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MAY 28 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

DICKEY OIL COMPANY,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 03-132
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Dickey Oil Company ("Dickey"), 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, Dickey respectfully states as follows:

1. On January 21, 2003, the Agency issued a final decision to Dickey, a copy of which is attached hereto as Exhibit A.
2. On February 20, 2003, Dickey made a written request to the Agency for an extension of time by which to file a petition for review from the thirty-five day period to ninety days, a copy of which is attached hereto as Exhibit B.

3. On February 25, 2003, the Agency joined in Dickey's request that the Board extend the thirty-five day period for filing a petition to ninety days, a copy of which is attached hereto as Exhibit C.

4. The grounds for the Petition herein are as follows:

Dickey submitted to the Agency, through its consultant United Science Industries, Inc., pursuant to 35 Ill. Adm. Code 732.312, a "Method 3" Site Classification Work Plan ("SCWP") and corresponding budget. Under 35 Ill. Adm. Code 732.312(c)(1) and (2), a site classification under Method 3 requires the full extent of the soil and groundwater contamination to be defined during the site classification process by means of the collection of sufficient data to make such determination. The SCWP and budget satisfy the requirements of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder, in that they were prepared and fully implemented in accordance with generally accepted engineering practices and their conclusions were consistent with the information obtained while implementing the Plan.

The costs associated with each material, activity and service necessary to accomplish the goals of the Plan and budget are similar in generally accepted engineering practices and technical protocol to those historically submitted to and approved by the Agency which the Agency now deems to be unreasonable and inconsistent with generally accepted engineering practices.

Dickey's site is rather unique in that it is larger than the typical corner gas station. Two tank beds were located at the site with product lines spanning greater

than average distances and connecting multiple fuel pump islands to the underground storage tanks. The site investigation identified two distinct plumes of soil contamination and two distant plumes of groundwater contamination which plumes eventually overlapped near the front of the site. Thus, it was as if Dickey was investigating two adjoining leaking underground storage tank sites. More specifically:

(1). The Agency's determination that four (4) soil borings and eight (8) monitoring wells were in excess of the minimum requirements necessary to comply with the Act and its regulations is arbitrary and capricious and without technical justification. Further, the Agency has failed to notify Dickey of which borings and which wells it deems to be unreasonable.

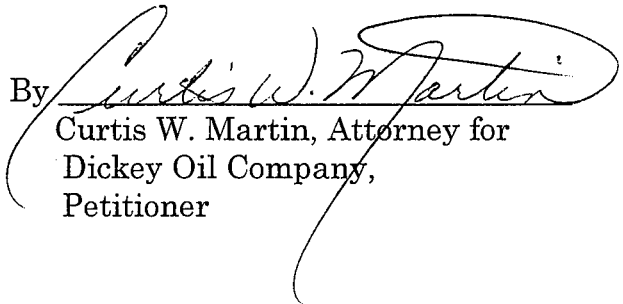
(2). The Agency's adjustment of \$490.00 for handling charges was on merely a cost basis with no technical justification and is therefore arbitrary and capricious. Further, the Agency has failed to notify Dickey with specific reasons why the sections of the Act or regulations cited in its decision may be violated if the Plan and budget are approved.

(3). The Agency's adjustment of \$13,532.40 for investigation, analysis, personnel and equipment costs associated with the borings and wells as excessive was on merely a cost basis with no technical justification and is therefore arbitrary and capricious. Further, the Agency has failed to notify Dickey with specific reasons why the sections of the Act or regulations cited in its decision may be violated if the Plan and budget are approved.

WHEREFORE, Petitioner, Dickey Oil Company, 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 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(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By  Curtis W. Martin, Attorney for
Dickey Oil 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. 10th Street, Suite 302
P.O. Box 1789
Mt. Vernon, Illinois 62864
Telephone (618) 244-1788



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 2030 0001 1875 4941

JAN 21 2003

Dickey Oil Company
Attention: Bruce Dickey
333 West North Avenue
Flora, Illinois 62839

Re: LPC #0250105030 -- Clay County
Flora/ Dickey Oil Company
333 West North Avenue
LUST Incident No. 20010275
LUST Technical File

Dear Mr. Dickey:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Classification Work Plan (plan) submitted for the above-referenced incident. This plan, dated September 19, 2002, was received by the Illinois EPA on September 24, 2002. Citations in this letter are from the Environmental Protection Act (Act) and 35 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 Illinois EPA has determined that the modifications listed in Attachment A are necessary to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732 (Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j)).

In addition, the budget is modified pursuant to Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j). Based on the modifications listed in Section 2 of Attachment B, the amounts listed in Section 1 of Attachment B 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 35 Ill. Adm. Code 732.305(e) or 732.312(l), 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.

