

RECEIVED

JAN 12 2004

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

KRAMER SERVICE STATION, )  
 )  
Petitioner, )  
 )  
vs. ) PCB No. 04-52  
 ) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

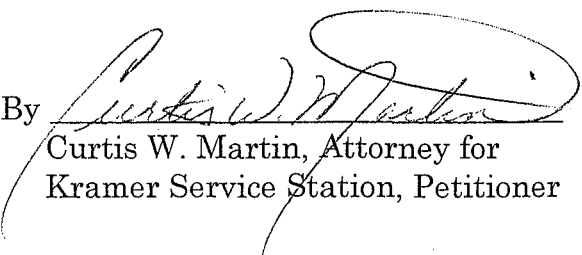
NOTICE

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  
Kramer Service Station, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> 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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**JAN 12 2004**

**STATE OF ILLINOIS  
POLLUTION CONTROL BOARD**

KRAMER'S SERVICE STATION, )

)

Petitioner, )

)

vs. )

)

PCB No. 04-52

(UST Appeal)

ILLINOIS ENVIRONMENTAL )

PROTECTION AGENCY, )

)

Respondent. )

**PETITION FOR REVIEW OF FINAL AGENCY**  
**LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Kramer's Service Station, ("Kramer"), 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, Kramer respectfully states as follows:

1. On September 5, 2003, the Agency issued a Final Decision to Kramer, a copy of which is attached hereto as Exhibit A.

2. On September 19, 2003, Kramer 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 October 10, 2003, the Agency joined in Kramer'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 4, 2003, the Board entered an Order extending the time by which Kramer could file a petition to and including January 8, 2004, a copy of which is attached hereto as Exhibit D.

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

On May 15, 2003, Kramer submitted to the Agency, through its consultant, United Science Industries, Inc. ("USI"), a revised Site Classification Work Plan ("Plan"). The costs included within the budget for the Plan were reasonable and in accordance with generally accepted engineering practices and consistent with the Act and its regulations.

By its letter of September 5, 2003, the Agency modified the Plan and conditionally approved it with such modifications. The history of this appeal leads back to August 1, 2002 when Kramer submitted a Site Classification Work Plan which the Agency rejected by letter of November 27, 2002, requiring a Leaking Underground Storage Tank ("LUST") pollutant sample to be performed. In accordance with the Agency's instructions, Kramer performed the LUST pollutant sample and analysis and the results and costs for same were included in the revised Site Classification Work Plan and Budget submitted on May 15, 2003. The Agency then issued its September 5, 2003 letter currently under appeal.

By its September 5, 2003 letter, the Agency eliminated substantial personnel time and in particular, the costs associated with the LUST pollutant sample and analysis. More specifically:

1. The Agency adjusted \$638.40 in handling charges but failed to clarify to which subcontract or field purchase costs the adjustment is associated. Such adjustment is therefore arbitrary and capricious.

2. The \$1,000.00 adjustment by the Agency for the LUST pollutant sample costs was arbitrary and capricious in that the Agency required such sampling and analysis by its letter dated November 27, 2002, but now disapproves of the costs associated with it. Such adjustment is also in contravention of 735 Ill. Adm. Code 732.312 (c) which provides in part that if, upon completion of early action requirements pursuant to sections 732.200 through 732.204, the requirements of subsection (b) of Section 732.312 have not been met, then the owner or operator, prior to conducting any site evaluation activities, shall submit to the Agency a site classification plan including, but not limited to, *contaminant identification*, and groundwater investigation plan, satisfying the minimum requirements for site evaluation activities as set forth in Section 732.312. (Emphasis added).

Therefore, the LUST sample and analysis and its associated costs were necessary to meet the minimum requirements of the site evaluation required under Section 732.312. Such sample is not required exclusively to be collected prior to site classification during early action. Moreover, USI, the current consultant for Kramer, was not the consultant during the early action phase of this

remediation project and was simply complying with the Agency's requirements. Requiring Kramer to perform the work necessary to comply with the Agency requirements and then to deny the costs associated with such compliance is not only arbitrary and capricious, but simply unfair.

3. The Agency's adjustment of \$250.00 for mobilization is the costs incurred by Kramer associated with the transportation of the equipment necessary for the LUST sampling. For the reasons stated in paragraph 3 above, such adjustment is arbitrary and capricious.

4. The Agency's adjustment of \$300.00 for PVC risers is merely on a cost basis without any technical justification and is therefore arbitrary and capricious.

