

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

AUG 12 2005

STATE OF ILLINOIS
Pollution Control Board

WILLIAM BREUER,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

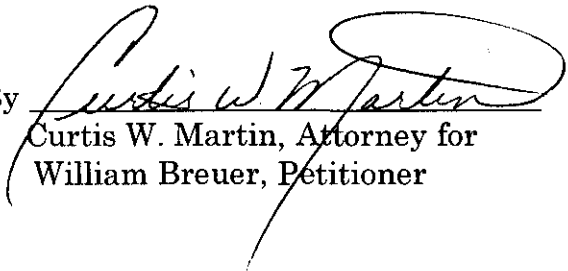
PCB No. 06- 25
(UST Appeal)

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
William Breuer, 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
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Mt. Vernon, Illinois 62864
Telephone (618) 244-1788

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WILLIAM BREUER,)
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Respondent.)

PCB No. 06-
(UST Appeal)

25

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, William Breuer ("Breuer"), 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, Breuer respectfully states as follows:

1. On July 6, 2005, the Agency issued a final decision to Breuer which was received by Breuer on July 7, 2005, a copy of which is attached hereto as Exhibit A. The basis for Breuer's Petition is as follows:

On November 5, 2002, Breuer submitted a High Priority Corrective Action Plan ("CAP") and Budget which proposed soil excavation and disposal and on-site deed restrictions to address groundwater contamination. On December 23, 2002, the Agency approved the CAP but modified the Budget by adjusting a combined

total of \$11,918.00 in personnel costs, equipment costs, field purchases and other costs, and handling charges. These costs were adjusted, according to the Agency, as exceeding the minimum requirements necessary to comply with Title XVI of the Environmental Protection Act ("Act") and 35 Ill. Adm. Code 732.505(c), as not "Corrective Action Costs" under Sections 57.6 and 57.7 of the Act and 35 Ill. Adm. Code 732.103 and as not reasonable as submitted under 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

In response to the Agency's December 23, 2002 letter, Breuer submitted an Amended CAP and Soil Abatement Report on October 16, 2003. This Plan and Report contained details of soil excavation activities and continued to propose on-site deed restrictions with regard to the groundwater contamination. While pursuing the soil excavation, Breuer encountered on May 19, 2003 a 560 gallon UST which had no records of existence and which was therefore treated by the Agency as a pre-1974 UST. Samples taken in and around this tank revealed, however, that it did not contribute to the contaminate plume. Breuer's Amended CAP also proposed a groundwater remediation program through monitoring wells.

By letter dated January 16, 2004, the Agency rejected the Amended CAP, Budget and Soil Abatement Report. The Agency claimed it had already approved a CAP which was close to completion and stated it would not reimburse Breuer costs incurred associated with reporting, planning, etc. of a new CAP. The Agency also rejected the Amended Budget consisting of a combined total of \$24,710.00 of

investigation costs, analysis costs, personnel costs, equipment costs, field purchases and other costs and handling charges.

In response to the Agency's January 16, 2004 letter, Breuer submitted a second Amended CAP and Soil Abatement and Groundwater Monitoring Report on August 3, 2004. This second Amended CAP proposed a quarterly groundwater monitoring program for one year and contained a budget for costs associated with the proposed groundwater remediation operations. By Agency letter dated October 26, 2004, the Soil Abatement and Groundwater Monitoring Report was approved. However, the Budget associated with the second Amended CAP was modified by means of a deduction to the personnel costs for "time/hours either partially or in full for activities that were previously allowed in your original budget for Corrective Action per IEPA letter dated December 23, 2002." The personnel adjustment amounted to \$14,569.00.

Breuer appealed the Agency's decision of October 26, 2004 by filing a Petition with the Board on February 16, 2005 in PCB No. 05-108. Subsequently, however, Breuer submitted additional justification to the Agency in a third Amended High Priority CAP and Budget on June 20, 2005. The third Amended CAP was approved but the Budget was modified by adjustment to personnel charges in the amount of \$12,635.00 by Agency letter dated July 6, 2005. Breuer has since moved to dismiss the appeal in PCB No. 05-108 regarding the Agency's October 26, 2004 decision letter to be replaced by the present appeal of the Agency's July 6, 2005 decision letter.

The basis for the Agency's July 6, 2005 modification of Breuer's third Amended Budget appears to be capsulated within its statements as follows: "Since you were changing your original approved plan in the manner you would handle any remaining groundwater contamination, the Agency denied these cost. . . ." and "[t]he Agency will not pay any costs associated with personnel time in report writing or re-writing, preparation etc. for a new corrective action plan, these costs are excessive activities." It is Breuer's position that the original groundwater remediation plan has not changed. The original groundwater plan as presented on November 5, 2002 included a highway authority agreement for the off-site contamination and for replacement monitoring wells on-site which were to be sampled to determine the effect of the soil remediation activities upon the groundwater. The CAP further explained that future activities "may include a proposal for extended groundwater sampling to assess if contamination may decrease over time." Breuer concedes that Section C.2 of the original CAP Agency form which listed on-site deed restriction was in error and did not coincide with the text of the CAP. This discrepancy, however, was not addressed by the Agency in its December 23, 2002 letter, and the CAP never stated that the on-site deed restriction would be utilized as an institutional control. In other words, the intent of the November 5, 2002 CAP was captured within its text that the groundwater remediation activities were approved by the Agency's December 23, 2002 letter.

