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NOV 08 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

BOWMAN OIL COMPANY, )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

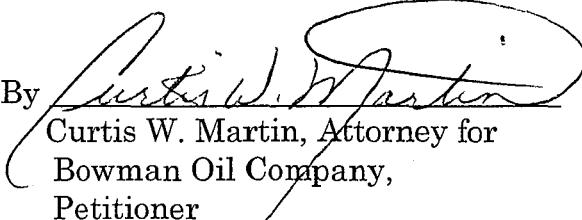
PCB No. 05-83  
(UST Appeal)

NOTICE

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

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of  
the Pollution Control Board a Petition for Review of Final Agency Leaking  
Underground Storage Tank Decision, a copy of which is herewith served upon you.

By   
Curtis W. Martin, Attorney for  
Bowman Oil Company,  
Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

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

BOWMAN OIL COMPANY,	)	
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Petitioner,	)	
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vs.	)	PCB No. PCB-05 83
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW OF FINAL AGENCY**  
**LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Bowman Oil Company ("Bowman"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, pursuant to Sections 57.7(c)(4)(D) and 40 of the Illinois Environmental Protection Act (415 ILCS 5/57.7(c)(4)(D) and 40) and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Bowman respectfully states as follows:

1. On October 1, 2004, the Agency issued a final decision to Bowman, a copy of which is attached hereto as Exhibit A.

2. The grounds for the Petition herein are as follows:

Bowman submitted to the Agency, through its consultant, United Science Industries, Inc., an Amended Site Classification Work Plan Budget ("Budget") dated May 27, 2004. This Budget contained personnel costs that had originally been approved by the Agency within the Site Classification Completion

Report ("SCCR"), plus additional personnel costs that had been underestimated by USI. The Agency, in its October 1, 2004 letter referenced a previous decision letter dated December 20, 2002 by which it claims the original Site Classification Work Plan Budget was approved as modified. The Agency further claims in its October 1, 2004 letter that its action by its December 20, 2002 letter was never appealed by Bowman and no subsequent justification for additional work was provided. The Agency's December 20, 2002 letter states in part, however:

*Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 IL Adm. Code 732.305(e) or 732.312(l), if reimbursement 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. NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter.*

Bowman simply submitted its additional underestimated personnel costs through the Amended Site Classification Work Plan Budget, just as required by the Agency. No scope of work changed for purposes of the Amended Site Classification Work Plan and the newly estimated personnel costs and the justification for the costs are included within the Amended Site Classification Work Plan. Therefore, the December 20, 2002 Agency letter does not defeat Bowman's claim and the Agency's failure to approve the Amended Site Classification Work Plan was arbitrary and capricious.

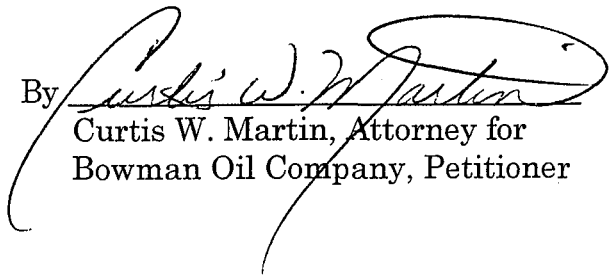
WHEREFORE, Petitioner, Bowman Oil Company, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for approval of its Amended Site Classification Work Plan Budget as being reasonable, justifiable, necessary, consistent with generally

accepted engineering practices, and eligible for reimbursement from the UST Fund,  
and that Petitioner recover its attorney's fees and costs incurred herein pursuant to  
415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By

  
Curtis W. Martin, Attorney for  
Bowman Oil Company, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
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Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788



# 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

RENEE CIPRIANO, DIRECTOR

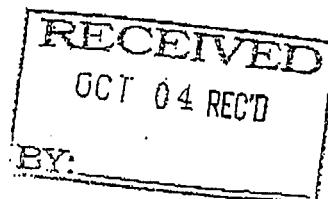
217/782-6762

CERTIFIED MAIL

7002 3150 0000 1113 8923

OCT 01 2004

Bowman Oil Company  
Attn: Jack Bowman, President  
P.O. Box 280  
Marion, Illinois 62959



Re: LPC #0558075003 -- Franklin County  
West Frankfort/Bowman Oil Company  
215 Oak Street  
LUST Incident No. 20002033  
LUST Technical File

Dear Mr. Bowman:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Site Classification Work Plan Budget (budget) submitted for the above-referenced incident as Appendix I of the Site Classification Completion Report dated June 1, 2004. This budget, dated May 27, 2004, was received by the Illinois EPA on June 4, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed below (Section 57.7(a)(1) and 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j) and 732.503(b)):

1. A Site Classification Work Plan Budget was previously approved with modifications on December 20, 2002. No Justification of additional work beyond the scope of the work previously approved was provided. The Illinois EPA previously notified the owner or operator of its final action. Further, in accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f), the Illinois EPA's action to reject or require modification of the plan or budget, or the rejection of any plan or budget by operation of law, was subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action. In addition, it appears that only seven of the eight proposed borings were advanced. Therefore, the budget previously approved would be adequate for the work performed.

All future correspondence must be submitted to:

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

EXHIBIT A

Page 2

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 you have any questions or need further assistance, please contact Lizz Schwartzkopf at 217/557-8763.

Sincerely,



Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:LS

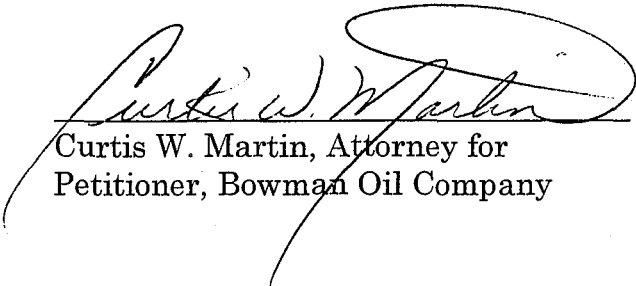
c: United Science Industries  
Division File

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on November 5, 2004, I served true and correct copies of a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

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

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
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