

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

DUNN'S UNIVERSITY BP,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 08-10
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

NOTICE OF FILING

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

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

October 30, 2007

DUNN'S UNIVERSITY BP

By: _____

Mandy L. Combs
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 Dunn's University BP

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

DUNN'S UNIVERSITY BP,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 08-10
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.7 of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.7, and to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner Dunn's University BP ("Dunn's"), submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 1 ("Decision") modifying Dunn's Corrective Action Plan Budget ("Budget") so as to delete and deny approval of \$10,401.66 of Consulting Personnel and Consultant's Material costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Dunn's further requests the Board to order the Agency to pay Taylor'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 1 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed June 22, 2007. It was received by Dunn's June 25, 2007. An order was entered on August 9, 2007, giving Dunn's until October 30, 2007 to file a petition for review. See Exhibit 2.

III. GROUND FOR APPEAL

1. The Agency's conclusion that the Consulting Personnel costs exceed the minimum requirements necessary to comply with the Act under 415 ILCS 5/57.7(c)(3) is erroneous, arbitrary and capricious.

2. The Agency's conclusion that such Consulting Personnel costs are ineligible for reimbursement under 35 Ill. Adm. Code 732.630(o) is erroneous, arbitrary and capricious.

3. The Agency's denial of the \$9,883.06 in costs for Consulting Personnel associated with activities associated with the Corrective Action remedial design and planning and Amended Corrective Action plan and budget preparation, and activities associated with Field Activities as being duplicative and excessive to meet the requirements of the Act as required under 415 ILCS 57.7(c)(3) and 35 Ill. Adm. Code 734.630(o) is erroneous, arbitrary, capricious, and contrary to law.

4. The Agency's conclusion that the Consultant's Material costs exceed the minimum requirements necessary to comply with the Act under 415 ILCS 5/57.7(c)(3) is erroneous, arbitrary and capricious.

5. The Agency's conclusion that such Consultant's Material costs are ineligible for reimbursement under 35 Ill. Adm. Code 732.630(o) is erroneous, arbitrary and capricious.

6. The Agency's denial of the \$518.60 in costs for Consultant's Material associated with utilizing a GSP system, vehicle use, and OTR permits as not be reasonable under 415 ILCS 57.7(c)(3) is erroneous, arbitrary, capricious, and contrary to law.

7. The Agency's conclusion that the \$518.60 costs for Consultant's Material associated with utilizing a GSP system, vehicle use, and OTR permits are included in the

soil excavation, transportation and disposal rate and the backfill rate and therefore exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734 is erroneous, arbitrary, capricious, and contrary to law.

IV. CONCLUSION.

For the foregoing reasons, petitioner Dunn's University BP, respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$10,401.66 and order the Agency to pay its attorneys' fees for this appeal.

October 30, 2007

DUNN'S UNIVERSITY BP

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 Dunn's University BP.

1805073-BP



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

RECEIVED

7004 2510 0001 8620 1599

JUN 22 2007

JUN 25 2007

BY: CA/HC

Dunn's University BP
Attention: Jim Dunn
2218 Seneca Drive
Charleston, IL 61920

Re: LPC #0290105024 -- Coles County
Charleston / Dunn's University BP
419 West Lincoln Avenue
Leaking UST Incident No. 20000804 and 20060080
Leaking UST Technical File

Dear Mr. Dunn:

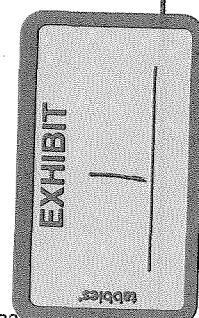
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated March 5, 2007, was received by the Illinois EPA on March 8, 2007. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

The Illinois EPA wishes to clarify the proposed Highway Authority Agreement for the exclusion of the soil contamination migrating into the roadways must extend to where soil contamination does not exceed the most stringent remediation objectives. The proposed Highway Authority Agreement map does not reflect this.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

In addition, the budget is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A have been approved. Please note



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 - 595 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

Page 2

that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

NOTE: The plan proposes activities that are technically acceptable. However, for the purpose of payment from the Underground Storage Tank Fund, some of the activities are in excess of those necessary to meet the minimum requirements of the Act and regulations. Owners and operators are advised that they may not be entitled to full payment for this reason. The Illinois EPA will review your complete request for partial or final payment from the Fund after it is submitted to the Illinois EPA. In addition, please note that 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 paid.

The activities in excess of those necessary to meet the minimum requirements of the Act and regulations are referenced in Attachment A. While it is technically acceptable that these activities be performed, payment from the Fund is not approved.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, 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.

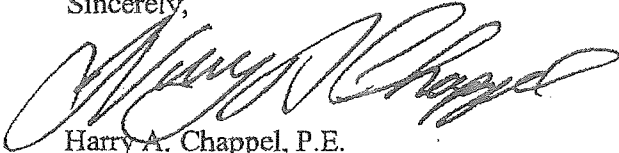
Please note that, if within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6)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

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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, written over the typed name.

