

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SCHROF SERVICE CENTER,)	
<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.

January 26, 2009

SCHROF SERVICE CENTER

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 Schrof Service Center

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

SCHROF SERVICE CENTER,)	
<i>Petitioner,</i>)	
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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.*, and to the decision denying continuance of the filing hereof beyond today's date (see Exhibit 1), petitioner Schrof Service Center ("Schrof") submits this *Petition for Review* of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying approval of Schrof's Amended High Priority Corrective Action Plan (the "Plan") and further denying approval of the budget associated therewith.

Pursuant to § 57.8(l) of the Act, Schrof further requests the Board to order the Agency to pay Schrof'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 2 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed December 19, 2008. It was received by Schrof December 22, 2008 and this appeal is timely pursuant to William Ingersoll's letter dated January 21, 2009 of which a true copy is attached as Exhibit 1.

III. GROUNDS FOR APPEAL

A. The Agency's denial of the Plan because the Plan requires excavation into the groundwater table is arbitrary and capricious.

B. The Agency's denial of the Plan because the Plan proposes to excavate into the right-of-way adjacent to the site without providing documentation indicating approval of the proposed off-site excavation area is arbitrary and capricious.

C. The Agency's denial of the Plan because the Plan fails to indicate the defined extent of ground water contamination off-site is arbitrary and capricious.

D. The Agency's denial of the Plan because the calculations in relation to the Tier II cleanup objectives could not be considered until the extent of groundwater contamination has been defined is arbitrary and capricious.

E. The Agency's denial of the Plan because the foc value was extracted from a contaminated boring sample is erroneous, arbitrary and capricious.

F. The Agency's denial of the Plan because the Plan failed to include the most recent results of the depth-to-water measurements and that the groundwater monitoring well logs set with the ground surface at 0.00 as unacceptable is arbitrary and capricious.

G. The Agency's denial of the Plan because the Plan calls for additional groundwater monitoring wells to be installed post excavation and for all groundwater monitoring wells to be sampled again post excavation is arbitrary and capricious.

H. The Agency's denial of Schrof's budget was erroneous, and arbitrary, capricious, in that the denial of the Plan with which the budget was associated was erroneous, arbitrary, and capricious.

I. The Agency's denial of Schrof's budget because it includes costs for Consulting Personnel Time Costs, which exceed the minimum requirements necessary to comply with the Act is erroneous, arbitrary and capricious.

IV. CONCLUSION.

For all the foregoing reasons, petitioner Schrof Service Center respectfully submits that the Decision should be reversed and the Agency ordered to approve the Amended High Priority Corrective Action Plan and the budget associated therewith, and order the Agency to pay Schrof's attorneys' fees for this appeal.

January 26, 2009

SCHROF SERVICE CENTER

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 Schrof Service Center
MandyCombs\USI\SchrofPetition for Review.doc

1899117-Jkd



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

(217)782-5544

JAN 23 2009

(TDD: 217-782-9143)

BY: _____

Author's Direct Line: (217)782-9827
E-Mail: william.ingersoll@illinois.gov
Telefax: 217-782-9807

January 21, 2009

Jim Kirkland, Project Manager
United Science Industries, Inc.
P.O. Box 360
6295 East IL Highway 15
Woodlawn, IL 62898

Re: LPC # 1050605073 - Livingston County
Pontiac/Schrof Service Center
402 West Howard Street
LUST Incident No. 991451

Dear Mr. Kirkland:

The Illinois Environmental Protection Agency ("Illinois EPA") is in receipt of your January 14, 2009 letter requesting a 90-day extension to the 35-day appeal period in regards to a December 19, 2008 decision regarding the above site and incident. The request is DENIED. It does not appear likely that the additional time would result in a resolution. The deadline for filing any appeal of this matter remains at January 26, 2009 based upon a December 20, 2008 received date of the decision.

