

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

AUG 26 2004

STATE OF ILLINOIS
Pollution Control Board

JOHNSON OIL COMPANY, LLC,)

Petitioner,)

vs.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB No. 04-190
(LUST Appeal)

NOTICE OF FILING

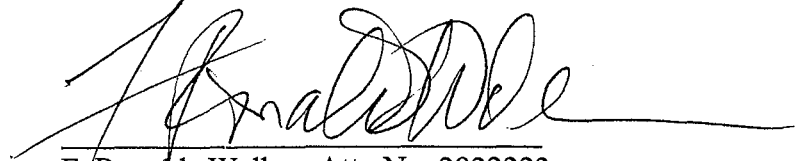
To: John Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

PLEASE TAKE NOTICE that I have today, August 24, 2004, filed with the Clerk of the Illinois Pollution Control Board an APPEARANCE OF F. RONALDS WALKER, a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

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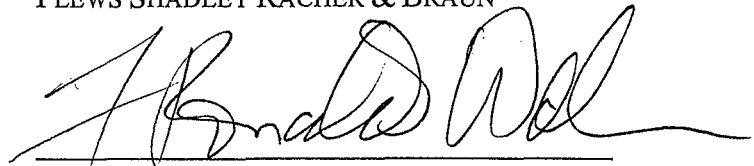
PCB No. 04-190
(LUST Appeal)

ATTORNEY APPEARANCE

F. Ronalds Walker an attorney with the law firm Plews Shadley Racher & Braun hereby enters his appearance on behalf of Petitioner, Johnson Oil Company, LLC.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN




F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 24, 2004, I served true and correct copies of the Attorney Appearance, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
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100 West Randolph Street
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Chicago, Illinois 60601

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Assistant Counsel
Special Assistant Attorney General
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James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today, August 24, 2004, filed with the Clerk of the Illinois Pollution Control Board an MOTION FOR ADMISSION OF JOHN D. MORIARTY COUNSEL PRO HAC VICE, a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
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**MOTION FOR ADMISSION
OF JOHN D. MORIARTY AS COUNSEL *PRO HAC VICE***

Counsel for Petitioner Johnson Oil Company, LLC ("Johnson Oil"), R. Ronalds Walker, an attorney licensed to practice in the State of Illinois, moves the Court for an Order of Admission *Pro Hac Vice* of John D. Moriarty, who is a duly licensed attorney in the State of Indiana, to serve as counsel for Johnson Oil. An affidavit of John D. Moriarty is attached to this Motion as Exhibit A and is incorporated by reference.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



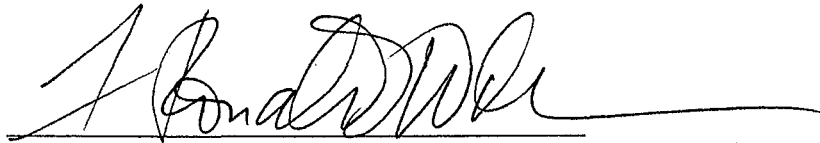
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PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 24, 2004, I served true and correct copies of the Motion For Admission of Counsel *Pro Hac Vice*, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

Dorothy M. Gunn, Clerk
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PCB No. 04-190
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**AFFIDAVIT IN SUPPORT OF MOTION FOR ADMISSION
OF JOHN D. MORIARTY AS COUNSEL *PRO HAC VICE***

John D. Moriarty, being first duly sworn, upon oath, states as follows:

1. I am a duly licensed attorney and counselor at law admitted to practice, and currently in good standing, in the State of Indiana. My Indiana attorney identification number is 19202-49.

2. I plan to appear as counsel or associate counsel in one other case pending in the State of Illinois: Johnson Oil Company, LLC vs. Illinois Environmental Protection Agency, PCB 04-183. I have not appeared in any other cases in the Courts or administrative agencies in the State of Illinois.

3. I am familiar with the provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules, and I understand and agree that I will be bound by them all in all proceedings before the Illinois Pollution Control Board.

4. In particular, I am familiar with Illinois Supreme Court Rule 137 relating to the signing of pleadings, motions and other papers and duties imposed upon litigants and counsel, and I understand and agree that I will follow and be bound by the provisions of said Supreme

Court Rule 137, and hereby submit myself to the jurisdiction of the court for any and all proceedings.

