

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

JUN 16 2003

STATE OF ILLINOIS
Pollution Control Board

WARREN'S SERVICE,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

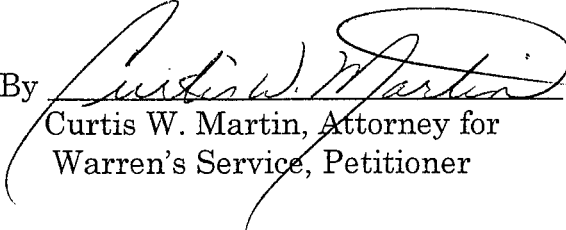
PCB No. 03-204
(UST Appeal)

NOTICE

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

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, a copy of which is herewith served upon you.

By 
Curtis W. Martin, Attorney for
Warren's Service, 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

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WARREN'S SERVICE,)
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 Petitioner,)
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vs.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB No. 03- 204
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Warren's Service ("Warren's"), 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, Warren's respectfully states as follows:

1. On March 11, 2003, the Agency issued a final decision to Warren's, a copy of which is attached hereto as Exhibit A.

2. On April 10, 2003, Warren's made a written request to the Agency for an extension of time by which to file a petition for review to ninety days, a copy of which is attached hereto as Exhibit B.

3. On April 16, 2003, the Agency joined in Warren'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:

Warren's submitted to the Agency, through its consultant, United Science Industries, Inc. ("USI"), pursuant to 35 Ill.Adm.Code 731, a request for reimbursement of costs incurred with regard to corrective action activities conducted at Warren's site. The request satisfies the requirements of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder, in that it reflects activities and cost associated therewith in accordance with generally accepted engineering practices. The costs associated with each material, activity and service necessary to accomplish the goal of the environmental remediation at Warren's site were reasonable and consistent and were incurred in the performance necessary to meet the minimum requirements of the Act and the regulations promulgated thereunder.

Further, the costs associated with each material, activity, and service necessary to accomplish the goal of the environmental remediation 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. More specifically:

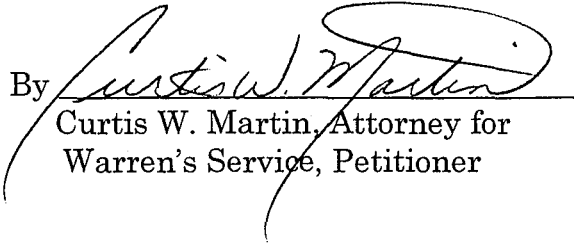
(1). . The Agency's adjustment of \$6,411.05 in Geoprobe, drilling foreman, rig hand, and laborer charges as unreasonable was on merely a cost basis and is therefore arbitrary and capricious.

(2). The Agency's adjustment of \$16,800.00 for Chemical Oxidation Compound ("Compound") due to lack of supporting documentation was on merely a cost basis with no technical justification. USI provided the Agency with sufficient information for this "in stock" item which was not a "field purchase." The Agency has requested information regarding USI's cost for the Compound under circumstances in which USI provided the Compound rather than a third party. Thus, the information requested by the Agency is not relevant to the reasonableness of the charges for the Compound in the environmental remediation industry, just as, for example, information regarding USI's payroll for various employees is not relevant. The industry standard supports the \$12.00 per pound charge for the Compound requested by USI and the Agency's adjustment is therefore arbitrary and capricious.

WHEREFORE, Petitioner, Warren's Service, 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 reimbursement request 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(1) and 35 Ill. Adm. Code 732.606(1).

Respectfully submitted,

SHAW & MARTIN, P.C.

By 
Curtis W. Martin, Attorney for
Warren's Service, 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

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

MAR 11 2003

Warren's Service
Attention: Ronald Ayers
84 County Highway 7
Lynn Center, IL 61262

Re: LPC #1310405001 -- Mercer County
 Sherrard/Warren's Service
 3rd & 5th
 LUST Incident Number 902097
 LUST FISCAL FILE

Dear Mr. Ayers:

On November 25, 2002, the Agency sent you a letter regarding the site referenced above. Upon further review, an additional voucher for \$17,750.86 will be prepared for submission to the Comptroller's Office for payment as funds become available.

An underground storage tank owner or operator may appeal this decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision may, within 35 days after the notification of the final Agency decision, petition for a hearing before the Board; however, the 35-day period may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the 35-day initial appeal period.

