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APR 27 2004

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

PAUL PHELAN, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB No. 04- 188  
 ) (LUST Appeal – Ninety Day Extension)  
 ILLINOIS ENVIRONMENTAL )  
 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

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: April 23, 2004

**APR 27 2004**

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

**STATE OF ILLINOIS  
Pollution Control Board**

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

PCB No. 04- 188  
(LUST Appeal – Ninety Day Extension)

**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 22, 2004, 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 18, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On April 13, 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 March 19, 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



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 23, 2004

This filing submitted on recycled paper.



# 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

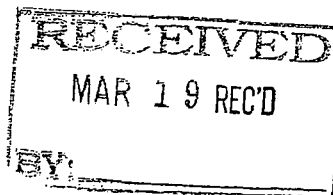
217/782-6762

**CERTIFIED MAIL**

7002 3150 0000 1255 7952

**MAR 18 2004**

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:

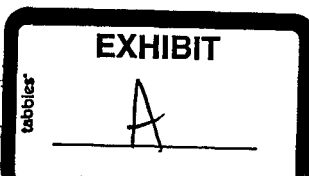
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan and High Priority Corrective Action Plan Budget submitted for the above-referenced incident. The Illinois EPA received the plan and budget, dated September 2003, on November 17, 2003. Citations 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) of the Act and 35 Ill. Adm. Code 732.405(c), the High Priority Corrective Action Plan is approved with the assumptions listed in Attachment A. The activities proposed in the plan (when taken in conjunction with the assumptions listed in Attachment A) are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the High Priority Corrective Action Plan Budget is modified. 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 High Priority Corrective Action 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.

If the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended High Priority Corrective Action Plan and/or High Priority Corrective Action Plan Budget is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). If reimbursement will be sought for any additional costs that may be incurred as a result of the Illinois EPA's

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 998-6300  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-5300  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 278-5900  
MADISON - 2309 W. Main



CHICAGO - 100 West Randolph, Suite 11-300, Chicago, IL 60601 - (312) 814-6026  
DESOER - 1000 N. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
PEORIA - 25 South First Street, Champaign, IL 61820 - (217) 278-5900  
JERSEYVILLE - 109 Mall Street, Jerseyville, IL 62534 - (618) 346-5120  
MADISON - 2309 W. Main

Page 2

modifications, an amended budget must be submitted (Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e)). Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that has not been approved prior to the issuance of an NFR Letter will not be reimbursable.

All future correspondence must be submitted 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

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

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

If you have any questions or need further assistance, please contact Trent Benanti at 217/524-4649.

Sincerely,



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

MTL:TLB:H:\Projects\Paul Phelan\Letter6.doc

Attachments: Attachment A (Assumptions Necessary To Approve The Plan)  
Attachment B (Budget Modification Attachment)  
Appeal Rights

c: United Science Industries, Inc.  
Division File

## Attachment A

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

The High Priority Corrective Action Plan is approved with the following assumptions:

1. The remedial approach, proposed in the High Priority Corrective Action Plan, includes the following elements: (a) removal of all accessible impacted soil (approximately 6,610 cubic yards), (b) removal of a 30-foot by 30-foot canopy, (c) replacement of groundwater monitoring wells destroyed during the soil removal, (d) collection of soil samples from the walls and floor of the soil excavation, (e) collection of one round of groundwater samples following completion of the soil removal activities and (f) use of engineered barriers and highway authority agreements to address the **inaccessible** impacted soil. The performance of any activities beyond those described above (unless otherwise noted below) is not approved at this time.
2. The owner or operator will remove all accessible impacted soil, including all impacted soil beneath the water table.
3. Removal of all impacted soil beneath the water table will reduce the concentrations of indicator contaminants in the groundwater to Tier 1 levels.
4. The owner or operator will not need to replace all seven of the groundwater monitoring wells destroyed during the soil removal. The Illinois EPA believes that the replacement of three groundwater monitoring wells (MW-1, MW-4 and MW-6) will be sufficient.
5. The owner or operator will sample all of the accessible on-site and off-site groundwater monitoring wells, including the replacement groundwater monitoring wells, no sooner than 30 days following completion of the soil removal activities.
6. The Illinois EPA may not approve the remedial approach, proposed in the High Priority Corrective Action Plan, in the future. The Illinois EPA is granting approval of the remedial approach on a trial basis in the interest of moving forward with this project.
7. Costs related to biofeasibility testing, pathway exclusion testing (organic carbon content, pH, etc...) and preparation of a full-scale groundwater remediation plan by Orin Technologies will not be reimbursed until the owner or operator demonstrates that full-scale groundwater remediation will be necessary.

