

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

WAUCONDA COMMUNITY UNIT	)	
SCHOOL DISTRICT #118,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. _____
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

NOTICE OF FILING

To:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

December 19, 2007

WAUCONDA COMMUNITY SCHOOL  
DISTRICT #118

By:   
Mandy L. Combs  
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 - 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Wauconda Community School District #118*

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

WAUCONDA CUSD #118,	)	
<i>Petitioner,</i>	)	
	)	
v.	)	PCB No. _____
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
<i>Respondent.</i>	)	

**PETITION FOR REVIEW**

Pursuant to §§ 40 and 57.7 of the Environmental Protection Act (“Act”), 415 ILCS 5/40, 5/57.7, to the Board’s regulations on Leaking Underground Storage Tank (“LUST”) decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, petitioner Wauconda CUSD #118 (“Wauconda”) submits this *Petition for Review* of the Illinois Environmental Protection Agency (“Agency”) decision attached hereto as Exhibit 1 (“Decision”) denying approval of Wauconda’s Corrective Action Completion Report (the “Report).

Pursuant to § 57.8(l) of the Act, Wauconda further requests the Board to order the Agency to pay Wauconda’s legal costs for seeking payment in this appeal.

**I. THE AGENCY’S FINAL DECISION**

The Decision of which review is sought is contained in Exhibit 1 hereto.

**II. SERVICE OF THE AGENCY’S FINAL DECISION**

The Decision indicates it was mailed November 14, 2007. It was received by Wauconda on or about November 16, 2007.

**III. GROUNDS FOR APPEAL**

**A.** The Agency’s conclusion that the Report failed to provide supporting documentation regarding the soil excavation and soil samples is erroneous, arbitrary, and

capricious. This is further supported by the reasoning of Wauconda's request for extension, which a copy is attached hereto as Exhibit 2.

B. The Agency's conclusion that samples from the soil borings were not collected at the depth of the highest PID readings is erroneous, arbitrary, and capricious. This is further supported by the reasoning of Wauconda's request for extension, which a copy is attached hereto as Exhibit 2.

C. The Agency's conclusion that the monitoring wells were not constructed in a manner that the well screen intersects the groundwater and that the samples from the wells were not acceptable for delineation purposes is erroneous, arbitrary, and capricious. This is further supported by the reasoning of Wauconda's request for extension, which a copy is attached hereto as Exhibit 2.

D. The Agency's conclusion that the soil boring log for the physical soil analysis does not indicate a PID reading was taken at the depth of the soil sample is erroneous, arbitrary, and capricious. This is further supported by the reasoning of Wauconda's request for extension, which a copy is attached hereto as Exhibit 2.

E. The Agency's conclusion that the soil samples were collected from beneath the groundwater table and that the samples are not acceptable for delineating soil contamination in the unsaturated zones is erroneous, arbitrary, and capricious. This is further supported by the reasoning of Wauconda's request for extension, which a copy is attached hereto as Exhibit 2.

**IV. CONCLUSION.**

For all the foregoing reasons, petitioner Wauconda CUSD #118 respectfully submits that the Decision should be reversed and the Agency ordered to approve the Corrective

Action Completion Report and order the Agency to pay Wauconda's attorneys' fees for this appeal.

December 19, 2007

WAUCONDA CUSD #118

By:   
One of its Attorneys

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 – 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Wauconda CUSD #118*  
sara\wpdocs\USI - Wauconda\Petition for Review.doc



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

NOV 14 2007

*CH/HL*

RECEIVED NOV 16 2007

Wauconda CUSD #118  
Attention: Bill Harkin  
555 North Main Street  
Wauconda, IL 60084

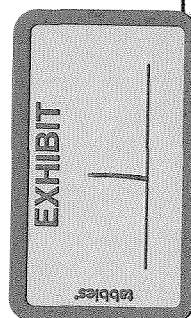
Re: LPC #0971855029 -- Lake County  
Wauconda / Wauconda CUSD #118  
225 Osage Street  
Leaking UST Incident No. 901772  
Leaking UST Technical File

Dear Mr. Harkin:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Completion Report submitted for the above-referenced incident. This information, dated August 17, 2007, was received by the Illinois EPA on August 21, 2007. Citations in this letter are from 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to 35 Ill. Adm. Code 731.166, the Corrective Action Completion Report is rejected for the following reason(s):

