

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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DEC 06 2005

STATE OF ILLINOIS
Pollution Control Board

COWDEN OIL,)
)
) Petitioner,)
) v.)
) ILLINOIS ENVIRONMENTAL)
) PROTECTION AGENCY,) PCB No. 06- 84
) (LUST Appeal)
) Respondent.)

NOTICE

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

Jim Bowling, 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: December 2, 2005

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

DEC 06 2005

STATE OF ILLINOIS
Pollution Control Board

COWDEN OIL,)
Petitioner,)
v.) PCB No. 06-84
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 March 24, 2006, 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:

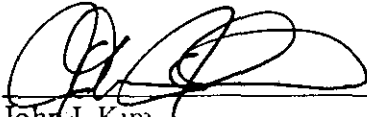
1. On November 18, 2005, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On November 29, 2005, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner’s request included information that represented that the final decision was received sometime on or after November 20, 2005. However, the certified mail tracking information indicates the final decision was received on November 19, 2005. (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: December 2, 2005

This filing submitted on recycled paper.



1800098

J.B.

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 DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8648 4428

NOV 18 2005 NOV 2 REC'D

Cowden Oil
Attn: Trent Buchanan
P.O. Box 245
Cowden, IL 62422

Re: LPC #1730055005 -- Shelby County
Cowden/Cowden Oil
Elm & Grand Ave.
LUST Incident No. 20001358
LUST Technical File

Dear Mr. Buchanan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated July 19, 2005, was received by the Illinois EPA on July 20, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

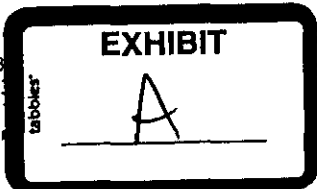
Pursuant to Section 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is rejected for the reasons listed in Attachment A.

Pursuant to Sections 57.7(a)(1) and 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.405(e) and 732.503(b), the associated budget is rejected for the reasons listed in Attachment B.

Pursuant to 35 Ill. Adm. Code 732.401, the Illinois EPA requires submittal of a revised plan, and budget if applicable, 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-2300
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-2300
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3397
MARION - 2309 W. Main Street, Marion, IL 62959 - (217) 993-7200



W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
University St., Peoria, IL 61614 - (309) 693-5463
125 South First Street, Champaign, IL 61820 - (217) 278-5800
109 Mall Street, Collinsville, IL 62234 - (618) 346-5120
(618) 993-7200

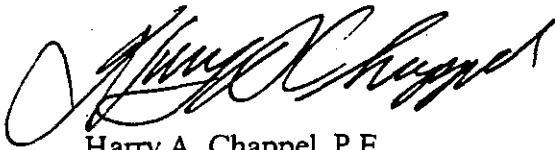
Page 2

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 information, please contact Jason Donnelly at (217) 557-8764.

Sincerely,



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

HAC:JD\001358-am.hpcap&bud#3.doc

Attachments: A
B
Appeal Rights

c: United Science Industries, Jim Bowling
Division File

Attachment A

Re: LPC # 1730055005 -- Shelby County
Cowden/Cowden Oil
Elm & Grand Ave.
LUST Incident No. 20001358
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. Pursuant to 35 Ill. Adm. Code 732.404(b), the owner or operator of a site certified as High Priority by a Licensed Professional Engineer or Licensed Professional Geologist and approved as such by the Illinois EPA or reclassified as High Priority by the Illinois EPA pursuant to 35 Ill. Adm. Code 732.403(g) shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable at the site:
 - a. After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in 35 Ill. Adm. Code 732.408 at the property boundary line or 200 feet from the underground storage tank system, whichever is less;
 - b. After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the underground storage tank system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;
 - c. After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742;
 - d. Threats to potable water supplies are remediated; and
 - e. Threats to bodies of surface water are remediated.

The plan fails to meet the above requirements, and, therefore, the requirements of Section 57.7(c)(1)(C) of the Act.

