

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MOTO, INC.,)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

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 PETITION FOR REVIEW OF THE AGENCY LUST DECISION, 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 18th day of August, 2016.

Respectfully submitted,
MOTO, INC., 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

MOTO, INC.,)	
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Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MOTO, INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency’s final decision, modifying a budget, and in support thereof states as follows:

1. This appeal arises from a release from a service station, commonly known as Moto Mart, located in Fairview Heights, County of St. Clair, currently owned by MOTO, INC., and assigned LPC #1630525045.
2. In 1997, a release was reported from three underground storage tanks at the site, for which remediation continues, and Incident Number 1997-2412 was assigned.
3. Progress on remediation has been slowed by offsite access issues, and the bankruptcy of the former consultant, United Science Industries, Inc. Also, regulations and practices have changed frequently over the time period.
4. On April 18, 2016, Petitioner’s new consultants submitted a corrective action plan and budget.
5. In a series of e-mails from July 5th to July 7th, the Agency raised issues with equipment costs charged by the consultant, and ultimately set reimbursement rates for some of the disputed items, explaining that “[w]ith the rates we think are reasonable, you aren’t going to

make the huge profits you have in the past, but you will still be making money off items you really shouldn't be.”

6. On July 12, 2016, the Agency issued its decision, a true and correct copy of which is attached hereto as Exhibit A.

7. The Agency decision modified the plan, and this modification is not disputed herein. Moreover, in the hopes of finding a compromise on the budget, Petitioner's consultant agreed to certain reductions in consultant's hours, which are not disputed herein either.

8. The Agency arbitrarily cut \$3,964.73 from the budget for drilling, soil sampling and vapor sampling work to be performed on the grounds that a previous consultant did not collect soil samples from the vadose zone back in the 1990s. Regardless of whether or not sampling should have been performed differently over 15 years ago when practices and regulations were different, there is no question that the subject work is necessary and the costs are reasonable to perform said work. The Agency lacks authority to cut or apportion based upon the Agency's reconsideration of its previous approval and payment for work it no longer finds satisfactory.

9. The Agency improperly cut \$446.16 for work budgeted to be performed by the Senior Project Manager that the Agency believes should be done by the Account Technician. It is reasonable for the Senior Project Manager to perform work on budget submittals.

10. The Agency improperly cut \$21.00 for a measuring wheel as now being considered an indirect cost. The costs associated with a measuring wheel is a direct cost to be incurred in the field, and the new Agency policy that a measuring wheel is no longer a reimbursable cost is contrary to its own application instructions and is an illegal unpromulgated

rule.

11. The Agency improperly eliminated the entire cost for gloves (\$16.00), bailers (5 for \$16 each) shroud costs (\$700.00). The rates proposed in the budget are reasonable, having been traditionally approved by the Agency for decades, were documented in correspondence with the Agency project manager and being less than the comparable cost for the consultant to lease the equipment.

12. The Agency further cut reimbursement rates by improperly imposing rates that had not been promulgated in rulemaking, namely a rate of \$0.10 per page for photocopying, \$0.54 for mileage/truck rental, \$16.00 for gloves, and \$75.00 for use of a PID. The original rates proposed in the budget are reasonable, having been traditionally approved by the Agency for decades, were documented in correspondence with the Agency project manager, and are less than comparable costs for the consultant to lease the equipment. Moreover, the Agency charges \$0.15 for copying, the Internal Revenue Service mileage reimbursement rate does not apply to use of a truck, and \$75.00 is without any basis and it appears to be justified by the belief that the PID used by Petitioner's consultant is too nice for LUST work.

13. The application was complete, containing all of the information required pursuant to Section 57.7(a)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.7(a)(2)), pursuant to Section 734.135 of the Board's regulations (35 Ill. Adm. Code § 734.135), and in accordance with Illinois EPA forms and instructions existing at the time of the submittal.

