

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

**RECEIVED**  
CLERK'S OFFICE

MAY 20 2003

STATE OF ILLINOIS  
Pollution Control Board

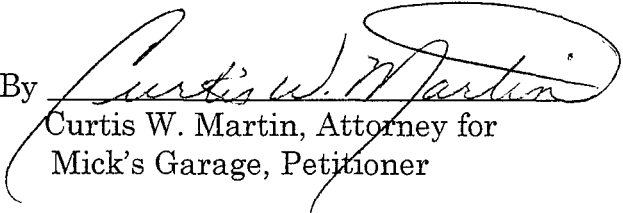
MICK'S GARAGE, )  
)  
Petitioner, )  
)  
vs. ) PCB No. 03-126  
) (UST Appeal)  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

NOTICE

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

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, a copy of which is herewith served upon you.

By   
Curtis W. Martin, Attorney for  
Mick's Garage, 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  
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STATE OF ILLINOIS  
*Pollution Control Board*

MICK'S GARAGE,	)	
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Petitioner,	)	
	)	
vs.	)	PCB No. 03-126
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

PETITION FOR REVIEW OF FINAL AGENCY  
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Mick's Garage, ("Mick's"), 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, Mick's respectfully states as follows:

1. On January 10, 2003, the Agency issued a final decision to Mick's, a copy of which is attached hereto as Exhibit A.
  
2. On February 11, 2003, Mick's made a written request to the Agency for an extension of time by which to file a petition for review from the thirty-five day period to ninety days, a copy of which is attached hereto as Exhibit B.
  
3. On February 18, 2003, the Agency joined in Mick'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 March 6, 2003, the Board entered an Order extending the time by which Mick's could file a petition to May 16, 2003, a copy of which is attached hereto as Exhibit D.

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

Mick's, a truck maintenance facility, reported a "suspected" release on June 11, 1991 to the Illinois Emergency Services Disaster Agency ("IESDA") and incident no. 911582 was assigned. In 1991, it was a standard practice to report a suspected release and to later confirm a release either by a site investigation and/or an underground storage tank ("UST") removal. An Application for Removal of eleven UST's, two of which were 2000 gallon diesel tanks, was received by the Office of the State Fire Marshall ("OSFM") on November 2, 1998 and the OSFM approved the Application on February 2, 1999. Bruce Trucking and Excavating, Inc. of Granite City, Illinois, in the presence of Arthur Jacobs, the OSFM Representative, removed the eleven UST's on April 5, 7, and 8, 1999.

Because there appeared to be a release from some of the UST's removed, Mr. Jacobs requested a second reporting of the same occurrence (the suspected release of June 11, 1991) on April 5, 1999 and the Illinois Emergency Management Agency ("IEMA") assigned a second incident no. 990820 to the site. Mr. Jacob's Log of Underground Storage Tank Removal did not, however, indicate a release from the two 2000 gallon diesel fuel tank system. The OSFM then determined that a \$10,000.00 deductible applies to the occurrence given incident no. 990820.

Mick's, through its consultant, United Science Industries, Inc. ("USI"), submitted to the Agency a Site Characterization Report/Corrective Action Plan ("Plan") in November 2002. The Agency approved the Plan as complying with 35 Ill.Adm.Code 731. However, the Agency determined that a \$50,000.00 deductible applies to this project because Mick's had actual or constructive knowledge that a release of petroleum occurred prior to July 28, 1989. It is from this Agency determination that Mick's appeals.

The Agency based its \$50,000.00 deductible determination upon the Gasoline Storage Act's tank registration prepared by Steve Fincher, the station attendant when the tank registration was submitted to the Agency. In the registration, Mr. Fincher indicated that two 2000 gallon diesel fuel tanks had been taken out of service due to an accident in which a tractor-trailer backed over the diesel fuel pump causing the pump to no longer dispense fuel. Mr. Fincher, without any further investigation at that time into the exact cause of the diesel fuel pumps' malfunction, assumed that a line connecting the tanks to the pump had been broken resulting in a fuel leak. Mr. Fincher saw neither a crack or a leak in the pump, line or any other portion of the diesel fuel dispensing system.

Some time after Mr. Fincher had completed and submitted the tank registration to the Agency, he discovered that the diesel fuel dispensing system involved a "suction pump" and that a crack in the pump prevented the suction pump from operating—it could not draw fuel through the line to be dispensed as a result of air leaking into the system through the crack.

That no diesel fuel had leaked from the two 2000 gallon diesel tanks or their dispensing system is demonstrated by the Log of Underground Storage Tank Removal prepared by Mr. Jacobs at the time the tanks were removed in April, 1999. The Log, previously provided to the Agency, clearly indicates no leaks from the two 2000 gallon diesel fuel system. The Agency, however, continues to hold to the position that Mick's had actual or constructive knowledge of a non-existent release from the diesel fuel system, while at the same time acknowledging in its January 10, 2003 decision letter that the information provided "does seem to indicate that the two diesel tanks did not have a release." There is no other conclusion for the Agency to reach but that there was no knowledge of a prior release.

