BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

R.W. SHERIDAN OIL CO., INC.,	)	
	)	
Petitioner,	)	
	)	
vs.	)	PCB No. 04- 109
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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
Curtis W. Martin, Attorney for
R.W. Sheridan Oil Co., 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

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

NOW COMES the Petitioner, R.W. Sheridan Oil Co., Inc. ("Sheridan"), 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, Sheridan respectfully states as follows:

1. On November 26, 2003, the Agency issued a final decision to Sheridan, a copy of which is attached hereto as Exhibit A.

2. On November 28, 2003, Sheridan, through its consultant, United Science Industries, Inc. ("USI"), received the Agency's final decision.

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

Sheridan submitted to the Agency, through its consultant, USI, a High Priority Corrective Action Plan Budget ("Budget") dated September 22, 2003. The

Plan and Budget satisfy the requirements of the 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 were consistent with the information obtained while implementing the Plan.

The Agency, by its letter dated November 26, 2003, modified the Budget by deducting $18,368.75 in personnel fees for investigative activities and related services or materials in developing the Plan as unnecessary or inconsistent with generally accepted practices or unreasonable costs for justifiable activities, materials, or services.

The costs associated with each material, activity and service necessary to accomplish the goals of the Plan are reasonable and consistent in the performance of tasks 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 Plan 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.

A historical review of Sheridan's submittal to the Agency of its Plan Budget is necessary to place this appeal in its proper perspective. This the second of two appeals filed by Sheridan with regard to the Plan and Budget submitted to the Agency for this site. The first appeal was directed to the Agency's modification of the Plan and Budget as then submitted. This appeal is directed to the Agency's

modifications of the Budget resubmitted by Sheridan. In a nutshell, Sheridan appeals the Agency's elimination of the personnel costs incurred as a response to the modifications to the Plan originally submitted and to the Plans subsequently submitted. The Budget under this appeal is the third submitted by Sheridan as a result of the Agency's rejection or modification of two previous budgets. For the last year and one-half, Sheridan has submitted and resubmitted to the Agency Plans and Budgets in accordance with Agency instructions or requirements, each time incurring additional personnel time for services necessary to develop and prepare the revised Plans and Budgets.

More specifically, Sheridan submitted with the third amended Budget Form G, as well as a Justification for Budget Amendments, particularly describing the personnel time incurred in the preparation of the original Plan and Budget and the additional personal time incurred in the preparation of the amended Plans and Budgets as required by the Agency. Additional personnel time included that of Draftsman, Environmental Specialist, Project Coordinator, and Professional Engineer associated with completing additional modeling, drafting of maps, and preparation of the amended Plan Budgets. The Justification also specified the particular time involved with each task performed in preparation of the activities necessary to prepare the Plans and Budgets, including the second amended Plan and the third amended Budget. The total additional project management time consisted of 137.5 hours. The Agency chose to reject all such personnel services without any explanation other than that such were unnecessary or inconsistent

with generally accepted practices or unreasonable. Such action by the Agency is arbitrary and capricious and should be reversed by this Board.

WHEREFORE, Petitioner, R.W. Sheridan Oil Co., 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 Amended 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
Curtis W. Martin, Attorney for
R.W. Sheridan Oil Co., Inc.,
Petitioner

Robert E. Shaw
IL ARDC No. 03123632
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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

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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
7002 3150 0000 1227 2305

NOV 26 2003

R.W. Sheridan Oil Co., Inc.
Attn: Robert Sheridan
P.O. Box 3516
Bloomington, IL 61702

Re: LPC #1130755016 -- McLean County
Le Roy/ R.W. Sheridan Oil Co., Inc.
301 South Chestnut
LUST Incident No. 20001571
LUST Technical File

Dear Mr. Sheridan:

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 22, 2003, was received by the Illinois EPA on September 23, 2003. 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

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 Jason Donnelly at (217) 557-8764.

Sincerely,

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

HAC:JD\001571-hpcap.bud-#5

Attachments: Attachment A
Appeal Rights

c: United Science Industries, Inc., Jennifer Herner-Thogmartin
Division File

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

Attachment A

Re: LPC #1130755016 -- McLean County
Le Roy/R.W. Sheridan Oil Co., Inc.
301 South Chestnut
LUST Incident No. 20001571
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:

$0.00	Investigation Costs
$0.00	Analysis Costs
$19,776.50	Personnel Costs
$0.00	Equipment Costs
$6,895.54	Field Purchases and Other Costs
$304.33	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
$0.00	Analysis Costs
$0.00	Personnel Costs
$0.00	Equipment Costs
$46.25	Field Purchases and Other Costs
$0.00	Handling Charges

Therefore, the total cumulative budget is approved for:

$0.00	Investigation Costs
$0.00	Analysis Costs
$19,776.50	Personnel Costs
$0.00	Equipment Costs
$6,941.79	Field Purchases and Other Costs
$304.33	Handling Charges

SECTION 2

1. $18,368.75 for an adjustment in total personnel fees for investigative activities and related services or materials for developing a.High Priority corrective action plan that are unnecessary or inconsistent with generally accepted practices or unreasonable costs for justifiable activities, materials, or services are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(cc)).

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 31, 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, R.W. Sheridan Oil Co., Inc.