

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MIDSTATE SALVAGE CORP.,)	
)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting 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 15th day of August, 2016.

Respectfully submitted,
MIDSTATE SALVAGE CORP., 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

MIDSTATE SALVAGE CORP.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MIDSTATE SALVAGE CORP., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency’s final decision, modifying a previously approved budget, and in support thereof states as follows:

1. This appeal arises from a release from a diesel fuel tank at facility currently owned and operated by MIDSTATE SALVAGE CORPORATION in Taylorville, County of Christian, Illinois, and assigned LPC # 20120515.

2. The release was reported on May 23, 2012 and assigned Incident # 20120515, and the tank was removed thereafter.

3. Following site investigation activities, Petitioner submitted a corrective action plan and budget that was substantially approved on December 1, 2015, provided that additional work be performed with respect to contamination in the vicinity of soil boring number one.

4. On April 22, 2016, Petitioner submitted a revised corrective action plan and budget to address the additional work.

5. On June 24, 2016, the Agency e-mailed Petitioner’s consultant and requested justification of consultant’s material costs, stating:

Several issue[s] of concern have arisen requiring further documentation and or justification [of] your matierial costs:

- 1. \$21.00 for measuring wheel costs are cut. Measuring wheels by the Agency are considered an indirect cost are ineligible for reimbursement from the fund.**
- 2. How many reports and plans were or will be made and for who[m]?**
- 3. How was \$0.15 per page rate derived [for copying charges]?**
- 4. How was the \$13.00 per box of gloves determined? What brand/model do you use? How many gloves per box? How many pair of gloves will be used? We'd like to see a receipt/invoice for the gloves.**
- 5. Map Quest measures a distance of 55 miles round trip. Please explain your additional miles. In addition we reimburse by the F[ed]eral Mileage Rate currently set at \$0.56 per mile. Therefore your mileage rate will be reduced by 9.0 cents.**
- 6. How do you determine your daily rate of \$148.00 for a PID? First, what brand/model of PID do you use, when was it purchased and how much did it cost? We'd like to see an invoice/receiptt for the purchase of the PID. Please explain how the rate of \$148.00 was determined?**

Please respond by July 1, 2016 or sooner. Thanks. w

6. On June 27, 2016, Petitioner's consultant responded to the queries by e-mail, a true and correct copy of which is attached hereto as Exhibit A.

7. On July 7, 2016, the Agency approved the plan and budget, but cut \$188.05 for all costs budgeted for the measuring wheel and PID, and partially for mileage. A true and correct copy of the decision is attached hereto as Exhibit B.

8. The Illinois EPA's decision to refuse to reimburse any consultant's material costs incurred should be reversed for the following reasons:

- a. The application was legally complete, containing all of the information required

by Section 57.8(a)(6) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(a)(6)), Section 734.135 of the Board's regulations (35 Ill. Adm. Code § 734.135), and Illinois EPA forms and instructions existing at the time of the submittal.

- b. A measuring wheel is specifically listed as a type of consultant's materials which are reimbursable direct costs in the Agency's Instructions for the Budget and Billing Forms.
- c. Board regulations expressly recognize that chargeable consultant's material costs may include "travel; per diem; mileage; transportation; [and] vehicle charges." (35 Ill. Adm. Code § 734.845) As explained in the e-mail to the Agency, the mileage rate is not simply for transportation of employees to the job site with their personal vehicle, but the costs associated with taking a truck or van to the site with the necessary tools and supplies, and the mileage reimbursement rate reflects a reasonable charge for the the total costs associated therewith, and ultimately based upon actual mileage as measured by the vehicle's odometer.
- d. By mandating a mileage rate set by the Internal Revenue Service, the Agency has engaged in illegal rulemaking and misapplication of the requirements and purposes of the Internal Revenue Code.
- e. In 1991, Petitioner's consultant customarily charged \$125 for use of a PID, which has increased a total of \$23 over the last twenty-five years to \$148, which is less than the rate of inflation. Those charges have been approved by the Agency countless times, are comparable to charges commonly assessed in the industry and

are reasonable.

f. No statutory or regulatory provision would be violated by approving payment of the consulting material costs incurred herein.

9. The subject Illinois EPA letter was received by certified mail on July 11, 2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, MIDSTATE SALVAGE CORP., 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 approve the application for payment as submitted, (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.

MIDSTATE SALVAGE CORP.,
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

THIS FILING IS SUBMITTED ON RECYCLED PAPER

6/27/2016

Print :: Workspace Webmail

RE: re: Consultant Material Costs

cwm@cwmcompany.com [cwm@cwmcompany.com]

Sent: 6/27/2016 9:55 AM

To: "Zuehlke, Wayne" <Wayne.Zuehlke@Illinois.gov>

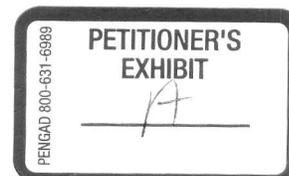
Wayne,

I will take these Item by item.

