

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

FEB 16 2005

WILLIAM BREUER,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-
(UST Appeal)

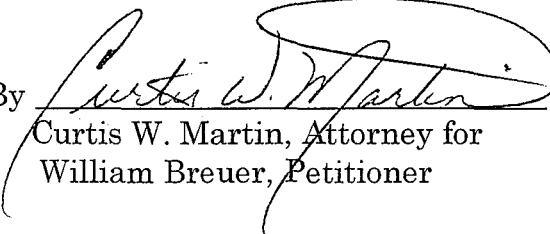
155 108 JR

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
William Breuer, 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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CLERK'S OFFICE

FEB 16 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

WILLIAM BREUER,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 05-155
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, William Breuer ("Breuer"), 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, Breuer respectfully states as follows:

1. On October 26, 2004, the Agency issued a final decision to Breuer, a copy of which is attached hereto as Exhibit A.
2. On November 19, 2004, Breuer 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, 2004, the Agency joined in Breuer'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 16, 2004 the Board entered an Order extending the time by which Breuer could file a Petition to and including March 2, 2005.

On August 3, 2004, Breuer, through its consultant, United Science Industries, Inc. ("USI"), submitted to the Agency a High Priority Corrective Action Plan ("Plan") and Budget ("Budget"). The Agency, in its October 26, 2004 letter, approved the Plan but modified the Budget. The result of the Agency's modification of the Budget was an adjustment in personnel costs of \$14,569.00. The Agency indicated such costs were not reasonable as submitted under Section 57.7(c)(4)(C) of the Environmental Protection Act ("Act") and 35 Ill. Adm. Code 732.606(hh). The Agency further indicated that a deduction was made in personnel costs previously allowed under Agency letter dated December 23, 2002.

The December 23, 2002 Agency letter was issued in response to a High Priority Corrective Action Plan submitted by Breuer on November 5, 2002. In that Plan, Breuer proposed soil excavation and disposal and on site deed restrictions to address groundwater contamination. The Agency approved this Plan but modified the Budget by adjusting a combined total of \$11,918.00 in personnel costs, equipment costs, field purchases and other costs, and handling charges. These costs were adjusted, according to the Agency, as exceeding the minimum requirements necessary to comply with Title XVI of the Act and 35 Ill. Adm. Code 732.505(c), as

not "Corrective Action Costs" under Sections 57.6 and 57.7 of the Act and 35 Ill. Adm. Code 732.103 and as not reasonable as submitted under 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh).

In response to the Agency's December 23, 2002 letter, Breuer submitted an Amended Corrective Action Plan and Soil Abatement Report on October 16, 2003. This Plan and Report contained details of soil excavation activities and continued to propose on site deed restrictions with regard to the groundwater contamination. While pursuing the soil excavation, Breuer encountered on May 19, 2003 a 560 gallon UST which had no records of existence and which was therefore treated by the Agency as a pre-1974 UST. Samples taken in and around this tank revealed, however, that it did not contribute to the contaminate plume. Breuer's Amended CAP proposed a groundwater remediation program through monitoring wells.

By letter dated January 16, 2004, the Agency rejected the Amended Corrective Action Plan, Budget and Soil Abatement Report. The Agency claimed it had already approved a Corrective Action Plan which was close to completion and it would not reimburse Breuer costs incurred associated with reporting, planning, etc. of a new Corrective Action Plan. The Agency also rejected the Amended Budget consisting of a combined total of \$24,710.00 of investigation costs, analysis costs, personnel costs, equipment costs, field purchases and other costs and handling charges.

In response to the Agency's January 16, 2004 letter, Breuer submitted an Amended Corrective Action Plan and Soil Abatement and Groundwater Monitoring

Report on August 3, 2004. This Amended Plan proposed a quarterly groundwater monitoring program for one year and contained a budget for costs associated with the proposed groundwater remediation operations. By Agency letter dated October 26, 2004, the Soil Abatement and Groundwater Monitoring Report was approved. However, the budget associated with the Amended Plan was modified by means of a deduction to the personnel costs for "time/hours either partially or in full for activities that were previously allowed in your original budget for Corrective Action per IEPA letter dated December 23, 2002." The personnel adjustment amounted to \$14,569.00.

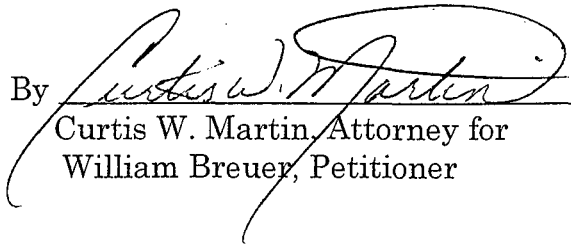
It is Breuer's position that the modification to the Agency, through this modification, continued to refer to the Corrective Action Plan that contained excavation and removal for the soil remediation when the Amended Corrective Action Plan, in association with the Soil Abatement and Groundwater Monitoring Report, propose, at least in part, groundwater monitoring as opposed to excavation and removal. Thus, the personnel costs adjusted by the Agency, through its October 26, 2004 letter, did not properly relate to the personnel costs associated with completely different means of remediation proposed by Breuer. Such an adjustment is unreasonable, arbitrary and capricious.