John D. Moriarty

John D. Moriarty
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, IN 46202
Ph: (317) 637-0700
Fax: (317) 637-0713

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Subscribed and sworn before me this 24th day of August, 2004.

Jamie L. Morris
Notary Public

Jamie L. Morris
Printed Name

Commission Expires: 05/22/04

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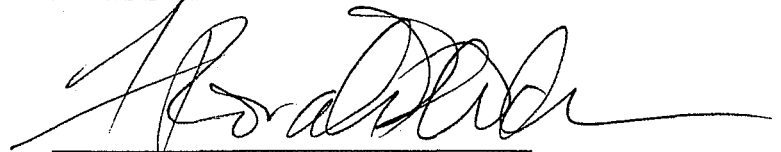
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Dorothy M. Gunn, Clerk
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100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today, August 24, 2004, filed with the Clerk of the Illinois Pollution Control Board an AMENDED PETITION FOR REVIEW OF FINAL AGENCY LEAKING UNDERGROUND STORAGE TANK DECISION a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
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Respondent.)

PCB No. 04-190
(LUST Appeal)

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

Petitioner, Johnson Oil Company, LLC ("Johnson Oil"), pursuant to Sections 40(a)(1) and 57.7(c)(4)(D) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1) and 57.7(c)(4)(D)) 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-referenced case. In support thereof, Johnson Oil respectfully states as follows:

I. Facts and Procedural History

1. Johnson Oil formerly owned and operated a gasoline service station on property located at 629 West Champaign Road, Rantoul, Champaign County, Illinois (the "Site"). On August 2, 2000, Johnson Oil reported a release of petroleum at the Site and the Site was assigned Incident No. 20001456. Johnson Oil retained American Environmental Corporation ("American Environmental") to complete Site Investigation and Corrective Action, including preparation of Site Investigation and Corrective Action Plans.

2. On November 17, 2003, American Environmental submitted on behalf of Johnson Oil a High Priority Corrective Action Plan ("HPCAP") and Budget for investigation to define the

extent of contamination and for a pilot study to evaluate the Method of Multi-phase Extraction to remediate contamination.

3. On March 19, 2004, the Agency issued a Final Decision to Johnson Oil in which the HPCAP was approved with modifications to the Budget, a copy of which is attached hereto as Exhibit A.

4. On April 29, 2004, Johnson Oil made a written request to the Agency for an extension of time by which to file a petition for review. The Agency joined in Johnson Oil's request that the Board extend the period for filing a Petition for Review by an additional ninety days, a copy of which is attached hereto as Exhibit B.

5. On May 6, 2004 the Board entered an Order granting Johnson Oil an additional ninety days, up to and including July 28, 2004 to file the Petition for Review. A copy of which is attached as Exhibit C.

6. Johnson Oil filed its Petition for Review on or before July 28, 2004. On August 25, 2004 the Board entered an Order requiring Johnson Oil to file an Amended Petition for Review accompanied by the appearance of an attorney, or before September 4, 2004. A copy of the Board's Order is attached as Exhibit D.

II. The HPCAP and Budget

Johnson Oil's consultant, Simon P. Broomhead, P.G. of American Environmental, prepared the November 17, 2003 HPCAP and Budget in accordance with the Environmental Protection Act ("Act") and regulations, in addition to generally accepted engineering practices. Mr. Broomhead is a Licensed Professional Geologist with ten (10) years experience in the environmental consulting industry. The HPCAP detailed the procedures necessary to define the extent of residual contamination and evaluate the proposed method of Corrective Action.

In accordance with 35 Ill. Adm. Code 732.404(f), the Budget included an estimate of all costs associated with the implementation and completion of the Corrective Action Plan. The budget also included personnel costs for activities which had been completed and for which copies of invoices were provided to document such costs. These costs were reasonable and were necessary to achieve the applicable remediation objectives, including the minimum requirements for corrective action required under 35 Ill. Adm. Code 732.404 and 732.505. The personnel activities included in the Budget consisted of:

- Completion of a geoprobe investigation to establish that contamination extends off-site;
- Obtaining and updating access agreements for neighboring properties;
- Evaluation of data and Site conditions to determine the most effective and economical method of Corrective Action;
- Preparation of Corrective Action Plan and Budget;
- Preparation of reimbursement claims;
- Completion of additional investigation, including soil and groundwater sampling; and
- Completion of a pilot study to evaluate the method of Multi-Phase Extraction for the remediation of residual contamination.

