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MAR 04 2004

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS
Pollution Control Board

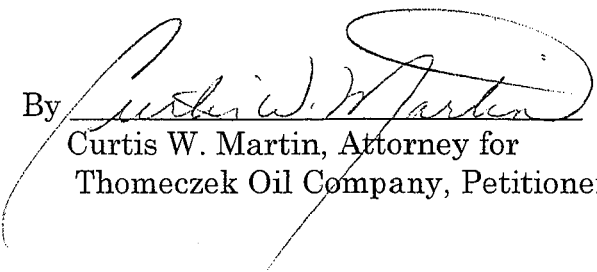
THOMECZEK OIL COMPANY,)
)
Petitioner,)
)
vs.) PCB No. 04-91
) (UST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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
Thomeczek Oil Company, 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

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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MAR 04 2004

STATE OF ILLINOIS
Pollution Control Board

THOMECZEK OIL COMPANY,)
)
 Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB No. 04-91
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Thomeczek Oil Company ("Thomeczek"), 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, Thomeczek respectfully states as follows:

1. On October 31, 2003, the Agency issued a final decision to Thomeczek, a copy of which is attached hereto as Exhibit A.
2. On November 13, 2003, Thomeczek 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 5, 2003, the Agency joined in Thomeczek'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 Thomeczek could file a Petition to and including March 4, 2004, a copy of which is attached hereto as Exhibit D.

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

On September 23, 2003, Thomeczek 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, the Agency's adjustment of \$6,355.00 in personnel costs as unreasonable due to inadequate justification for costs beyond the personnel time involved in the Tier II calculations performed is arbitrary and capricious. The present CAP before the Agency is the fifth submitted by Thomeczek, each successive CAP submitted in response to varying Agency requirements submitted at various times ranging from August, 2000 through September, 2003. In addition, Thomeczek has been required to submit two (2) Corrective Action Completion Reports ("CACR") to the Agency due to its requirements.

Despite the extensive consultant personnel hours involved in the preparations and submittals of the multiple CAPs and budgets and CACR's at the Agency's request, the Agency has denied as unreasonable such personnel charges. Such denial is arbitrary and capricious as the personnel charges are subject to reimbursement under the Act and its regulations.

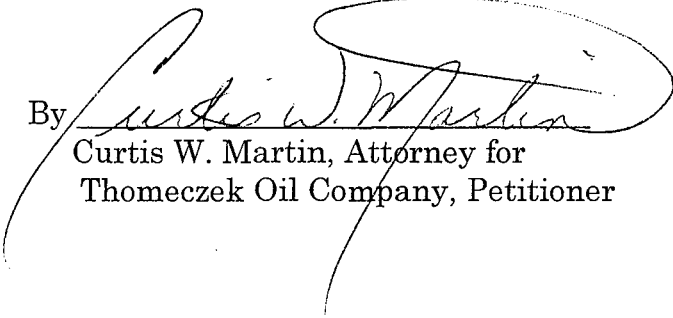
WHEREFORE, Petitioner, Thomeczek Oil Company, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for approval of its CAP and budget as being reasonable, justifiable, necessary, consistent with generally accepted engineering 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
Thomeczek Oil Company, 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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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 0349

OCT 31 2003

Thomeczek Oil Company
Attention: Mr. Dan Thomeczek
P.O. Box 66
Alton, Illinois 62002

Re: LPC 1190405159 -- Madison County
Granite City/ Thomeczek Oil Company
3252 West Chain of Rocks Road
LUST Incident No. 991248 & 983101
LUST Technical File

Dear Mr. Thomeczek

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated September 22, 2003, was received by the Illinois EPA on September 23, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget 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.

