

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

GATEWAY FS, INC.,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. _____
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

NOTICE OF FILING

To:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

September 7, 2007

GATEWAY FS, INC.

By:   
Mandy L. Combs  
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 - 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Gateway FS, Inc.*

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

GATEWAY FS, INC.,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. 07-126
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

**PETITION FOR REVIEW**

Pursuant to §§ 40 and 57.8(i) of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.8(i), to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the Board's Order entered June 21, 2007 a copy of which is attached hereto as Exhibit 1, petitioner Gateway FS, Inc. ("Gateway") submits this Petition for Review of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying Gateway reimbursement for \$1,579.90 in costs incurred under the LUST program.

Pursuant to § 57.8(l) of the Act, Gateway further requests the Board to order the Agency to pay Gateway's legal costs for seeking payment in this appeal.

**I. THE AGENCY'S FINAL DECISION**

The Decision of which review is sought is contained in Exhibit 2 hereto.

**II. SERVICE OF THE AGENCY'S FINAL DECISION**

The Decision indicates it was mailed May 2, 2007. It was received by Gateway May 4, 2007 and this appeal is timely pursuant to the Board's Order entered June 21, 2007 a copy of which is attached as Exhibit 1.

**III. GROUND FOR APPEAL**

A. The Agency's contention that Gateway's analysis costs and shipping costs "lack supporting documentation" is erroneous, arbitrary and capricious. 35 Ill. Adm. Code 732.601(b)(9) and 734.605(b)(9) state that a complete application for payment consists of "an accounting of costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed." Gateway submitted appropriate documentation, which was ignored by the Agency.

B. The Agency's contention that it cannot determine if the \$1,477.07 for analysis costs and \$102.83 for shipping costs will be used for "corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act" and/or are "not reasonable" is erroneous, arbitrary and capricious. The application at issue was not for a budget but for reimbursement. The activities already have been performed and the conjecture by the Agency is both illogical and erroneous.

**IV. CONCLUSION.**

For the foregoing reasons, petitioner Gateway FS, Inc. respectfully petitions the Board to reverse the denial of reimbursement in the amount of \$1,579.90 and order the Agency to pay Gateway's attorneys' fees for this appeal.

September 6, 2007

GATEWAY FS, INC.

By:   
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 – 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Gateway FS, Inc.*

MandyCombs\US\Gateway\Pet for Review.wpd

461  
cc Barry  
7/6/07

ILLINOIS POLLUTION CONTROL BOARD

June 21, 2007

GATEWAY FS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 07-126
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	(90-Day Extension)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

On June 6, 2007, the Board received a joint notice to extend the 35-day period within which Gateway FS, Inc. (Gateway) may appeal a May 2, 2007 determination of the Illinois Environmental Protection Agency (Agency). According to the joint notice, Gateway received the Agency determination on May 5, 2007. The joint request was therefore timely filed. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b)(2), 105.406. The Agency's determination concerns Gateway's leaking underground storage tank site located at "C" Avenue in Randolph County. In the determination, the Agency accepted Gateway's Corrective Action Plan but modified the budget.

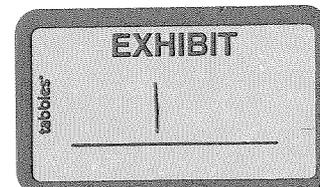
413 CPN LLC

The Board extends the appeal period until September 7, 2007, as the parties request, based on the May 5, 2007 decision receipt date. See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.406. If Gateway fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2007, by a vote of 4-0.

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1899240-JD

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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

RECEIVED

CERTIFIED MAIL #

MAY 02 2007

MAY 04 2007

7004 2510 0001 8623 5709

BY: \_\_\_\_\_

Gateway FS Inc.

Attention: Greg Birchler/Southwest Bank/Commercial Lending

Jennifer Vescogni-Acct. #0032713725

#2 Carlyle Plaza Drive

Belleville, Illinois 62221

Re: LPC #1570405003 -- Randolph County

Prairie Du Rocher/Gateway FS Inc.

"C" Avenue

Leaking UST Incident No. 20000027

Leaking UST FISCAL FILE

Dear Mr. Birchler:

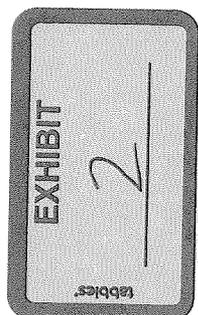
The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 29, 2006 and was received by the Agency on January 3, 2007. The application for payment covers the period from July 1, 2006 to November 25, 2006. The amount requested is \$80,073.20.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on May 2, 2001 for \$9,102.39 and September 5, 2003 for \$30,725.15. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On January 3, 2007, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$78,479.01 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However,

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



Page 2

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 applicant 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:

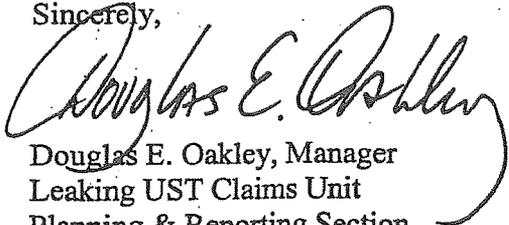
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

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

**If you have any questions or require further assistance, please contact Niki Weller of my staff at 217/782-6762.**

Sincerely,



Douglas E. Oakley, Manager  
Leaking UST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:NW:bjh\072431.doc

Attachment

cc: United Science Industries

Attachment A  
Accounting Deductions

Re: LPC #1570405003 -- Randolph County  
Prairie Du Rocher/Gateway FS Inc.  
"C" Avenue  
Leaking UST Incident No. 20000027  
Leaking UST Fiscal File

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$1,579.90, deduction for costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act; therefore, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Deduction for corrective action costs for analysis that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

A deduction is being made in the amount of \$1,477.07 from the Analysis costs. The claim contained lab reports from Prairie Analytical for analysis work that suggests the work was done by their company. If the work was done by Prairie Analytical please provide an invoice with dates the work was done and the amounts charged.

If the Analytical work was done by USI, to our knowledge USI is not an accredited lab.  
35 Ill. Adm. Code 732.106  
35 Ill. Adm. Code 732.606(i)  
35 Ill. Adm. Code 732.606(q)

A deduction is being made in the amount of \$102.83 from the Field Purchases and Other Costs. The costs are for shipping costs. A receipt is necessary.

2. \$189.07, deduction for costs associated with free product removal, site investigation or corrective action. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts

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pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(g) and 732.606(m).

Also, \$189.07 (analysis) included in the above deduction. This amount is over the approved budget amount.

3. \$14.29, deduction for corrective action costs for handling charges on permits that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

The Agency does not pay handling charges on permits.

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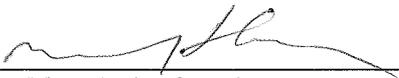
**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14<sup>th</sup> & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

September 7, 2007

  
\_\_\_\_\_  
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