

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

**MAR 25 2004**

STATE OF ILLINOIS  
Pollution Control Board

CHEMREX,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 04- 170
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE**

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

Mark A. Bilut  
McDermott, Will & Emery  
227 West Monroe Street  
Chicago, IL 60606-5096

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: March 23, 2004

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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
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CHEMREX,	)	
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Petitioner,	)	
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v.	)	PCB No. 04- 170
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 June 24, 2004, or any other date not more than a total of one hundred twenty-five (125) days from February 20, 2004, the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On February 17, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On March 18, 2004, 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 February 20, 2004. (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



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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  
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Dated: March 23, 2004

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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

CERTIFIED MAIL

7002 3150 0000 1255 1745

**FEB 17 2004**

Chem Rex  
Attention: Scott Shinn  
889 Valley Park Drive  
Shakopee, Minnesota 55379-1854

**RECEIVED**

**FEB 20 2004**

**CRA, INC.**

RE: LPC 0310455050 - Cook County  
Chicago Heights - Chem Rex  
415 East 16th Street  
LUST Incident 910674  
LUST TECHNICAL FILE

Dear Mr. Shinn:

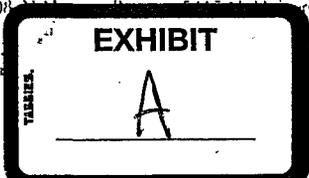
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above referenced incident. This information, dated October 17, 2003, was received by the Illinois EPA on October 20, 2003. The report proposes the information which is summarized in Attachment 1. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code.

Pursuant to Section 57.7(c)(4)(D) of the Act and 35 Illinois Administrative Code 732.405(c), the High Priority Corrective Action Plan is rejected for the reasons which are explained in Attachment 2.

Pursuant to Sections 57.7(a)(1) and 57.7(c)(4)(D) of the Act and 35 Illinois Administrative Code 732.405(e) and 732.503(b), the associated budget is rejected for the reasons which are explained in Attachment 3.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 4.

Please also be advised that the current remediation objectives for TMB are outlined in the September 9, 1997 Illinois EPA letter.



Any questions regarding this letter should be directed to Michael Piggush via phone (217-782-3101), fax (217-524-4193), or e-mail (epa4200@epa.state.il.us).

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

Attachments (4):

1. Summary of Report Proposal.
2. High Priority Corrective Action Plan Disapproval Reasons.
3. High Priority Corrective Action Budget Disapproval Reasons.
4. Appeal Rights.

cc: Conestoga Rovers & Associates  
Division File

## ATTACHMENT 1

### SUMMARY OF REPORT PROPOSAL

RE: LPC 0310455050 - Cook County  
Chicago Heights - Chem Rex  
415 East 16th Street  
LUST Incident 910674  
LUST TECHNICAL FILE

The report proposes the following information:

1. The report proposes that releases have occurred from the following underground storage tank systems:
  - a. 1-1,000 gallon gasoline underground storage tank system.
  - b. 2-4,000 gallon xylene underground storage tank systems.
  - c. 3-4,000 gallon mineral spirits underground storage tank systems.
  - d. 2-8,000 gallon "Organic 100" underground storage tank systems.
2. The report proposes that the indicator contaminants would be the following: BETX, 1,2,4-TMB & 1,3,5-TMB.
3. The report assumes a Class 1 groundwater designation, in accordance with 35 Illinois Administrative Code 620.210.
4. The report proposes that the underground storage tank systems were removed.
5. The report proposes that 2,438 tons of contaminated soil were excavated & thermally treated.
6. The report proposes that 4,183 tons of contaminated soil were excavated & disposed of.
7. The report proposes that additional site assessment activities were performed on August 26, 2002 → August 27, 2002, as follows:
  - a. The report proposes that 8 soil borings (soil borings SB-35 → SB-42) were performed.
  - b. The report proposes that 2 soil samples were obtained from each soil boring.