III. Budget Expenses That Were Improperly Disallowed

The Agency approved the HPCAP by letter dated March 19, 2004 to Johnson Oil. However, the personnel costs in the associated budget were modified down to an unreasonable level with no justification for the reductions. The Agency unjustifiably reduced the budget for personnel costs from \$34,239.25 to \$9,100.00. Furthermore, the reduced personnel costs of

\$9,100.00 did not even cover the \$16,421.75 of completed personnel costs for which documentation was provided. The Agency's reduction for personnel cost was without any technical justification and was arbitrary and capricious.

The Agency deducted \$1,453.00 for monitoring well, manway installation, and well materials, alleging that the well and manway installation costs should be included with the monitoring well installation materials. However, these same monitoring well and manway installation costs were previously approved when presented in the Budget approved on October 31, 2001 for this Site. No details were provided for the deductions from the well installation materials, except that they were unreasonable. The Agency's reduction for monitoring well, manway installation, and well materials was without any technical justification and was arbitrary and capricious.

The Agency also deducted \$36.00 for report shipping costs, alleging that these costs are indirect corrective action costs charged as direct costs. The referenced costs were clearly identified in the budget for the shipment of required plans and claims to the Agency and are therefore direct costs. The November 17, 2003 HPCAP and budget does not include indirect costs, which would be such things as shipping costs for stock items, computer time, telephone toll charges, etc. The Agency's reduction for report shipping costs was without any technical justification and was arbitrary and capricious.

Mr. Broomhead, other environmental consultants from American Environmental, and other qualified experts will testify that the approved budget for the HPCAP is vastly below industry norms, is not reasonable, and violates 35 Ill. Adm. Code Sections 732.505 and 732.605. Moreover, the HPCAP cannot be implemented with the unreasonably low budgetary amounts approved by the Agency. The budget approved by the Agency is unreasonable, is arbitrary and

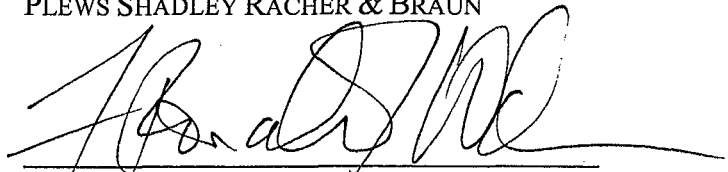
capricious, and does not account for the multiple investigations and corrective action activities which were proposed in the approved HPCAP.

Furthermore, upon information and belief, Johnson Oil alleges that the Agency improperly utilized certain rate sheets to reduce the budget. These rate sheets were not promulgated pursuant to the Illinois Administrative Procedure Act (APA) and Illinois Ayers Oil Company vs. IEPA, PCB 03-214. Thus, the budget approved by the Agency is invalid and is arbitrary and capricious.

WHEREFORE, Petitioner, Johnson Oil Company, LLC, for the reasons stated above and others that may be discerned through the course of discovery, requests that the Board reverse the Final Decision of the Agency and restore the above-referenced personnel, drilling, and field purchase amounts as submitted in Johnson Oil's Budget associated with the November 17, 2003 HPCAP and award consultant and attorney's fees incurred pursuant to 415 ILCS 5/57.8(1) and 35 Ill. Adm. Code 732.606(g).

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223

PLEWS SHADLEY RACHER & BRAUN

1346 N. Delaware Street

Indianapolis, Indiana 46202

Ph: (317) 637-0700

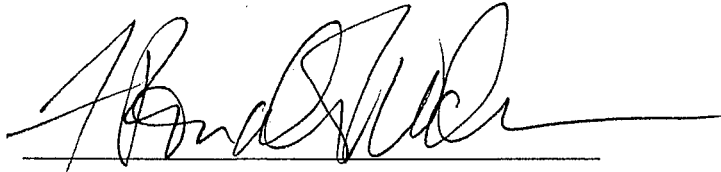
Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 24, 2004, I served true and correct copies of the Amended Petition For Review Of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

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



A handwritten signature in black ink, appearing to read 'John Kim', is written over a horizontal line.

