

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05- 77
(UST Appeal)

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NOV 01 2004

STATE OF ILLINOIS
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Wiseman submitted to the Agency, through its consultant United Science Industries, Inc., an Amended High Priority Corrective Action Plan (“CAP”) and corresponding budget (“Budget”) dated August 18, 2004. The CAP requires the full extent of the soil and groundwater contamination to be defined by means of the

collection of sufficient data to make such determination. The CAP and Budget satisfy the requirements of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder, in that they were prepared and fully implemented in accordance with generally accepted engineering practices and their conclusions were consistent with the information obtained while implementing the CAP.

The costs associated with each material, activity and service necessary to accomplish the goals of the CAP were reasonable and consistent and were incurred in the performance necessary to meet the minimum requirements of the Act and the regulations promulgated thereunder. Further, the costs associated with each material, activity, and service necessary to accomplish the goals of the CAP are similar in generally accepted engineering practices and technical protocol to those historically submitted to and approved by the Agency which the Agency now deems to be unreasonable and inconsistent with generally accepted engineering practices. More specifically:

By its September 29, 2004 letter, the Agency modified the Budget, relying upon Section 57.7(c)(4) and 35 Ill. Adm. Code 732.405(c) for such modification. By the modification, the Agency did not approve \$321.00 in additional investigation costs, \$500.00 of additional analysis costs, \$26,060.00 in personnel costs, and \$2,770.00 in additional equipment costs. The Agency did approve \$1,900.00 of the additional personnel costs requested, all of an additional \$13,136.00 in field purchases and other costs requested, and all of an additional

\$1,233.60 in handling charges requested. In summary, of the \$45,920.60 additional monies requested by Wiseman, the Agency approved only \$15,269.60 and disapproved \$30,751.00.

The reasons provided by the Agency for not approving the additional \$30,751.00 of investigation costs, analysis costs, personnel costs and equipment costs were that such costs were inconsistent with the associated technical plan as amended by the Agency under 35 Ill. Adm. Code 732.505(c). The Agency, however, has failed to provide specific reasons why it deems such costs to be inconsistent with the associated technical plan, or how they fail to meet the minimum requirements of 35 Ill. Adm. Code 732.403 or 404, despite Wiseman's justifications submitted to the Agency by USI letter dated August 18, 2004. USI's letter provides a cost breakdown for each of the tasks associated with the corrective action.

Essentially, Wiseman underestimated the time and costs associated with the corrective action phase and requested by the amended plan and budget additional monies to reimburse the costs to be incurred by Wiseman, particularly the time spent by USI in responding to Agency requests. The additional personnel costs include the time associated with preparing additional supporting documentation for the justification of the use of chemical oxidizing compound ("COC") on the floor of the excavation at the site, and for the applicability of injected COC which was previously approved in the CAP. The additional personnel costs also include preparation and revision of three (3) amended budgets with separate justifications and special supporting documentation in response to Agency requests.

The additional personnel time further includes field work for the COC injection along with obtaining Illinois Department of Transportation and Agency permits. All of the personnel time was reasonable time spent by USI's environmental specialist and professional engineer. The Agency requirements to which Wiseman responded were above and beyond what the Agency has normally requested and the multiple responses were ultimately extremely time consuming. The cost breakdown also appears on the form G-1 submitted to the Agency.

Wiseman also proposed asphalt replacement as an engineered barrier. This would require some asphalt removal, soil excavation and additional asphalt placement in light of the soil data provided to the Agency which reflects contaminants above inhalation and Tier 1 objectives. The additional personnel monies requested by Wiseman also include project manager tasks of groundwater modeling and corrective action completion report preparation.

