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JUN 25 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

TASIM FEJZA,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB No. *PCB 03-162*
(UST Appeal)

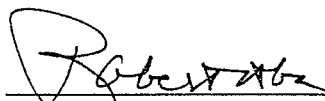
NOTICE

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

John I. 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



Robert E. Shaw, Attorney for
Tasim Fejza, Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
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123 S. 10th Street, Suite 302
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BEFORE THE POLLUTION CONTROL BOARD
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TASIM FEJZA,

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vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB No. *PCB03-162*
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Tasim Fejza ("Fejza"), by its attorneys, 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) 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, Fejza respectfully states as follows:

1. On February 18, 2003, the Agency issued a final decision to Fejza, a copy of which is attached hereto as Exhibit A.
2. On March 7, 2003, Fejza made a written request to the Agency for an extension of time by which to file a petition for review to ninety days, a copy of which is attached hereto as Exhibit B.
3. On March 25, 2003, the Agency joined in Fejza's 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 April 3, 2003, the Board entered an Order extending the time by which Fejza could file its petition to June 23, 2003, a copy of which is attached hereto as Exhibit D.

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

Fejza submitted to the Agency, through its consultant United Science Industries, Inc., a High Priority Corrective Action Plan ("CAP") and corresponding budget. The CAP requires the full extent of the soil and groundwater contamination to be defined by means of the collection of sufficient data to make such determination. The CAP and budget satisfy the requirements of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder, in that they were prepared and fully implemented in accordance with generally accepted engineering practices and their conclusions were consistent with the information obtained while implementing the CAP. The costs associated with each material, activity and service necessary to accomplish the goals of the CAP were reasonable and consistent and were incurred in the performance necessary to meet the minimum requirements of the Act and the regulations promulgated thereunder.

Further, the costs associated with each material, activity, and service necessary to accomplish the goals of the CAP are similar in generally accepted engineering practices and technical protocol to those historically submitted to and approved by the Agency which the Agency now deems to be unreasonable and inconsistent with generally accepted engineering practices. More specifically:

(1). The Agency's adjustment of \$3,168.75 in investigation costs associated with the five (5) groundwater monitoring wells deducted from Fejza's budget as in excess of those costs necessary to meet the minimum requirement of Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o) was on merely a cost basis with no technical justification and is therefore arbitrary and capricious. Further, the Agency has failed to notify Fejza of which groundwater monitoring wells it deems unnecessary, unreasonable or unjustifiable.

(2). The Agency's adjustment of \$570.00 in analysis costs associated with five (5) soil BTEX samples and five (5) groundwater BTEX samples as in excess of those necessary to meet the minimum requirements of Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o) was merely on a cost basis with no technical justification and is therefore arbitrary and capricious.

(3). The Agency's adjustment of \$10,000.00 in personnel costs was on merely a cost basis with no technical justification and is therefore arbitrary and capricious.

(4). The Agency's adjustment of \$1,470.00 for field purchases and other costs as not reasonable was on merely a cost basis with no technical justification and is therefore arbitrary and capricious. In particular, the Agency's adjustment for the five (5) PNA samples collected during early action unduly penalizes Fejza for taking such early action.

(5). The Agency's adjustment of \$91.91 for handling charges in excess of those necessary to meet the minimum requirements of Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o) was on merely a cost basis with no

technical justification and is therefore arbitrary and capricious, since the Agency's adjustments for the soil and groundwater samples and the field purchases and other costs were likewise arbitrary and capricious.

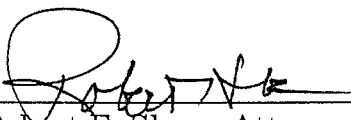
(6). The Agency's adjustment of \$3,040.00 in project manager fees, personnel, and equipment for dig and haul and preparing the High Priority Corrective Action Plan and budget was on merely a cost basis with no technical justification and is therefore arbitrary and capricious.

WHEREFORE, Petitioner, Tasim Fejza, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for approval of its CAP and budget as being reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST Fund, and that Petitioner recover its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(l).

Respectfully submitted,

SHAW & MARTIN, P.C.

