

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

MOTO, INC.,)
)
) *Petitioner,*)
)
 v.) PCB No. 08-43
) (LUST Appeal)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
) *Respondent.*)

NOTICE OF FILING

To:

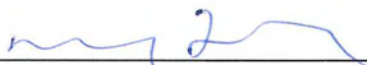
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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.

April 23, 2008

MOTO, INC.

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 Moto, Inc.

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

MOTO, INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 08-43
)	(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 Moto, Inc. (“Moto”), submits this Petition for Review of the Illinois Environmental Protection Agency (“Agency”) decision attached hereto as Exhibit 1 (“Decision”) modifying Moto’s High Priority Corrective Action Plan (“Plan”) and High Priority Site Investigation Corrective Action Plan Budget (“Budget”) so as to delete and deny approval of \$39,554.83 of Consulting Personnel Time and Consultant’s Material costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Moto further requests the Board to order the Agency to pay Moto’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 December 18, 2007. It was received by Moto December 21, 2007. An order was entered on January 10, 2008, giving Moto until April 23,

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2008 to file a petition for review. See Exhibit 2.

III. GROUND FOR APPEAL

1. The Agency's conclusion that the Consulting Personnel Time costs of \$38,804.99 are not reasonable as submitted and are ineligible for payment from the Fund pursuant to the Act under 415 ILCS 5/57.7(c)(4)(C) and 35 Ill. Adm. Code 732.606(hh) is erroneous, arbitrary and capricious.

2. The Agency's denial of the \$38,804.99 in costs for Consulting Personnel Time associated with the preparation of the plans and budgets that were received by the Agency on September 2, 2004, December 20, 2004 and August 28, 2006 as being duplicative is erroneous, arbitrary, capricious, and contrary to law.

3. The Agency's conclusion that the Consulting Personnel Time costs of \$24,062.66 to \$33,515.16 are not reasonable as submitted and are ineligible for payment from the Fund pursuant to the Act under 415 ILCS 5/57.7(c)(4)(C) and 35 Ill. Adm. Code 732.606(hh) is erroneous, arbitrary and capricious.

4. The Agency's denial of the \$24,062.66 to \$33,515.16 in costs for Consulting Personnel Time associated with the preparation of the plans and budgets that were received by the Agency on September 2, 2004 and December 20, 2004 as not being reasonable since the plans and budgets were unacceptable and unapprovable is erroneous, arbitrary, capricious, and contrary to law.

5. The Agency's denial of the \$24,062.66 to \$33,515.16 in costs for Consulting Personnel Time associated with the preparation of the plans and budgets that were received by the Agency on September 2, 2004, December 20, 2004 and August 28, 2006

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that proposed to address the contamination with sodium persulfate and PermeOx injections as not being reasonable to reimburse because the corrective action (remedial technology) proposed therein was never implemented is erroneous, arbitrary, capricious, and contrary to law.

6. The Agency's denial of the \$688.20 in costs for Consulting Personnel Time associated with monitoring well abandonment because the costs are included in the maximum rate of \$10.59 per foot as ineligible because it exceeds the maximum payment set forth in Subpart H, Appendix D and/or Appendix E of 35 Ill. Adm. Code 732 and ineligible for reimbursement under 415 IICS 57.7(c)(4)(C) and not reasonable pursuant to 35 Ill. Adm. Code 734.606(ccc) is erroneous, arbitrary, capricious, and contrary to law.

7. The Agency's denial of the \$61.64 costs for Consultant's Material associated with monitoring well abandonment because the costs are included in the maximum rate of \$10.59 per foot as ineligible because it exceeds the maximum payment set forth in Subpart H, Appendix D and/or Appendix E of 35 Ill. Adm. Code 732, and ineligible for reimbursement under 415 IICS 57.7(c)(4)(C) and not reasonable pursuant to 35 Ill. Adm. Code 734.606(ccc) is erroneous, arbitrary, capricious, and contrary to law.

IV. CONCLUSION.

For the foregoing reasons, petitioner Moto, Inc., respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$39,554.83 and order the Agency to pay its attorneys' fees for this appeal.

Electronic Filing - Received, Clerk's Office, April 23, 2008

April 23, 2008

MOTO, 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 Moto, Inc.

