



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

**RECEIVED**  
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JAN 11 2007

STATE OF ILLINOIS  
Pollution Control Board

GATEWAY FS, INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	PCB No. 07- 61
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW OF FINAL AGENCY**  
**LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Gateway FS, Inc., ("Gateway"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, pursuant to Sections 57.7(c)(4)(D) and 40 of the Illinois Environmental Protection Act (415 ILCS 5/57.7(c)(4)(D) and 40) and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Gateway respectfully states as follows:

1. On December 6, 2006, the Agency issued a final decision to Gateway, a copy of which is attached hereto as Exhibit A.
2. The grounds for the Petition herein are as follows:

The Agency in its December 6, 2006 letter rejected the Amended High Priority Corrective Action Budget submitted by Gateway on September 8, 2006, asserting that there was a lack of supporting documentation regarding the Budget and that the costs reflected in the Budget may be in excess of those required to meet the minimum requirements of the Act relating to corrective

action activities. More particularly, the Agency indicated that the scope of the Amended High Priority Corrective Action Plan had not changed and it is unclear why the Budget has changed from the Plan and Budget approved, with modifications, by the Agency on May 3, 2002. Since no Amended Plan has been submitted, according to the Agency, the Budget includes costs that exceed the Plan to which it relates.

In addition, the Agency's December 6, 2006 letter posits that the Amended Budget includes costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D and/or Appendix E of 35 Ill. Adm. Code 732 and, as such, are ineligible for payment from the Leaking Underground Storage Tank Fund under 35 Ill. Adm. Code 732.606(ccc). Lastly, the Agency indicates that the costs are not reasonable and therefore cannot be approved pursuant to Section 57.7(c)(4)(C) of the Act.

Gateway contends that Amended High Priority Corrective Action Budget includes additional legitimate, reasonable, reimbursable investigation and personnel costs associated with development and implementation of the Amended High Priority Corrective Action Plan and the High Priority Corrective Action Completion Report. Gateway encountered additional costs associated with abnormally difficult drilling conditions as well as drilling set up and deconstruction regarding geotechnical bore hole-101 and three (3) extra off-set boreholes. In fact, geotechnical borehole 101 was changed to 103 after the drilling difficulties encountered at 101. In addition, extra personnel site visits were required to monitor the groundwater sampling, stabilization and purging

at 103. These charges necessitated further personnel efforts to development budget modifications.

Additional personnel time was required for quantitative documentation for the Class 2 groundwater designation previously made using prior data. In light of historical testing data, the Tier 1 averaging approach was reevaluated for appropriateness. During this reevaluation, data gaps including but not limited to the presence of previously unaddressed benzene detection limits above cleanup objectives were discovered in the approved work plan, and the Agency required replacement results from replacement samples, thus further increasing personnel time and costs.

During implementation of the corrective action activities, significant acquisition and modification of pre-existing or additional data was necessary in order for an accurate comparison of historical LUST facility data to current investigation findings and proposed corrective actions to be completed. The prior approved plans were created and approved by different consulting and Agency personnel than had implemented them, and corrections of oversights or data gaps of past plan approvals were necessary. These corrections/updates were required in order to meet the minimum requirements of the Act and regulations so that a registered geologist or professional engineer could certify that the conditions and findings in the report were accurate.

During Gateway's development of the original High Priority Corrective Action Completion Report, it became aware of the option to add MTBE as an indicator constituent. It was not until after Gateway's submittal to

the Agency of the High Priority Corrective Action Completion Report that the Agency indicated that the election to add MTBE was required on Gateway letterhead. Additional personnel efforts were required for administration of the project and development of budget modification.

Gateway notified the Agency that the discovery of past oversights, data gaps, and inclusion of historic MTBE data required additional personnel efforts, and that the costs and time delays initially incurred were considered more economical than submitting individual work scope and budget modifications. Based on the historical data and the projected activities, the Agency only required one borehole and the re-submittal of the Corrective Action Completion Report (with limited modifications) for an approved amended Corrective Action Plan. These previously unbudgeted activities would have been considered necessary as part of the amended Corrective Action Plan had they not been performed as extras to the prior Corrective Action Plan.

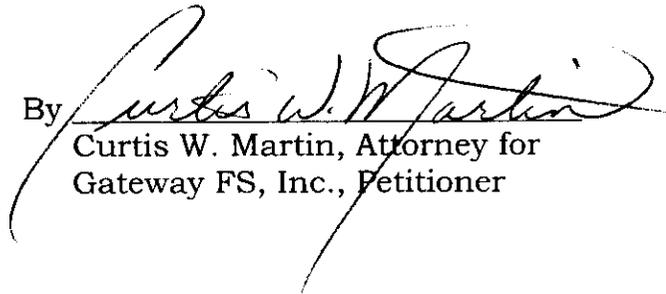
All of the above additional personnel efforts were required in excess of the original budget and contributed to the personnel costs incurred in addition to the original budget. These additional activities were necessary and performed in accordance with standard consulting practices allowed under the Act and its regulations and should have been allowed by the Agency. In addition, the performance of these activities and level of detail are consistent with that provided for other Gateway LUST incidents under which full LUST Fund reimbursement has been provided. Therefore, the failure of the Agency to do the same for this LUST incident is arbitrary and capricious.

WHEREFORE, Petitioner, Gateway FS, Inc., prays for reversal of the Agency's decision of December 6, 2006, that its Budget be approved as reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST Fund, and that Petitioner recover its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By

  
Curtis W. Martin, Attorney for  
Gateway FS, Inc., Petitioner

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

2021 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

DEC 06 2006

7004 2510 0001 8593 7284

Gateway FS, Inc.
Attention: Greg Birchler
221 East Pine Street
Red Bud, IL 62278

Re: LPC #1570450009 -- Randolph County
Red Bud / Gateway FS, Inc.
201 East Pine Street
Leaking UST Incident No. 980020 and 980391
Leaking UST Technical File

Dear Mr. Birchler:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended High Priority Corrective Action Budget (budget) submitted for the above-referenced incident. This budget, dated September 8, 2006, was received by the Illinois EPA on September 11, 2006. 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).

The budget is rejected for the following reason(s) (Section 57.7(a)(1) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(i) and 732.503(b)):

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

As the scope of the plan has not changed, it is unclear why the budget has changed. The High Priority Corrective Action plan and budget were approved with modifications in a letter dated May 3, 2002. No amended plan has been submitted to address the justifications for the additional costs requested.

- 2. The budget includes costs that exceed the maximum payment amounts set forth in

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

EXHIBIT A

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 732.606(ccc). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable

All future correspondence must be submitted 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 you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,



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

HAC:CLH

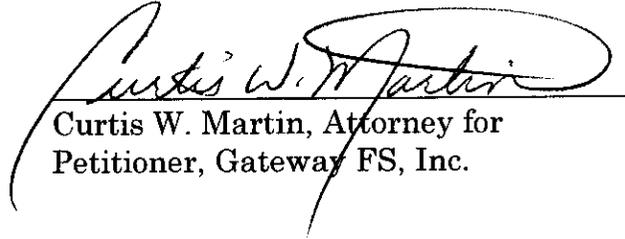
c: Philips Environmental  
BOL File

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on January 9, 2007, I served true and correct copies of a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient postage affixed thereto, upon the following named persons:

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

Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

  
Curtis W. Martin, Attorney for  
Petitioner, Gateway FS, Inc.