

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

2F, Inc.,)	
)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. _____
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

NOTICE OF FILING

To:

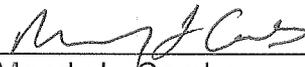
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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.

February 9, 2007

2F, 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 Ted's Citgo

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

2F, Inc.,)	
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<i>Petitioner,</i>)	
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v.)	PCB No.
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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.8(i) of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.8(i), and to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner 2F, Inc. ("2F"), by its attorneys in this regard, The Sharp Law Firm, P.C., submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 1 ("Decision") purporting to deny 2F reimbursement for \$3,081.00 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, 2F further requests the Board to order the Agency to pay 2F'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 January 5, 2007. It was received by 2F January 6, 2007.

III. GROUND FOR APPEAL

A. The denial of reimbursement for the \$3,081.00 was taken by the Agency without jurisdiction and contrary to law. The Decision admits the Agency received 2F's complete application for payment on July 25, 2006 but did not issue the denial until January 5, 2007. As 415 ILCS 57.8(a)(1) provides that "[i]f the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application", the application at issue had been "approved by operation of law" prior to the Decision at issue and the Agency was without jurisdiction to issue a Decision to the contrary.

B. In the alternative, the Agency's claims that 2F's application for the funds at issue "lack supporting documentation" and that it cannot determine if the \$3,081.00 will be used for "corrective action activities in excess of those required to meet the minimum requirements" of the act are erroneous, arbitrary and capricious.

IV. CONCLUSION.

For the foregoing reasons, petitioner 2F, Inc. respectfully petitions the Board to reverse the denial of reimbursement in the amount of the \$3,081.00 and order the Agency to pay 2F's attorneys' fees for this appeal.

February 9, 2007

2F, INC.

By: 
One of its Attorneys

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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 2F, Inc..

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1899147-JC



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

JAN 03 2007

RECEIVED

CERTIFIED MAIL #

JAN 03 2007

7004 2510 0001 8586 6638

2F, Inc.

BY: RS/uk

Attn: Ron Emery

Southwest Bank/Commercial Lending

Jennifer Vescogni-Acct. #0032713725

#2 Carlyle Plaza Dr.

Belleville, Illinois 62221

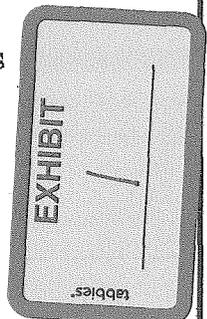
Re: LPC #1650205059 -- Saline County
Harrisburg/2F BP Station
1011 West Poplar Street
Leaking UST Incident No. 20000432
Leaking UST FISCAL FILE

Dear Mr. Emery:

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 June 27, 2006 and was received by the Agency on July 25, 2006. The application for payment covers the period from November 1, 2005 to July 11, 2006. The amount requested is \$68,911.09.

The deductible amount for this incident was \$10,000.00, which was previously taken from the billing submittal received by the Agency on August 14, 2000 for \$48,485.06. The OSFM increased the deductible from \$10,000.00 to \$15,000.00 in their letter dated August 26, 2005. The amount of \$2,863.75 was previously deducted from the billing submittal received by the Agency on November 22, 2005 for \$2,863.75. The balance of the deductible in the amount of \$2,136.25 is being deducted from this payment. The \$15,000.00 deductible has been met.

On July 25, 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 \$63,693.84 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



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received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

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:

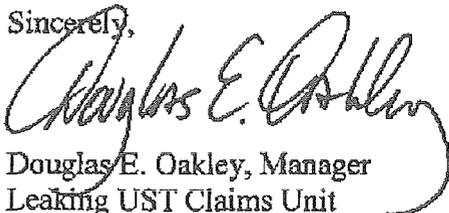
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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 Susan Brock of my staff at 217/782-6762.

Sincerely,



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

DEO:SB:m\0600314.doc

Attachment

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #1650205059 -- Saline County
Harrisburg/2F BP Station
1011 West Poplar Street
Leaking UST Incident No. 20000432
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. \$3,081.00, 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.

No invoice was provided for the Analysis Costs.

SB:mls/0600315.doc

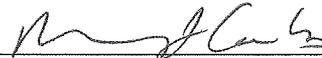
CERTIFICATE OF SERVICE

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
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James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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