, 2007

THE SHARP LAW FIRM, P.C.

By: s/ John Hundley
John T. Hundley Bar Number: 3123403
Attorney for Plaintiff
THE SHARP LAW FIRM, P.C.
1115 Harrison – P.O. Box 906
Mt. Vernon, IL 62864
Telephone: (618) 242-0246
Fax: (618) 242-1170

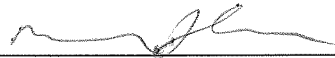
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14th & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

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

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

September 14, 2007



Mandy L. Combs

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Watertower Marina, Inc.