

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

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CLERK'S OFFICE

APR 04 2006

STATE OF ILLINOIS  
Pollution Control Board

MIDWEST PETROLEUM COMPANY, )  
)  
Petitioner, )  
)  
vs. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

06-153  
PCB No. 07-  
(UST Appeal)

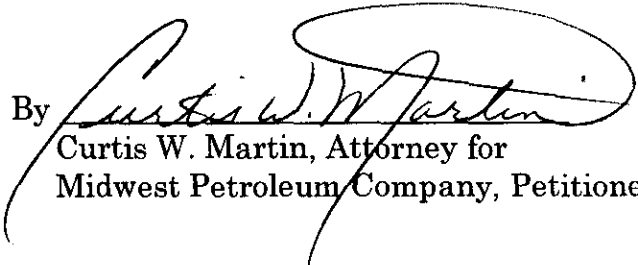
**NOTICE**

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

William D. Ingersoll  
Manager Enforcement Programs  
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  
Midwest Petroleum Company, 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  
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Telephone (618) 244-1788

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06-153

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

NOW COMES the Petitioner, Midwest Petroleum Company, ("Midwest"), 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, Midwest respectfully states as follows:

1. On February 28, 2006, the Agency issued a final decision which was received by Midwest on March 1, 2006, a copy of which is attached hereto as Exhibit A.
2. On March 10, 2006, Midwest requested an extension of time within which to file an appeal of the Agency's final decision.
3. On March 27, 2006, the Agency denied Midwest's request for the Agency to join in the requested extension of time to file the appeal.

4. The basis for Midwest's appeal is as follows:

On August 13, 2004, Midwest, through its consultant, United Science Industries, Inc. ("USI"), submitted a Corrective Action Plan ("Plan") and Budget ("Budget") which were approved by the Agency in a letter dated September 1, 2004. The Plan and Budget approved by the Agency estimated that soil removal and backfilling would require twenty-five (25) days to complete. An estimate of twenty-seven (27) days at 10 hours per day for an environmental technician was included within the approved Budget for performance of "excavation and overburden screening, manifesting, sampling, surveying, and sample shipment." However, the Plan and Budget also provided for the removal of clean overburden but inadvertently failed to include an estimate of the time required to remove the clean overburden. Based upon the approved Plan and Budget, the resulting allowance for the completion of excavation and replacement of clean overburden was only two (2) days, i.e. twenty-seven (27) total days less twenty-five (25) days for excavation, transportation and backfilling.

The time actually incurred by Midwest to perform the contaminated soil excavation, transportation, disposal, and backfilling and overburden excavation and replacement ("field activities") totaled forty-three (43) days. As a result, Midwest presented an Amended Budget ("Amended Budget") dated March 29, 2005. The Amended Budget contained an M-1 Justification which demonstrated that the production rates for the actual field activities time were reasonable and Midwest requested in the Amended Budget additional time for the environmental technician,

environmental specialists, and senior project manager for the provision of the oversight and management of the field activities.

By letter dated July 18, 2005, the Agency rejected the Amended Budget as including costs that are not reasonable. Midwest appealed the Agency's July 18, 2005 denial of the Amended Budget to the Board under PCB No. 06-28. The Board on December 15, 2005 issued an Opinion and Order that the Agency properly denied Midwest's request for approval of the Amended Budget because the Amended Budget was inconsistent with the existing Plan.

On January 30, 2006, Midwest appealed to the Fifth District Appellate Court in Cause No. 5-06-0056 the Board's Opinion and Order of December 15, 2005. That appeal is still pending. Thereafter, on February 15, 2006, Midwest submitted to the Agency an Amended Corrective Action Plan ("Amended Plan") which included a detailed explanation of the basis for the requested amendment, all to be consistent with the Amended Budget previously submitted.

By letter dated February 28, 2006, the Agency rejected the Amended Plan and associated Amended Budget on the basis that the Amended Plan did not provide additional documentation/justification for the additional personnel hours requested for excavation, transportation, disposal and backfill. In addition, the Agency asserts that the Amended Plan reveals a reduction in the soils to be excavated, transported, disposed and backfilled and "it would appear" as though the cost of such corrective actions should also have a reduction. The Agency was evidently struggling with the concept that additional costs were sought when

overall corrective action activities were reduced. The Agency then concluded that without an approvable Plan the associated Amended Budget could not be fully reviewed.

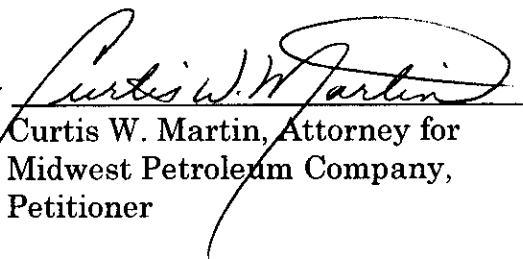
The basis for Midwest's request for approval of the Amended Plan and Amended Budget are fully discussed within the appeal in PCB No. 06-28. Midwest has presented to the Agency ample justification for the approval of its Amended Plan and Amended Budget through its M-1 Justification included within the Amended Budget and its separate explanation included within the Amended Plan. To summarize for purposes of this appeal, the originally approved Plan and Budget underestimated the amount of time required to complete the field activities referred to in the Plan, in particular the personnel hours required to complete the clean overburden excavation, clean overburden stockpiling, and clean overburden backfilling. Midwest simply seeks to correct that oversight by the Amended Plan and Amended Budget.

The Amended Plan and Amended Budget clearly demonstrate that the additional personnel hours sought to be approved within the Amended Budget were reasonable, consistent with the associated Amended Plan, were incurred in the performance of corrective action activities and are not in excess of those corrective action activities necessary to meet the minimum requirements of the Environmental Protection Act and its regulations. The Agency's rejection of the Amended Plan is therefore arbitrary and capricious and should be reversed.

WHEREFORE, for the foregoing reasons, Petitioner, Midwest Petroleum Company, prays for reversal of the Agency's decision of February 28, 2006, that its Amended Plan and Amended Budget be approved as 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  
Midwest Petroleum Company,  
Petitioner

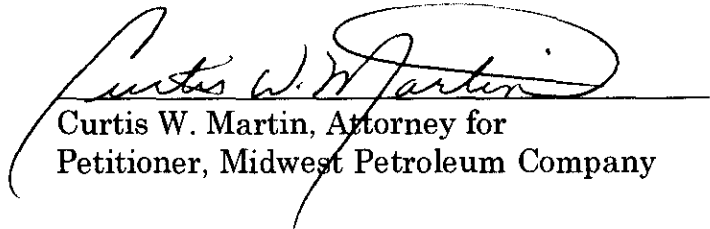
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**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on March 31, 2006, 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

William D. Ingersoll  
Manager Enforcement Programs  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
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