

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

NORTH AURORA GAS STATION)	
(F/N/A INTERMART, INC.))	
)	
Petitioner,)	PCB 09 - ____
)	(UST Appeal)
vs.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

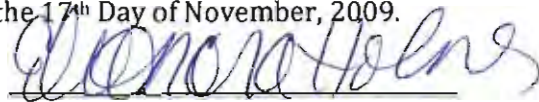
TO: Mr. John T. Therriault, Assistant Clerk Illinois Pollution Control Board State of Illinois Center 100 W. Randolph, Suite 11-500 Chicago, IL 60601	Mr. Hernando A. Albarracin, Mgr. Illinois Environmental Protection Agency LUST, Div. of Remediation Management Bureau of Land 1021 N. Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794
Mr. Javed Arshed Intermart, Inc. (former operator) 187 Timber Oaks North Aurora, IL 60542	

PLEASE TAKE NOTICE that on November 17, 2009, STROHSCHN LAW GROUP, LLC, has caused to be filed a Petition for Review of IEPA LUST Decision with the Illinois Pollution Control Board, a copy of which is attached and hereby served upon you.

STROHSCHN LAW GROUP, LLC


CERTIFICATE OF SERVICE

I, Eleonora "Lee" R. Holmes, an attorney, certify that I served this Notice of Filing via U.S. Mail to each person to whom it is directed above, on the 17th Day of November, 2009.


Eleonora "Lee" R. Holmes

Strohschein Law Group, LLC
2455 Dean Street, Suite G
St. Charles, Illinois 60175
630-377-3241

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

NORTH AURORA GAS STATION)
(F/N/A INTERMART, INC.))
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PETITION FOR REVIEW OF IEPA LUST DECISION

Petitioner, NORTH AURORA GAS STATION, by and through its attorneys, STROHSCHWEIN LAW GROUP, LLC, hereby appeals from respondent the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY's ("IEPA") decision determining that a \$100,000 deductible applies. This appeal is filed pursuant to Sections 40 and 58.8(i) of the Environmental Protection Act (the "Act"), 415 ILCS 5/40 and 5/58.8(i), and Subpart D of Part 105 of the Board's procedural rules (35 Ill. Adm. Code 105, Subpart D).

1. The North Aurora gas station (formerly known as Intermart, Inc.) located at 24 South Lincolnway, North Aurora, Illinois, is owned by the Estate of Rashidah Malik and the Estate of Muhammad Bashir Malik (hereinafter collectively referred to as the "Estates"), pursuant to Court Orders approving a Settlement Agreement entered into, in Kane County Case Numbers 00 PK 192 and 00 PK 218, on July 29, 2009 (copies of the Orders are attached hereto as Exhibit "A"). Further, a form was submitted to the Office of the State Fire Marshall ("OSFM") on October 20, 2009 and to the IEPA on November 13, 2009 notifying both agencies of the change in ownership.

2. With respect to the contamination on the site, on August 12, 2009, the Estates entered into a Settlement Agreement with the State of Illinois as to a previous Judgment entered in December 2004, with respect to the cleanup of the North Aurora gas station, and paid \$35,000 in settlement thereof (a copy of the Order entered thereto is attached as Exhibit "B"). And in respect of that Order, the parties have 2 years from August 12, 2009 to complete the cleanup of the site and to obtain and record a "No Further Remediation" ("NFR") letter. The determination of the \$100,000 deductible by the IEPA is delaying the ability of the Estates to clean up the North Aurora gas station, which clean up is in best interests of the parties and the People of the State of Illinois.

3. Applications for payment from the Leaking Underground Storage Tank Fund for the North Aurora gas station site cleanup, identified as Incident No. 97-0184, were received by the IEPA on January 17, 2008 and letters were issued by the IEPA on October 8, 2008 regarding the final decision on payment based on a deductible of \$15,000 as determined by the OSFM (copy of letters attached as Exhibit "C").

4. On October 13, 2009, the IEPA issued a decision determining that a deductible of \$100,000 applies to this site (a copy of the October 13, 2009 letter from the IEPA is attached as Exhibit "D").