Exhibit A



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 RENÉE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

MAR 19 2004

7002 3150 0000 1255 8140

Johnson Oil Company of Indiana
Jeffrey N. Bush
P.O. Box 347
Columbus, Indiana 47202

Re: LPC#0190655076 -- Champaign County
Rantoul/Johnson Oil Co.
629 West Champaign Road
LUST Incident No. 20001456
LUST Technical File

Dear Mr. Bush:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Site Investigation Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated November 17, 2003, was received by the Illinois EPA on November 21, 2003. This document was originally submitted as a High Priority Site Investigation Corrective Action Budget, however, due to revisions made to the plan, which was previously approved, it is considered a Revised High Priority Site Investigation Corrective Action Plan (plan). 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 modifications listed below 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. Please note that the activities proposed in the plan are for investigative purposes only. Final approval for corrective action activities is contingent upon the submittal of a High Priority Corrective Action Plan that documents the results of the proposed investigation and satisfies the requirements set forth in Section 57.7(c)(1) of the Act and 35 Ill. Adm. Code 732.404. The required modification(s) is/are as follows:

Monitoring wells MW10 thru MW17 are only approved if necessary to define the plume. Specifically, if the analytical results of MW12 define the extent of contamination, then MW16 and MW17 would be unnecessary and therefore ineligible for payment. The same principal of plume definition would also apply to all other wells proposed in this revised plan (MW10 thru MW17).

In addition, the budget for the High Priority Site Investigation 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

EXHIBIT

A

ROCKFORD - 4302 North Main Street, Rockford, IL
ELGIN - 595 South State, Elgin, IL 60120
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62777

Urbana St., Des Plaines, IL 60016 - (847) 294-4000
Peoria, IL 61614 - (309) 693-5463
South First Street, Champaign, IL 61820 - (217) 278-5800
all Street, Collinsville, IL 62234 - (618) 346-5120

MARION - 2509 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if reimbursement will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted.

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.

Pursuant to 35 Ill. Adm. Code 732.401, the site investigation results and a High Priority Corrective Action Plan demonstrating compliance with the requirements set forth in Section 57.7(c)(1) of the Act and 35 Ill. Adm. Code 732.404 must be submitted within 90 days of the date of this letter to:

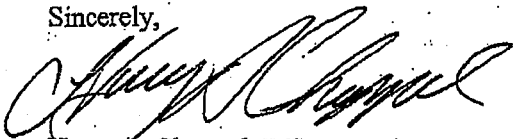
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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 Lizz Schwartzkopf at 217/557-8763.

Sincerely,



Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:LS

Attachment: Attachment A

c: American Environmental
Division File

Attachment A

Re: LPC#0190655076 -- Champaign County
Rantoul/Johnson Oil Co.
629 West Champaign Road
LUST Incident No. 20001456
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

The budget was previously approved for:

\$6,436.20	Investigation Costs.
\$1,015.00	Analysis Costs
\$9,256.00	Personnel Costs
\$375.00	Equipment Costs
\$682.05	Field Purchases and Other Costs
\$858.62	Handling Charges

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

\$7,836.98	Investigation Costs
\$2,505.00	Analysis Costs
\$9,100.00	Personnel Costs
\$725.00	Equipment Costs
\$7,974.36	Field Purchases and Other Costs
\$1,832.06	Handling Charges

Therefore, the total cumulative budget is approved for:

\$14,273.18	Investigation Costs
\$3,520.00	Analysis Costs
\$18,356.00	Personnel Costs
\$1,100.00	Equipment Costs
\$8,656.41	Field Purchases and Other Costs
\$2,690.68	Handling Charges

SECTION 2

1. \$1,453.00 for an adjustment in Monitoring Well and Manhole installation, \$2,498.00 for an adjustment in Personnel costs previously deducted as unreasonable, \$1,832.00 for an adjustment in Pilot Study Personnel costs, \$20,809.25 for an adjustment in Personnel costs for site investigation costs, \$15.00 for an adjustment in Digital Camera costs, \$10.00 for an adjustment in Development pump costs, \$135.68 for an adjustment in Nitrile glove costs,

\$109.50 for an adjustment in mobilization costs for personnel from Indianapolis for Pilot Study, and \$6.49 for an adjustment in mileage costs due to incorrect rate. 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.