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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

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DEC 18 2007

FKG Oil Company (Moto, Inc.) -TB/ml
Joseph Hooten
721 West Main Street (P. O. Box 122)
Belleville, IL 62220

RECEIVED DEC 21 2007

Re: LPC #0490255075 - Effingham County
Effingham/FKG Oil Company (Effingham Motomart)
I-70 and Highway 45 (15451 North U.S. Highway 45)
Leaking UST Incident No. 983001
Leaking UST Technical File

Dear Mr. Hooten:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan submitted for the above-referenced incident. The Illinois EPA received the plan, dated August 2007, on August 21, 2007. 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).

Pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

1. The plan states that the total soil porosity is the same for the SSL and RBCA models. Please note that Equation S24 shall be used to calculate the total soil porosity for the SSL model and Equations R21, R22 and R23 shall be used to calculate the total soil porosity for the RBCA model.
2. The plan does not include a sufficiently detailed discussion of how input variable S_d was determined. The owner or operator shall provide a sufficiently detailed discussion or use the default (200 centimeters) in Equation R26.
3. The owner or operator used an RfC of 0.1 in the Tier 2 calculation for total xylenes for the construction worker inhalation exposure route. Please note that the RfC for total xylenes for the construction worker inhalation exposure route is 0.3; therefore, the Tier 2 remediation objective for total xylenes for the construction worker inhalation exposure route is approximately 105 mg/kg.

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 -
 MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200



Page 2

In addition, the Illinois EPA has the following comments regarding the plan:

1. The plan does not include a sufficiently detailed discussion of how input variables d and d_s were determined. A sufficiently detailed discussion is not necessary at this time, because the default dilution factor (20) was used in the Tier 2 calculations for the soil component of the groundwater ingestion exposure route.
2. The plan states that the pH of the sample taken from soil boring ST-1A was 7.74; therefore, the soil does not exhibit a pH less than or equal to 2.0 or greater than or equal to 12.5. Please note that soil boring ST-1A was drilled in an unimpacted area of the site; therefore, the pH sample is not sufficient to demonstrate compliance with 35 Ill. Adm. Code 742.305(d). The owner or operator does not need to collect a new pH sample unless 35 Ill. Adm. Code 742, Subpart C will be used to exclude the exposure routes.
3. The Tier 2 remediation objectives for total xylenes for the industrial-commercial inhalation and soil component of the groundwater ingestion exposure routes exceed the soil saturation limit. The Tier 2 soil remediation objective for ethylbenzene for the residential inhalation exposure route exceeds the soil saturation limit. Pursuant to 35 Illinois Administrative Code (35 Ill. Adm. Code) 742.220(a) and (b), the Tier 2 remediation objective for the inhalation and soil component of the groundwater ingestion exposure routes for any organic contaminant that has a melting point below 30 degrees Celsius shall not exceed the soil saturation limit.

Pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 732.405(c), the High Priority Corrective Action Plan Budget is modified. 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 payment from the Fund 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.

If the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget is not required (Section 57.7(c) of the Act). If payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter (Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e)). Costs associated with a plan or budget that has not been approved prior to the issuance of an NFR Letter will not be paid.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

Page 3

If you have any questions or need assistance, please contact Trent Benanti at (217) 524-4649.

Sincerely,



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

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Attachments: Attachment A
Appeal Rights

c: United Science Industries, Inc.
Division File

Attachment A

Re: LPC #0490255075 – Effingham County
Effingham/FKG Oil Company (Effingham Motomart)
I-70 and Highway 45 (15451 North U.S. Highway 45)
Leaking UST Incident No. 983001
Leaking UST Technical File

SECTION 1

The High Priority Site Investigation Corrective Action Plan Budget was previously approved for:

\$ 5,965.39 ✓	Drilling and Monitoring Well Costs
\$ 3,606.35 ✓	Analytical Costs
\$ 0.00	Remediation and Disposal Costs
\$ 0.00	UST Removal and Abandonment Costs
\$ 0.00	Paving, Demolition, and Well Abandonment Costs
\$21,697.50 ✓	Total Consulting Fees

Based on the Illinois EPA's modifications listed in Section 2 of this Attachment A, the following amounts are approved:

\$ 1,270.48 ✓	Drilling and Monitoring Well Costs
\$ 1,227.10 ✓	Analytical Costs
\$ 0.00 ✓	Remediation and Disposal Costs
\$ 0.00 ✓	UST Removal and Abandonment Costs
\$ 1,217.85 ✓	Paving, Demolition, and Well Abandonment Costs
\$16,982.40 ✓	Total Consulting Fees

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) 732.607.