1. The Illinois EPA has no supporting documentation regarding the soil excavation. Please provide all supporting documentation regarding the 1,500 cubic yard soil excavation referenced in the report, including all confirmation samples collected during the excavation. All supporting documentation regarding all activities conducted to remediate the release are required to be submitted prior to the issuance of a No Further Remediation letter.
2. Chemical samples from the following soil borings were not collected at the depth of the highest PID readings, therefore these samples are not acceptable for contamination delineation: BH1, BH2 and BH3. As PID levels are not acceptable sample methods for determining contaminant levels, the Illinois EPA requires that samples be collected from area of the highest PID for analytical testing. This was not conducted.
3. The following monitoring wells were not constructed in such a manner that the well screen intersects the groundwater in the monitoring well: MW1, MW2, MW3, MW5 and MW6. The groundwater samples from these wells are not acceptable for delineation purposes. Please provide groundwater sample analyses from monitoring wells that are constructed in a manner where the well screen intersects the groundwater table.
4. The soil boring log provided for the physical soil analysis does not indicate a PID reading was taken at the depth of the soil sample. In order to determine if the physical soil analysis boring was advanced



Page 2

in an area not affected by contamination, PID reading are required with this borings as it is required for all borings.

5. During the review of this document, it is apparent that all soil samples with the exception of BH11, have been collected from beneath the groundwater table. This strata is not acceptable for delineating soil contamination extent in the unsaturated zones, therefore, all soil samples, with the exception of BH11 are not acceptable for confirmation sampling. Please provide the Illinois EPA with soil sample results delineating the soil contamination extent in the unsaturated zone.
6. Please provide the Illinois EPA with maps showing the surrounding streets and properties. The Illinois EPA requires that surrounding property use be notated on the map.

A revised report 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.

If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

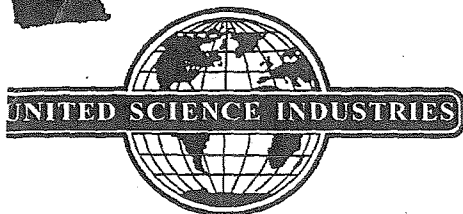
Sincerely,



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

HAC: CLH

c: United Science Industries  
BOL File

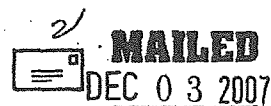


P.O. Box 360  
6295 East IL Highway 15  
Woodlawn, IL 62898  
tf 800.372.8740  
p 618.241.8000  
f 618.735.2907

91 7108 2133 3931 9370 0424

www.unitedscience.com

November 27, 2007



Illinois Environmental Protection Agency  
Attn: William Ingersoll  
Division of Legal Counsel  
1021 North Grand Avenue  
Springfield, IL 62794-9276

**COPY**

Re: LPC # 0971855029 - Lake County  
Wauconda/Wauconda CUSD #118  
225 Osage Street  
LUST Incident No. 901772

Dear Mr. Ingersoll:

United Science Industries, Inc. (USI), on behalf of our client, Wauconda CUSD #118, is hereby requesting a 90-day extension to the 35-day appeal period in regard to the IEPA correspondence dated November 14, 2007 which rejected the Corrective Action Completion Report. A copy of the correspondence is attached. The reason for the appeal extension is to provide the additional time necessary for the Agency and Wauconda CUSD #118 to negotiate a settlement resulting from the rejection as defined on Attachment A, Section 2 of the decisions.

Wauconda CUSD #118 is considering an appeal of this decision on the following basis:

- 1) *The Illinois EPA has no supporting documentation regarding the soil excavation. Please provide all supporting documentation regarding the 1,500 cubic yard soil excavation referenced in the report, including all confirmation samples collected during the excavation. All supporting documentation regarding all activities conducted to remediate the release are required to be submitted prior to the issuance of a No Further Remediation letter.*

This information was obtained from the Agency FOIA. The soil excavation was performed by previous consultant Acacia Environmental Services. United Science Industries, Inc. (USI) does not have excavation confirmation samples. USI was under the impression this issue was resolved since the Agency approved a "plan" in 1991 for corrective action and reimbursed corrective action costs in 1993. The owner has been contacted again to find out if any data or information is available.



Wauconda CUSD #118

Incident # 901772

Page 2 of 3

- 2) *Chemical samples from the following soil borings were not collected at the depth of the highest PID readings, therefore these samples are not acceptable for contamination delineation: BH1, BH2, and BH3. As PID levels are not acceptable sample methods for determining contaminant levels, the Illinois EPA requires that samples be collected from area of the highest PID for analytical testing. This was not conducted.*

PID readings are used for soil screening in the field, they are an estimate of potential contamination and readings within a few ppm are essentially the same. The low level readings can be interpreted as "clean" soil and standard Agency approved protocol allowed for soil samples at the water table to insure no migration to groundwater had occurred. The PID readings for BH1, BH2, and BH3 range from 2 - 5 ppm at all depths. These low levels indicate "clean" samples as indicated by the soil analysis; therefore the sample was collected above the groundwater table because the soil column was screened as potentially meeting objectives and essentially the same contaminant levels, if any. A sample was collected above the water table because the soil was "clean" throughout and as common practice, a sample was obtained above or at the top of the groundwater table. This was the standard engineering practice at the time in November 2005 and the samples should be acceptable based on previous Agency approved practices.

