

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

WHITMORE MANAGEMENT, INC.,	)	
Petitioner,	)	
v.	)	PCB: _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To: Don Brown, 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 12<sup>th</sup> day of March, 2018.

Respectfully submitted,  
WHITMORE MANAGEMENT, 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

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

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, WHITMORE MANAGEMENT, 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 final decision of the Illinois Environmental Protection Agency (hereinafter “the Agency”), modifying a budget for corrective action, stating as follows:

1. Petitioner is the owner/operator of a former Marathon service station in the City of Milford, County of Iroquois, Illinois, which has been assigned LPC # 0750655026.
2. On September 23, 2015, a release was reported from tanks at the site, which was assigned Incident #2015-1035. All tanks were later removed.
3. After completing site investigation, Petitioner, through its consultants, submitted a corrective action plan and budget designed to achieve applicable site remediation objectives.
4. On November 3, 2017, the Agency reviewer e-mailed a request for information regarding time budgeted for consulting personnel, and “supporting documentation to justify the number of copies included . . . and the cost per copy.”
5. On December 7, 2017, the consultant submitted a lengthy response to the queries
6. Sometime thereafter, the budget issues were reviewed in a management meeting.
7. On January 23, 2018, the Agency issued a final decision approving the plan, but

modifying the budget to remove all time allotted for the Senior Project Manager and all copying charges. A true and correct copy of the decision is attached hereto as Exhibit A.

8. The Agency erred in denying all costs estimated for Senior Project Manager for lack of supporting documentation, as the Consultant provided an explanation for the tasks to be performed, a Senior Project Manager is an accepted role in the Board's regulations, and the cost estimates for performing corrective action were reasonable, regardless of how the Agency tries to manage personnel roles.

9. Further, as explained in the December 7, 2017 correspondence, the number of copying pages was an estimate based upon the number of pages that had been required for similar submittals in the past, and the consultant indicated that the payment application would only be submitted for actual number of pages produced. At the budget stage, the consultant cannot "document" the number of documents required when the documents have yet to be created and the Agency continues to request additional documentation.

10. The copying charge of fifteen cents per page is reasonable, particularly given that this is what the Agency charges for Freedom of Information Act requests. (2 Ill. Adm. Code 1828. Appedix A) ("Paper copy from original, in excess of 50 copies of black and white, letter or legal sized copies") These rates are not market rates, however; they are the caps that State FOIA imposes to balance the public access to government records with the costs in administering the program. Also, the Agency charges the same copying-rate, regardless of whether the Agency makes the copies or if the requester makes copies at the Agency offices.

11. The subject Illinois EPA letter was received by certified mail on February 6, 2018, and therefore the appeal deadline is March 13, 2018, and this appeal is thus timely.

WHEREFORE, Petitioner, WHITMORE MANAGEMENT, 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 remove the modifications to the budget for consultant's time and materials; (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.

WHITMORE MANAGEMENT, INC.,  
Petitioner

By its attorneys,  
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



Electronic Filing: Received, Clerk's Office 3/12/2018 \* \* PCB 2018-069 \* \*  
**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, DIRECTOR

217/524-3300

**CERTIFIED MAIL**

**JAN 23 2018**

7015 0640 0004 7916 0376

Whitmore Management, Inc.  
Attn: Mike Cripe  
506W. Kahler  
Wilmington, Illinois 60481

Re: LPC #0750655026 -- Iroquois County  
Milford/Milford Marathon (Whitmore Management, Inc.)  
401 South Chicago Street  
Leaking UST Incident No. 20151035  
Leaking UST Technical File

EPA DIVISION OF RECORDS MANAGEMENT  
RELEASABLE

**FEB 08 2018**

**REVIEWER: JKS**

Dear Mr. Cripe:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated September 21, 2017, was received by the Illinois EPA on September 25, 2017. 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). This review also includes additional information submitted by CWM Company via email on September 28, 2017 and December 7, 2017.