14. This is a budget, the purpose of which is to account for all costs, including materials, equipment, or field purchases, that may be required to implement the corrective action plan, and unless the Illinois EPA believes such costs cannot be incurred or would necessarily be

unreasonable, their removal is not authorized by any statute or regulation.

15. No statutory or regulatory provision would be violated by approving a budget containing the contested items.

16. The subject Illinois EPA letter was received by certified mail on July 14, 2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, MOTO, INC., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the budget as submitted, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

MOTO, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
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217-299-8484
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THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62774-9276 • (217) 782-3397
BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

217/524-3300

CERTIFIED MAIL

JUL 12 2016

7014 2120 0002 3289 1338

Moto, Inc.
Attn: Rob Whittington
721 West Main Street
Belleville, IL 62222

RECEIVED
JUL 14 2016
BY: CR

Re: LPC #1630525045 – St. Clair County
Fairview Heights/Moto Mart, Inc.
6114 North Illinois
Leaking UST Incident No. 972412 & 20040425
Leaking UST Technical File

Dear Mr. Whittington:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated April 8, 2016, was received by the Illinois EPA on April 12, 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 modifications listed in Attachment A 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)).

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 B, the amounts listed in Section 1 of Attachment B 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.

PENSIAD 800-631-6888
PETITIONER'S EXHIBIT
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Page 2

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. Besides providing at least two weeks' notice to Leaking UST staff in Springfield, notification must be provided to Rob Mileur either by telephone at (618) 993-7223 or by email at Robert.Mileur@illinois.gov.

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.

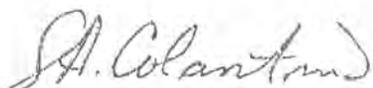
If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

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

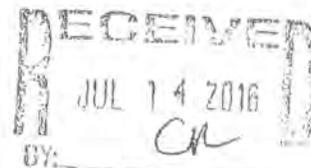
Page 3

If you have any questions or need further assistance, please contact Jason Donnelly at (217) 557-8764.

Sincerely,



Stephen A. Colantino
Acting Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land



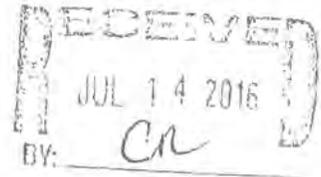
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Attachments: A
B
Appeal Rights

c: CWM Company, Inc., Carol Rowe
BOL File

Attachment A

Re: LPC #1630525045 – St. Clair County
Fairview Heights/Moto Mart, Inc.
6114 North Illinois
Leaking UST Incident No. 972412 & 20040425
Leaking UST Technical File



Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

1. An owner or operator seeking to comply with the best efforts requirements of 35 Ill. Adm. Code 734.345(b) must demonstrate compliance with the requirements of 35 Ill. Adm. Code 734.350. (Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.350(a))

In conducting best efforts to obtain off-site access, an owner or operator must, at a minimum, send a letter by certified mail to the owner of any off-site property to which access is required, stating:

- a. Citation to Title XVI of the Act stating the legal responsibility of the owner or operator to remediate the contamination caused by the release;
- b. That, if the property owner denies access to the owner or operator, the owner or operator may seek to gain entry by a court order pursuant to Section 22.2c of the Act;
- c. That, in performing the requested investigation, the owner or operator will work so as to minimize any disruption on the property, will maintain, or its consultant will maintain, appropriate insurance and will repair any damage caused by the investigation;
- d. If contamination results from a release by the owner or operator, the owner or operator will conduct all associated remediation at its own expense;
- e. That threats to human health and the environment and diminished property value may result from failure to remediate contamination from the release; and
- f. A reasonable time to respond to the letter, not less than 30 days.