Moreover, the Amended CAP dated October 16, 2003 was consistent with the Agency approved CAP and should have been approved by the Agency. The Agency's

denial of the October 16, 2003 Amended CAP required Breuer to prepare and submit yet another Amended CAP on August 3, 2004. The Amended CAP of August 3, 2004 was then approved by the Agency by letter dated October 26, 2004, but the Amended Budget associated with this Amended CAP was again modified. The further modification of the August 3, 2004 Amended CAP Budget again required Breuer to prepare and submit a third Amended CAP Budget with justification. This third Amended CAP was again modified by the Agency's July 6, 2005 letter which is the subject of this appeal.

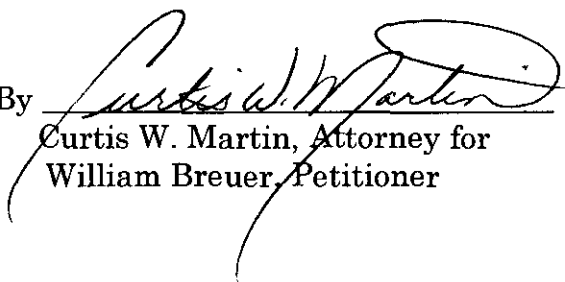
Breuer contends that all of the Amended CAP reports and associated budgets were consistent with the intent of the original CAP report as approved by the Agency on December 23, 2002. Breuer further contends that since the on site groundwater remediation plan has remained unchanged, the costs associated with personnel time and report writing or rewriting, preparation, etc. for the Amended CAPs are not in any way "excessive activities" and should be approved by the Agency. These personnel costs adjustments by the Agency do not properly relate to the personnel costs associated with different means of remediation as contended by the Agency, and its adjustment to personnel costs in its July 6, 2005 letter is unreasonable, arbitrary and capricious.

WHEREFORE, Petitioner, William Breuer, 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 third 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
William Breuer, Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
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18/99213 - KB
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

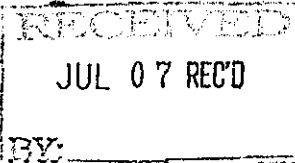
1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

217/782-6762

JUL 06 2005

William Breuer
Attention: Mr. Gerald Huge, POA
Post Office Box 96
Hoyleton, Illinois 62803



CERTIFIED MAIL

7002 3150 0000 1108 8174

Re: LPC #1890205002 -- Washington County
Hoyleton/ Breuer, William
Highway 177 & Hoyleton-Hoffman Road
LUST Incident No. 992697 and No. 20030951
LUST Technical File

Dear Mr. Huge:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 3rd Amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated June 7, 2005, was received by the Illinois EPA on June 20, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Agency has reviewed your plan modification to include the removal of an abandoned UST. This UST was discovered during excavation activities.

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. 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.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and

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

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EXHIBIT A

Page 2

35 Ill. Adm. Code 732.405(e), 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. 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 Donna Wallace at 217/ 524-1283.

Sincerely,



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

TAH:DW:dw\

Attached: Attachment A

c: United Science Industries/ Karen Bartling
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 # 1890205002 -- Washington County
Hoyleton/ Breuer, William
Highway 177 & Hoyleton-Hoffman Road
LUST Incident No. 992697 and No. 20030951
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:

\$1,531.50	Investigation Costs
\$3,247.00	Analysis Costs
\$57,579.00	Personnel Costs
\$28,625.00	Equipment Costs
\$54,512.00	Field Purchases and Other Costs
\$0	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	Investigation Costs
\$0	Analysis Costs
\$6,673.75	Personnel Costs
\$0	Equipment Costs
\$0	Field Purchases and Other Costs
\$0	Handling Charges

Therefore, the total cumulative budget is approved for:

\$1,531.50	Investigation Costs
\$3,247.00	Analysis Costs
\$64,252.75	Personnel Costs
\$28,625.00	Equipment Costs
\$54,512.00	Field Purchases and Other Costs
\$0	Handling Charges

SECTION 2

An amount of \$12,635.00 is deducted in personnel charges. Costs 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 reimbursement from the Fund (35 Ill. Adm. Code 732.606(cc)). The budget includes such costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)) and/or are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)).

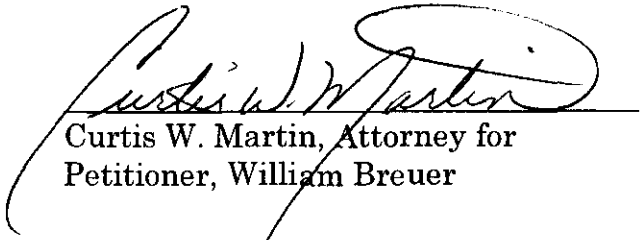
Your original Corrective Action Plan and Budget were approved for excavation of contaminated soils, (2) rounds of groundwater sampling, reinstalling of (2) monitoring wells and taking (23) conformation samples. Your plan stated if any groundwater issue remained after excavation it would be addressed by an on site groundwater use restriction and a Highway Authority Agreement. Your firm submitted an amended plan dated October 16, 2003 proposing that should the levels in groundwater not decrease, you would propose an alternative technology for an oxygen releasing compound or chemical oxidation (see page 7, 9 and 10 of this report). Since you were changing your original approved plan in the manner you would handle any remaining groundwater contamination, the Agency denied these cost. Your excavation had been completed and it had been shown the groundwater would not go beyond the proposed Highway Agreements. Your original plan was near completion when you decided to change you plan. You then submitted another amended plan going back to your original plan to monitor the wells after excavation with the exception that you wanted to add (2) additional groundwater sampling episodes, and address any groundwater contamination at that time (no method given). (The Agency will not pay any cost associated with personnel time in report writing or re-writing, preparation etc for a new corrective action plan, these costs are excessive activities.)

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 10, 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
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Springfield, IL 62794-9276


Curtis W. Martin, Attorney for
Petitioner, William Breuer