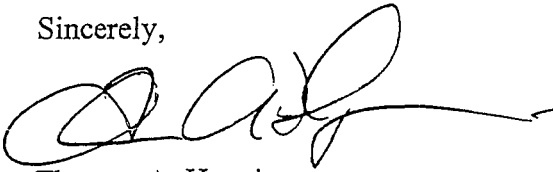
EXHIBIT A

Page 2

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If you have any questions or need further assistance, please contact Donna Wallace at 217/ 524-1283.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Henninger', with a long horizontal flourish extending to the right.

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

TAH:DW:dw\

c: United Science Industries
Division File

Appeal Rights

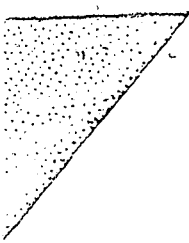
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4)(D) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may 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 #0250105030 -- Clay County
Flora/ Dickey Oil Company
333 west North Avenue
LUST Incident No. 20010275
LUST Technical File

Citations in this Attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The installation of (4) soil borings and (8) monitoring wells is in excess of the minimum requirements-necessary-to-comply-with Title XVI and/or 35 Ill. Adm. Code. For the purpose of reimbursement, since these activities are in excess of those necessary to meet the minimum requirements of the Title XVI of the Act, costs for such activities are not reimbursable (Sections 57.5(a) and 57.7(c)(4)(C) of the Act; 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

DW:dwl

Attachment B

Re: LPC # 0250105030 -- Clay County
Flora/ Dickey Oil Company
333 West North Avenue
LUST Incident No. 20010275
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

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

\$13,668.40	Investigation Costs
\$7,310.00	Analysis Costs
\$20,000.00	Personnel Costs
\$1,595.00	Equipment Costs
\$45.53	Field Purchases and Other Costs
\$835.55	Handling Charges

SECTION 2

- A. \$344.00 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 Plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 Plus 8% of amount over \$15,000
\$50,001 - \$100,000	\$4,400 Plus 5% of amount over \$50,000
\$100,001 - \$1,000,000	\$6,900 Plus 2% of amount over \$100,000

Handling charges were adjusted to meet deductions in classification plan/budget

- B. \$13,532.40 for an adjustment in investigation, analysis, personnel and equipment costs associated with the excessive borings and/or monitoring wells.. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs submitted are reasonable.



P.O. Box 360
6295 East Illinois Highway 15
Woodlawn, Illinois 62898-0360

Phone: (618) 735-2411
Fax: (618) 735-2907
E-Mail: unitedsciences@unitedscience.com

February 20, 2003

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, IL 62792-9276

**Re: LPC# 0250105030—Clay County
Dickey Oil Co. - Flora
333 West North Ave.
LUST Incident No. 20010275
ATTN: Susan Schroeder**

Mrs. Schroeder:

With regard to an Agency letter dated January 21, 2003 and enclosed herein for the above referenced project, United Science Industries, Inc. on behalf of our client, Dickey Oil Co., is requesting an extension of the current petition for hearing filing deadline of February 25, 2003 to May 26, 2002, an extension of 90 days beyond the current 35 day petition filing deadline.

I appreciate your time and consideration in this matter. If you have any questions or comments regarding this matter please contact me at (618) 735-2411.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Zachary Bishop
Project Manager

Enclosures

RECEIVED
Division of Legal Counsel
FEB 21 2003
Environmental Protection
Agency

B

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

DICKY OIL COMPANY,)	
Petitioner,)	
v.)	PCB No. 03-
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,)	
Respondent.)	

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to May 27, 2003, or any other date not more than a total of one hundred twenty-five (125) days from January 21, 2003, the date of the Illinois EPA’s final decision. The 125th day actually falls on May 26, a State holiday, and the next business day is May 27, 2003. In support thereof, the Illinois EPA respectfully states as follows:

1. On January 21, 2003, the Illinois EPA issued a final decision to the Petitioner.
(Exhibit A)


2. On February 20, 2003, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner did not represent when the final decision was received. (Exhibit B)

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: February 25, 2003

This filing submitted on recycled paper.


CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on February 25, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, 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 Springfield, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

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

Zachary Bishop, Project Manager
United Science Industries
P.O. Box 360
6295 East Illinois Highway 15
Woodlawn, IL 62898-0360

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



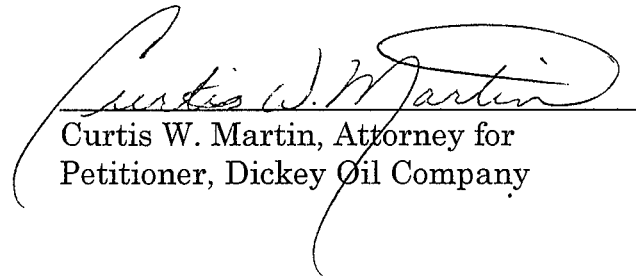
John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 23, 2003, 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 I. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276


Curtis W. Martin, Attorney for
Petitioner, Dickey Oil Company