

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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DEC 3 2003

STATE OF ILLINOIS
Pollution Control Board

RUSSELL OIL,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 04- 89
(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

John Kroeger, 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: December 1, 2003

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

DEC 3 2003

STATE OF ILLINOIS
Pollution Control Board

RUSSELL OIL,)
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Petitioner,)
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v.) PCB No. 04- 89
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 March 1, 2004, or any other date not more than a total of one hundred twenty-five (125) days from October 27, 2003, the date of the Illinois EPA’s final decision. The 125th day from the date of the decision is February 29, 2003, a Sunday. The next business day is March 1, 2004. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 27, 2003, the Illinois EPA issued a final decision to the Petitioner.
(Exhibit A)
2. On November 21, 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 S. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
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217/782-5544
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Dated: December 1, 2003

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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

OCT 27 2003

Russell Oil Company
Attention: Leon Russell
200 East Main Street
Galatia, IL 62935

Re: LPC #1650200006 -- Saline County
 Harrisburg/Russell Oil Company
 326 East Poplar Street
 LUST Incident No. 20030626
 LUST FISCAL FILE

Dear Mr. Russell:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated September 25, 2003 and was received by the Agency on September 25, 2003. The application for payment covers the period from April 29, 2003 to June 30, 2003. The amount requested is \$2,418.00.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on July 22, 2003 for \$64,849.20. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On September 25, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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

A

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from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant 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:

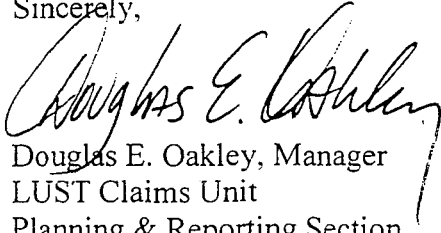
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Nancy Moore of my staff at 217/782-6762.

Sincerely,


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

DEO:NM:jk\030716.doc

cc: United Science Industries, Inc.

Attachment A
Accounting Deductions

Re: LPC #1650200006 -- Saline County
Harrisburg/Russell Oil Co.
326 East Poplar Street
LUST Incident No. 20030626
LUST Fiscal File

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

Item # Description of Deductions

1. Deduction associated with 732.612(a)(1)(2)(3), 732.612(b)(5) and 732.612(c)(2), as explained below.

Section 732.612 Determination and Collection of Excess Payments

- a) If, for any reason, the Agency determines that an excess payment has been paid from the Fund, the Agency may take steps to collect the excess amount pursuant to subsection (c) of this Section.
 - 1) Upon identifying an excess payment, the Agency shall notify the owner or operator receiving the excess payment by certified or registered mail, return receipt requested.
 - 2) The notification letter shall state the amount of the excess payment and the basis for the Agency's determination that the payment is in error.
 - 3) The Agency's determination of an excess payment shall be subject to appeal to the Board in the manner provided for the review of permit decisions in Section 40 of the Act.
- b) An excess payment from the Fund includes, but is not limited to: 5) Payment calculated by the Agency in reliance on incorrect information.
- c) Excess payments may be collected using the following procedure:
 - 2) If an owner or operator submits a subsequent claim for payment after previously receiving an excess payment from the Fund, the Agency may deduct the excess payment amount from any subsequently approved payment amount. If the amount subsequently approved is insufficient to recover the entire amount of the excess payment, the Agency may use the procedures in this Section or any other collection methods available to the Agency by law to collect the remainder.

Following is an explanation why no further costs can be reimbursed from the payment letter dated September 2, 2003.

Per the letter from USI dated and received on September 25, 2003 requesting the payment of costs previously denied, \$979.50 of the costs that were originally designated for

Mobilization/Demobilization are now designated for either contaminated soil removal, backfill or UST removal. The costs that were deducted for UST removal, in the amount of \$1,438.50, are now designated for contaminated fill removal or waste characterization. These shifts of costs to different tasks reduce the UST removal costs to a reasonable rate, but the addition of costs to the contaminated soil task makes the costs for contaminated soil excessive.

The total costs for contaminated soil are \$19,853.30
There is a \$4.80 per ton cost overage.
 $\$4.80 \times 478.77 \text{ tons} = \$2,298.10$ in excess costs

In addition, there should have been an additional deduction in the letter dated September 2, 2003 for excessive backfill costs. This was overlooked in the original review and subsequent payment letter. The deduction for backfill costs should have been \$2,382.55 originally. Recognizing the newly-defined task descriptions in USI's letter of September 25, 2003, the total costs for backfill are \$12,710.25. That revises the deduction to \$2,755.99.

The total costs for backfill are \$12,710.25
There is a \$3.69 per ton overage
 $\$3.69 \times 746.88 \text{ tons} = \$2,755.99$

The total of the two deductions outlined above is \$5,054.09 ($\$2,298.10 + \$2,755.99$). The amount requested for further reimbursement and already deducted in the letter of September 2, 2003 is \$2,418.00. ~~The balance of \$2,636.09 will be deducted from future submittals, as this represents an overpayment.~~



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

November 21, 2003

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

**Re: LPC # 1650200006 – Saline County
Harrisburg – Russell Oil
326 East Poplar Street
LUST Incident No. 20030626**

To Whom It May Concern:

United Science Industries, Inc. (USI), on behalf of our client Russell Oil Company, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated October 27, 2003, which is included.

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.

John Kroeger
Project Manager

Enclosures

RECEIVED
Division of Legal Counsel
NOV 24 2003
Environmental Protection
Agency

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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 1, 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

John Kroeger, Project Manager
United Science Industries
P.O. Box 360
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