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JAN 19 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

A & R, INC.,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. 05-
(UST Appeal)

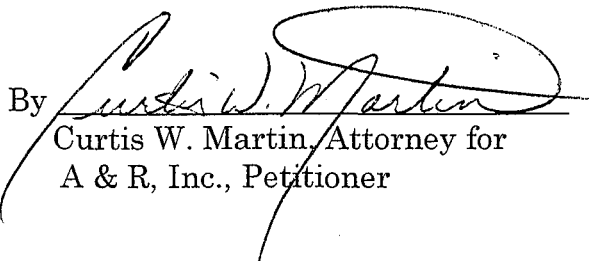
128

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
A & R, Inc., Petitioner

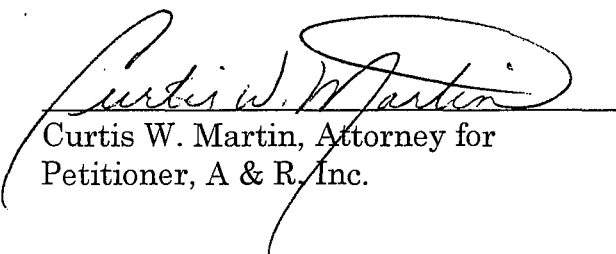
Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
Attorneys at Law
123 S. 10th Street, Suite 302
P.O. Box 1789
Mt. Vernon, Illinois 62864
Telephone (618) 244-1788

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 14, 2005, 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
P.O. Box 19276
Springfield, IL 62794-9276



Curtis W. Martin, Attorney for
Petitioner, A & R, Inc.

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

A & R, INC.,)
)
Petitioner,)
)
vs.) PCB No. 05-128
) (UST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, A & R, Inc. ("A & R"), 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, A & R respectfully states as follows:

1. On December 27, 2004, the Agency issued a final decision to A & R, a copy of which is attached hereto as Exhibit A.

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

On September 15, 2004, A&R, through its consultant, United Science Industries, Inc., submitted a High Priority Corrective Action Plan and Budget and supplemental information at various times thereafter (hereinafter referred to as "Amended Plan" and "Amended Budget"). By its letter of December 27, 2004, the Agency modified the Amended Plan to reduce the total cubic yards of soil for

excavation, removal, and disposal by 343.78 cubic yards, a reduction of 37.76 percent of the total cubic yards proposed by A & R to be effected. The Agency correspondingly adjusted the Amended Budget's field purchases and other costs by 37.76 percent, or \$26,471.06. A & R does not contest this adjustment due to the direct correlation between the reduced scope of the excavation, transportation and disposal and the field purchases associated therewith. A & R does contest, however, the Agency's further adjustment in personnel costs of \$6,012.52 representing the same 37.76 reduction in scope.

Page G-1 of A & R's Amended Budget reflects 40 hours of Environmental Technician time associated with on-site activities during the excavation, transportation and disposal of the contaminated soil. Environmental Technician time is the only time that would actually be directly affected by the Agency's reduction of the scope of work because it is the Environmental Technician who is on-site during such activities. Moreover, the Agency's reduction of soil excavation, transportation, and disposal would equate to one day's time, or eight (8) hours, of the Environmental Technician's time. At \$53.00 per hour for the Environmental Technician's time, a reasonable adjustment in personnel costs would be approximately \$425.00 directly associated with the Agency's reduction in the scope of the work.

The Agency's adjustment, however, correlates a 37.76 percent reduction in overall personnel costs without regard to the task proposed to be performed. The fact that less soil will be affected does not automatically mean the same corresponding reduction in personnel time associated with professional

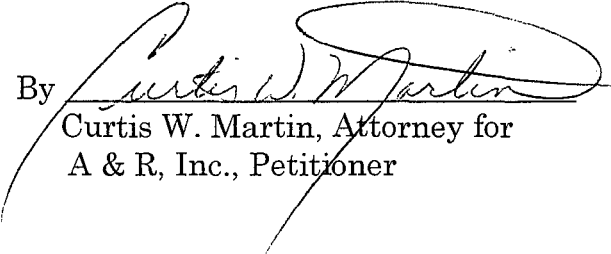
oversight, Agency and client correspondence, and report preparation, to name a few activities. The Agency's adjustment in the personnel time simply has no correlation to the actual reduction that should be associated with the reduced soil excavation, transportation and disposal. The Agency's adjustment in personnel costs is therefore arbitrary and capricious.

