

RECEIVED
CLERK'S OFFICE

OCT 21 2003

STATE OF ILLINOIS
Pollution Control Board

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

PAUL PHELAN,)
)
 . Petitioner,)
)
 v.)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB No. 04- 71
(LUST Appeal - Ninety Day Extension)

NOTICE

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

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

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: October 17, 2003

RECEIVED
CLERK'S OFFICE

OCT 21 2003

STATE OF ILLINOIS
Pollution Control Board

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

PAUL PHELAN,)	
)	
Petitioner,)	
v.)	PCB No. 04- 11
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 January 15, 2004, or any other date not more than a total of one hundred twenty-five (125) days from September 12, 2003, the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On September 11, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On September 19, 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 September 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: October 17, 2003



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 5859

SEP 11 2003

Paul Phelan
406 West Carpenter Street
Jerseyville, IL 62052

Re: LPC #1174165009 -- Macoupin County
Brighton/Paul Phelan (Wayne's Service)
1008 North Main Street
LUST Incident No. 983046
LUST Technical File

Dear Mr. Phelan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan and High Priority Corrective Action Plan Budget submitted for the above-referenced incident. The Illinois EPA received the High Priority Corrective Action Plan and High Priority Corrective Action Plan Budget, dated April 2003, on May 14, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.405(c), the High Priority Corrective Action Plan is rejected for the reasons listed in Attachment A.

Pursuant to Sections 57.7(a)(1) and 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.405(e) and 732.503(b), the High Priority Corrective Action Plan Budget is rejected for the reasons listed in Attachment B.

Pursuant to 35 Ill. Adm. Code 732.401, the Illinois EPA requires submittal of a revised High Priority Corrective Action Plan and High Priority Corrective Action Plan Budget within 120 days of the date of this letter 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

Attachment A

Re: LPC #1174165009 -- Macoupin County
Brighton/Paul Phelan (Wayne's Service)
1008 North Main Street
LUST Incident No. 983046
LUST Technical File

1. Reason For Rejection: In review letters dated March 15, 2002 and March 18, 2003 the Illinois EPA instructed the owner or operator to characterize the extent and/or degree of groundwater contamination at the source and south of the canopy (north of MW-4). To date, the owner or operator has not characterized the extent and/or degree of groundwater contamination at the aforementioned locations.

Illinois EPA Proposed Resolution: The owner or operator shall install sufficient groundwater monitoring wells (after excavation of the on-site soil contamination) to characterize the degree and/or extent of groundwater contamination at the source and south of the canopy (north of MW-4).

2. Reason For Rejection: The Illinois EPA will not approve High Priority Corrective Action Plans, which do not include full-scale proposals for both soil and groundwater remediation. Soil and groundwater contamination are present on and off-site; however, the High Priority Corrective Action Plan only includes a proposal for the remediation of the accessible on-site soil and groundwater contamination.

Illinois EPA Proposed Resolution: The owner or operator shall submit a High Priority Corrective Action Plan, which includes a full-scale proposal for soil remediation, the results of a pilot study or a proposal for a pilot study (including a description of the information that will be collected during the pilot study) and a full-scale proposal for groundwater remediation.

Note: The Illinois EPA prefers that the pilot study be performed prior to submittal of the High Priority Corrective Action Plan; however, the Illinois EPA will allow for the full-scale groundwater remediation proposal to be adjusted if the pilot study is performed after submittal of the High Priority Corrective Action Plan.

3. Reason For Rejection: The High Priority Corrective Action Plan does not identify the type of chemical oxidation compound that is to be placed in the soil excavation or include calculations for the amount of chemical oxidation compound that will be placed in the soil excavation.

Illinois EPA Proposed Resolution: If the owner or operator wishes to use a chemical oxidation compound to remediate the groundwater contamination in the soil excavation, he/she shall provide, at a minimum, the name of the chemical oxidation compound, the composition of the chemical oxidation compound, the time-release properties of the chemical oxidation compound and calculations for the amount of chemical oxidation compound that will be placed in the soil excavation.

Attachment B

Re: LPC #1174165009 -- Macoupin County
Brighton/Paul Phelan (Wayne's Service)
1008 North Main Street
LUST Incident No. 983046
LUST Technical File

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

1. The Illinois EPA has not approved the High Priority Corrective Action Plan with which the High Priority Corrective Action Plan Budget is associated; therefore, the Illinois EPA cannot determine whether these costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)).

It also cannot be determined whether the costs are corrective action costs. "Corrective action" means an activity associated with compliance with the provision of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act).

In addition, it cannot be determined whether these costs are reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(hh)).

MTL:TLB:H:\Projects\Paul Phelan\5b.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

September 19, 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
SEP 22 2003
Environmental Protection
Agency

**Re: LPC# 1174165009
Brighton/Paul Phelan
1008 North Main Street
LUST Incident No. 983046**

Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Mr. Paul Phelan, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated September 11, 2003 and received by Mr. Paul Phelan on September 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 ext. 185.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Matt Cherry
Project Manager

Enclosures


CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on October 17, 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 First Class 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

Matt Cherry, 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)