Therefore, the total cumulative budget is approved for:

\$ 7,235.87 ✓	Drilling and Monitoring Well Costs
\$ 4,833.45 ✓	Analytical Costs
\$ 0.00 ✓	Remediation and Disposal Costs
\$ 0.00 ✓	UST Removal and Abandonment Costs
\$ 1,217.85 ✓	Paving, Demolition, and Well Abandonment Costs
\$38,679.90 ✓	Consulting Personnel Costs

SECTION 2

1. \$38,804.99 for consulting personnel time 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).

The Illinois EPA received a High Priority Site Investigation Corrective Action Plan and High Priority Site Investigation Corrective Action Plan Budget on August 28, 2006. Said plan and budget outlined all corrective action activities completed to date, including the preparation of said plan and budget.

The budget at-hand includes \$38,804.99 in actual consulting personnel time costs. The actual consulting personnel time costs are related to the preparation of High Priority Corrective Action Plans and High Priority Corrective Action Budgets that were received by the Illinois EPA on September 2, 2004, December 20, 2004 and August 28, 2006.

It would not be reasonable for the Illinois EPA to reimburse the owner or operator for consulting personnel time costs that are duplicative.

2. \$24,062.66 to \$33,515.16 for consulting personnel time 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).

The budget at-hand includes \$24,062.66 to \$33,515.16 in actual consulting personnel time costs that are related to the preparation of High Priority Corrective Action Plans and High Priority Corrective Action Budgets that were received by the Illinois EPA on September 2, 2004 and December 20, 2004. Both plans and budgets were denied.

It would not be reasonable for the Illinois EPA to reimburse the owner or operator for the preparation of plans and budgets that are unacceptable and unapprovable.

3. \$24,062.66 to \$33,515.16 for consulting personnel time 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).

The budget at-hand includes \$24,062.66 to \$33,515.16 in actual consulting personnel time costs that are related to the preparation of High Priority Corrective Action Plans and High Priority Corrective Action budgets that were received by the Illinois EPA on September 2, 2004 and December 20, 2004. Both plans and budgets proposed to address the contamination with sodium persulfate and PermeOx injections. Both plans and budgets were denied, in part, because the owner or operator did not provide a discussion of the inputs for the sodium persulfate and PermeOx calculations.

The High Priority Corrective Action Plan received by the Illinois EPA on August 28, 2006 proposed to address the contamination with sodium persulfate and PermeOx if favorable results could be obtained from the sodium persulfate pilot study. The plan and budget were approved with modifications.

The plan and budget at-hand propose to address the contamination by re-sampling the soil and groundwater, because the time frame for obtaining favorable results from the sodium persulfate pilot study has gone beyond the original expectations.

It would not be reasonable for the Illinois EPA to reimburse the owner or operator for consulting personnel time costs that are associated with a form of corrective action (remedial technology) that was never implemented.

4. The consulting personnel time costs associated with monitoring well abandonment (senior technician - \$688.20) are not approved as part of this budget. These costs are included in the monitoring well abandonment rate, for which a maximum rate of \$10.59 per foot applies. These costs exceed the maximum payment amounts set forth in Subpart H, Appendix D and/or Appendix E of 35 Ill. Adm. Code 732. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.606(ccc). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable.

5. The consultant's materials costs associated with monitoring well abandonment (environmental utility vehicle for tech for monitoring well abandonment documentation - \$61.64) are not approved as part of this budget. These costs are included in the monitoring well abandonment rate, for which a maximum rate of \$10.59 per foot applies. These costs exceed the maximum payment amounts set forth in Subpart H, Appendix D and/or Appendix E of 35 Ill. Adm. Code 732. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.606(ccc). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable.

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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) 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
January 10, 2008

MOTO, INC.)	
)	
Petitioner,)	
)	
v.)	PCB 08-43
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On January 7, 2008, the parties timely filed a joint notice to extend the 35-day period within which Moto, Inc. (petitioner) may appeal a December 18, 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's determination concerns a leaking underground petroleum storage tank site located at I-70 and Highway 45 (15451 North U.S. Highway 45) in Effingham County. In the determination, the Agency modified petitioner's corrective action plan and budget.

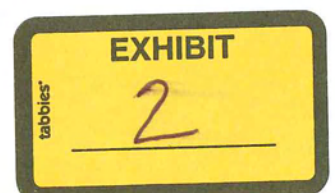
The Board extends the appeal period until April 23, 2008, as the parties request. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If petitioner fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

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 January 10, 2008, 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

April 23, 2008



Mandy L. Combs

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