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. 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.

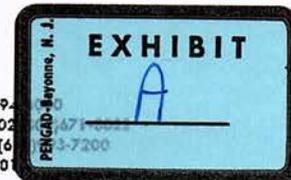
In addition, the budget is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A have been approved. Please note that the costs must 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.

4302 N. Main St., Rockford, IL 61103 (815)967-7760  
595 S. State, Elgin, IL 60123 (847)608-5131  
2125 S. First St., Champaign, IL 61820 (217)276-5800  
2009 Wall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-  
412 SW Washington St., Suite D, Peoria, IL 61602  
2309 W. Main St., Suite 116, Marion, IL 62959 (618)3-7200  
100 W. Randolph, Suite 4-500, Chicago, IL 60601



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**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 and shall be made to EPA.FieldNotifications@illinois.gov. This notification of field activities must be provided at least two weeks prior to the scheduled field activities.**

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 Karl Kaiser at (217) 524-4650.

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

MTL::KEK\

Attachment: Attachment A  
Appeal Rights

c: Carol Rowe, CWM Company (electronic copy), cwm@cwmcompany.com  
BOL File

**Attachment A**

Re: LPC #0750655026 -- Iroquois County  
Milford/Milford Marathon (Whitmore Management, Inc.)  
401 South Chicago Street  
Leaking UST Incident No. 20151035  
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:

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$7,671.84	Paving, Demolition, and Well Abandonment Costs
\$22,732.72	Consulting Personnel Costs
\$343.88	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. \$435.00 for costs for copy charges, 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.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site-specific basis and the owner/operator must demonstrate to the Illinois EPA the amounts sought for reimbursement are reasonable. The owner/operator has not provided sufficient documentation to support the rate requested for copy charges and/or the quantity of copies requested pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient

information for the Illinois EPA to make a site-specific reasonableness determination.

In addition, without supporting documentation the rate and/or the quantity of copies requested 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). It should be noted, the Illinois EPA only requires technical correspondence be submitted in duplicate and only an original for reimbursement correspondence.

The justification that the rate of \$0.15 per page "is the same rate the IEPA charges" is not accurate. This information appears to be an incorrect interpretation of the Illinois EPA FOIA duplication fee web page. The actual fee is \$0.15 per page for copies in excess of 400; therefore, the first 400 copies are free. In addition, the Illinois EPA does not charge for personnel time while copying where it appears that time for a Senior Administrative Assistant is billed in addition to the rate of \$0.15 per page.

2. Personnel Lacking Supporting Documentation

\$8,089.60 for costs for personnel hours requested under the Senior Project Manager title, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). As there is no supporting documentation for the requested 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 and 35 Ill. Adm. Code 734.630(o) 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 Illinois EPA has requested additional documentation to support the personnel hours requested as noted above pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Illinois EPA to make a task-specific reasonableness determination. Without supporting documentation, the personnel hours for Senior Project Manager 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). In addition, the request appears to be for activities and related services or materials that are unnecessary. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(aa).

The Illinois EPA has determined that the task descriptions provided for personnel are too vague and insufficient to assure that they are reasonable, consistent with the associated technical plan, incurred in the performance of corrective action activities, and not used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, as required pursuant to 35 Ill. Adm. Code 734.510(b).

The Illinois EPA does not accept the "team work" approach as a sufficient explanation and believe the total costs associated with this stage of site investigation and/or corrective action are not reasonable. Furthermore, in the same instance, the Illinois Pollution Control Board affirmed Illinois EPA's reduction where the Petitioner failed to support its budget for consultant tasks of Oversight, Compliance and Review in the Abel Investments, LLC v. Illinois EPA UST Appeal (PCB 16-108). Simply changing the tasks to Development, Preparation, Calculations, Scheduling, etc. does not warrant justification when it is essentially redundant.

KEK\

### 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