

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MOTO, INC. (Swansea))	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: John T. Therriault, Acting Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
100 West Randolph Street	1021 North Grand Avenue East
State of Illinois Building, Suite 11-500	P.O. Box 19276
Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 2nd day of February, 2017.

Respectfully submitted,
MOTO, INC., Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MOTO, INC. (Swansea))	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MOTO, INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency's final decision, modifying a budget, and in support thereof states as follows:

1. This appeal arises from a release from a service station, commonly known as Moto Mart, located in Swansea, County of St. Clair, currently owned by MOTO, INC., and assigned LPC #1631405021.
2. In 2002 during construction work, a 560 gallon heating oil tank was discovered, and a release reported for which Incident Number 2002-0431 was assigned.
3. A consultant was promptly retained to address the release, but after completing on-site investigation, the consultant filed bankruptcy and the business arrangement fell under the jurisdiction of the U.S. Bankruptcy Court.
4. Subsequently a new consultant was retained who submitted and obtained approval of a Stage III Site Investigation Plan, and performance of that work was delayed in unsuccessful efforts to get three adjoining property owners to provide access to their property.
5. A site investigation completion report was submitted and approved, which identified relatively modest levels of contamination throughout the site, extending onto a

property where access had been allowed and under the adjoining highway. A vapor intrusion analysis has not been performed on the site, and some of the sampling dates from 2006 and 2007 may no longer reflect current conditions.

6. On October 3, 2016, a Corrective Action Plan and Budget was submitted to the Illinois EPA, proposing to remediate the site through the use of institutional controls, namely a highway access authority agreement and expansion of the groundwater ordinance by the municipality. This requires conducting a vapor intrusion analysis and resampling in certain locations to determine that contamination is below applicable TACO remediation objectives. The associated budget includes cost estimates for all items to mitigate any threat to human health, human safety, or the environment, from the technical planning documents, to field work, to evaluation of the samples, implementation of the insitutional controls and recording of the No Further Remediation letter. In the event the analysis indicates this approach would not work, an amended Corrective Action Plan would be submitted to address changed circumstances.

7. On December 20, 2016, the Illinois EPA rejected the plan in part and the budget in part. A true and correct copy is attached hereto as Exhibit A.

8. The Illinois EPA rejected the plan in part because:

Without results from the proposed soil boring (resampling for BH-2 and BH-9), monitoring well installation and soil vapor investigation in the area of MW-1, the Illinois EPA cannot approve the plan as submitted. Subsequently, the Illinois EPA only approves the two soil borings (collection and analysis of additional soil samples), installation of one groundwater monitoring well and performance of a soil vapor investigation.

(Ex. A, at p. 1)

9. This explanation is inconsistent with the requirements of the Illinois Environmental Protection Act, which states that a corrective action plan must be “designed to

mitigate any threat to human health, human safety, or the environment resulting from the underground storage tank release.” (415 ILCS 5/57.7(b)(2)) Once site investigation is complete and approved, further investigation is not a prerequisite for approval of a corrective action plan. Instead, the plan must propose how the site will be remediated, and in the event new information requires a change of plans, Board regulations provide for revised plans.

10. In relation to this modification, the Agency cut costs from the budget to perform certain work, with the notation that these costs should be included in the amended plan and budget. Specifically, the Illinois EPA cut \$2,191.00 for the cost of well abandonment for the monitoring well it was approving to be installed, as well as \$22,378.12 for consultant’s time and materials to submit the plan and budget, analyze the samples pursuant to TACO requirements, and implement the institutional controls and record the NFR letter.

11. The Illinois EPA is not authorized by any statute or regulation to arbitrarily cut a corrective action plan into pieces, requiring work to be performed for which at least a portion will not be approved for payment at this time, but must be submitted in a stage two corrective action plan after the work is performed. Nor is there any justification given in the denial letter, nor is the reasoning apparent from the Illinois EPA’s project manager notes that concede the next submittal “should be very similar to the one in-house.”

12. While there are other cuts to consultant’s materials, the only one which is challenged herein is the cutting of the “measuring wheel charged as direct costs.” The Pollution Control Board has ruled that this position is without merit. Abel Investments, LLC v. IEPA, PCB 16-108 (Dec. 15, 2016).