5. This appeal is timely, being filed within 35 days of the service of the IEPA's decision.

6. The IEPA determined that the deductible of \$100,000 applied based on Rules issued by the Joint Committee on Administrative Rules, and identified as 35

Ill. Adm. Code Part 732.603(b)(4). In making its determination, the IEPA refers to an initial letter authored by the OSFM and dated January 24, 2000 identifying the \$100,000 deductible. In that same letter, the OSFM states that it, the OSFM, reserves the right to change the deductible. In a subsequent letter authored by the OSFM and dated July 25, 2003, the OSFM changed that deductible to \$15,000. The lower deductible was for the same Incident Number (97-0184) at the same Facility Number (2-027109) and constituted a final decision by the OSFM as to the eligibility and deductibility (a copy of both letters are attached hereto as Exhibit "E"). The OSFM was the appropriate agency to make the decision.

7. Pursuant to Section 57.9 (c) of the Act, which is an Illinois statute enacted by the legislature of the State of Illinois and signed into law by the Governor, the eligibility and deductibility determinations are to be made by the OSFM (415 ILCS 5/57.9 (c)). There is no provision in the Act that allows the IEPA to undermine the Illinois Legislature's grant of authority to the OSFM. In fact, the IEPA's reliance in its determination of the \$100,000 deductible is a rule issued by the Joint Committee on Administrative Rules (35 Ill. Adm. Code 732, Subpart 603). Section 57.9 (c) of the Act is clear on its face. It is well settled that when there is a conflict between an administrative rule and a law enacted by the legislature, the law governs.

8. Further, the language in the letter dated July 2003 states that it is a final decision by the OSFM as to the eligibility and determination of the \$15,000 deductible. This deductible has been relied upon by the Estates and the previous operators with regard to the cleanup of the North Aurora gas station.

9. It should further be noted that this is not a case of two separate and conflicting determinations of the deductible, but rather a decision by an appropriate agency which was amended and then relied upon by the present owners.

10. This decision by the IEPA should also be reversed because the agency should be equitably estopped from changing the deductible six (6) years after a final decision was made by the OSFM, which the IEPA published and which the present owners relied upon (copy of printout from the IEPA website identifying the deductible amount as \$15,000 is attached as Exhibit "F"). In this case, the present owners were involved in litigation with the prior operator to determine ownership of the subject property. The settlement of that litigation requires that the present owners complete the remediation and the present owners relied upon the published information of the IEPA to settle the ownership issue and assume responsibility for remediation. In addition, the present owners have moved forward with new remediation plans. There has been clear detrimental reliance by the present owners on the \$15,000 deductible as determined by the OSFM. There is a lack of cash available to both estates to pay an additional \$85,000 over and above the initial deductible of \$15,000 and the \$35,000 paid in settlement to the State of Illinois, all of which has been paid to allow the remediation process to move forward.

11. Because the authority in determining the amount of the deductible lies with the OSFM, and because the OSFM has made a final decision that the deductible is \$15,000, the IEPA erred in attempting to determine that the applicable deductible is \$100,000.

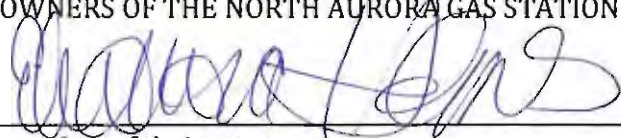
12. Thus, the Estates, as owners of the North Aurora gas station, seek an Order requiring the IEPA to accept the \$15,000 deductible as determined by the OSFM.

WHEREFORE, Petitioner, NORTH AURORA GAS STATION, by its attorneys, Strohschein Law Group, LLC, asks the Board to enter an Order finding that the deductible for the site is \$15,000 as determined by the Office of the State Fire Marshall pursuant to its authority under the Act, estopping the IEPA from making its own determination of a deductible, and for such other relief as the Board deems just and equitable.

Respectfully Submitted,

ESTATE OF RASHIDAH MALIK, DECEASED
ESTATE OF MUHAMMED MALIK, DECEASED
AS OWNERS OF THE NORTH AURORA GAS STATION

BY: _____



One of their attorneys

Dated: November 17, 2009

Linda M. Strohschein
Eleonora "Lee" Holmes
Strohschein Law Group, LLC
Supervised Administrator of the Estate
Of Rashidah Malik, Deceased
2455 Dean Street, Suite G
St. Charles, Illinois 60175
630-377-3241

Mark E. Heimsoth, Esquire
Attorney at Law
Supervised Administrator of the Estate
Of Muhammad Bashir Malik, Deceased
563 Galena Boulevard
Aurora, Illinois 60506
630-892-4349

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No.