1. We were not aware of any rule changes or changes to the definition of direct and indirect costs. The Subpart H personnel rates were developed with these items being considered direct costs in many of the reimbursements that served as the basis for the rates, and therefore were not included in the Subpart H personnel rates. If the personnel rates now include additional items, then the rates should be adjusted to reflect the additions, which they have not.
2. There were a total of five final reports prepared, the original and one copy to the Agency, one copy for each of our two offices, and one copy for the client. There were also draft reports used in the development of the final report.
3. The copy rate is the same as the IEPA charges for copies.
4. The rate was originally developed by looking at what others were charging years ago (approximately 1991 - 1992), adjusted for inflation periodically. We use multiple brands, sizes, and types of gloves. The number per box does vary, although 100 is the most common. The number of gloves used per drilling event varies depending upon the personnel involved, the weather, the soil conditions, and the number of samples which are handled. We have purchased gloves in bulk, and stock different sizes and types. For instance, some of our personnel have a latex allergy, some like thicker gloves, etc. If it is the Agency's preference, we will purchase an individual box of gloves for this project and submit the receipt with the reimbursement, however the amount will be significantly higher than \$13.00, and the Agency will not benefit from the the gloves being a stock item when a specific receipt is requested.
5. The distance of 55 miles round trip is fine. As always, only the actual mileage from the trip will be charged to the project. We were not aware of any rule changes that define the allowable mileage rate to be the IRS rate. We do not take personal vehicles to drill, we take a truck or van which has tools and supplies needed to sample. This is another change like your item 1, which makes more costs indirect and forces consultants to provide additional materials and services for which they are not compensated.
6. Our PID rate was originally developed by looking at what others were charging for comparable equipment years ago, adjusted for inflation periodically. The PID we use is a several year old Orion model from MSA, which reads in ppb, not like the ones which read in ppm. We have never been asked, until recently, to keep records of the costs associated with the instrument, so we do not have them available. The purchase of the PID is just one cost of owning and operating one, as they require parts such as filters and calibration equipment and gasses which must be provided, as well as maintenance and repair costs. In our research for this question for other projects, we have been unable to find a vendor who can provide a comparable PID at a price which does not exceed the rate we have requested, particularly when shipping, taxes, and the time we would have to spend ordering and returning the PID are factored in. We do not understand how an original invoice price could be converted into a rental rate, even if we had one.

Vince E. Smith, P.E.
 Sr. Environmental Engineer
 CWM Company, Inc.
 701 W. South Grand Ave.
 Springfield, IL 62704
 217-522-8001
 FAX 217-522-8009
 cwm@cwmcompany.com

----- Original Message -----
 Subject: re: Consultant Material Costs
 From: "Zuehlke, Wayne" <Wayne.Zuehlke@Illinois.gov>
 Date: 6/24/16 10:07 am
 To: "cwm@cwmcompany.com" <cwm@cwmcompany.com>



Re: LPC # 0210605108— Christian County
Taylorville/MidState Salvage Corporation
109 Chestnut Street
Leaking UST Incident No. 20120515
Leaking UST Technical File

Hi Vince:

Several issue of concern have arisen requiring further documentation and or justification your material costs:

<![if !supportLists]>1. <![endif]>\$21.00 for measuring wheel costs are cut. Measuring wheels by the Agency are considered an indirect cost are ineligible for reimbursement from the fund.

<![if !supportLists]>2. <![endif]>How many reports and plans were or will be made and for who?

<![if !supportLists]>3. <![endif]>How was \$0.15 per page rate derived?

<![if !supportLists]>4. <![endif]>How was the \$13.00 per box of gloves determined? What brand/model do you use? How many gloves per box? How many pair of gloves will be used? We'd like to see a receipt/invoice for the gloves.

<![if !supportLists]>5. <![endif]>Map Quest measures a distance of 55 miles round trip. Please explain your additional miles. In addition we reimburse by the Feral Mileage Rate currently set at \$0.56 per mile. Therefore your mileage rate will be reduced by 9.0 cents.

<![if !supportLists]>6. <![endif]>How do you determine your daily rate of \$148.00 for a PID? First, what brand /model of PID do you use, when was it purchased and how much did it cost? We'd like to see an invoice/receipt for the purchase of the PID. Please explain how the rate of \$148.00 was determined?

Please respond by July 1, 2016 or sooner. Thanks. w

Wayne Zuehlke

Environmental Protection Specialist III

Project Manager

Leaking Underground Storage Tank Section

EPA (Mail code #24)

6/27/2016

Print : Workspace Webmail

Bureau of Land

1021 North Grand Ave.

Springfield, Il. 62794

Ph. 217/557-6937

Email Wayne.Zuehlke@Illinois.gov

Copyright © 2003-2016. All rights reserved.

Page 1

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 Plan 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 Scott McGill at (217) 524-5137.

Sincerely,



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

Attachment: Attachment A
Appeal Rights

cc: CW3M Company, Inc.
BOL File

Attachment A

Re: LPC #0312825232 -- Cook County
Schaumburg/Raj Bhatia
1730 West Wise Road
Leaking UST Incident No. 20130876
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
\$1,858.50	Paving, Demolition, and Well Abandonment Costs
\$45,338.39	Consulting Personnel Costs
\$1,132.90	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. \$266.50 for costs for mileage costs, 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.

\$.65/mile for mileage is unreasonable and there is no supporting documentation to justify that this rate is appropriate. Costs are being cut back to \$.54/mile per 2016 IRS standard mileage reimbursement rate.

2. \$266.50 for site investigation or corrective action costs for mileage costs that 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).

Costs in the amount of \$266.50 mileage of \$.65/mile are unreasonable and costs are being cut back to \$.54/mile or \$221.40 per 2016 IRS standard mileage reimbursement rate.

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