5. The Agency's adjustment of \$7,553.50 in total personnel charges is merely on a cost basis with no technical justification and further fails to advise Kramer of the particular personnel charges adjusted or the reasons therefore. Such adjustment is therefore arbitrary and capricious.

6. The adjustment by the Agency of \$10.00 for the PID is merely on a cost basis and without technical justification and is therefore arbitrary and capricious.

7. The Agency's adjustment of \$102.00 in transducer and data logger charges is merely on a cost basis and without technical justification and is therefore arbitrary and capricious.

8. The Agency's adjustment of \$50.00 related to the number of sample shippings is arbitrary and capricious in that the shipping costs were

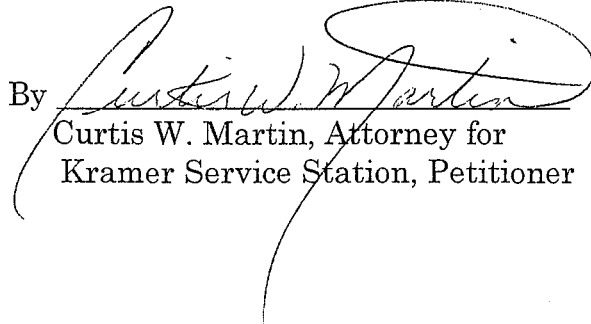
incurred with regard to the LUST pollutant sampling and are, for the reasons stated in paragraph 3 above, subject to reimbursement.

9. The Agency's adjustment of \$60.00 for the number of per diem charges is arbitrary and capricious in that such costs were incurred with regard to the LUST pollutant sampling and are, for the reasons stated in paragraph 3 above, subject to reimbursement.

WHEREFORE, Petitioner, Kramer Service Station, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of the Petitioner's request for approval of the High Priority Corrective Action Plan and Budget 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  
Kramer Service Station, Petitioner

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



1701129 30  
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

FRED R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 5477

SEP 05 2003

Kramer's Service Station  
John Kramer  
3107 Perrysville Road  
Danville, Illinois 61834

Re: LPC #1830205099 - Vermillion County  
Danville / Kramer's Service Station  
1015 E. Main Street  
LUST Incident No. 961668  
LUST Technical File

Dear Mr. Kramer:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Classification Work Plan (plan) submitted for the above-referenced incident. The Illinois EPA received this plan, dated May 15, 2003, on May 16, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The Illinois EPA has determined that the modifications listed in Attachment A are necessary to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732 (Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j)).

In addition, the budget is modified pursuant to Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j). Based on the modifications listed in Section 2 of Attachment B, the amounts listed in Section 1 of Attachment B 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.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.305(e) or 732.312(i), if reimbursement will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget

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) 734-1614

BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463

SPRINGFIELD - 4500 S. Sixth Street, Springfield, IL 62761 - (217) 278-5800

CHAMPAIGN - 1111 W. University St., Champaign, IL 61820 - (217) 278-5800

WINSTON-SALEM - 1111 W. University St., Winston-Salem, NC 27157 - (703) 346-5120

EXHIBIT A

Page 2

must be submitted.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

Pursuant to 35 Ill. Adm. Code 732.301 a Site Classification Completion Report must be submitted within 90 days of the date of this letter to:

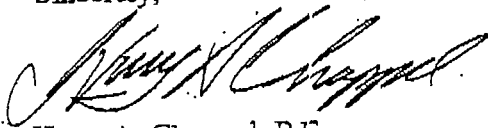
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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 Brian Bauer at 217/782-3335.

Sincerely,



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

HAC:BPB\

Attachment: Attachments A and B  
Election not to proceed form

cc: United Science Industries  
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 #1830205099 - Vermillion County  
Danville / Kramer's Service Station  
1015 E. Main Street  
LUST Incident No. 961668  
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. For used oil, the indicator contaminants shall be determined by the results of a used oil soil sample analysis (35 Ill. Adm. Code 732.310(g)). Prior to the submission of a site classification plan the owner or operator shall collect a grab sample from a location representative of soil that is the most contaminated as a result of the release from the used oil UST. If an area of contamination cannot be identified, the sample shall be collected from beneath the used oil UST. The sample shall be analyzed for:
  - a. All volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Appendix B of Part 732 and any other parameters the Licensed Professional Engineer or Licensed Professional Geologist suspects may be present based on UST usage. The Illinois EPA may add degradation products or mixtures of any of the above pollutants in accordance with 35 Ill. Adm. Code 620.615.
  - b. The used oil indicator contaminants shall be those volatile, base/neutral, polynuclear aromatic, and metal parameters listed at Appendix B of Part 732 or as otherwise identified at subsection (g)(1) of this Section that exceed their remediation objective at 35 Ill. Adm. Code 742 in addition to benzene, ethylbenzene, toluene, total xylenes, and PNAs.
  - c. If none of the parameters exceed their cleanup objective, the used oil indicator contaminants shall be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of 35 Ill. Adm. Code 732.