BY



Robert E. Shaw, Attorney for
Tasim Fejza, Petitioner

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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 2030 0001 1879 0581

FEB 18 2003

Mr. Tasim Fejza
514 South Governors Highway
Peotone, Illinois 60468

Re: LPC # 1970755020 -- Will County
Peotone / Fejza, Tasim
I-57 & Peotone Rd.
LUST Incident No. 941095 & 991199
LUST Technical File

Dear Mr. Fejza:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated October 18, 2002, was received by the Illinois EPA on October 21, 2002. 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 following modifications 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:

The number of groundwater monitoring wells installed at the subject facility was excessive and costs associated with five groundwater monitoring wells have been deducted from the budget.

In addition, the budget for the High Priority 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 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.

Page 2

A Corrective Action Plan which meets the requirements of 35 IAC Part 732, Subpart D: Corrective Action, must be submitted within 120 days 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 Michael A. Heaton at 217/524-3312.

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:mh\941095fi.doc

Attachments: Attachment A
Appeal Rights

cc: Mr. Corey Eversgerd -- United Science Industries (Woodlawn, Illinois)
Division File

Attachment A

Re: LPC # 1970755020 -- Will County
Peotone / Fejza, Tasim
I-57 & Peotone Rd.
LUST Incident No. 941095 & 991199
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

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

\$7,263.49	Investigation Costs
\$2,015.00	Analysis Costs
\$14,663.25	Personnel Costs
\$930.00	Equipment Costs
\$6,408.73	Field Purchases and Other Costs
\$631.70	Handling Charges

SECTION 2

- a. \$3,168.75 for Investigation Costs. These costs are 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)).

The number of groundwater monitoring wells was excessive and five have been deducted from the budget.

75 feet @ \$24/foot = \$1,800

\$273.50 x 5 = \$1,368.75 (\$273.50 being the average cost per well for the Groundwater monitoring Well Installation Materials)

- b. \$570.00 for Analysis Costs. These costs are 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)).

Five soil BTEX samples @ \$55 / sample = \$275

Three groundwater BTEX samples @ \$55 / sample plus 2 BTEX samples @ \$65 / sample = \$295

- c. \$10,000 for Personnel. These costs are 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)).
- d. \$1,470.00 for an adjustment in Field Purchases and Other Costs. 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.

The rate for Per Diem, including the cost for hotels and motels, is excessive and has been reduced by \$350.

The Office of State Fire Marshal eligibility determination has three gasoline tanks listed. Since PNAs are not an indicator contaminant for gasoline, the seven PNA samples collected during early action @ \$160/sample have been deducted from Other Costs.

- e. \$91.99 for Handling Charges. These costs are 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)).

This modification reflects the change in items eligible for reimbursement based upon the modifications listed in Items II.b and II.d above.

Appeal Rights

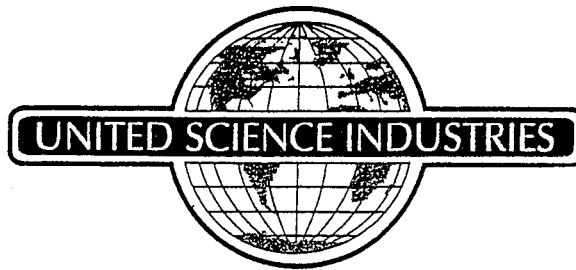
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4)(D) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may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



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

March 7, 2003

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

Re: **LPC# 1970755020 – Will County**
Peotone / Fejza, Tasim
I-57 & Peotone Road
LUST Incident No. 941095 & 991199
ATTN: Susan Schroeder

RECEIVED
Division of Legal Counsel
MAR 11 2003
Environmental Protection
Agency

Mrs. Schroeder:

United Science Industries, Inc. (USI), on behalf of our client, Tasim Fejza, 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.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Corey Eversgerd
Project Manager

Enclosures

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

TASIM FEJZA,	)	
	)	
v.	)	PCB No. 03-
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 23, 2003, or any other date not more than a total of one hundred twenty-five (125) days from February 18, 2003, the date of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On February 18, 2003, the Illinois EPA issued a final decision to the Petitioner.
(Exhibit A)
2. On March 7, 2003, 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 did not represent when the final decision was received. (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.

EXHIBIT C

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 I. 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 25, 2003

April 3, 2003

Respondent.

PCB 03-162
(UST Appeal)
(90-Day Extension)

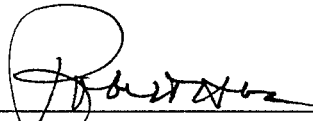
EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 23, 2003, I served true and correct copies of a 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 drop box located within Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

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

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



Robert E. Shaw, Attorney for
Petitioner, Tasim Fejza