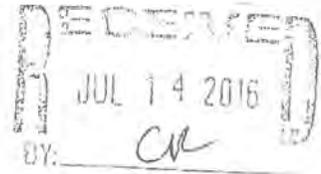
(Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.350(b))

As previously stated, an owner/operator must try to gain off-site access to both investigate and remediate any off-site contamination. It does not appear off-site access has been attempted to remediate any contamination present on the off-site properties. However, since BH-25 was collected almost eight years ago, it is recommended the area immediately adjacent be re-sampled to determine the current concentrations. Samples should be collected from the highest PID readings from each five-foot interval above the saturated zone or from the same depths as previously sampled if PID readings are not present.

2. Pursuant to 35 Ill. Adm. Code 734.510(a), a technical review must consist of a detailed review of the steps proposed or completed to accomplish the goals of the plan and to achieve compliance with the Act and regulations. The overall goal of the technical review for plans must be to determine if the plan is sufficient to satisfy the requirements of the Act and regulations and has been prepared in accordance with generally accepted engineering practices or principles of professional geology. Based on the information submitted to date, it is still unclear if the sample analyzed for foc was collected from five feet below ground surface or six to eight and a half feet below ground surface. The lab report indicates the foc sample was collected from five feet below ground surface while the boring log indicates six to eight and a half feet below ground surface. The discrepancies must be addressed.
3. Pursuant to 35 Ill. Adm. Code 620.220 and based on the information submitted to date, it appears the groundwater beneath the site meets the criteria for Class II: General Resource Groundwater. It is recommended a Class II Groundwater demonstration be performed and submitted with the next correspondence.
4. The hydraulic conductivity value of 5.9×10^{-5} cm/sec. cannot be duplicated. Based on the results from MW-1, MW-2 and MW-4, it appears the average hydraulic conductivity should be 5.83×10^{-5} cm/sec. Once the current groundwater concentrations have been determined, the R26 modeling must be revised with the correct hydraulic conductivity.
5. After boring locations B4, B6, B7, B8, B9, MW-2 and MW-3 have been re-sampled above the saturated zone, the analytical tables must be revised to include the current results. The results should be next to the original sample results, with the samples that are not valid due to being collected below the saturated zone being noted (i.e.; struck through, etc.).

Attachment B

Re: LPC #1630525045 – St. Clair County
Fairview Heights/Moto Mart, Inc.
6114 North Illinois
Leaking UST Incident No. 972412 & 20040425
Leaking UST Technical File



SECTION 1

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

\$2,165.46	Drilling and Monitoring Well Costs
\$7,276.64	Analytical Costs
\$619.58	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$19,912.03	Consulting Personnel Costs
\$426.20	Consultant's Materials Costs

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.

SECTION 2

- I. \$495.29 in drilling costs associated with improperly collected, transported, or analyzed laboratory samples. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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). Fourthly, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in these locations were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation.

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2. \$218.00 for costs associated with the installation materials for the 4" to 6" recovery well for the vapor port, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

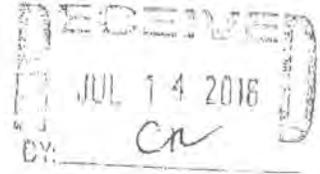
Per the Illinois EPA Soil Gas Sampling Protocol Fact Sheet, a direct push method should be used to drill for the collection of soil gas samples. Although technically acceptable, costs for drilling with a hollow stem auger and installing a vapor well for the collection of soil gas samples exceeds the minimum requirements to comply with the regulations.

3. \$619.58 for site investigation or corrective action costs associated with solid waste drum disposal that 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). In addition, the costs 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 the July 5, 2016 phone conversation with Vince Smith of CWM Company, Inc., only two of the four proposed drums would be required for the activities proposed.

4. \$495.64 in Senior Project Manager costs associated with budget compliance/technical oversight that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., four hours were cut for the above activities.



5. \$123.91 in Engineer III costs associated with budget calculations and inputs that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., one hour was cut for the above activities.

6. \$743.46 in Engineer III costs associated with TACO calculations that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., six hours were cut for the above activities.

7. \$247.82 in Senior Project Manager costs associated with TACO calculation reviews that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., two hours were cut for the above activities.

