

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PMA & ASSOCIATES, INC.,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. _____
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.8(l) of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.8(l), and to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner PMA & Associates, Inc. ("PMA") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 1 ("Decision") denying PMA reimbursement for \$2,096.88 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, PMA further requests the Board to order the Agency to pay PMA'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 11, 2006. It was received by PMA December 13, 2006.

III. GROUND FOR APPEAL

A. The Agency's contention that PMA's analysis costs "lack supporting documentation" is erroneous, arbitrary and capricious. 35 Ill. Adm. Code 732.601(b)(9) and 734.605(b)(9) state that a complete application for payment consists of the following elements: ...[A]n accounting of costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed. PMA in fact submitted the required documentation, which was ignored by the Agency.

B. The Agency's contention that it cannot determine if the \$2,096.88 will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" is erroneous, arbitrary and capricious. The application at issue was not for a budget but for reimbursement. The activities already have been performed and the conjecture by the Agency is both illogical and erroneous.

IV. CONCLUSION.

For all the foregoing reasons, petitioner PMA & Associates, Inc. respectfully submits that the Decision should be reversed and the Agency ordered (1) to pay from the LUST fund the disallowed costs and (2) to pay PMA's attorneys' fees for this appeal from non-LUST funds.

January 16, 2007

PMA & ASSOCIATES, 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 PMA & Associates, Inc..

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1802096-MH

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

RECEIVED

CERTIFIED MAIL #

DEC 1 1 2006

DEC 1 3 2006

7004 2510 0001 8622 8985

BY: _____

PMA & Associates, Inc.
Attn: John Montgomery
Southwest Bank/Comm. Lending (Acct. #0032713725)
#2 Carlyle Plaza Drive
Belleville, Illinois 62221

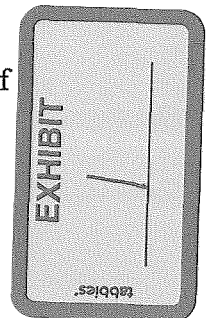
Re: LPC #18189950011 -- Union County
Ware/PMA & Assoc.
Rt. 3 & 146
Leaking UST Incident No. 20021598
Leaking UST FISCAL FILE

Dear Mr. Montgomery:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated August 31, 2006 and was received by the Agency on September 1, 2006. The application for payment covers the period from August 1, 2005 to August 12, 2006. The amount requested is \$113,944.46.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on March 28, 2003 for \$54,315.75. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On September 1, 2006, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$111,847.58 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.



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An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 applicant 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:

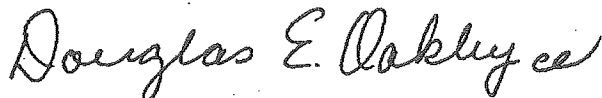
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Bill Richards of my staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
Leaking UST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:WWR:mis\060256.doc

Attachment

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #18189950011 -- Union County
Ware/PMA & Assoc.
Rt. 3 & 146
Leaking UST Incident No. 20021598
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$2,096.88, deduction for 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.

Need invoices for charges associated with Analysis Costs.

WWR:mls/060241.doc


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

January 16, 2007



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