WHEREFORE, Petitioner, A & R, Inc., 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 personnel costs within the Amended High Priority Corrective Action Plan and 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(l).

Respectfully submitted,

SHAW & MARTIN, P.C.

By


Curtis W. Martin, Attorney for
A & R, Inc., Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
Attorneys at Law
123 S. 10th Street, Suite 302
P.O. Box 1789
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

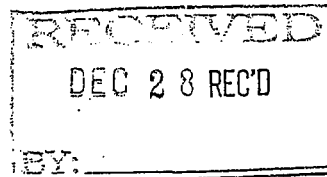
217/782-6762

CERTIFIED MAIL

DEC 27 2004

7002 3150 0000 1105 5541

A & R, Inc.
Mr. Avery Moore
6229 West Ogden Avenue
Berwyn, IL 60402



Re: LPC #0310215104 -- Cook County
Berwyn/ A & R, Inc.
6229 West Ogden Avenue
LUST Incident No. 981412
LUST Technical File

Dear Mr. Moore:

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 September 15, 2004, was received by the Illinois EPA on September 20, 2004. Supplemental information was received October 8, 2004, October 27, 2004 and December 10, 2004. 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

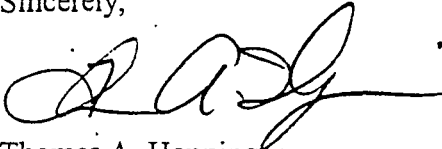
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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
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

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,

A handwritten signature in black ink, appearing to read 'T. Henninger', with a long horizontal flourish extending to the right.

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

TAH:DM:drm\HPamBUDmod3.doc

Attachment: Attachment A, Appeal Rights

c: United Science Industries
Division File

Attachment A

Re: LPC #0310215104 -- Cook County
Berwyn/ A & R, Inc.
6229 West Ogden Avenue
LUST Incident No. 981412
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

SECTION 1

The budget was previously approved for:

\$7123.66	Investigation Costs
\$5250.00	Analysis Costs
\$26,674.00	Personnel Costs
\$1788.00	Equipment Costs
\$167,722.35	Field Purchases and Other Costs
\$2660.57	Handling Charges

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

\$0.00	Investigation Costs
\$520.00	Analysis Costs
\$9910.48	Personnel Costs
\$0.00	Equipment Costs
\$44,801.51	Field Purchases and Other Costs
\$116.49	Handling Charges

As a result of an appeal settlement with the Illinois EPA dated November 16, 2004, the following amounts are approved:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$12,235.00	Personnel Costs
\$0.00	Equipment Costs
\$0.00	Field Purchases and Other Costs
\$0.00	Handling Charges

Therefore, the total cumulative budget is approved for:

\$7123.66	Investigation Costs
\$5770.00	Analysis Costs
\$48,819.48	Personnel Costs
\$1788.00	Equipment Costs
\$212,523.86	Field Purchases and Other Costs
\$2777.06	Handling Charges

SECTION 2

1. \$26,471.06 for an adjustment in Field Purchases and Other Costs associated with excavation, transportation, disposal and backfill. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The approved plan allows for a total of 2566.65 cubic yards total excavation (1656.22 yards already removed and 910.43 yards additional to be removed). 2000 cubic yards were budgeted in the budget approved October 29, 2003. This amendment allows for the additional 566.65 cubic yards.

2. \$6012.52 for an adjustment in Personnel costs associated with excavation, transportation, disposal and backfill. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

Personnel costs are reduced by 37.76% (343.78/910.43) commensurate with the yardage deduction.

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