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) 987-7760 • Des PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000

ELGIN - 595 South State, Elgin, IL 60120 - (815) 733-7300 • CHICAGO - 1601 N. Dearborn St., Chicago, IL 60642 - (312) 346-5120

BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61604 - (309) 693-5463

SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62794 - (217) 278-5800

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A

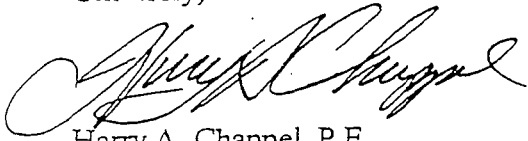
EXHIBIT A

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 James R. Malcom, III at 217/524-9140.

Sincerely,



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

HAC: jrm

Attachment: Attachment A

cc: USI
Division 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)(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

Attachment A

Re: LPC 1190405159 -- Madison County
Granite City/ Thomeczek Oil Company
3252 West Chain of Rocks Road
LUST Incident No. 991248 & 983101
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:

\$0.00	Investigation Costs
\$0.00	Analysis Costs
\$800.00	Personnel Costs
\$0.00	Equipment Costs
\$0.00	Field Purchases and Other Costs
\$0.00	Handling Charges

SECTION 2

1. \$6,355.00 for an adjustment in unreasonable personnel 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.

All costs previously denied by the Agency continue to be denied as adequate justification has not been submitted for the additional personnel costs being requested. The Agency is reimbursing for the personnel time involved during the Tier II calculations performed.

TOTAL AMOUNT APPROVED FOR HIGH PRIORITY CORRECTIVE ACTION:

\$21,286.80	Investigation Costs
\$26,540.00	Analysis Costs
\$137,819.00	Personnel Costs
\$72,323.60	Equipment Costs
\$303,523.70	Field Purchases and Other Costs
\$11,704.00	Handling Charges

jrm



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 13, 2003

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

RECEIVED
Division of Legal Counsel
NOV 14 2003
Environmental Protection
Agency

Re: **LPC# 1190405159 — Madison County
Granite City/Thomeczek Oil Company
3252 West Chain of Rocks Road
LUST Incident No. 983101 & 991248**

Dear Mr. John Kim:

United Science Industries, Inc. (USI), on behalf of our client, Mr. Dan Thomeczek, is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated October 31, 2003. A copy of the correspondence is attached.

I appreciate your time and consideration in this matter. If you have any questions or comments concerning the above, please contact me at (618) 735-2411 ext 166.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Sallie Minks
Sallie Minks
Project Manager

Enclosures

cc: Mr. Dan Thomeczek

EXHIBIT B

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

THOMECZEK OIL COMPANY,)	
Petitioner,)	
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 4, 2004, or any other date not more than a total of one hundred twenty-five (125) days from October 31, 2003, the date of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 31, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)

2. On November 13, 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 C. 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 5, 2003

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2003

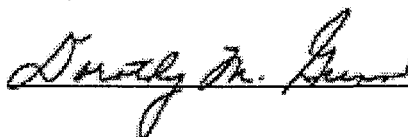
THOMECZEK OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 04-91
)	(UST Appeal)
)	(90-Day Extension)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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 Thomeczek Oil Company may appeal an October 31, 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 modifications, for Thomeczek Oil Company's leaking underground petroleum storage tank facility located at 3252 West Chain of Rocks Road, Granite City, Madison County. The Board extends the appeal period until March 4, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Thomeczek Oil Company 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 December 5, 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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



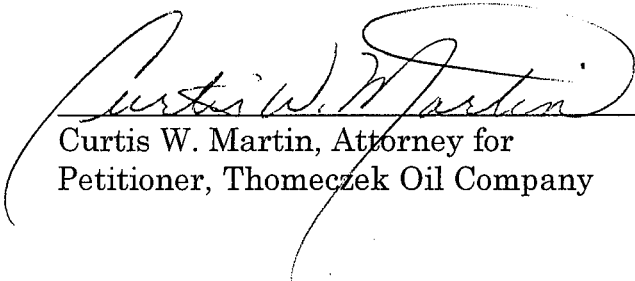
John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 2, 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, Thomeczek Oil Company