

BEFORE THE POLLUTION CONTROL BOARD JUN 03 2004  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

ILLIOPOLIS GRAIN COMPANY, )  
)  
Petitioner, )  
)  
vs. ) PCB No. 04-148  
) (UST Appeal)  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

NOTICE

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

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, a copy of which is herewith served upon you.

By   
Curtis W. Martin, Attorney for  
Illioopolis Grain Company, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

**RECEIVED**  
CLERK'S OFFICE

JUN 03 2004

STATE OF ILLINOIS  
Pollution Control Board

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

ILLIOPOLIS GRAIN COMPANY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	PCB No. 04-148
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW OF FINAL AGENCY**  
**LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Illiopolis Grain Company, ("Illiopolis"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, pursuant to Sections 57.7(c)(4)(D) and 40 of the Illinois Environmental Protection Act (415 ILCS 5/57.7(c)(4)(D) and 40 of the "Act") and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Illiopolis respectfully states as follows:

1. On January 27, 2004, the Agency issued a final decision to Illiopolis, a copy of which is attached hereto as Exhibit A.
2. On February 13, 2004, Illiopolis made a written request to the Agency for an extension of time by which to file a petition for review from the thirty-five day period to ninety days, a copy of which is attached hereto as Exhibit B.

3. On March 3, 2004, the Agency joined in Illiopolis' request that the Board extend the thirty-five day period for filing a petition to ninety days, a copy of which is attached hereto as Exhibit C.

4. On March 18, 2004, the Board entered an Order extending the time by which Illiopolis could file a petition to June 1, 2004, a copy of which is attached hereto as Exhibit D.

5. The grounds for the Petition herein are as follows:

Illiopolis, through its consultant, United Science Industries, Inc. ("USI"), submitted to the Agency a request for reimbursement of corrective action costs incurred at its site governed by Section 731 of the Illinois Administrative Code covering the period from June 1, 2003 to July 31, 2003 in the sum of \$91,087.95. By its letter of January 27, 2004, the Agency deducted \$4,057.00 as non-reimbursable and authorized a voucher for \$87,030.95 for submission to the Comptroller's Office for payment.

The Agency accounting deductions consisted of \$279.00 in personnel and \$20.00 in equipment costs for Illiopolis' failure to demonstrate such costs were reasonable under Section 22.18 (b)(4)(c) of the Act. The Agency technical deductions consisted of \$3,758.00 for Illiopolis' failure to demonstrate such costs were reasonable. The accounting deductions relate solely to an improperly promulgated "internal guidance" or rate sheet used by the Agency and such deduction is arbitrary and capricious. The technical deduction was related to an overall

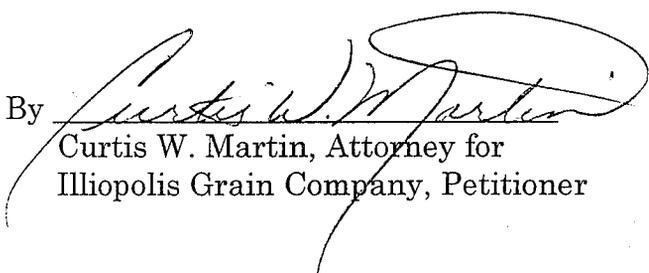
proportional reduction of the scope of work at Illiopolis' site which was also arbitrary and capricious and without technical justification.

WHEREFORE, Petitioner, Illiopolis Grain Company, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for reimbursement as being reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST Fund, and that Petitioner have such other and further relief as the Board deems just and equitable under the circumstances.

Respectfully submitted,

SHAW & MARTIN, P.C.

By

  
Curtis W. Martin, Attorney for  
Illiopolis Grain Company, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
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Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788



Page 2

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:

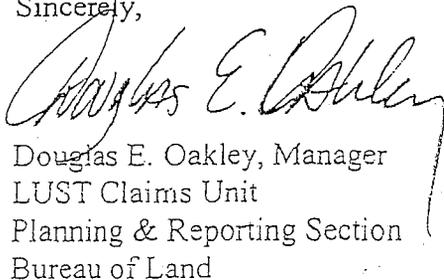
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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

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

If you have any questions, please contact Kevin Mably of my staff or Sam Hale of Cliff Wheeler's staff at 217/782-6762.