Sincerely,

William D. Ingersoll, Manager
Enforcement Programs

cc: Harry Chappel, BOL/LUST
BOL Records Unit



1899117 JKirkard



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
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

RECEIVED

CERTIFIED MAIL

DEC 19 2008

DEC 22 2008

7004 2510 0001 8617 9096

BY: MW/PH

Schrof Service Center
Attention: Carl Schrof
2205 Hedgewood Drive
Bloomington, Illinois 61704

Re: LPC #1050605073 -- Livingston County
Pontiac/Schrof Service Center
402 West Howard Street
Leaking UST Incident No. 991451
Leaking UST Technical File

Dear Mr. Schrof:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated August 21, 2008, was received by the Illinois EPA on August 22, 2008. Citations in this letter are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, 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 rejected for the following reason(s):

1. The plan indicates excavation to a depth of ten (10) feet below ground surface even though past depth-to-groundwater measurements indicate groundwater is encountered at approximately 4.35 feet below ground surface to 9.35 feet below ground surface. The Illinois EPA does not approve excavating into the groundwater table. In addition, the plan proposes to excavate into the right-of-way adjacent to the site without providing documentation indicating approval of the proposed off-site excavation area(s). It may be more advantageous to seek a Highway Authority Agreement for the soil/groundwater contamination off-site in the right-of-way. Further, the plan fails to indicate the defined extent of groundwater contamination off-site for this LUST incident. Proposal(s) for groundwater remediation must be presented as part of the corrective actions since the site does not exist within a groundwater ordinance area for this LUST incident.



2. The plan indicates Tier II cleanup objectives have been completed. However, the calculations cannot be considered until the extent of groundwater contamination has been defined. In addition, the foc value is not a value that can be used since it was extracted from a contaminated boring/sample. Further, once the extent of groundwater contamination has been defined, the R26 model assumes one contributing plume so the Sw will be valued from clean groundwater monitoring well to clean groundwater monitoring well perpendicular to groundwater flow direction as one plume. All contaminated wells within the extent will use that source width.
3. The plan fails to include the most recent results of the depth-to-water measurements. Since all the groundwater wells installed for this LUST incident were recently re-sampled May 29, 2008 these results should have been provided in this Corrective Action Plan. In addition, please be aware that any groundwater monitoring well logs set with the ground surface at 0.00 are not acceptable. The groundwater monitoring well logs must have groundwater elevations based on a bench mark identified or mean sea level. It appears the groundwater monitoring well logs for all of the current groundwater monitoring wells developed for this LUST incident have the ground surface set at 0.00 and are not based on a bench mark identified or mean sea level. Further, a Class II groundwater demonstration has not been completed for this LUST incident.
4. The plan indicates additional groundwater monitoring wells will be installed post excavation and all groundwater monitoring wells will be sampled again. However, it is not clear to the Illinois EPA as to the purpose of installing a groundwater monitoring well within the excavated area. In addition, the only groundwater monitoring wells that will require additional sampling post excavation will be the groundwater monitoring wells that had indicated groundwater contamination from the most recent sampling event. Further, the Illinois EPA is requiring an explanation as to the purpose of installing a groundwater monitoring well approximately 140 feet east of the contaminated wells off-site in the right-of-way. Has the Pontiac Plumbing Heating and Cooling property denied access for investigations/corrective actions? The Illinois EPA is requesting a groundwater monitoring well be installed to the west of groundwater monitoring well MW-8 on site prior to installing the proposed off-site groundwater monitoring well off-site on the Easy Credit Autosales property.

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

1. Pursuant to Sections 57.7(c) of the Act and 35 Ill. Adm. Code 732.305 or 732.405 and 732.503(b), the associated budget is rejected for the following reason:

The Illinois EPA has not approved the plan with which the budget is associated. Until such time as the plan is approved, a determination regarding the associated budget— i.e., a determination as to whether costs associated with materials, activities, and services are reasonable; whether costs are consistent with the associated technical plan; whether costs will be incurred in the performance of corrective action activities; whether costs will not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and whether costs exceed the maximum payment amounts set forth in Subpart H of 35 Ill. Adm. Code 732 cannot be made (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.505(c)).

2. The budget includes costs for Consulting Personnel Time Costs, which exceed the minimum requirements necessary to comply with the Act. Costs associated with 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 pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(o).

The costs are for activities and associated materials or services that have been previously denied in the Illinois EPA letters dated December 12, 2005 and December 31, 2007.

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

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 Mindy Weller at 217/782-6762.

Sincerely,



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

HAC:MW\991451.DOC

cc: Jim Krikland, USI, Inc.
BOL File

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) 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 request for 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

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

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

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 14th & 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

January 26, 2009



Mandy L. Combs

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
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