08 PK 218

Plaintiff(s) <i>In the Estate of Roshidah Malik</i>	Defendant(s)	<div style="border: 1px solid black; padding: 5px;"> <p style="text-align: center;">Clerk of the Circuit Court Kane County, IL</p> <p style="text-align: center; font-size: 1.2em;">JUL 30 2009</p> <p>FILED 41</p> <p style="text-align: right;">File Stamp</p> </div>	
Plaintiff(s) Atty. <i>Acumes</i>	Defendant(s) <i>HEIMSOHN, McLean Campbell (Mr) SYLVESTER</i>		
Judge <i>Countryman</i>	Court Reporter <i>[Signature]</i>		Deputy Clerk
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present <input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other			

ORDER

This matter coming before this Court upon the ~~ORAL~~ ^{ORAL} MOTION of the Administrator ^{with authority} to APPROVE the Settlement Agreement attached to and entered into in case No. 08PK192 this date, all parties having notice, and the Court being advised in the premises;

The Court having reviewed said agreement ~~attached~~ ^{attached} hereto with the parties, it is hereby ORDERED:

- ① The Administrator is authorized to execute said Settlement Agreement and any and all documents required thereof.
- ② That the Administrator may accept and hold title to the real estate commonly known as 24 S. Lincolnway; that said title may be conveyed to the Administrator by any individual, individuals, legal entity or entities who have or claim any interest in the title.
- ③ That the Administrator of the Estate may accept and hold title to any personal property conveyed to him by any individual or legal entity.

Date: 7/29/09

Yes - Disposal No - Disposal

Judge

EXHIBIT

A

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No.

08 PK 218

Plaintiff(s) <i>In Re Estate of Rashid Malik</i>		Defendant(s)	
Plaintiff(s) Atty. <i>HOLMES</i>		Defendant(s) <i>Heimsoth, McLean CAMPBELL (NP) SILVERSON</i>	
Judge <i>Cunbyman</i>	Court Reporter	Deputy Clerk	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			
			File Stamp

ORDER

- ④ That the claim filed by Javed and shahnaz Arshed individually and as agents of Intermark is hereby withdrawn;
- ⑤ That this Court retains jurisdiction of all parties for the enforcement of the Settlement Agreement referred to herein;
- ⑥ The Administrator is authorized to execute any and all documents required ~~to~~ necessary to complete the Remediation of the gas station, commonly known as 24 S. Lincolnway, ^{North} Aurora, Illinois;
- ⑦ The Administrator is authorized to enter into a Settlement Agreement with the State of Illinois in settlement of the judgment order entered previously in 00 CH 313, and execute any and all documents required thereof.

Date: 7/29/09

Yes - Disposal No - Disposal

[Signature]
Judge

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No. 2000 P K 192

In Re: The Estate of Muhammad Bashir Malik Plaintiff(s)		Defendant(s)	
Heimsoth Plaintiff(s) Atty.		Holmes, McLean, Campbell (NA) Defendant(s)	
Judge Countryman	Court Reporter	Deputy Clerk	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			

Deborah S. Miller
Clerk of the Circuit Court
Kane County, IL

JUL 30 2009

FILED 110

ENTERED Etc. Stamp

ORDER

This matter comes before this Court upon the joint motion of the parties (Strohschein Law Group, LLC E/ponora "Lee" Holmes as Administrator of the Estate of Rashidah B. Malik, Mark E. Heimsoth as Administrator of the Estate of Muhammad Bashir Malik, Javed Arshed, and Shahnaz Arshed), to approve the attached Settlement Agreement in settlement of the Citation proceeding previously filed herein.

The Court having reviewed said agreement with the parties, orders as follows:

- 1) That the Settlement Agreement attached hereto is approved and that the Administrators of the Estate of Rashidah B. Malik and the Estate of Muhammad Bashir Malik are authorized to execute said agreement.

Page 1 of 4

Date: 7/29/09 Yes - Disposal No - Disposal

Judge

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No. 2000 P K 192

Plaintiff(s) <u>In Re: The Estate of Muhammad Bashir Malik</u>		Defendant(s) _____	
Plaintiff(s) Atty. <u>Heimsoth</u>		Defendant(s) <u>Holmes, McLean Campbell</u>	
Judge <u>Countryman</u>	Court Reporter _____	Deputy Clerk _____	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			File Stamp _____

ORDER

2) That the Administrator of the Estate of Muhammad Bashir Malik may accept and hold the title to the real estate commonly known as 24 S. Lincolnway, North Aurora, Illinois and legally described as:

The South 1/2 of Lot 9 and all of Lots 10, 11, and 12 in Block 2 of Schneider's Addition to North Aurora in the Village of North Aurora, Kane County, Illinois.