- c. The report proposes that the soil samples were analyzed for the following: BETX, 1,2,4-TMB & 1,3,5-TMB.
  - d. The report proposes that groundwater samples were obtained from monitoring wells MW-4S & MW-8L.
  - e. The report proposes that the groundwater samples were analyzed for the following: BETX, 1,2,4-TMB & 1,3,5-TMB.
8. The report requests approval of a High Priority Corrective Action Plan, as follows:
- a. The report proposes that 1,300 cubic yards of contaminated soil would be excavated & disposed of. The report proposes that contaminated soil would remain in place beneath the railroad tracks.
  - b. The report proposes that 25 soil samples would be obtained from the sidewalls of the excavation area. The report proposes that no soil samples would be obtained from the floor of the excavation area, since the excavation area would extend to bedrock.
  - c. The report proposes that the soil samples would be analyzed for the following: BETX, 1,2,4-TMB & 1,3,5-TMB.
  - d. The report proposes that the excavation area would be backfilled.
  - e. The report proposes that groundwater samples would be obtained from the existing monitoring wells for 2 annual sampling periods. The report proposes that the purpose of the groundwater monitoring would be to evaluate if the groundwater contamination plume is stable or shrinking.
  - f. The report proposes that the groundwater samples would be analyzed for the following: BETX, 1,2,4-TMB & 1,3,5-TMB.
9. The report requests approval of a High Priority Corrective Action Budget, for an amount of \$175,057.50.

## ATTACHMENT 2

### HIGH PRIORITY CORRECTIVE ACTION PLAN DISAPPROVAL REASONS

RE: LPC 0310455050 - Cook County  
Chicago Heights - Chem Rex  
415 East 16th Street  
LUST Incident 910674  
LUST TECHNICAL FILE

The Illinois EPA does not approve of the High Priority Corrective Action Plan, for the following reasons:

1. The proposal to leave soil contamination in place would require (at a minimum) institutional controls in the form of Environmental Land Use Controls (from the affected property owners). The proposal to leave groundwater contamination in place (either existing or modelled) would require (at a minimum) either institutional controls in the form of Environmental Land Use Controls (from the affected property owners) or a groundwater ordinance (from the unit of local government). The report does not address the issue of whether or not such institutional controls would be potentially obtainable.
2. With regard to soil boring SB-35 (which was performed on August 27, 2002), there were no soil samples obtained from the depth of the highest PID measurement.
3. With regard to soil borings SB-37 → SB-39 & SB-42 (which were performed on August 27, 2002), it is not clear how the maximum depth of the soil borings was determined.
4. Plan diagrams must be provided which illustrate the following information (as applicable):
  - a. Property boundaries.
  - b. Parcel boundaries.
  - c. Underground storage tank systems.
  - d. Underground utilities.
  - e. Potable water supply wells.
  - f. Potable water supply well setback zones.
  - g. Soil boring locations.
  - h. Monitoring well locations.
  - i. Excavation areas.
  - j. Soil sample locations.
  - k. Groundwater contours.

- l. Contaminant plumes.
- m. Modelling dimensions.
- n. Areas of proposed engineered barriers.
- o. Areas of proposed institutional controls.
- p. Excavation and/or site assessment impediments.

Plan diagrams must be drawn to scale & oriented north.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The plan diagrams do not illustrate the former excavation area.
- b. Figures 4 & 8 of the report do not illustrate the locations of soil borings SB-35 → SB-42 (which were performed on August 27, 2002).
- c. Figure 10 of the report does not illustrate the locations of the proposed soil samples which would be obtained from the excavation area.

5. A Laboratory Certification Form must be provided for all sample analyses.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The report does not contain a Laboratory Certification Form for the soil & groundwater samples which were obtained on August 26, 2002 → August 27, 2002.

