

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

MIDSTATE SALVAGE CORP.,     )  
  )  
                          Petitioner,     )  
                  v.                             )  
  )  
ILLINOIS ENVIRONMENTAL     )  
PROTECTION AGENCY,         )  
                          Respondent.     )

PCB 2017-002  
(LUST Permit Appeal)

**NOTICE OF FILING AND PROOF OF SERVICE**

To:     John T. Therriault, Acting Clerk                     Division of Legal Counsel  
          Illinois Pollution Control Board                 Illinois Environmental Protection Agency  
          100 West Randolph Street                         1021 North Grand Avenue East  
          State of Illinois Building, Suite 11-500         P.O. Box 19276  
          Chicago, IL 60601                                     Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a MOTION TO SUBSTITUTE EXHIBIT B, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 15<sup>th</sup> day of August, 2016.

Respectfully submitted,  
MIDSTATE SALVAGE CORP., Petitioner

BY:    LAW OFFICE OF PATRICK D. SHAW

BY:    /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MIDSTATE SALVAGE CORP.,	)	
Petitioner,	)	
	)	
v.	)	PCB 2017-002
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**MOTION TO SUBSTITUTE EXHIBIT B**

NOW COMES Petitioner, MIDSTATE SALVAGE CORP., pursuant to Section 101.500 of the Board's Procedural Rules (35 Ill. Adm. Code § 101.500), and hereby moves to Substitute Exhibit B, stating as follows:

1. On this date, Petitioner timely filed its Petition for Review of a final decision of the Illinois Environmental Protection Agency, which erroneously attached as Exhibit B the final decision in an unrelated matter.
2. A true and correct copy of the correct decision is attached hereto as Exhibit B.
3. Past Board practice has been to allow petitioners to correct errors or omissions in *timely* filed petitions for review. E.g., Dickerson Petroleum v. IEPA, PCB 09-87 (May 7, 2009); Prime Location Properties v. IEPA, PCB 09-67 (March 19, 2009), aff'd on appeal.
4. Given this motion is filed and served the same day as the timely filed Petition for Review, Petitioner believes no prejudice will be caused by ordering the attached Exhibit B to be substituted for the earlier exhibit.

WHEREFORE, Petitioner, MIDSTATE SALVAGE CORP., prays for order directing that the attached Exhibit B be substituted for Exhibit B filed with the Petition for Review.

MIDSTATE SALVAGE CORP.,  
Petitioner

By its attorneys,  
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
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[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)

THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397  
BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

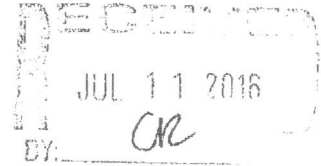
217/524-3300

JUL 07 2016

CERTIFIED MAIL

7014 2120 0002 3289 1178

MidState Salvage Corporation  
Neal Lebeter  
1402 West South Street  
Taylorville, IL 62568



Re: LPC # 0210605108— Christian County  
Taylorville/MidState Salvage Corporation  
109 Chestnut Street  
Leaking UST Incident No. 20120515  
Leaking UST Technical File

Dear Mr. Lebeter:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated April 22, 2016, was received by the Illinois EPA on April 22, 2016. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

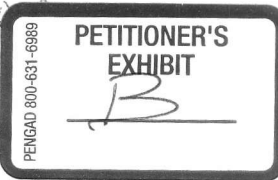
The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

In a phone conversation on June 23, 2016 with Vince Smith from CW3M Consulting, it was agreed one soil boring near MW-1 will be installed and sampled for PNA analysis as a modification for the plan.

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 is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section I of Attachment A have been approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount

of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.



of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

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) of the Act).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund 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. 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 paid from the Fund.

**Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least two weeks prior to the scheduled field activities.**

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan 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.

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

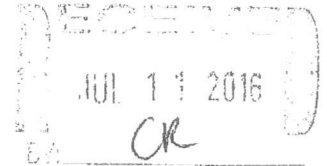
An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or need further assistance, please contact Wayne Zuehlke at 217/557-6937.

Sincerely,



Michael T. Lowder  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land



MTL: WSZ:\

Attachment: Appeal rights  
Attachment A

cc: CW3M  
BOL 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) 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:

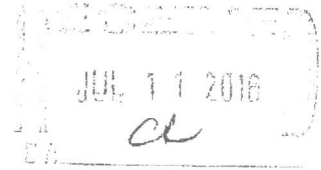
John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

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 # 0210605108— Christian County  
Taylorville/MidState Salvage Corporation  
109 Chestnut Street  
Leaking UST Incident No. 20120515  
Leaking UST Technical File



SECTION 1

The budget was previously approved for:

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$1,093.50	Paving, Demolition, and Well Abandonment Costs
\$31,007.02	Consulting Personnel Costs
\$710.00	Consultant's Materials Costs

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

\$1,486.97	Drilling and Monitoring Well Costs
*\$768.28	Analytical Costs
\$619.57	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
*\$8,865.74	Consulting Personnel Costs
\$174.20	Consultant's Materials Costs

\*The deductions and increases are based on an agreement by the Illinois EPA and the Owner/Operator's Consultant in an email dated June 21, 2016.

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.



Therefore, the total cumulative budget is approved for:

\$1,486.97	Drilling and Monitoring Well Costs
\$768.28	Analytical Costs
\$619.57	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$1,093.50	Paving, Demolition, and Well Abandonment Costs
\$39,872.76	Consulting Personnel Costs
\$884.20	Consultant's Materials Costs

SECTION 2

1. The deductions and increases are based on an agreement by the Illinois EPA and the Owner/Operator's Consultant in an email dated June 21, 2016.
  - a. Analytical costs were increased by \$470.88:
    - i. Four (4) additional soil BTEX samples were added:  
 $4 * \$105.33 \text{ per sample} = \$421.32$
    - ii. Four (4) additional Encore samplers were added:  
 $4 * \$12.39 \text{ per sample} = \$ 49.56$
  - b. Personnel costs were reduced by \$4,888.22  
The hourly reduction in personnel is explained in the e-mail sent to the Agency on June 21, 2016.
2. \$21.00 for indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
  - i. Measuring wheels are considered to be an indirect cost and, as such, these costs are not reimbursable from the fund.
3. \$19.05 deducted for mileage costs. In an e-mail dated June 27, 2016 mileage was reduced from 75 miles to 55 miles. The mileage rate was reduced from \$0.65 per mile to the federal rate of \$0.54 per mile
  - i.  $\$0.11 \text{ per mile} * 75 \text{ miles} = \$8.25$
  - ii.  $(75 \text{ miles} - 55 \text{ miles}) (20 \text{ miles } \textit{deduction}) * \$0.54 \text{ per mile} = \$10.80$
- 4.. \$148.00 for costs for PID, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). 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)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to 35 Ill. Adm. Code 734.850(b) for costs associated with activities that do not have a maximum payment amount set forth in pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the rate requested for a PID pursuant 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation for the rate requested the PID costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

- i. The email date June 27, 2016 explained how the rate for the PIDs was originally developed. However, the explanation is insufficient to allow payment for the PID costs. Please provide the documentation and the cost breakdown on how the rate was developed into \$148.00 per day.

WSZA