16. The subject Illinois EPA letter was received by certified mail on December 29,

2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, MOTO, INC., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the plan and budget as urged herein, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

MOTO, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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pdshaw1law@gmail.com

THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217)782-3397
BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

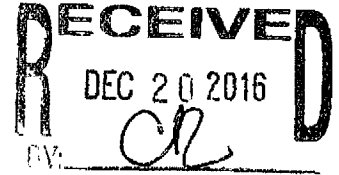
217/524-3300

CERTIFIED MAIL

7014 2120 0002 3292 2094

DEC 20 2016

Moto Inc.
Attn: Rob Whittington, Environmental Manager
P.O. Box 122
Belleville, Illinois 62222



Re: LPC #1631405021 – St. Clair County
Swansea/ MotoMart-Swansea
1324 North Illinois (Route 159)
Leaking UST Incident No. 20020431
Leaking UST Technical File

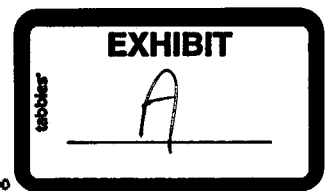
Dear Mr. Whittington

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated October 3, 2016 was received by the Illinois EPA on October 11, 2016. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the 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)):

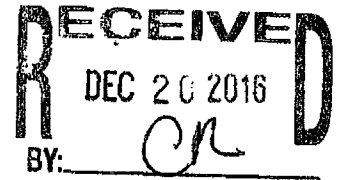
Without results from the proposed soil boring (resampling for BH-2 and BH-9), monitoring well installation and soil vapor investigation in the area of MW-1, the Illinois EPA cannot approve the plan as submitted. Subsequently, the Illinois EPA only approves the two soil borings (collection and analysis of additional soil samples), installation of one groundwater monitoring well and performance of a soil vapor investigation.

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.



4302 N. Main St., Rockford, IL 61103 (815) 987-7760
895 S. State, Elgin, IL 60123 (847) 608-3131
2125 S. First St., Champaign, IL 61820 (217) 278-3800
2009 Mall St., Collinsville, IL 62234 (618) 346-5120

9511 Harrison St., Des Plaines, IL 60018 (847) 294-4000
412 SW Washington St., Suite D, Peoria, IL 61602 (309) 671-3022
2309 W. Main St., Suite 110, Marion, IL 62959 (618) 993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601



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 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 57.7(c), 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.

If the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c) of the Act).

NOTE: Pursuant to Section 57.8(a)(5) 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. 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 from the Fund.

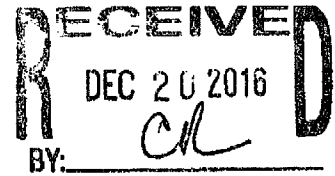
Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least two weeks prior to the scheduled field activities.

Besides providing at least two weeks' notice to Leaking UST Section staff in Springfield, notification must be provided to Rob Mileur either by telephone at (618) 993-7223 or by e-mail at Robert.Mileur@illinois.gov.

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.




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.

If you have any questions or need further assistance, please contact Shirlene South at 217/558-0347.

Sincerely,

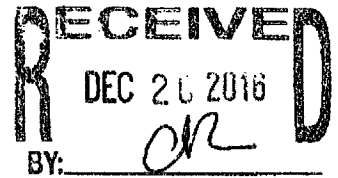

Stephen A. Colantino
Acting Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

SAC:sls:SS\

Attachment: Attachment A

c: vince@cwmccompany.com (electronic copy),

BOL File



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:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson 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

RECEIVED
DEC 20 2016
BY: CR

Attachment A

Re: LPC #1631405021 – St. Clair County
Swansea/ MotoMart-Swansea
1324 North Illinois (Route 159)
Leaking UST Incident No. 20020431
Leaking UST Technical File

SECTION 1

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

\$2,033.75	Drilling and Monitoring Well Costs
\$1,661.72	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$15,330.81	Consulting Personnel Costs
\$609.00	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 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

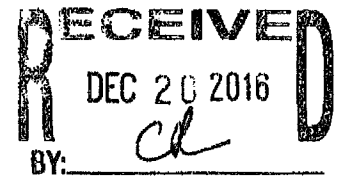
SECTION 2

1. \$2,191.00 for costs for well abandonment, 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).

These costs may be included in an amended corrective action plan and be reviewed at that time

2. \$21,738.62 for costs for personnel that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

These costs may be included in an amended corrective action plan and be reviewed at that time.



3. \$1,501.80 for costs for personnel, 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).

Senior Project Manager costs for reimbursement compliance/technical oversight(CAP, Drilling, Closure submittals)

In addition, for costs for corrective action –pay which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Also, for site investigation or corrective action costs for corrective action–pay that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

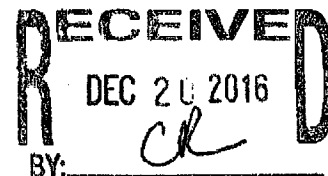
4. \$639.50 for costs for material cost that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

These costs may be included in an amended corrective action plan and be reviewed at that time.

5. \$200.00 for costs for material costs that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

The Illinois EPA is requesting documentation for the shroud construction and operation materials, rental of gas canister and regulator prior to approving these costs as was discussed in the phone conversation on December 9, 2016 with the project manager.

6. \$18 for indirect corrective action costs for a measuring wheel charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to 35 Ill. Adm. Code 734.630(dd) and Section 57.7(c)(3) of the Act because they are not reasonable



7. \$44.00 for costs for mileage, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The current federal rate for mileage is \$0.54, therefore the cost as been adjusted to reflect this in the budget.

sls:SS\