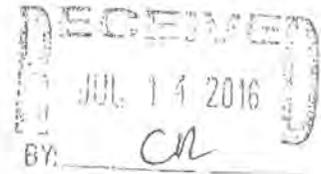
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8. \$1,239.10 in Engineer III costs associated with drilling, soil sampling and vapor sampling that exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Costs associated with improperly collected, transported, or analyzed laboratory samples are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in the borings mentioned were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation. Four of the proposed borings were approved and the Illinois EPA added one boring for the recommended re-sample of BII-25. Since only five of the ten borings were approved, 50% of the proposed costs for the above consulting personnel title have been deducted. It should be noted, the costs associated with re-sampling B4 have been approved since the Illinois EPA requested a worst case monitoring well in this area.

9. \$929.30 in Engineer I costs associated with drilling, soil sampling and vapor sampling that exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Costs associated with improperly collected, transported, or analyzed laboratory samples are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in the borings mentioned were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation. Four of the proposed borings were approved and the Illinois EPA added one boring for the recommended re-sample of BII-25. Since only five of the ten borings were approved, 50% of the proposed costs for the above consulting personnel title have been deducted. It should be noted, the costs associated with re-sampling B4 have been approved since the Illinois EPA requested a worst case monitoring well in this area.



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10. \$557.58 in Engineer I costs associated with recording bore logs and well completion reports and tabulating the analytical results that exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Costs associated with improperly collected, transported, or analyzed laboratory samples are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in the borings mentioned were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation. Four of the proposed borings were approved and the Illinois EPA added one boring for the recommended re-sample of BII-25. Since only five of the ten borings were approved, 50% of the proposed costs for the above consulting personnel title have been deducted. It should be noted, the costs associated with re-sampling B4 have been approved since the Illinois EPA requested a worst case monitoring well in this area.

11. \$247.82 in Senior Project Manager costs associated with reviewing boring logs and well completion reports that exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Costs associated with improperly collected, transported, or analyzed laboratory samples are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in the borings mentioned were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation. Four of the proposed borings were approved and the Illinois EPA added one boring for the recommended re-sample of BII-25. Since only five of the ten borings were approved, 50% of the proposed costs for the above consulting personnel title have been deducted. It should be noted, the costs associated with re-sampling B4 have been approved since the Illinois EPA requested a worst case monitoring well in this area.

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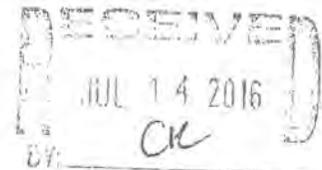
12. \$495.64 in Senior Project Manager costs associated with reviewing and evaluating the analytical results, SI documentation and field data that exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). Costs associated with improperly collected, transported, or analyzed laboratory samples are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(q). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs. Further, the 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).

The previous consultant did not collect soil samples from the vadose zone in the following locations: B4, B6, B7, B8, B9, MW-2 and MW-3. All previous samples in the borings mentioned were collected from below the groundwater table; and therefore, improperly collected. All costs associated with going back out to resample above the groundwater table are not eligible for payment from the Fund as it is unreasonable to go back out and collect samples, which should have been collected during the initial investigation. Four of the proposed borings were approved and the Illinois EPA added one boring for the recommended re-sample of BH-25. Since only five of the ten borings were approved, 50% of the proposed costs for the above consulting personnel title have been deducted. It should be noted, the costs associated with re-sampling B4 have been approved since the Illinois EPA requested a worst case monitoring well in this area.

13. \$495.64 in Senior Project Manager costs associated with reimbursement compliance, technical oversight and documentation that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., four hours were cut for the above activities.

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14. \$446.16, deduction for a reduction in the personnel title listed in Section 734.APPENDIX E Personnel Titles and Rates. Pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. The Senior Project Manager rate has been reduced to a Senior Account Technician rate of \$68.14 per hour.

The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable and 35 Ill. Adm. Code 734.630(dd).