Section 57.9(b)(2) of the Environment Protection Act ("Act"), 415 ILCS 5/57.9(b)(2), provides that an owner/operator may access the UST Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action after the application of a \$10,000.00 deductible, except a deductible of \$50,000.00 shall apply if any of the UST's were registered prior to July 28, 1989, and the State received notice of the confirmed release prior to July 28, 1989. In the Mick's project, although the diesel fuel tanks were registered prior to July 28, 1989, the State did not receive notice of any release regarding the diesel fuel tanks at any time.

In its January 10, 2003 decision letter the Agency states that "[a]ll tanks were indicated as having had releases from both the tank and piping systems connected to them." This simply is not true. No indication of any release from the diesel fuel tanks exists except for Mr. Fincher's erroneous assumption previously

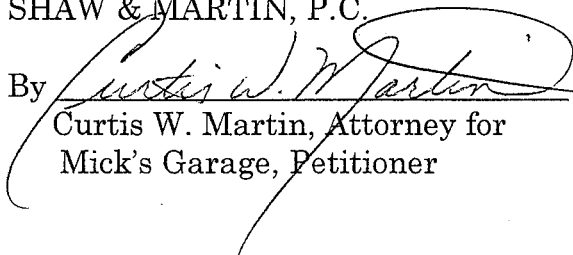
addressed. It must be noted that the Agency made an earlier determination on March 9, 1992 that a \$50,000.00 deductible applies to this project because the documentation provided to it indicated "both of the 20,000[sic] gallon diesel fuel tanks were taken out of service in 1980 due to a leak in line going from connecting tank to pump". With Mick's having dispelled that erroneous information, the Agency now asserts prior gasoline tank releases cause the application of the \$50,000.00. Neither assertion chosen by the Agency is supported by the facts in this project. The proper deductible to be applied under Section 57.9(b) of the Act is \$10,000.00.

WHEREFORE, Petitioner, Mick's Garage, for the reasons stated above, requests that the Board reverse the deductible decision of the Agency and rule in favor of Petitioner's request for the application of a \$10,000.00 deductible and award Petitioner its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By

  
Curtis W. Martin, Attorney for  
Mick's Garage, 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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

GEORGE H. RYAN, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

JAN 10 2003

Mary Fincher Estate/Mick's Garage  
Steve Fincher  
1251 E. Chain of Rocks Road  
Pontoon Beach, Illinois 62040

Re: LPC # 119085502-- Madison County  
Pontoon Beach / Mick's Garage  
1251 East Chain of Rocks Road  
LUST Incident #911582 & 990820  
LUST Technical File

Dear Mr. Fincher:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Characterization Report/Corrective Action Plan (plan) submitted for the above-referenced incident. This information was dated November 2002 and was received by the Illinois EPA on November 13, 2002. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (Ill. Adm. Code).

The activities proposed in the plan are appropriate to demonstrate compliance with 35 Ill. Adm. Code 731; therefore, the plan is approved. 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 requirements, including compliance with the proper permits. In addition, this approval does not constitute payment approval for costs associated with the performance of the activities in the plan. The Illinois EPA will review your complete request for partial or final payment from the Underground Storage Tank Fund after it is submitted.

The Agency appreciates the information provided with the cover letter for the Site Classification Report/Corrective Action Plan received November 13, 2002. The information provided does seem to indicate that the two diesel tanks did not have a release. However, the information provided at the time of the release indicates that the release reported on June 11, 1991 was for a gasoline tank. The Corrective Action/Proposed Plan of Remediation prepared by ARDL and

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-7400 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (708) 294-4073  
ELGIN - 595 South State, Elgin 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-4400  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 333-6907  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2304 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

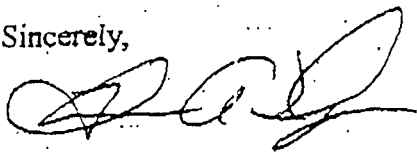
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EXHIBIT A

received by the Agency on August 8, 1991 and the Application for Reimbursement from the Underground Storage Tank Fund dated September 17, 1991 further supports this. The Application for Reimbursement indicates that of the eleven tanks identified for removal one (1) was a Waste Oil tank, two (2) were Heating Oil/Kerosene tanks, one (1) was a Gasohol tank, three (3) were Diesel Fuel tanks, three (3) were Regular Gasoline tanks and one (1) was an Unleaded Gasoline tank. All tanks were indicated as having had releases from both the tank and the piping systems connected to them. Based on the information stated above, the Agency continues to believe that the \$50,000.00 deductible originally assessed applies at this site.

If you have any questions or need further assistance, please contact John Barrett at (217) 782-4869.

