

**RECEIVED**

CLERK'S OFFICE

DEC 22 2003

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

STATE OF ILLINOIS  
*Pollution Control Board*

SIMPSON AUTO SERVICE, )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

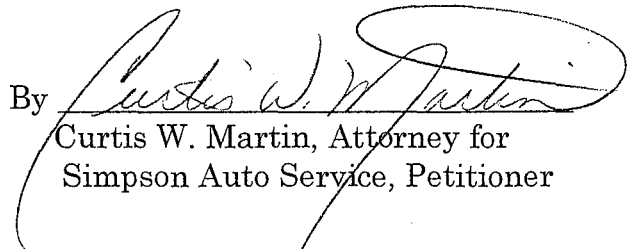
PCB No. 04- 99  
(UST Appeal)

**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  
Simpson Auto Service, 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

**BEFORE THE POLLUTION CONTROL BOARD  
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PCB No. 04-<sup>99</sup>  
(UST Appeal)

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

NOW COMES the Petitioner, Simpson Auto Service, ("Simpson"), 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, Simpson respectfully states as follows:

1. On November 13, 2003, the Agency issued a Final Decision to Simpson, a copy of which is attached hereto as Exhibit A.
2. On November 14, 2003, Simpson, through its consultant, United Science Industries, Inc. ("USI") received the Agency's Final Decision.
3. The grounds for the Petition herein are as follows:  
  
Simpson submitted to the Agency, through its consultant, USI, a Revised High Priority Site Investigation Corrective Action Plan ("Plan") and Budget ("Budget") dated September 18, 2003. By letter dated October 24, 2003, the Agency rejected the Budget pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code

732.405(c) and 732.503(b) on the basis that the Budget included an additional \$17,025.75 in personnel costs that the Agency deemed unreasonable as exceeding costs already budgeted and Agency approved.

More specifically:

A. The Agency modified the Plan to require offset wells 13, 14 and 15 to be sampled when groundwater is present. These wells are located in a flood plane of the Mississippi River. The River has been low but monitoring of the wells has been accomplished by PID tests of the water residue left behind. The PID logs show no contamination and USI has performed groundwater modeling to identify the plume of contamination which has historically been an acceptable method to the Agency. In relation to the modification of the Budget, the Agency has continued to require Simpson to perform additional work without providing for costs of such additional work or the Agency has modified the costs associated with the additional work it has requested.

B. Regarding the modifications to the Budget, at the time that the \$102.00 in costs for the transducer and data logger and the \$45.00 for the PID meter were incurred they were reasonable and subject to reimbursement. The Agency's deduction from the Budget for these items is without technical justification and is merely on a cost basis and is therefore arbitrary and capricious. The Agency's deduction of \$700.00 associated with personnel costs for cost per foot drilling was erroneous, arbitrary and capricious.

C. The Agency's deduction for overall personnel costs of \$22,835.00 as unreasonable fails to identify which particular personnel costs the Agency deems unreasonable and fails to provide a technical basis for such

deduction. The deduction is therefore arbitrary and capricious. Moreover, additional hours were necessary in order to obtain on several occasions offsite access, including the use of new Agency required forms, in order to properly document the same pursuant to Agency requirements. The Agency recognized the possibility of additional costs associated with its additional requirements by its January 29, 2001 letter which advised that if additional costs will be incurred as a result of Agency's modifications, an amended Budget must be submitted.

Simpson submitted an amended Budget in February 2003.

Further, additional hours of personnel were incurred with regard to the selection, procurement, installation, testing and evaluation of the pilot study equipment as well as additional project manager and professional engineering time. Additional personnel time was also incurred as a result of the Agency's requirement of the additional monitoring wells, which are some 300 feet away from existing wells, over and above the groundwater modeling effort already utilized by Simpson.

D. The Agency's deduction of \$1,829.97 in costs associated with the pilot study as being performed prior to Agency approval were incurred as part of the remediation process and at no time did the Agency notify USI of its denial of the pilot project. The Agency, as a matter of historical policy, has had owners/operators proceed with pilot studies rather than first submitting a Plan and Budget for prior approval.

The pilot study and Corrective Action Plan submitted following its completion reflect that the system implemented during the pilot study was sufficient for site remediation. The Agency, however, would not accept that Simpson could not obtain offsite access and required additional investigation for

additional offsite groundwater contamination, thereby rendering the system essentially infeasible. In addition, the Agency indicated the use of other remediation methods such as the tiered approach ("TACO") to close out the remediation of the site, causing the system of the pilot study to no longer be a viable option for remediation.