Sincerely,



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

DEO:KM:m1s\043457.doc

Attachment

cc: United Science Industries

Attachment A  
Accounting Deductions

Re: LPC #1670555006 -- Sangamon County  
Illioopolis/Illioopolis Grain Co.  
246 Lousisia Street  
LUST Incident No. 922178  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$299.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

United Science Industries - Invoice #18-13280	\$279.00	Personnel
United Science Industries - Invoice #18-13280	\$ 20.00	Equipment

\$299.00 Total Accounting Deductions

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Attachment A  
Technical Deductions

Re: LPC #1670555006 -- Sangamon County  
Illioopolis/Illioopolis Grain Company  
246 Louisia Street  
LUST Incident No. 922178  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$3,758.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

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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)

February 13, 2004

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

Re: **LPC# 1670555006 — Sangamon County  
Illipolis/Illiopolis Grain Company  
246 Louisa Street  
LUST Incident No. 922178**

Dear Mr. John Kim:

United Science Industries, Inc. (USI), on behalf of our client, Mr. William Peters, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated January 27, 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 166.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

*Sallie Minks*

Sallie Minks  
Project Manager

Enclosures

cc: Mr. William Peters

**RECEIVED**

Division of Legal Counsel

FEB 17 2004

Environmental Protection  
Agency

**EXHIBIT**   B  

B

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

ILLIOPOLIS GRAIN COMPANY,	)	
Petitioner,	)	
v.	)	PCB No. 04-
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 1, 2004, or any other date not more than a total of one hundred twenty-five (125) days from January 28, 2004, the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On January 27, 2004, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)

2. On February 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 final decision provided by the Petitioner indicates the letter was received on January 28, 2004. (Exhibit B)

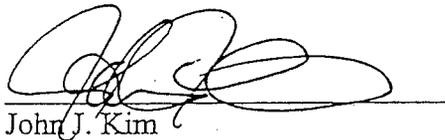
**EXHIBIT   C**

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: March 3, 2004

## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 3, 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

Sallie Minks, 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)

ILLINOIS POLLUTION CONTROL BOARD  
March 18, 2004

ILLIOPOLIS GRAIN COMPANY, )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

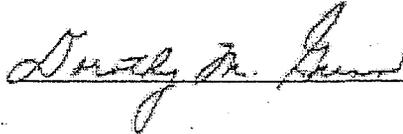
PCB 04-148  
(UST Appeal)  
(90-Day Extension)

ORDER OF THE BOARD (by J.P. Novak):

On March 5, 2004, the parties timely filed a joint notice to extend the 35-day period within which Illiopolis Grain Company may appeal a January 27, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency approved petitioner's request for reimbursement from the Underground Storage Tank Fund, with modifications, for Illiopolis Grain Company's leaking underground petroleum storage tank facility located at 246 Louisiana Street, Illiopolis, Sangamon County. The Board extends the appeal period until June 1, 2004, as the parties request. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Illiopolis Grain Company fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 18, 2004, by a vote of 5-0.



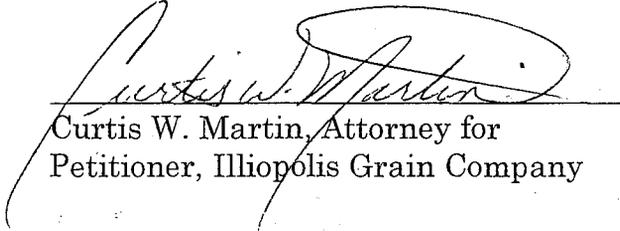
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 1<sup>st</sup>, 2004, I served true and correct copies of a Petition for Review, 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 Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

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

  
Curtis W. Martin, Attorney for  
Petitioner, Illiopolis Grain Company