2. Pursuant to 35 Ill. Adm. Code 732.404(a), the owner or operator of a site that has been certified by a Licensed Professional Engineer or Licensed Professional Geologist as a High Priority site and approved as such by the Illinois EPA shall develop a corrective action plan and perform corrective action in accordance with the requirements of 35 Ill. Adm. Code 732.404. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in 35 Ill. Adm. Code 732.404(b) that caused the site to be classified as High Priority.

The plan fails to meet the above requirements for the following reason(s):

- A) From the information submitted to date, the Illinois EPA cannot determine if the soil beneath the building will meet Tier 1/Class II Remediation Objectives. Without the above information, it cannot be determined if the proposed excavation will adequately remediate all contaminated soils to below Tier 1/Class II Remediation Objectives. Therefore, before a High Priority Corrective Action Plan (HPCAP) proposing excavation of contaminated soils will be approved, further investigation is being required to determine if contamination soils extend beneath the building. Please note this must be determined since institutional controls and use restrictions are not wanted on the property.
- B) In addition, how will the contamination around and beneath the canopy footings be addressed? Please note a HPCAP must address all criteria that made the site high priority.
- C) Further, why is the area to the north of the building being excavated for second time? From the information submitted to date, it appears this area was excavated during UST removal and clean backfill soils were placed back in the excavation. Please note for reimbursement purposes, the Illinois EPA will not pay for an area to be excavated twice.
- D) The HPCAP states bench scale treatability testing will be performed on the soil excavation samples. Why is this required for soil confirmation samples?

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Attachment B

Re: LPC # 1730055005 -- Shelby County
Cowden/Cowden Oil
Elm & Grand Ave.
LUST Incident No. 20001358
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. Pursuant to Sections 57.7(a) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405 and 732.503(b), the associated budget is rejected for the following reason:

A full financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities, or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities, and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, and shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.505(c)).

Without an approvable plan, the proposed budget cannot be fully reviewed.

2. In addition, the budget includes costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget for a site classified as high priority must include, but not be limited to, an accounting of all costs associated with the development, implementation, and completion of the applicable activities (Section 57.7(c)(1)(B) of the Act and 35 Ill. Adm. Code 732.405(b)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used 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 732.606(o)).
 - A) The Illinois EPA is requiring detailed breakdowns of all proposed personnel hours.
 - B) The Illinois EPA is requiring detailed breakdowns of all proposed hotel room and per diem days/costs.
 - C) The Illinois EPA is requiring a detailed breakdown of the proposed concrete and asphalt replacement costs.

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Appeal Rights

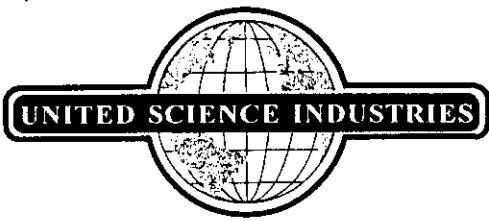
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4)(D) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may 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



United Science Industries, Inc.
PO. Box 36
6295 East IL Highway 1
Woodlawn, IL 6289
toll free 800.372.874
phone 618.735.241
fax 618.735.290

www.unitedscience.com

November 29, 2005

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62792-9276
Attn: John Kim

**Re: LPC # 1730055005 – Shelby County
Cowden/Cowden Oil
Elm & Grand Ave.
LUST Incident No. 20001358
LUST Technical File**

Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Trent Buchanan, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence included.

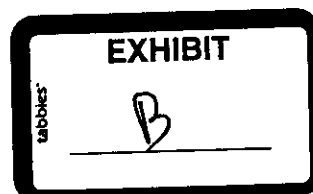
I appreciate your time and consideration in this matter. If you have any questions or comments regarding this matter please contact me at (618) 735-2411 ext. 176.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Jim Bowling
Project Manager

Enclosures



RECEIVED
Division of Legal Counsel

NOV 30 2005

Environmental Protection
Agency

ORIGINAL

CERTIFICATE OF SERVICE

RECEIVED
CLERK'S OFFICE

DEC 06 2005

I, the undersigned attorney at law, hereby certify that on December 6, 2005, 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 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

Jim Bowling, Project Manager
United Science Industries
P.O. Box 360
6295 East Illinois Highway 15
Woodlawn, IL 62898-0360

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



John F. 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)