

RECEIVED
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MAR 04 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

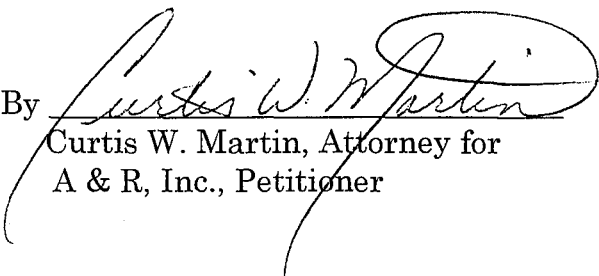
A & R, INC.,)	
)	
Petitioner,)	
)	
vs.)	PCB No. 04-90
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

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

John J. 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 
Curtis W. Martin, Attorney for
A & R, Inc., 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

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

A & R, INC.,)
)
Petitioner,)
)
vs.) PCB No. 04-90
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, A & R, Inc. ("A & R"), by one of its attorneys, Curtis W. Martin of 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, A & R respectfully states as follows:

1. On October 29, 2003, the Agency issued a final decision to A & R, a copy of which is attached hereto as Exhibit A.
2. On November 11, 2003, A & R 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 December 3, 2003, the Agency joined in A & R'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 December 18, 2003 the Board entered an Order extending the time by which A & R could file a Petition to and including March 2, 2004, a copy of which is attached hereto as Exhibit D.

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

A & R submitted to the Agency, through its consultant United Science Industries, Inc., an Amended High Priority Corrective Action Plan ("CAP") and corresponding budget ("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.

This Budget was submitted in response to a previous Agency decision dated September 16, 2003 by which the Agency adjusted equipment costs and field

purchases and other costs associated with its reduction of A & R's proposal for the amount of contaminated soil to be excavated and transported. By its October 29, 2003 letter, the Agency approved only an additional \$3,800.00 in personnel costs and nothing further for additional proposed equipment costs or field purchases and other costs.

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:

With regard to the adjustments by the Agency in its September 16, 2003 letter which are reflected in the approved Budget shown in attachment A to the Agency's October 29, 2003 letter:

(1). The Agency's adjustment of \$500.00 for investigation costs associated with the per foot boring cost as unreasonable is in error and without technical justification.

(2). The Agency's adjustment of \$30,226.00 in personnel costs as unreasonable is arbitrary and capricious and without technical justification.

Further, the Agency fails to notify A & R of the basis for the adjustment or the particular personnel costs it is adjusting.

(3). The Agency's adjustment of \$1,360.00 in equipment costs associate with the Geoprobe rental as required to be included in per foot boring costs is in error and without technical justification.

(4). The Agency's adjustment of \$360.00 for equipment costs associated with the PID rental is arbitrary and capricious and without technical justification.

(5). The Agency's adjustment of \$180.00 in equipment costs associated with the utility vehicle is arbitrary and capricious and without technical justification and fails to notify A & R of the basis for such adjustment.

(6). The Agency's adjustment of \$9,240.00 in field purchases and other costs associated with asphalt pavement is arbitrary and capricious as associated with the reduction to 2,000 cubic yards of excavation of contaminated soil which is in error.

(7). The Agency's adjustment of \$30.00 in field purchases and other costs associated with disposable cameras is arbitrary and capricious and fails to notify A & R of the basis for such adjustment.

(8). The Agency's adjustment of \$51,282.76 in field purchases and other costs associated with soil excavation, transportation and disposal is arbitrary and capricious as associated with the reduction to 2,000 cubic yards of excavation of contaminated soil which is in error and the Agency further fails to advise A & R of the particular costs adjusted accumulating the \$51,282.76 or the reason(s) for such adjustments.

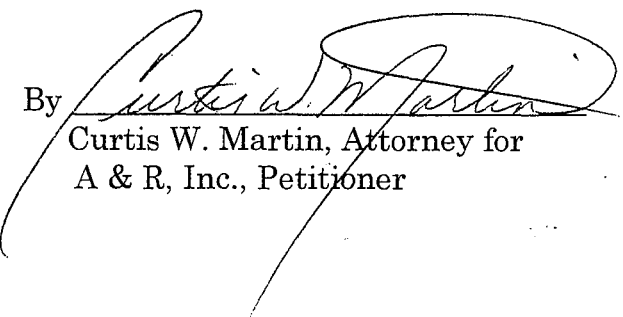
(9). The Agency's adjustment of \$18,648.28 associated with field purchases and other costs associated with backfill is arbitrary and capricious and without technical justification.

(10). The Agency's adjustment of \$1,311.20 associated with handling charges is arbitrary and capricious and without technical justification.