Well/manhole installation cost should be included with the monitoring well installation materials. In addition the monitoring well installation materials listed on page E-2 of the budget are unreasonable.

The Personnel cost deducted from the previous budget remain unreasonable.

Personnel costs for the Pilot Study were considered separately from the previous personnel costs (listed above) and the personnel costs for site investigation activities (listed below).

Personnel costs for the final HPCAP and budget should be included with the plan and budget and will be addressed at that time. These costs should not be included with the additional site investigation. The personnel costs for the site investigation activities include costs for the installation and development of the wells and interim report of the findings of the investigation. The pilot study costs were not included in this amount.

2. \$36.00 for report shipping costs(FedEx). Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(v)).
3. \$61.62 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

This amount reflects and adjustment due to a calculation error and a reduction due to the removal of ineligible shipping costs. The calculation error appears to be the application of 10% to the amount over \$15,000 as apposed to 8%.

HAC:LS

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

Exhibit B

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

JOHNSON OIL 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 July 28, 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 March 19, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On April 27, 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 25, 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 29, 2004

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 29, 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

Simon P. Broomhead, P.G.
American Environmental Corp.
3700 West Grand Avenue
Suite A
Springfield, IL 62707

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)

Exhibit C

ILLINOIS POLLUTION CONTROL BOARD

May 6, 2004

JOHNSON OIL COMPANY,)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 04-190

(UST Appeal)

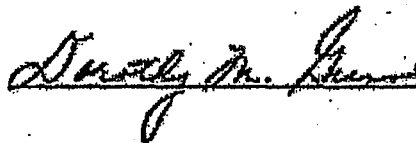
(90-Day Extension)

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

On May 3, 2004, the parties timely filed a joint notice to extend the 35-day period within which Johnson Oil Company may appeal a March 19, 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 high priority site investigation corrective action plan, with modifications, for Johnson Oil Company's leaking underground petroleum storage tank facility located at 629 West Champaign Road, Rantoul, Champaign County. The Board extends the appeal period until July 28, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Johnson Oil 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 May 6, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Exhibit D

ILLINOIS POLLUTION CONTROL BOARD

August 5, 2004

JOHNSON OIL COMPANY,)
)
Petitioner,)
)
v.) PCB 04-190
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

On May 6, 2004, the Board, at the parties' request, extended until July 28, 2004, the time period within which Johnson Oil Company might appeal a March 19, 2004 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. The Agency modified petitioner's revised high priority site investigation corrective action plan for Johnson Oil Company's leaking underground petroleum storage tank facility located at 629 S. Champaign Road, Rantoul, Champaign County.

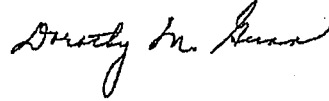
On July 30, 2004, Johnson Oil Company filed a petition asking the Board to review the Agency's determination. Johnson Oil Company appeals on the grounds, among others, that the plan modifications approved by the Agency are unreasonable, arbitrary, and capricious.

Because the postmark date of the petition is within the time for filing, the Board accepts this matter as timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. But, the petition signed by Dick Johnson on behalf of Johnson Oil Company does not identify him as an attorney, but only as "Managing Member" of "Johnson Oil Company, LLC." The Board's procedural rules incorporate the requirement under Section 1 of the Illinois Attorney Act (705 ILCS 205/1 (2002)) and Section 1 of the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (2002)), that anyone other than an individual "must appear through an attorney-at-law licensed and registered to practice law." 35 Ill. Adm. Code 101.400(a)(2). If he is not an attorney, Dick Johnson cannot represent Johnson Oil Company in this proceeding. See 35 Ill. Adm. Code 101.400(a)(2).

On or before September 4, 2004, Johnson Oil Company must file an amended petition for review accompanied by the appearance of an attorney. If an amended petition accompanied by an attorney's appearance is not timely filed, this petition will be dismissed. The filing of an amended petition will restart the Board's decision deadline. See 35 Ill. Adm. Code 105.114(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board