Said title to the real estate may be conveyed to the Administrator by any individual, individuals, legal entity or legal entities who have or claim any interest in the title.

3) That the Administrator of the Estate of Muhammad Bashir Malik may accept

Page 2 of ~~00~~ 4

Date: 7/29/09

Yes - Disposal No - Disposal

Judge _____

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No. 2000 P K 192

In Re: The Estate of Muhammad Bashir Malik Plaintiff(s)		Defendant(s)	
Helmsoth Plaintiff(s) Atty.		Holmes, McLean Defendant(s) Campbell	
Judge Countryman	Court Reporter	Deputy Clerk	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other			File Stamp

ORDER

and hold title to any personal property conveyed to him by any individual or legal entity.

4) That the Citation Proceedings herein are dismissed as to all parties.

5) That upon the oral motion of Javed Arshed and Shahnaz Arshed, individually and as agents of ~~Intermet, Inc.~~ leave is granted to them to withdraw their complaint as to all parties instanter.

6) That this Court retains jurisdiction of all parties for the enforcement of the Settlement Agreement

7) The Administrator, Mark E. Helmsoth is authorized to execute the Settlement Agreement and any ~~other~~ and all documents required there of, including but not limited to the Mortgage and Note,

Date: 7/29/09

Yes - Disposal No - Disposal

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

Case No. 2000 P K 192

Plaintiff(s) <u>In Re: The Estate of Muhammad Bashir Malik</u>		Defendant(s)	
Plaintiff(s) Atty. <u>Heimsoth</u>		Defendant(s) <u>Holmes, McLean Campbell</u>	
Judge <u>Countrymay</u>	Court Reporter	Deputy Clerk	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent Present			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____			File Stamp

ORDER

8) The Administrator, Mark E. Heimsoth, is authorized to ~~execute~~ execute any and all documents required and necessary to complete the remediation of the gas station commonly known 95 24 S, Lincolnway, North Aurora, Illinois,

9) The Administrator, Mark E. Heimsoth is authorized to enter into a settlement agreement with the State of Illinois in settlement of the judgment order entered previously in 00CH313, and execute any and all documents required hereof,

Page 4 of 4

Date: 7/29/09

Yes - Disposal No - Disposal

[Signature]
 Judge

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney General of the)
State of Illinois,)
)
Plaintiff,)
)
v.) No. 00 CH 313
)
RASHIDAH MALIK and AKIF MALIK,)
individually and as administrator for the estate of)
M. Bashir Malik)
)
Defendants.)

Sakant S. Miller
Clerk of the Circuit Court
Kane County, IL
AUG 12 2009
FILED 54

AGREED ORDER
AMENDING DECEMBER 16, 2004 AND DECEMBER 27, 2006 COURT ORDERS

This cause coming before the Court on this date to be heard, due notice having been given, the Court being fully advised in the premises, and the Plaintiff and Defendants, Rashidah Malik (n/k/a the Estate of Rashidah Malik, Deceased, whose estate is probated in Kane County, Illinois, Case No. 08 PK 218) and Akif Malik, having agreed to this Order.

NOW, THEREFORE, the Court enters the following Order, which shall remain in effect until further order of this Court.

I. BACKGROUND

1. On December 16, 2004, this Court entered its Judgment Order setting forth remedies and penalties as to Defendants, Rashidah Malik and Akif Malik in the above-captioned case. The December 16, 2004 Judgment Order is attached hereto as exhibit 1.

2. On December 27, 2006, Defendant Akif Malik having been found in contempt of court, this Court entered an Order, which modified in part its December 16, 2004 Judgment Order, as to Defendant Akif Malik only. The December 27, 2006 Court Order is attached hereto as exhibit 2.



II. AMENDMENT

3. By agreement of the parties, Section V.B.13 of the December 16, 2004 Judgment Order, entitled "Final Compliance Date" shall be modified to allow Defendant, Rashidah Malik, two (2) years from the date of the entry of this Agreed Order to obtain a No Further Remediation Letter from the Illinois EPA and record it.