The indicator contaminant for this incident must be benzene, ethylbenzene, toluene, total xylenes, and the polynuclear aromatics listed in Appendix B of 35 Ill. Adm. Code 732. Please note the results of the metal analysis in the screening sample do not appear to be over their respective remediation objective therefore, they are not indicator contaminants.

2. The plan indicates that the owner/operator is electing to opt the pre-1974 kerosene fuel UST out of the UST Program. In order for the Agency to consider this option the attached form must be completed and signed by the owner/operator.

BPB\

## Attachment B

Re: LPC #1830205099 - Vermillion County  
Danville / Kramer's Service Station  
1015 E. Main Street  
LUST Incident No. 961668  
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 B, the following amounts are approved:

|             |                                 |
|-------------|---------------------------------|
| \$8,474.55  | Investigation Costs             |
| \$1,950.00  | Analysis Costs                  |
| \$13,400.00 | Personnel Costs                 |
| \$768.00    | Equipment Costs                 |
| \$420.00    | Field Purchases and Other Costs |
| \$279.60    | Handling Charges                |

### SECTION 2

1. \$4,800.00 for costs associated with the analysis for RCRA Metals. Costs associated with the analysis of laboratory samples for constituents other than applicable indicator contaminants or groundwater objectives are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(r)). 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)).
2. \$638.40 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

| Subcontract or Field<br>Purchase Cost: | Eligible Handling Charges as a<br>Percentage of Cost: |
|----------------------------------------|-------------------------------------------------------|
| \$0 - \$5,000                          | 12%                                                   |
| \$5,001 - \$15,000                     | \$600 plus 10% of amount over \$5,000                 |
| \$15,001 - \$50,000                    | \$1,600 plus 8% of amount over \$15,000               |

\$50,001 - \$100,000  
\$100,001 - \$1,000,000

\$4,400 plus 5% of amount over \$50,000  
\$6,900 plus 2% of amount over \$100,000

3. \$1,000.00 for an adjustment in LUST pollutant sample. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The LUST pollutant sample is required to be collected prior to site classification and is therefore an Early Action cost, not a Site Classification cost.

4. \$250.00 for an adjustment in mobilization. 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.
5. \$300.00 for an adjustment in PVC risers. 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.
6. \$7,553.50 for an adjustment in total personnel charges. 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.
7. \$10.00 for an adjustment in PID. 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.
8. \$102.00 for an adjustment in transducer and data logger charges. 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.

9. \$50.00 for an adjustment in the number of sample shipping's. 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.
10. \$60.00 for an adjustment in number of per diem charges. 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.

BPB\

The Agency is authorized to require this information under Section 4 and Title XVI of the Environmental Protection Act (415 ILCS 5/4, 5/57 - 5/7.17). Failure to disclose this information may result in a civil penalty of not to exceed \$50,000.00 for the violation and an additional civil penalty of not to exceed \$10,000.00 for each day during which the violation continues (415 ILCS 5/42). Any person who knowingly makes a false material statement or representation in any label, manifest, record, report, permit, or license, or other document filed, maintained or used for the purpose of compliance with Title XVI commits a Class 4 felony. Any second or subsequent offense after conviction hereunder is a Class 3 felony (415 ILCS 5/57.17). This form has been approved by the Forms Management Center.

## Illinois Environmental Protection Agency Leaking Underground Storage Tank Program

(this form applies to releases subject to 415 ILCS 5/57 et seq. and 35 Ill. Adm. Code Part 732)

### A. Site Identification

IEMA Incident # (6 or 9 digit): \_\_\_\_\_ IEPA Generator # (10 digit): \_\_\_\_\_

Site Name: \_\_\_\_\_

Site Address (Not a P.O. Box): \_\_\_\_\_

City: \_\_\_\_\_ County: \_\_\_\_\_

Office of the State Fire Marshal facility ID # (7 digit): \_\_\_\_\_

### B. Regulatory Status

1. Was this incident reported to the Illinois Emergency Management Agency (IEMA) as a result of a confirmed release from an Underground Storage Tank (UST) or USTs taken out of operation prior to January 2, 1974?  
Yes ☐ No ☐