WHEREFORE, Petitioner, William Breuer, 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 Amended High Priority Corrective Action Plan 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
William Breuer, 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

FILE COPY

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
CERTIFIED MAIL

217/782-6762

OCT 26 2004

7002 3150 0000 1258 6624

William Breuer
Attention: Mr. Gerald Huges, POA
Post Office Box 96
Hoyleton, Illinois 62803

RECEIVED
OCT 29 REC'D
BY:

Re: LPC #1890205002 -- Washington County
Hoyleton/ Breuer, William
Hwy. 177 and Hoyleton -- Hoffman Road
LUST Incident No. 992697 and No. 20030951
LUST Technical File

Dear Mr. Huges:

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 August 3, 2004, was received by the Illinois EPA on August 4, 2004. 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 approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

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.

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 732.405(e), 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 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.

All future correspondence must be submitted to:

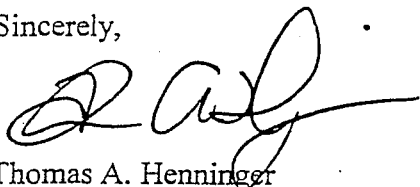
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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

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 Donna Wallace at 217/ 524-1283.

Sincerely,



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

TAH:DW:dw\

Attached: Attachment A
Appeal Rights

c: United Science Industries/ Karen Bartling
Division File

Attachment A

Re: LPC # 1890205002 -- Washington County
Hoyleton/ Breuer, William
Hwy. 177 & Hoyleton Hoffman Road
LUST Incident No. 992697 and No. 20030951
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 for:

\$1,498.50	Investigation Costs
\$1,887.00	Analysis Costs
\$50,109.00	Personnel Costs
\$28,280.00	Equipment Costs
\$52,204.00	Field Purchases and Other Costs
\$0	Handling Charges

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

\$33.00	Investigation Costs
\$1,360.00	Analysis Costs
\$7,470.00	Personnel Costs
\$345.00	Equipment Costs
\$2,308.00	Field Purchases and Other Costs
\$0	Handling Charges

Therefore, the total cumulative budget is approved for:

\$1,531.50	Investigation Costs
\$3,247.00	Analysis Costs
\$57,579.00	Personnel Costs
\$28,625.00	Equipment Costs
\$54,512.00	Field Purchases and Other Costs
\$0	Handling Charges

SECTION 2

\$14,569.00 for an adjustment in 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.

A deduction was made in personnel cost for time/hours either partially or in full for activities that were previously allowed in your original budget for Corrective Action per IEPA letter dated December 23, 2002.

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.

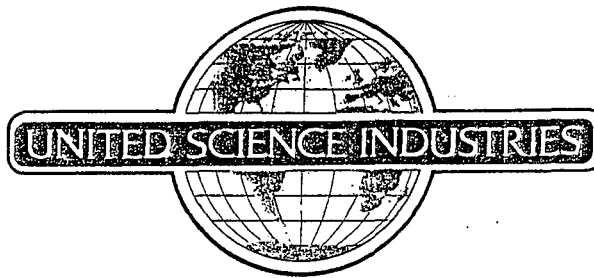
For information regarding the filing of an appeal, please contact:

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

FILE COPY



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 19, 2004

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

Re: **LPC# 1890205002 – Washington County
Hoyleton – Breuer, William
Hwy. 177 and Hoyleton-Hoffman Road
LUST Incident No. 992697 & 20030951
ATTN: John Kim**

Dear Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, William Breuer 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. 165.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

A handwritten signature in cursive script that reads "Karen S. Bartling".

Karen S. Bartling
Project Manager

Enclosures

EXHIBIT B

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

WILLIAM BREUER,)	
)	
Petitioner,)	
)	
v.)	PCB No. 05-
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

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

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

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, 2004

EXHIBIT C

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

WILLIAM BREUER,)	
Petitioner,)	
v.)	PCB No. 05-
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 3, 2005, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 26, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)

2. On November 19, 2004, 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’s request included information that represented that the final decision was received on October 29, 2004. (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



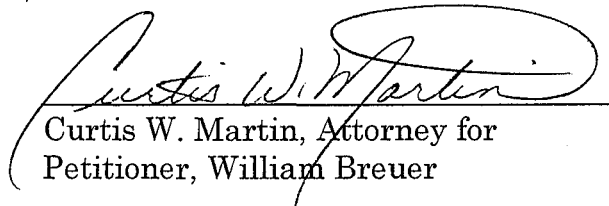
John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: December 3, 2004

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on February 14, 2005, 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, William Breuer