4. Section V.B.13 of the December 16, 2004 Judgment Order, entitled "Final Compliance Date" is hereby modified and shall now read, in pertinent part, as follows:

Notwithstanding the dates for compliance set forth in paragraphs V.B.2 to V.B.11 above, Defendants shall obtain a No Further Remediation Letter from the Illinois EPA and record it as set forth in paragraph V.B.11 by the "Final Compliance Date," which shall be within two years from the date of entry of this Agreed Order Amending December 16, 2004 and December 27, 2006 Court Orders.

5. By agreement of the parties, Paragraph 20 of the December 27, 2006 Court Order, entitled "Final Compliance Date" shall be modified to allow Defendant, Akif Malik, two (2) years from the date of the entry of this Agreed Order to obtain a No Further Remediation Letter from the Illinois EPA and record it.

6. Paragraph 20 of the December 27, 2006 Court Order, entitled "Final Compliance Date" is hereby modified and shall now read, in pertinent part, as follows:


Notwithstanding the dates for compliance set forth in paragraphs 7(d) & (e), and 11 to 18 above, Malik shall obtain a No Further Remediation letter from the Illinois EPA and record it as set forth in paragraph 18 by the "Final Compliance Date," which shall be two years from the date of entry of this Agreed Order Amending December 16, 2004 and December 27, 2006 Court Orders.

7. This amendment only supersedes Section V.B.13 of the December 16, 2004 Judgment Order, entitled "Final Compliance Date", Paragraph 20 of the December 27, 2006 Court Order, entitled "Final Compliance Date". All of the other terms and conditions of the December 16, 2004 Judgment Order and the December 27, 2006 Court Order remain in full force and effect.

WHEREFORE, the Plaintiff and Defendants, Rashidah Malik (n/k/a the Estate of Rashidah Malik, Deceased, whose estate is probated in Kane County, Illinois, Case No. 08 PK 218) and Akif Malik, by their representatives, enter into this Agreed Order Amending December 16, 2004 and December 27, 2006 Court Orders and submit it to the Court that it may be approved and entered.

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

BY: 
STEPHEN J. SYLVESTER
Assistant Attorney General
Environmental Bureau North
69 W. Washington St., Suite 1800
Chicago, Illinois 60602

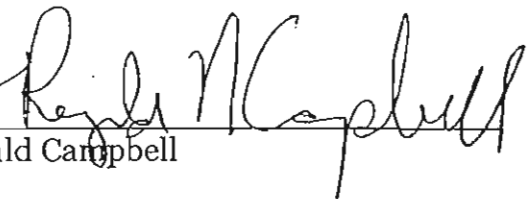
FOR THE DEFENDANTS:

Rashidah Malik
The Estate of Rashidah Malik, Deceased

BY: 
Eleonora "Lee" R. Holmes

Strohschein Law Group, LLC , Administrator
Of the Estate of Rashidah Malik
40W310 LaFox Road, Suite K-2
St. Charles, Illinois 60175

Akif Malik

BY: 
Reginald Campbell

Law Office of Richard C. Irvin
605 N. Broadway
Aurora, Illinois 60505

ENTERED:

DATE: 8/12/09 
JUDGE



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
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

OCT 08 2008

CERTIFIED MAIL #

7007 3020 0002 3213 1326

Shahnaz Anjum c/o Intermart Inc.
24 South Lincolnway
North Aurora, IL 60542

Rc: LPC #0890605030 -- Kane County
North Aurora/North Aurora 76
24 South Lincolnway
Leaking UST Incident No. 970184
Claim No. 53632
Leaking UST Fiscal File

Dear Ms. Anjum:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code 732.Subpart F. This application for payment is dated January 13, 2008 and was received by the Illinois EPA on January 17, 2008. It covers the period from January 1, 2004 to February 28, 2007. The amount requested is \$30,825.00.

As a result of the Illinois EPA's review of the application for payment, a voucher for \$30,567.00 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received the application for payment. Subsequent applications for payment that have been or are submitted will be processed based upon the date of receipt by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application for payment.

Following are costs that are not approved for payment and the reasons the costs are not approved:

1. The amount of \$258.00 was withheld from your payment. Pursuant to Section 57.8(a)(1) of the Act, in no event shall payment from the UST Fund be made for an amount greater than the amount approved in the budget. The line-item amount for Report Preparation Costs was reduced to that approved in the budget.