WHEREFORE, Petitioner, A & R, Inc., 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 
Curtis W. Martin, Attorney for
A & R, Inc., 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, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1227 0110

OCT 29 2013

A & R, Inc.
Mr. Avery Moore
6229 West Ogden Avenue
Berwyn, IL 60402

Re: LPC #0310215104 -- Cook County
 Berwyn/ A & R, Inc.
 6229 West Ogden Avenue
 LUST Incident No. 981412
 LUST Technical File

Dear Mr. Moore:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated October 27, 2003, was received by facsimile by the Illinois EPA on October 27, 2003 and indicates a mathematical error was made in a October 24, 2003 Agency letter. This letter is issued to correct the mathematical error in the October 24, 2003 budget totals. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is approved for the amounts listed in Section 1 of Attachment A. 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.

All future correspondence must be submitted 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.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 897-2260
ELGIN - 595 South State, Elgin, IL 60120 - (815) 398-2260
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62234 - (618) 346-5120
PLAINES, IL 60016 - (847) 294-4000
CHAMPAIGN, IL 61820 - (217) 278-5800
MARIC

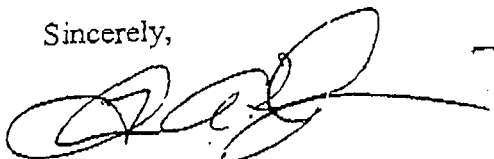
A

Page 2

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 Dave Myers at 217/785-7491.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:DM:drm\HPCAPamBUDmod2.doc

Attachment: Attachment A
Appeal Rights

c: United Science Industries, Inc.
Division File

Attachment A

Re: LPC #0310215104 -- Cook County
Berwyn/ A & R, Inc.
6229 West Ogden Avenue
LUST Incident No. 981412
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 in a November 17, 2000 letter for:

\$3750.00	Investigation Costs
\$2520.00	Analysis Costs
\$8474.00	Personnel Costs
\$128.00	Equipment Costs
\$531.00	Field Purchases and Other Costs
\$930.20	Handling Charges

The budget was previously approved in a September 16, 2003 letter for:

\$3373.66	Investigation Costs
\$2730.00	Analysis Costs
\$14,400.00	Personnel Costs
\$1660.00	Equipment Costs
\$167,191.35	Field Purchases and Other Costs
\$1730.37	Handling Charges

The following amounts are approved:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$3800.00	Personnel Costs
\$0.00	Equipment Costs
\$0.00	Field Purchases and Other Costs
\$0.00	Handling Charges

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

November 11, 2003

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

RECEIVED
Division of Legal Counsel
NOV 17 2003
Environmental Protection
Agency

**Re: LPC# 0310215104--Cook Co.
Berwyn/A & R, Inc.
6229 West Ogden Avenue
LUST Incident No. 981412
ATTN: John Kim**

Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, A & R, Inc., 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. 175.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Mark Owens
Project Manager

Enclosures

MO:bg



B

EXHIBIT B

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

A & R, INC.,)	
)	
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 March 2, 2004, or any other date not more than a total of one hundred twenty-five (125) days from October 29, 2003, the date of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 29, 2003, the Illinois EPA issued a final decision to the Petitioner. The Illinois EPA notes that the copy of the final decision provided to the Illinois EPA by the Petitioner is not complete. The undersigned attorney has not had an opportunity to secure a complete copy prior to this filing. (Exhibit A)

2. On November 11, 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.

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 3, 2003

This filing submitted on recycled paper.

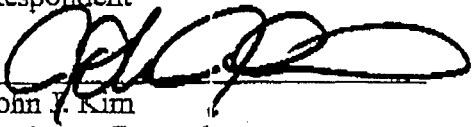
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 3, 2003, 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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent


John V. 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)

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2003

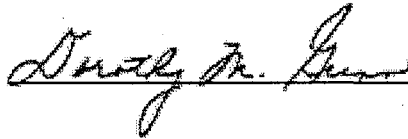
A & R, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 04-90
)	(UST Appeal)
)	(90-Day Extension)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 8, 2003, the parties timely filed a joint notice to extend the 35-day period within which A & R, Inc. (A & R) may appeal an October 29, 2003 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 the high priority corrective action plan budget, with corrections, for A & R's leaking underground petroleum storage tank facility located at 6229 West Ogden Avenue, Berwyn, Cook County. The Board extends the appeal period until March 2, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If A & R 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 December 18, 2003, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

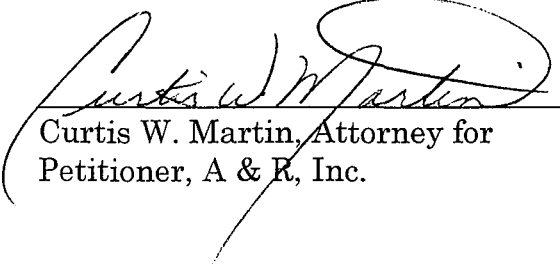
EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 1, 2004, 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 J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, IL 62794-9276


Curtis W. Martin, Attorney for
Petitioner, A & R, Inc.