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

ROCKFORD - 4302 North Main Street, Rockford, IL 61109
ELGIN - 595 South State, Elgin, IL 60120
BUREAU OF LAND - PENNA - 7620 N. University St., Springfield, IL 62761
SPRINGFIELD - 4300 S. Sixth Street Rd., Springfield, IL 62761
MAR.

PLAINFIELD - 1000 N. Main Street, Plainfield, IL 60016 - (847) 294-4000
MOUNTAIN VIEW - 1000 N. Main Street, Mountain View, IL 60056 - (309) 693-5463
CHAMPAIGN - 1000 N. Main Street, Champaign, IL 61820 - (217) 278-5800
MOUNTAIN VIEW - 1000 N. Main Street, Mountain View, IL 60056 - (309) 693-5463

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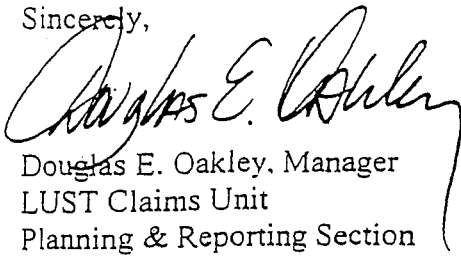
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For information regarding the filing of an extension, please contact:

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, please contact Kevin Mably or myself at 217/782-6762.

Sincerely,



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

DEO:KM:jk\0330115.doc

cc: United Science Industries

Attachment A
Accounting Deductions

Re: LPC #1310405001 -- Mercer County
Sherrard/Warren's Service
3rd & 5th
LUST Incident Number 902097
LUST FISCAL FILE

Item # Description of Deductions

1. \$70.39, deduction for an adjustment in costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

United Science Industries-Invoice #18-10379 Need receipt-Hotel

\$70.39 Total Accounting Deductions

DEO:KM:jk\0330115.doc

Attachment A
Technical Deductions

Re: LPC #1310405001 -- Mercer County
Sherrard/Warren's Service
3rd & 5th
LUST Incident Number 902097
LUST FISCAL FILE

Item # Description of Deductions

1. \$6,411.05, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

Specifically, the combined rate for the Geoprobe, plus drilling foreman, rig hand, and laborer, are excessive.

The Personnel cost for Adams, K. Pavletich, and Tensmeyer, S. total \$7,850. Hotel rooms for these individuals totaled \$601.05 (\$248.40 plus \$248.40 plus \$104.05).

Use of the Geoprobe was billed at \$80/hour for 62 hours over seven days, for a total of \$4,960.

A total of the above charges equals \$13,411.05. A reasonable rate for these activities is ~~\$7,000~~, thus the \$6,411.05 deduction.

2. \$16,800.00, deduction for an adjustment in costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

Specifically, the Chemical Oxidation Compound is listed at \$12.00/LB. An invoice from the manufacturer of this Chemical Oxidation Compound should be provided documenting the rate paid for this compound.

DEO:KM;jk\0330115.doc



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

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

April 10, 2003

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

RECEIVED
Division of Legal Counsel
APR 14 2003
Environmental Protection
Agency

**Re: LPC# 1310405001 – Mercer Co.
Sherrard/Warren's Service
3rd & 5th
LUST Incident No. 902097**

Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Mr. Ronald Ayers, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated March 11, 2003 and received by Mr. Ronald Ayers on March 12, 2003. A copy of the correspondence is attached.

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

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Matt Cherry ^{or}

Matt Cherry
Project Manager

Enclosures

B

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

WARREN'S SERVICE,)	
)	
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 July 15, 2003, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On March 11, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On April 10, 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 represented that the final decision was received on March 12, 2003. (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: April 16, 2003

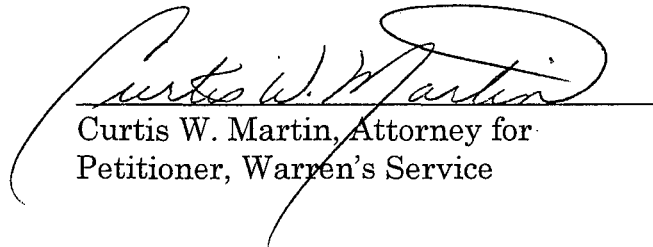
This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 13, 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, Warren's Service