Page 2

Please note that this final decision was made after expiration of the 120-day period for reviewing applications for payment, as prescribed at Section 57.8(a)(1) of the Act. Because of this, some standard review procedures may not have been performed. Nothing about this final decision or the underlying review of the application for payment should be interpreted or referenced as representing a change in Illinois EPA standard review procedures for applications for payment.

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 require further assistance, please contact Chris Covert of my staff at 217/785-3943.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:CC

Attachment: Appeal Rights

c: U.S. Environmental Technologies Corp.
Leaking UST Claims Unit

***** PCB 2010-035 *****

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICI, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

OCT 08 2008

CERTIFIED MAIL #

7007 3020 0002 3213 1319

Shahnaz Anjum c/o Intermart Inc.
24 South Lincolnway
North Aurora, IL 60542

Re: LPC #0890605030 -- Kane County
North Aurora/North Aurora 76
24 South Lincolnway
Leaking UST Incident No. 970184
Claim No. 53631
Leaking UST Fiscal File

Dear Ms. Anjum:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code 732.Subpart F. This application for payment is dated December 6, 2007 and was received by the Illinois EPA on January 17, 2008. It covers the period from February 1, 1997 to March 31, 2001. The amount requested is \$85,158.00.

As a result of the Illinois EPA's review of the application for payment, a voucher for \$70,158.00 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received the application for payment. Subsequent applications for payment that have been or are submitted will be processed based upon the date of receipt by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application for payment.

The deductible amount of \$15,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

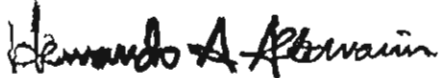
Please note that this final decision was made after expiration of the 120-day period for reviewing applications for payment, as prescribed at Section 57.8(a)(1) of the Act. Because of this, some standard review procedures may not have been performed. Nothing about this final decision or

Page 2

the underlying review of the application for payment should be interpreted or referenced as representing a change in Illinois EPA standard review procedures for applications for payment.

If you have any questions or require further assistance, please contact Chris Covert of my staff at 217/785-3943.

Sincerely,

A handwritten signature in black ink that reads "Hernando A. Albarracin". The signature is written in a cursive style with a large initial 'H'.

Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:CC

c: U.S. Environmental Technologies Corp.
Leaking UST Claims Unit

Attachment - 1

***** PCB 2010-035 *****

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR



217/782-6762

OCT 13 2009

CERTIFIED MAIL #

7007 2560 0003 2089 9745

Intermart, Inc.
Shahnaz Anjum
24 South Lincolnway
North Aurora, Illinois 50501

Re: LPC #0890605030 – Kane County
North Aurora / North Aurora 76
24 South Lincolnway
Incident-Claim No.: 970184 – 53631 and 53632
Queue Date: January 17, 2008
Leaking UST Fiscal File

Dear Ms. Anjum:

On October 8, 2008 the Illinois Environmental Protection Agency (Illinois EPA) issued two letters regarding your applications for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act) in effect prior to June 24, 2002 and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.Subpart F. These applications for payment were dated December 6, 2007 and were received by the Illinois EPA on January 17, 2008. It covers the periods from February 1, 1997 to March 2001 and January 1, 2004 to February 28, 2007. The amounts requested were \$85,158.00 and \$30,567.00.

Pursuant to 35 Ill. Adm. Code Part 732.612(a) the Illinois EPA is notifying you that an excess payment was approved in the Illinois EPA's letter dated October 8, 2008. The excess payment is for \$85,000.00 the remainder of the \$100,000.00 deductible that was not withheld from your payments.

Pursuant to 35 Ill. Adm. Code Part 732.603(b)(4) where more than one deductible determination has been made, the higher deductible shall apply. On January 24, 2000 the Office of the State Fire Marshal issued an Eligibility and Deductibility Determination of \$100,000.00 for this site. A second Eligibility and Deductibility Determination of \$15,000.00 was issued on July 25, 2003 by the Office of the State Fire Marshal. The Illinois EPA has determined that the \$100,000.00 deductible applies at this site.

Rockford • 4302 N. Main St., Rockford, IL 61107 • (815) 987-7760
Eggin • 595 S. State, Eggin, IL 60123 • (847) 608-3131
Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346 5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60018 • (708) 441-7400
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5462
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 244-2000
Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (217) 244-2000



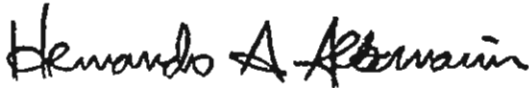
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The Illinois EPA has determined that the excess payment will be deducted from any subsequent claim(s) and subsequently approved payment amount(s). Please note that if the amount subsequently approved is insufficient to recover the entire amount of excess payment, the Illinois EPA may use the procedures under 35 Ill. Adm. Code Part 732.612 or any other collection methods available to the Illinois EPA by law to collect the remainder of the excess payment.