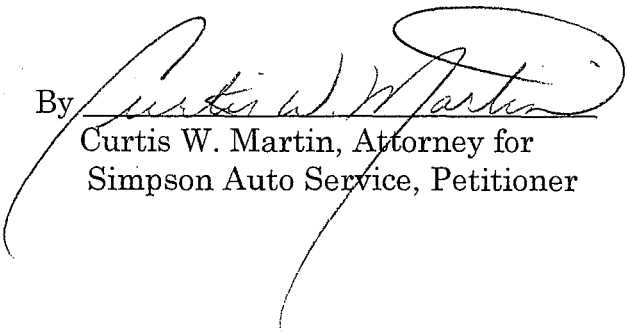
E. Finally, the adjustment of \$5.18 for handling charges was arbitrary and capricious based upon the reasoning with regard to the deducted costs referred to above.

WHEREFORE, Petitioner, Simpson Auto, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of the Petitioner's request for approval of the High Priority Corrective Action Plan and Budget 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  
Simpson Auto Service, Petitioner

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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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 RENE E CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1227 1346

NOV 13 2003

Mr. Harvey Simpson  
600 Berkshire  
East Alton, Illinois 62024

Re: LPC #1190205031 -- Madison County  
East Alton/ Simpson Auto Service  
600 Berkshire  
LUST Incident No. 941010  
LUST Technical File

Dear Mr. Simpson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated September 18, 2003, was received by the Illinois EPA on September 22, 2003. The budget was dated February 19, 2003 and received by the Agency on March 3, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

- 1. The Agency is requesting that off-site wells 13,14 and 15 be sampled when groundwater is present.

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 for the High Priority Corrective Action Plan 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.

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) 378-5800  
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

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)).

NOTE: 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 reimbursable.

All future correspondence must be submitted to:

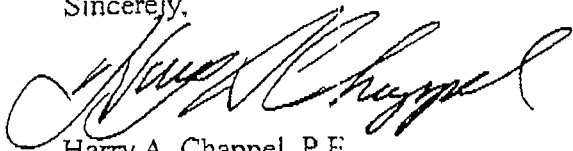
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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

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 James R. Malcom, III at 217/524-9140.

Sincerely,



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

HAC: jrm

Attachment: Budget Modification

cc: USI  
Division File

Attachment A

Re: LPC #1190205031 -- Madison County  
East Alton/ Simpson Auto Service  
600 Berkshire  
LUST Incident No. 941010  
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

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

\$11,628.56	Investigation Costs
\$6,430.00	Analysis Costs
\$15,115.00	Personnel Costs
\$1,713.00	Equipment Costs
\$151.25	Field Purchases and Other Costs
\$757.13	Handling Charges

SECTION 2

1. \$25,510.97 for an adjustment in equipment and personnel costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The amount proposed for the transducer and data logger was deemed unreasonable with \$102.00 deducted from the budget. The amount proposed for the PID meter was deemed unreasonable with \$45.00 deducted from the budget. All personnel costs associated with well installation should be incorporated into the cost per foot for drilling, based on this \$700.00 was deducted from the personnel portion of the budget. The overall personnel costs submitted for review was deemed unreasonable with \$22,835.00 deducted from the budget. The Agency is deducting all costs associated with the pilot study based on the fact that the pilot study was performed prior to Agency approval and the proposed system was not used during site remediation. Based on this \$1,828.97 was deducted from the budget.



2. \$5.18 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 plus 8% of amount over \$15,000
\$50,001 - \$100,000	\$4,400 plus 5% of amount over \$50,000
\$100,001 - \$1,000,000	\$6,900 plus 2% of amount over \$100,000

Based on the above outlined deductions the proposed handling charge was reduced by \$5.18.

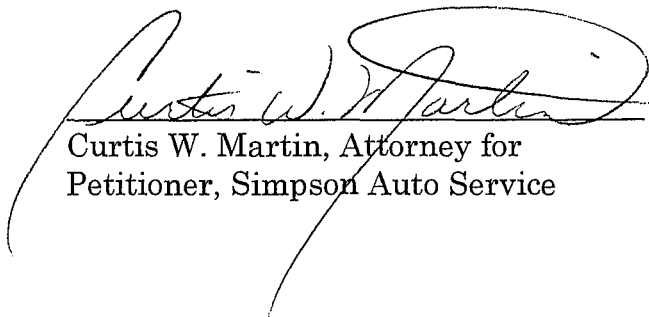
jrm

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 18, 2003, 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, Simpson Auto Service