2. Was this incident reported to IEMA as a result of a confirmed release from an UST or USTs used exclusively to store heating oil for consumptive use on the premises where stored and which serves other than a farm or residential unit?  
Yes ☐ No ☐

Note: If you marked "yes" to number 1 and/ or 2 then please complete the section below:

This form should be used as an official notification to the Agency of your intention to NOT proceed in accordance with the Leaking Underground Storage Tank (LUST) regulations, in which case you should mark the box in line "A" below. Please be advised that this election shall be deemed effective upon receipt by the Agency and may not be withdrawn once made. Alternatively, this form may be used to notify the Agency of your intention to proceed in accordance with the LUST regulations, in which case you should mark the box in line "B" below:

A. I am electing NOT to proceed ☐ (will not be subject to LUST regulations)

B. I am electing to proceed ☐ (will be subject to LUST regulations)

### D. Signatures

Owner

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Operator

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



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](mailto:unitedscience@unitedscience.com)

September 19, 2003

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, IL 62794-9276

Attn: John Kim

Re: **LPC# 1830205099 – Vermillion County**  
**Danville/Kramer's Service Station**  
**1015 East Main St.**  
**LUST Incident No. 961668**  
**LUST TECHNICAL FILE**

Dear Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Kramer's Service Station, is requesting a 90-day extension of the 35-day appeal period in regards to the IEPA correspondence of September 5, 2003, included herein.

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. 140.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Justin Overturf  
Project Manager

Enclosures

**RECEIVED**  
Division of Legal Counsel  
SEP 22 2003  
Environmental Protection  
Agency

EXHIBIT B

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

|                           |   |                                      |
|---------------------------|---|--------------------------------------|
| KRAMER'S SERVICE STATION, | ) |                                      |
| 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 January 8, 2004, or any other date not more than a total of one hundred twenty-five (125) days from September 5, 2003, the date of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On September 5, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)

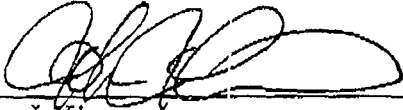
2. On September 19, 2003, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner did not 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: October 10, 2003

## CERTIFICATE OF SERVICE

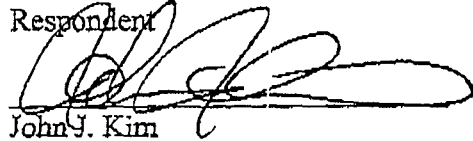
I, the undersigned attorney at law, hereby certify that on October 10, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop 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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



John G. 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 (TDE)

ILLINOIS POLLUTION CONTROL BOARD

December 4, 2003

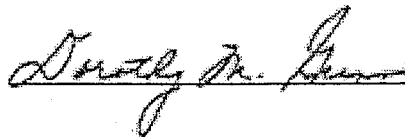
|                           |   |                    |
|---------------------------|---|--------------------|
| KRAMER'S SERVICE STATION, | ) |                    |
|                           | ) |                    |
| Petitioner,               | ) |                    |
|                           | ) |                    |
| v.                        | ) | PCB 04-52          |
|                           | ) | (UST Appeal)       |
|                           | ) | (90-Day Extension) |
| ILLINOIS ENVIRONMENTAL    | ) |                    |
| PROTECTION AGENCY,        | ) |                    |
|                           | ) |                    |
| Respondent.               | ) |                    |

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

On October 14, 2003, the parties timely filed a joint notice to extend the 35-day period within which Kramer's Service Station may appeal a September 5, 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 site classification plan, with modifications, for Kramer's Service Station's leaking underground petroleum storage tank facility located at 1015 E. Main Street, Danville, Vermilion County. The Board extends the appeal period until January 8, 2004, as the parties request. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Kramer's Service Station 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 4, 2003, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

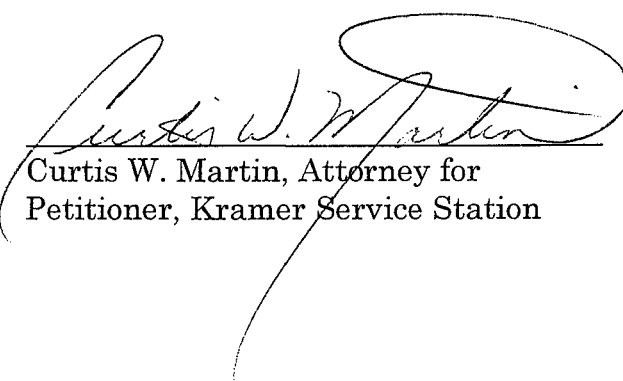
EXHIBIT D

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on January 8, 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, Kramer Service Station