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 require further assistance, please contact Brian Bauer of my staff at 217/782-3335.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BB

Attachment: Appeal Rights

c: Leaking UST Claims Unit
U.S. Environmental Technologies Corp.
Brian Bauer
Chris Covert

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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 57.8(i) 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

***** PCB 2010-035 *****



Office of the Illinois State Fire Marshal

General Office
217-785-0869
FAX
217-782-1082

Divisions

ARSON INVESTIGATION
217-782-8116

BOILER and PRESSURE
VESSEL SAFETY
217-782-2688

FIRE PREVENTION
217-785-4714

MANAGEMENT SERVICES
217-782-9889

INFIRS
217-785-5828

HUMAN RESOURCES
217-785-1026

PERSONNEL STANDARDS
and EDUCATION
217-782-4542

PETROLEUM and
CHEMICAL SAFETY
217-785-5878

PUBLIC INFORMATION
217-785-1021

WEB SITE
www.state.il.us/osfm

CERTIFIED MAIL - RECEIPT REQUESTED #7001 2510 0002 3296 1869

July 25, 2003

Intermart, Inc.
24 S. Lincolnway
North Aurora, IL 60542
Attn: Shanaz Anjum

In Re: Facility No. 2-027109
IEMA Incident No. 97-0184
Intermart, Inc.
24 S. Lincolnway
Rt. 31 & John St.
North Aurora, Kane Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on July 15, 2003 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$15,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

- Tank 1 4,000 gallon Gasoline
- Tank 2 5,000 gallon Gasoline
- Tank 3 6,000 gallon Gasoline
- Tank 5 1,000 gallon Heating Oil

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

1035 Stevenson Drive • Springfield, Illinois 62703-4259

Printed on Recycled Paper



Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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

The following tanks are also listed for this site:

- Tank 4 550 gallon Used Oil
- Tank 6 12,000 gallon Gasoline
- Tank 7 8,000 gallon Gasoline

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,



Deanne Lock
Administrative Assistant
Division of Petroleum and Chemical Safety

cc: IEPA
Facility File



Office of the Illinois
State Fire Marshal

General Office

217-785-0969

FAX

217-782-1082

Divisions

ARSON INVESTIGATION

217-782-9118

BOILER and PRESSURE

VESSEL SAFETY

217-782-2696

FIRE PREVENTION

217-785-4714

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217-782-4542

PETROLEUM and

CHEMICAL SAFETY

217-785-5878

PUBLIC INFORMATION

217-785-1021

WEB SITE

www.state.il.us/osfm

CERTIFIED MAIL - RECEIPT REQUESTED # Z 082 408 551

January 24, 2000

J & S Enterprises
1566 Dundee Road
Wheaton, IL 60187

In Re: Facility No. 2-027109
IEMA Incident No. 97-0184
Intermart
24 S. Lincoln Way
North Aurora, Kane Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on January 21, 2000 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$100,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

- Tank 1 4,000 gallon Gasoline
- Tank 2 5,000 gallon Gasoline
- Tank 3 6,000 gallon Gasoline
- Tank 4 550 gallon Used Oil
- Tank 5 1,000 gallon Heating Oil

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

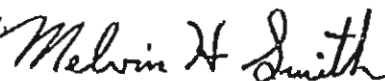
This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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

If you have any questions regarding the eligibility or deductibility determinations, please contact our Office at (217) 785-1020 or (217) 785-5878 and ask for Jim Boone.

Sincerely,



Melvin H. Smith
Division Director
Division of Petroleum and Chemical Safety

MHS:jb

cc: IEPA
Facility File

***** PCB 2010-035 *****



www.epa.state.il.us

State of Illinois

L.I.T. Search

IEMA # 970184

LPC # 0890605030

Site: North Aurora 76

Bills Received	Status Code	Amount Requested	Amount Paid	Voucher Date	Deductible
1/17/2008	VOB	85158	70158		15000
1/17/2008	VOB	30825	30567		0

Site (Main)	Tank Operator	General	Title XVI	TACO	Search
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