- 3) *The following monitoring wells were not constructed in such a manner that the well screen intersects the groundwater in monitoring well: MW1, MW2, MW3, MW5 and MW6. The groundwater samples from these wells are not acceptable for delineation purposes. Please provide groundwater sample analyses from monitoring wells that are constructed in a manner where the well screen intersects the groundwater table.*

Referencing soil boring logs, the groundwater is noted at a depth of approximately 13 to 14 feet within a sandy layer beneath a number of clay layers which confine this aquifer. Monitoring well completion reports indicate the well screens were set a depth of 20 feet for MW-1, MW-2, MW-3, and MW-5. MW-4 and MW-6 boring logs revealed groundwater at a depth of 10 feet and 8 feet respectively. Wells were set at a depth of 15 feet. In all instances the 10 foot screen intersects the top the of the groundwater table and allows for fluctuations in groundwater depth. Therefore, the monitoring well screens intersected the top of the groundwater table when they were installed. Typically, monitoring wells set beneath or in a clay type soil are in a confined aquifer; therefore, it is common for groundwater to rise up into the well due to hydrostatic pressure. So, when the technician returned to the site to sample the wells the groundwater level in the well was approximately 8-9 feet bgs. This is referred to as the potentiometric surface and is not the actual depth to groundwater. These samples should be acceptable and such samples were accepted by the Agency on other project.

- 4) *The soil boring log provided for the physical soil analysis does not indicate a PID reading was taken at the depth of the soil sample. In order to determine if the physical soil analysis boring was advanced in an area not affected by contamination, PID reading are required with this borings as it is required for all borings.*



Wauconda CUSD #118  
Incident # 901772  
Page 3 of 3

The PID readings shown in the soil boring log for ST-1 was zero. The sample from ST-1 was collected for physical soil analysis and not chemical analysis. The PID is technically not applicable. Physical analysis soil samples are collected in a steel Shelby tube which is an intact sample and cannot be screened. Soil sampling above the Shelby tube was screened and did not indicate contamination based on PID readings, no odor or stain was noted. USI typically collects physical soil samples in non-contaminated areas. Technically, the physical parameters are not affected by the presence of contamination nor do regulations indicate this as a requirement. This is the first time the Agency has made an issue of this.

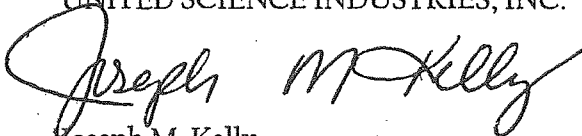
- 5) *During the review of this document, it is apparent that all soil samples with the exception of BH11 have been collected from beneath the groundwater table. This strata is not acceptable for delineating soil contamination extent in the unsaturated zones, therefore, all soil samples, with the exception of BH11 are not acceptable for confirmation sampling. Please provide the Illinois EPA with soil sample results delineating the soil contamination extent in the unsaturated zone.*

As indicated above, the groundwater depth in the soil and the monitoring wells is different due to hydrostatic pressure which "pushes" the groundwater up into the open monitoring well. Based on soil boring logs, the soil samples were collected just above the water table. This is the first time soil sample depths have been contested by the Agency in this type of scenario. Please refer to the soil boring logs. The issue of hydrostatic pressure and potentiometric surface is an issue on some other projects and has to be explained.

For the above reasons, a 90 day extension to appeal is requested. Wauconda CUSD #118 appreciates your time and consideration in this matter. If you have any questions or comments concerning the above, please contact me at (618) 241-8027.

Sincerely,

UNITED SCIENCE INDUSTRIES, INC.



Joseph M. Kelly  
Professional Engineer

Attachments

Confirmation Services	Package ID: 9171082133393193700424	E-CERTIFIED
	Destination ZIP Code: 62794	FIRST CLASS
	Recipient: _____	PBF Account #: 41470352
	Address: _____	Serial #: 2344202
	_____	DEC 3 2007 9:42A

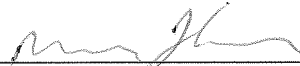
**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14<sup>th</sup> & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

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

William D. Ingersoll  
Managing Attorney  
Ill. Environmental Protection Agency  
1021 North Grand Ave. East  
Springfield, IL 62702

December 19, 2007



---

Mandy L. Combs

John T. Hundley  
Mandy L. Combs  
THE SHARP LAW FIRM, P.C.  
P.O. Box 906 - 1115 Harrison  
Mt. Vernon, IL 62864  
618-242-0246  
*Counsel for Petitioner Wauconda Community Unit School District #118*