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MAY 24 2004

STATE OF ILLINOIS
Pollution Control Board

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

AYLSWORTH OIL COMPANY,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 04- 210
(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

Holly Hurt, 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: May 20, 2004

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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 August 18, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On April 15, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On April 28, 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 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 L. 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: May 20, 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

7001 2510 0002 5280 7291

APR 15 2004

Aylsworth Oil Company
 Attention: Mr. Joseph Aylsworth
 905 East Mail Street
 Carmi, Illinois 62821

Re: LPC # 1930105033 -- White
 Aylsworth Oil Company
 905 East Main Street
 LUST Incident #982746
 LUST Technical File

Dear Mr. Aylsworth:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated December 12, 2003, was received by the Illinois EPA on December 15, 2003. In addition, a report containing groundwater sampling data dated February 13, 2004 and received by Illinois EPA on February 19, 2004, was reviewed. 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 plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

1. Due to the soil and groundwater sampling results from the area identified as RIDES Mass Transit, as well as MW-1/SCB, and as well as the groundwater gradient, it appears as though soil and groundwater contamination from this area is from a currently unidentified on-site source. Therefore, future investigation work in the area identified as RIDES Mass Transit, as well as any corrective action on this property, will not be considered eligible from the UST fund unless this release is from a tank eligible for reimbursement in RIDES Mass Transit area. Investigation work to date will be considered reimbursable from the LUST fund.

EXHIBIT

A

2. Regarding the proposed 6" concrete engineered barrier, the existing concrete and asphalt appears to be a sufficient engineered barrier under 35 IAC 742.1100 (Engineered Barriers), thus the proposal to replace this concrete and asphalt is denied.

A demonstration may be made as to why the existing concrete and asphalt is insufficient as an engineered barrier, but any approved engineered barrier would be a cap on top of the existing asphalt. Costs associated with upgrades to the asphalt / concrete above the cost to cap the existing asphalt / concrete would not be eligible for reimbursement from the LUST fund.

3. At this time, proposed groundwater monitoring well MW-20 should not be advanced. Both groundwater modeling and MW-19 demonstrate that groundwater contamination would not migrate to the opposite side of the railroad property.

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.

In addition, the budget for the High Priority Corrective Action Plan is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved 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. This budget includes costs for completed activities, as well as the preparation of the off-site ELUCs and HAA and the eventual CACR. Costs associated with the engineered barriers and proposed groundwater monitoring well MW-20 have not been approved.

NOTE: 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 have 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

Page 3

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 Michael A. Heaton at 217/524-3312.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Lowder", with a long horizontal flourish extending to the right.

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

MTL:mh\982746f2.doc

Attachment

cc: Ms. Holly Hurt -- United Science Industries (Woodlawn, Illinois)
Division File

Attachment A

Re: LPC # 1930105033 -- White
Alysworth Oil Company
905 East Main Street
LUST Incident #982746
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 A, the following amounts are approved:

\$13,747.55	Investigation Costs
\$4,585.00	Analysis Costs
\$29,520.00	Personnel Costs
\$1,912.50	Equipment Costs
\$3,959.60	Field Purchases and Other Costs
\$19.75	Handling Charges

\$53,744.40

SECTION 2

1. \$2,087.05 for Investigation Costs. 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 (Section 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 payment from the Fund (35 Ill. Adm. Code 732.606(o)). In addition, these costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 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)

Specifically, the proposed work associated with MW-20 has been eliminated from the subject budget. This includes:

One mobilization: \$250

Gloves, camera, visqueen, Geoprobe, and headspace analysis containers: \$1,519.85

Well materials associated with MW-20: \$317.20.

2. \$266.00 for an adjustment in Investigation Costs. Such costs are not consistent with the requirement for a line item estimate. The budget must include a line item estimate of all costs associated with the development, implementation, and completion of the applicable

activities (35 Ill. Adm. Code 732.405(b)). The budget fails to include such line item estimate.

Specifically, the rate for Drilling Costs has been reduced to \$23 / foot, from \$24 / foot. 266 feet were drilled, $266 * \$1/\text{foot} = \266 .

3. \$130.00 for Analysis Costs. 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 (Section 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 payment from the Fund (35 Ill. Adm. Code 732.606(o)). In addition, these costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 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)

Specifically, the two groundwater samples associated with proposed groundwater monitoring well MW-20 have been eliminated. 2 samples @ \$65 / sample = \$130.

4. \$20,521.50 for an adjustment in 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)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

Please note that work associated with groundwater monitoring well abandonment has been moved to "Other Costs".

5. \$540.00 for an adjustment in Equipment 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)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

Specifically, 10 days have been allotted to the Env. Utility Vehicle at \$60 / day, thus all other vehicles have been eliminated. This includes the service truck with tools (\$420), 5-ton utility trailer (\$45), S/M utility vehicle (\$30), and the drill rig utility trailer (\$45).

- 6. \$475.00 for an adjustment in Equipment Costs. Such costs are not consistent with the requirement for a line item estimate. The budget must include a line item estimate of all costs associated with the development, implementation, and completion of the applicable activities (35 Ill. Adm. Code 732.405(b)). The budget fails to include such line item estimate.

The proposed work, which appears to be associated with the construction of proposed groundwater monitoring well MW-20, has been eliminated.

- 7. \$64,020.80 for an adjustment in Field Purchases and Other 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)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

Specifically, \$100 has been deducted from Shipping Costs, \$1,185 has been deducted from well abandonment costs (the remaining \$3,815 includes Personnel costs), and \$62,280.00 has been deducted from concrete engineered barrier costs. In addition, \$455.80 was deducted for costs associated with "Carmi Light and Water". It is unclear what this charge was for, further information for this charge may be provided in a future submittal. If these charges were associated with water disposal, the volume of water disposed will need to be provided.

- 8. \$66.70 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

As a result of the reduction in sampling shipping from \$200 to \$100, and the elimination of \$455.80 for Carmi Light and Power, the remaining amount eligible for reimbursement is \$164.60.

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

April 28, 2004

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

**Re: LPC# 1930105033--White Co.
Carmi/Aylsworth Oil Company
905 East Main Street
LUST Incident No. 982746**

Dear Mr. Kim,

United Science Industries, Inc. (USI), on behalf of our client, Aylsworth Oil Company, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence 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 ext. 192.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Holly Hurt
Project Manager

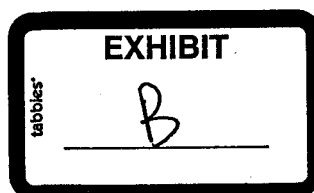
Enclosures

HH:bg

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Division of Legal Counsel

APR 30 2004

Environmental Protection
Agency




CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 20, 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

Holly Hurt, 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
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