

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

RUSS TAYLOR, d/b/a MAHOMET)
HEN HOUSE,)
)
) *Petitioner,*)
)
)
 v.) PCB No. 07-080
) (LUST Appeal)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
) *Respondent.*)

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.

May 23, 2007

Russ Taylor, d/b/a Mahomet Hen House

By: /s/ Mandy L. Combs
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 Russ Taylor, d/b/a Mahomet Hen House

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

RUSS TAYLOR, d/b/a MAHOMET)	
HEN HOUSE,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. 07-080
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.7 of the Environmental Protection Act (“Act”), 415 ILCS 5/40, 5/57.7, and to the Board’s regulations on Leaking Underground Storage Tank (“LUST”) decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner Russ Taylor d/b/a, Mahomet Hen House (“Taylor”), submits this Petition for Review of the Illinois Environmental Protection Agency (“Agency”) decision attached hereto as Exhibit 1 (“Decision”) modifying Taylor’s High Priority Corrective Action Plan Budget (“Budget”) so as to delete and deny approval of \$7,062.74 of personnel and equipment costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Taylor further requests the Board to order the Agency to pay Taylor’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 10, 2007. It was received by Taylor January 17, 2007. An order was entered on March 1, 2007, giving Taylor until May 23, 2007 to file a petition for review. See Exhibit 2.

III. GROUNDS FOR APPEAL

1. The Agency’s conclusion that the personnel and equipment costs are not reasonable under 415 ILCS 5/57.7(c)(4)(C) is erroneous, arbitrary and capricious.

2. The Agency's conclusion that such personnel and equipment costs are ineligible for reimbursement under 35 Ill. Adm. Code 732.606(hh) is erroneous, arbitrary and capricious.

3. The Agency's denial of the \$6,016.02 in costs for personnel associated with development of institutional controls, billing package review by the Professional Engineer, and billing package review by the Account Technician due to the lack of supporting documentation as required under 415 IICS 57.7(c)(4)(C) and 35 Ill. Adm. Code 732.606(gg) is erroneous, arbitrary, capricious, and contrary to law.

4. The Agency's denial of the \$594.48 in costs for personnel and equipment associated with measurements for asphalt replacement due to the costs exceeding the minimum requirements under 415 IICS 57.7(c)(4)(C) and 35 Ill. Adm. Code 732.606(o) is erroneous, arbitrary, capricious, and contrary to law.

IV. CONCLUSION.

For the foregoing reasons, petitioner Russ Taylor, d/b/a Mahomet Hen House, respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$7,062.75 and order the Agency to pay his attorneys' fees for this appeal.

May 23, 2007

RUSS TAYLOR, d/b/a MAHOMET HEN HOUSE

By: /s/ 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 Russ Taylor, d/b/a Mahomet Hen House.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1/10/07 BP

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

CERTIFIED MAIL

JAN 10 2007

7004 2510 0001 8586 7871

RECEIVED

Mahomet Hen House
Attn: Ms. Jacqueline Taylor
P. O. Box 110
Mahomet, IL 61853

JAN 10 2007

BY: Jm/TH

Re: LPC #0190455025 -- Champaign County
Mahomet/ Taylor, Russ
Route 47 & Eastwood Drive
LUST Incident No. 20010722
LUST Technical File

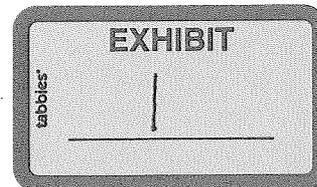
Dear Ms Taylor:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated December 5, 2006, was received by the Illinois EPA on December 6, 2006. Supplemental information was received by electronic mail on January 2, 2007. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

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.

Page 2

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 Dave Myers at 217/785-7491.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:DM:DMHPCAPam2BUDmod.doc

Attachment: Attachment A
Appeal Rights

c: United Science Industries, Inc.
Division File

Attachment A

Re: LPC #0190455025 -- Champaign County
Mahomet/ Taylor, Russ
Route 47 & Eastwood Drive
LUST Incident No. 20010722
LUST Technical File

SECTION 1

The budget was previously approved for:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$27,600.00 ✓	Personnel Costs
\$180.00 ✓	Equipment Costs
\$4381.00 ✓	Field Purchases and Other Costs
\$1.38 ✓	Handling Charges

As a result of review of the budget at-hand and the Illinois EPA's modification(s) in Section 2 of this attachment, the following amounts are approved:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$3993.37 ✓	Personnel Costs
\$60.00 ✓	Equipment Costs
\$5178.00 ✓	Field Purchases and Other Costs
\$0.00 ✓	Handling Charges

Therefore, the total cumulative budget is approved for:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$31,593.37 ✓	Personnel Costs
\$240.00 ✓	Equipment Costs
\$9559.00 ✓	Field Purchases and Other Costs
\$1.38 ✓	Handling Charges

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 57.8(f) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.607.

SECTION 2

1. \$5748.76 for corrective action costs for personnel costs associated with development of institutional controls that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Sufficient amounts were previously approved in Agency review letters dated August 15, 2005 and March 5, 2004. In addition, the request for additional personnel hours associated with institutional controls lacks supporting documentation pursuant to 35 Ill. Adm. Code 732.606(gg).

2. \$534.48 for corrective action costs for personnel costs associated with measurements for asphalt replacement that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Measurements for asphalt replacement could have been taken during any visit to the field during early action or the investigation. These costs, therefore, also exceed the minimum requirements pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(o).

3. \$267.26 for corrective action costs for personnel costs associated with billing package review by the Professional Engineer that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Costs for three billing packages have been previously approved in Agency letters dated August 15, 2005 and March 5, 2004. This budget allows for only one of the three proposed billing packages.

4. \$452.24 for corrective action costs for personnel costs associated with billing package review by the Account Technician that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Costs for three billing packages have been previously approved in Agency letters dated August 15, 2005 and March 5, 2004. This budget allows for only one of the three proposed billing packages.

5. \$60.00 for corrective action costs for equipment costs associated with measurements for asphalt replacement that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

Measurements for asphalt replacement could have been taken during any visit to the field during early action or the investigation. These costs, therefore, also exceed the minimum requirements pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(o).

dm:DM\HPCAPam2BUDmodA.doc

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)(D) 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

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

May 23, 2007

/s/ Mandy L. Combs

Mandy L. Combs

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
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Counsel for Petitioner Russ Taylor, d/b/a Mahomet Hen House