Sincerely,



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

TAH/JB

cc: United Science Industries  
Division File



House Bill 4471 is now Public Act 92-0554

Governor George Ryan signed House Bill 4471 into law as Public Act 92-0554 on June 24, 2002. Public Act 92-0554 amends the Environmental Protection Act Sections 57.1, 57.2, 57.5, 57.6, 57.7, 57.8, 57.10, and 57.13 and adds Section 57.14A. The Act includes some significant changes to the handling of underground storage tank releases. Owners or operators who report a release on or after June 24, 2002 will no longer be able to perform Site Classification, pursuant to 35 Ill. Adm. Code 732.307 and 35 Ill. Adm. Code 732.312, and must now perform Site Investigation. However, if a release was reported prior to June 24, 2002, owners or operators may elect to perform Site Investigation.

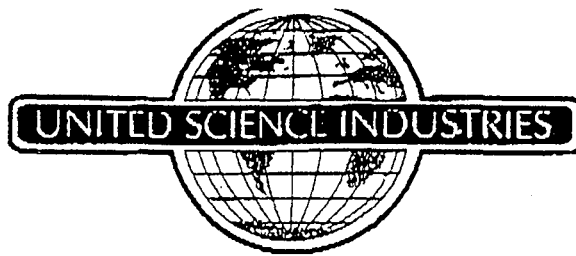
Public Act 92-0554 also raised the maximum amount that may be reimbursed from the Underground Storage Tank Fund. The Illinois EPA will request that the Illinois Pollution Control Board change the Illinois Administrative Code to reflect Public Act 92-0554. This change is expected to occur in 2003.

Public Act 92-0554 may be viewed at:

<http://www.legis.state.il.us/publicacts/pubact92/acts/92-0554.html>

The effective date of Public Act 92-0554 was June 24, 2002.

For additional information, please call the Illinois EPA, Leaking Underground Storage Tank Section at: (217) 782-6762.



**MAILED**

2/13/03 B

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)

February 11, 2003

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

**Re: LPC# 119085502 – Madison County  
Pontoon Beach / Mick's Garage  
1251 East Chain of Rocks Road  
LUST Incident No. 911582 & 990820  
LUST Technical File**

To Whom It May Concern:

United Science Industries, Inc. (USI), on behalf of our client, Mary Fincher Estate is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence dated January 10, 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.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Bob Pulfrey  
Project Manager

Enclosures

BP:bg

**EXHIBIT B**

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

MICK'S GARAGE,	)	
	Petitioner,	)
v.	)	PCB No. 03-
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal - Ninety Day Extension)
PROTECTION AGENCY,	)	
	Respondent.	)

**REQUEST FOR NINETY DAY EXTENSION  
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board ("Board") grant an extension of the thirty-five (35) day period for petitioning for a hearing to May 16, 2003, or any other date not more than a total of one hundred twenty-five (125) days from January 11, 2003, the date of service of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On January 10, 2003, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)


2. On February 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 represent that the final decision was received no earlier than January 11, 2003.  
(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: February 18, 2003

This filing submitted on recycled paper.

ILLINOIS POLLUTION CONTROL BOARD  
March 6, 2003

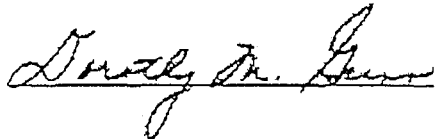
MICK'S GARAGE, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 03-126  
 ) (UST Appeal)  
 ILLINOIS ENVIRONMENTAL ) (90-Day Extension)  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by T.E. Johnson):

On February 18, 2003, the parties placed into the U.S. mail a joint request to extend the 35-day period within which Mick's Garage may appeal a January 10, 2003 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(c), 105.208(a), (c). Mick's Garage was served with the Agency's determination on January 11, 2003. The Board received the joint request on February 21, 2003. The 35-day filing deadline in this case extended to February 18, 2003. See 35 Ill. Adm. Code 101.300(a). Because the joint request was postmarked February 18, 2003, the joint request was timely filed. See 35 Ill. Adm. Code 101.300(b)(2). In this case, the Agency accepted a site characterization report/corrective action plan, but applied a \$50,000 deductible toward reimbursement from the leaking underground storage tank fund regarding Mick's Garage's underground storage tank site at 1251 East Chain of Rocks Road in Pontoon Beach, Madison County. The Board extends the appeal period until May 16, 2003, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.208(a). If Mick's Garage 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 March 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

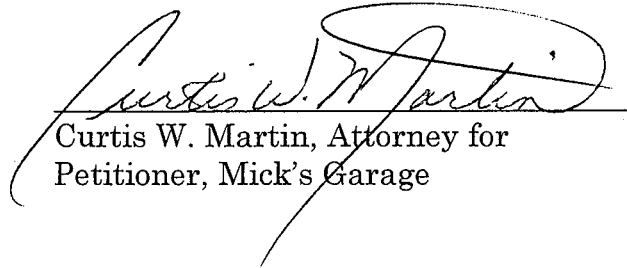
EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 16, 2003, I served true and correct copies of a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

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

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

  
Curtis W. Martin, Attorney for  
Petitioner, Mick's Garage