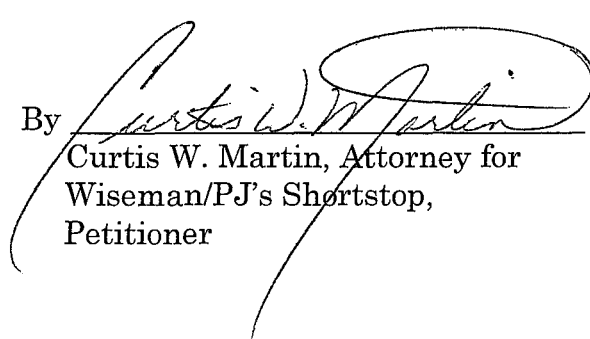
Finally, the Agency, also without reason, did not approve of \$321.00 associated with the investigation costs, \$500.00 for analytical costs, or \$2,770.00 in equipment costs associated with a geoprobe, groutpump, cargo trailer and utility vehicle. The equipment was to be used in connection with corrective action COC injection. The Agency's failure to approve these and the other costs proposed by Wiseman in the Amended High Priority Corrective Action Plan and Budget is arbitrary and capricious and does not serve the Act's purpose of protection of the environment. The Agency's decision of September 29, 2004 should therefore be reversed.

WHEREFORE, Petitioner, Wiseman/PJ's Shortstop, 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 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(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By


Curtis W. Martin, Attorney for
Wiseman/PJ's Shortstop,
Petitioner

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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

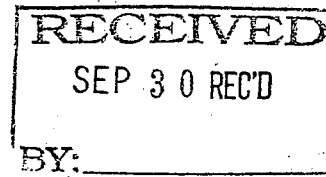
217/782-6762

CERTIFIED MAIL

SEP 29 2004

7002 3150 0000 1113 8497

Patrick Wiseman
RR 3, Box 231A
Chrisman, IL 61924



Re: LPC #0450105003 -- Edgar County
Chrisman/PJ's Shortstop
IL Route 1 & US Highway 36
LUST Incident No. 990254 & 922728
LUST Technical File

Dear Mr. Wiseman:

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 August 18, 2004, was received by the Illinois EPA on August 31, 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.

EXHIBIT A

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 Scott Rothering at 217-785-1858.

Sincerely,

Clifford L. Wheeler

Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

CLW:SRR\990254

Attachment: Attachment A
Appeal Rights

c: United Science Industries
Division File

Attachment A

Re: LPC # 0450105003 -- Edgar County
Chrisman/PJ's Shortstop
IL Route 1 & US Highway 36
LUST Incident No. 990254 & 922
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:

\$10,373.00	Investigation Costs
\$12,195.00	Analysis Costs
\$89,409.00	Personnel Costs
\$33,339.50	Equipment Costs
\$80,135.85	Field Purchases and Other Costs
\$2,183.89	Handling Charges

The following amounts are approved:

\$0	Investigation Costs
\$0	Analysis Costs
\$1,900.00	Personnel Costs
\$0	Equipment Costs
\$13,136.00	Field Purchases and Other Costs
\$1,233.60	Handling Charges

Therefore, the total cumulative budget is approved for:

\$10,373.00	Investigation Costs
\$12,195.00	Analysis Costs
\$91,309.00	Personnel Costs
\$33,339.50	Equipment Costs
\$93,271.85	Field Purchases and Other Costs
\$3,417.49	Handling Charges

SECTION 2

1. \$321.00 for an adjustment in Investigation Costs. 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)).
2. \$500.00 for an adjustment in Analysis Costs. 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)).
3. \$26,060.00 for an adjustment in Personnel Costs. 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)).
4. \$2,770.00 for an adjustment in Equipment Costs. 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)).

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:

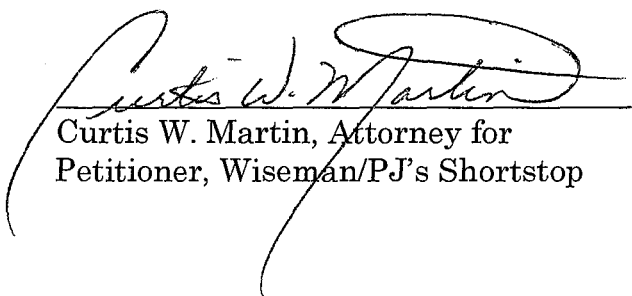
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on October 29, 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
P.O. Box 19276
Springfield, IL 62794-9276


Curtis W. Martin, Attorney for
Petitioner, Wiseman/PJ's Shortstop