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).

**SECTION 1**

As a result of the Illinois EPA's modifications in Section 2 of this Attachment B, the following amounts are approved:

\$ 13,373.33	Investigation Costs
\$ 23,232.00	Analysis Costs
\$ 36,340.00	Personnel Costs
\$ 1,284.75	Equipment Costs
\$509,961.12	Field Purchases and Other Costs
\$ 1,051.00	Handling Charges

Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

**SECTION 2**

1. \$335.00 for an adjustment in the investigation costs (drilling). 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)).
2. \$1,920.00 for an adjustment in the investigation costs (drilling). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
3. \$2.00 for an adjustment in the investigation costs (disposable camera). 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)).

4. \$9.60 for an adjustment in the investigation costs (latex gloves). 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)).
5. \$195.00 for an adjustment in the investigation costs (VOA sample kit). 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)).
6. \$313.50 for an adjustment in the investigation costs (monitoring well installation materials). 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)).
7. \$1,260.57 for an adjustment in the investigation costs (monitoring well installation materials). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
8. \$160.00 for an adjustment in the analysis costs (moisture content, soil particle size, bulk density, total organic carbon and pH). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
9. \$232.00 for an adjustment in the analysis costs (PNA samples (soil) – preparation of CAP). 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)).
10. \$400.00 for an adjustment in the analysis costs (PNA samples (soil) – excavation & disposal). 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)).
11. \$136.00 for an adjustment in the analysis costs (PNA samples (groundwater) – preparation of CAP). 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)).



12. \$260.00 for an adjustment in the analysis costs (BTEX samples (groundwater) – groundwater remediation). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
13. \$640.00 for an adjustment in the analysis costs (PNA samples (groundwater) – groundwater remediation). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
14. \$80.00 for an adjustment in the analysis costs (PNA samples (groundwater) – groundwater remediation). 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)).
15. \$174.00 for an adjustment in the analysis costs (heterotrophic plate count, dissolved oxygen, biochemical oxygen demand and chemical oxygen demand). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
16. \$39,065.00 for an adjustment in the personnel costs. 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)).
17. \$90.00 for an adjustment in the equipment costs (imperial trailer – plume ID). 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)).
18. \$10.00 for an adjustment in the equipment costs (PID – plume ID). 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)).
19. \$0.25 for an adjustment in the equipment costs (imperial trailer – monitoring well reinstallation). 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)).

20. \$10.00 for an adjustment in the equipment costs (PID – monitoring well reinstallation). 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)).
21. \$4.00 for an adjustment in the field purchases (disposable camera w/ processing). 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)).
22. \$18.00 for an adjustment in the field purchases (latex gloves). 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)).
23. \$1,140.00 for an adjustment in the other costs (concrete replacement (4-inch)). 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)).
24. \$4,160.00 for an adjustment in the other costs (well abandonment). 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)).
25. \$2,000.00 for an adjustment in the other costs (well abandonment). These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).
26. \$604.20 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

## 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



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](mailto:unitedscience@unitedscience.com)

April 13, 2004

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

**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 March 18, 2004 and received by Mr. Paul Phelan on March 19, 2004. 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.

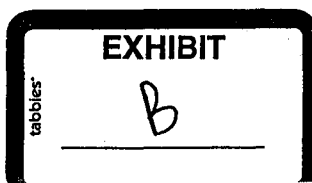
Matt Cherry  
Project Manager

Enclosures

**RECEIVED**  
Division of Legal Counsel

APR 19 2004

Environmental Protection  
Agency



**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on April 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

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  
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