Reimbursement activities are an Account Technician task and must be budgeted accordingly.

15. \$408.84 in Senior Account Technician costs associated with reimbursement preparation that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., six hours were cut for the above activities.

16. \$111.52 in Senior Administrative Assistant costs associated with reimbursement compilation, assembly and distribution that 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). In addition, the costs 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.

The total amount of hours for the above tasks were not reasonable as submitted. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., two hours were cut for the above activities.

17. \$362.40 in copy costs that 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). In addition, the costs 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.

CWM has not provided sufficient supporting documentation that a rate of \$0.15 per copy is reasonable. Comparing the proposed rate of \$0.15 per copy to the rate of \$0.15 per copy, which the Illinois EPA charges for Freedom Of Information Act (FOIA) copies does not provide adequate justification the proposed rate is reasonable. The first 400 copies for FOIA requests are free and the rate also includes Illinois EPA personnel time to copy the documents. CWM requests additional Consulting Personnel costs to copy documents. Pursuant to the July 7, 2016 email submitted by Vince Smith of CWM Company, Inc., the entire cost will be deducted.

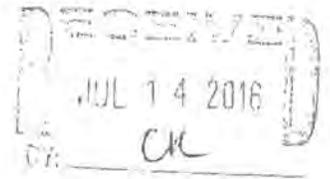
18. \$21.00 for indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

Measuring wheels are indirect costs.

19. \$41.80 in mileage costs that 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). In addition, the costs 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.

CWM has not provided sufficient supporting documentation that a rate of \$0.65 per mile is reasonable. The Federal rate of \$0.54 per mile has been allowed.

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20. \$16.00 in glove costs that 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). In addition, the costs 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.

The proposed costs associated with the second box of gloves was deducted since one box would provide a sufficient amount of gloves to perform the proposed activities. On July 5, 2016, during our phone conversation, Vince Smith (CWM) agreed one box would be sufficient.

21. \$16.00 in glove costs that 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). In addition, the costs 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.

CWM has not provided sufficient supporting documentation that a rate of \$16.00 per box is reasonable since gloves can be purchased at a significantly lower rate per box. The requested invoices for their bulk purchases of gloves were not provided; and therefore, the Illinois EPA could not determine if the rate was reasonable.

22. \$80.00 in bailer costs that 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). In addition, the costs 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.

CWM has not provided any supporting documentation that a rate of \$16.00 per bailer is reasonable. Pursuant to the July 7, 2016 email submitted by Vince Smith of CWM Company, Inc., the entire cost will be deducted.

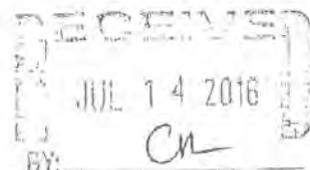
23. \$73.00 in photoionization detector (PID) costs that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd). In addition, the costs lack supporting documentation. Such costs are ineligible for 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. Further, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The PID is used only as a screening tool; and therefore, using the most expensive PID that reports in parts per billion (ppb) exceeds the minimum requirements. In addition, CWM only reports their PID readings in parts per million (ppm) on the boring logs provided to the Agency, which also indicates the costs for the more expensive ppb PID meter are not justified. Further, CWM owns the PIDs they use; and therefore, the Illinois EPA is not going to consider the additional costs such as taxes and shipping or pickup and return costs in determining a reasonable rate for the PID. Pursuant to the July 6, 2016 email submitted by Vince Smith of CWM Company, Inc., a rate of \$75.00 will be allowed.

24. \$700.00 in shroud costs that 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). In addition, the costs 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.

Per the July 6, 2016 email, CWM agreed that the rate of \$700.00 was not an appropriate rate and stated \$100.00 should be the rate based on the new field constructed shroud they use. The Illinois EPA then requested information to determine what materials were used in the field constructed shroud. CWM did not provide the requested information. Pursuant to the July 7, 2016 email submitted by Vince Smith of CWM Company, Inc., the entire cost will be deducted.

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