### ATTACHMENT 3

#### HIGH PRIORITY CORRECTIVE ACTION BUDGET DISAPPROVAL REASONS

RE: LPC 0310455050 - Cook County  
Chicago Heights - Chem Rex  
415 East 16th Street  
LUST Incident 910674  
LUST TECHNICAL FILE

The Illinois EPA does not approve of the High Priority Corrective Action Budget, for the following reasons:

1. The Illinois EPA cannot approve of a budget without a corresponding Illinois EPA approved technical plan. The Illinois EPA has not approved of the High Priority Corrective Action Plan, for the reasons which were previously explained in Attachment 2.
2. In accordance with 35 Illinois Administrative Code 732.606(hh), all costs must be reasonable.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The proposed cost for the Project Coordinator (\$115.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$65.00 per hour for this type of activity.
- b. The proposed cost for the Project Manager (\$145.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$99.00 per hour for this type of activity.
- c. The proposed cost for the Chemist (\$95.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$87.00 per hour for this type of activity.
- d. The proposed cost for the Health & Safety Manager (\$95.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$87.00 per hour for this type of activity.

- e. The proposed cost for drafting (\$66.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$60.00 per hour for this type of activity.
  - f. The proposed cost for word processing (\$50.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$45.00 per hour for this type of activity.
  - g. The proposed cost for the Associate (\$145.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$130.00 per hour for this type of activity.
  - h. The proposed cost for the Principal (\$150.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$130.00 per hour for this type of activity.
  - i. The proposed overall cost for soil excavation, transportation, disposal & backfilling (\$86.73 per cubic yard) (Section (I) of the budget) is not reasonable. The Illinois EPA does not reimburse in excess of \$77.00 per cubic yard.
  - j. The Illinois EPA does not feel that the proposed cost for office supplies related to report preparation (\$1,800.00) (Section (I) of the budget) is reasonable.
3. In accordance with 35 Illinois Administrative Code 732.606(v), indirect costs may not be charged as direct costs.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The proposed cost for office supplies related to groundwater sampling (\$100.00) (Section (I) of the budget) is a direct cost charged as an indirect cost.
  - b. The proposed cost for personal protective equipment related to soil remediation (\$500.00) (Section (I) of the budget) is a direct cost charged as an indirect cost.
  - c. The proposed cost for office supplies related to soil sampling (\$300.00) (Section (I) of the budget) is a direct cost charged as an indirect cost.
4. It is not clear how the proposed number of groundwater samples (42) (Section (F)(3) of the budget) was determined. Obtaining groundwater samples from the 19 existing monitoring wells for 2 annual sampling periods would result in a total of 38 groundwater samples.
5. It is not clear how the proposed quantity of backfill material (1,700 cubic yards) (Section (I) of the budget) was determined. The report proposes that 1,300 cubic yards of contaminated soil would be excavated & disposed of.

## ATTACHMENT 4

### APPEAL RIGHTS

An underground storage tank system 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, 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  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
217-782-5544

**MCDERMOTT, WILL & EMERY**

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Washington, D.C.

March 18, 2004

**VIA FACSIMILE AND MAIL**

John J. Kim, Esq.  
Special Assistant Attorney General  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Re: LPC 0310455050 - Cook County  
Chicago Heights - ChemRex  
415 East 16th Street  
LUST Incident 910674

Dear Mr. Kim:

We are writing in response to the Illinois Environmental Protection Agency's ("IEPA") February 17, 2004 final decision regarding ChemRex Inc.'s Revised Groundwater and Off-Site Soil Investigation Report and Corrective Action Plan. ChemRex received IEPA's final decision on February 20, 2004. A copy of IEPA's final decision is enclosed with this letter. Pursuant to 35 I.A.C. Section 105.406, we are requesting a 90 day extension of the 35 day period for petitioning for a hearing before the Pollution Control Board.

Call me at 312-984-7670 if you have any questions.

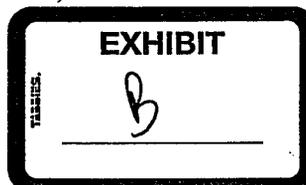
Sincerely,



Mark A. Bilut

Enclosures

cc: Mark A. McClendon, Esq. (via fax w/ encl.)  
Todd R. Wiener, Esq.



## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 23, 2004, 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

Mark A. Bilut  
McDermott, Will & Emery  
227 West Monroe Street  
Chicago, IL 60606-5096

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

  
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Assistant Counsel  
Special Assistant Attorney General  
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