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

HAC: CLH

Attachment: A

c: United Science Industries, Inc.
BOL File

Attachment A

Re: LPC # 0290105024 -- Coles County
Charleston / Dunn's University BP
419 West Lincoln Avenue
Leaking UST Incident No. 20000804 and 20060080
Leaking UST Technical File

SECTION 1

The budget was previously approved for:

\$1,367.00	Drilling and Monitoring Well Costs
\$12,635.31	Analytical Costs
\$554,375.90	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$67,457.14	Paving, Demolition, and Well Abandonment Costs
\$62,201.11	Consulting Personnel Costs
\$345.40	Consulting Materials Costs

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

\$0.00 -	Drilling and Monitoring Well Costs
\$3,200.88 -	Analytical Costs
\$132,681.50 -	Remediation and Disposal Costs
\$0.00 -	UST Removal and Abandonment Costs
\$9,748.40 -	Paving, Demolition, and Well Abandonment Costs
\$9,471.00 -	Consulting Personnel Costs
1,173.40 -	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.8(f) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

Therefore, the total cumulative budget is approved for:

\$1,367.00	Drilling and Monitoring Well Costs
\$15,836.19	Analytical Costs
\$687,057.40	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$77,205.54	Paving, Demolition, and Well Abandonment Costs
\$71,672.11	Consulting Personnel Costs
\$1,518.80	Consultant's Materials Costs

SECTION 2

1. \$10,000.00 for Building Demolition costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Pursuant to 35 IAC, Section 734.840(c), the total costs for dismantling and reassembly of above grade structures must not exceed the time and material amounts set forth in Section 734.850 of this Part. The total cost for the destruction and reassembly of above grade structures must not exceed \$10,000.00 per site. The Agency approved \$10,000.00 in costs for destruction of buildings associated with this site in a letter dated July 17, 2006.

2. \$551.25 for costs for the replacement of concrete, asphalt, or paving, except as otherwise provided in 35 Ill. Adm. Code 734.625(a)(16). Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(oo). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

Asphalt replacement under the building exceeds the minimum requirements to comply with Title XVI of the Act and is not a corrective action cost. The Agency has deducted 225 square feet of asphalt replacement costs.

3. \$9,883.06 for costs for Consulting Personnel costs, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and 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 pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The Illinois EPA approves the following costs for this section:

32 hours for Sr. Project Manager for all tasks involving the preparation of the Amended Corrective Action plan and associated budget.

2 hours for Sr. Professional Engineer for reviewing the Amended Corrective Action plan and associated budget.

66 hours for Sr. Technician for conducting Field Activities.

10 hours for Sr. Project Manager for reviewing the results of the Field Activities

6 hours for Sr. Administrative Assistant for data entry for all activities.

The additional tasks and titles listed for all activities associated with the Corrective Action remedial design and planning and Amended Corrective Action plan and budget

preparation appear to be duplicative in nature and do not generally require the excessive number of personnel or excessive hours proposed in the budget. Therefore, the Illinois EPA has determined that the above-referenced approved hours and personnel title are adequate to complete the task.

The Illinois approves 1 consulting personnel in the field for 6 days (66 hours). Any additional personnel in the field during corrective action activities exceeds the minimum requirements to comply with the Act. The additional tasks and titles listed for all activities associated with the Field Activities appear to be duplicative in nature and do not generally require the excessive number of personnel or excessive hours proposed in the budget. Therefore, the Illinois EPA has determined that the above-referenced approved hours and personnel titles are adequate to complete the task.

All costs associated with reimbursement activities have been deducted from the budget because reimbursement costs associated with 3 billing packages were approved in the budget approval letter dated July 16, 2006. The tasks approved should not result in the completion of additional reimbursement packages beyond what was already approved.

4. \$518.60 for costs for Consultant's Material costs, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and 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 pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The following costs are not eligible for reimbursement:

Utilizing a GSP system for soil investigation activities exceeds the minimum requirements to comply with the regulations.

1 day of vehicle use. The Agency has approved 6 days of vehicle use in conjunction with the 6 proposed days for field activities.

Additionally, the costs associated with OTR permits are not approved as part of this budget. These charges are included in the soil excavation, transportation and disposal rate and the backfill rate, for which a maximum rate of \$58.59 per cubic yard and \$20.56 per cubic yard respectively applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

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

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2007

DUNN'S UNIVERSITY BP,)	
)	
Petitioner,)	
)	
v.)	PCB 08-10
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On July 27, 2007, the parties timely filed a joint notice to extend the 35-day period within which Dunn's University BP (petitioner) may appeal a June 22, 2007 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. The Agency modified the corrective action plan for remediation of a leaking underground storage tank located at 419 West Lincoln, Charleston, Coles County.

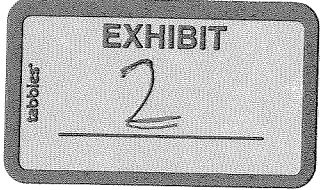
The Board extends the appeal period until October 30, 2007, as the parties request. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If petitioner fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

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 August 9, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board



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

October 30, 2007


Mandy L. Combs

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