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CLERK'S OFFICE

JAN 19 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

GATEWAY FS, INC.,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

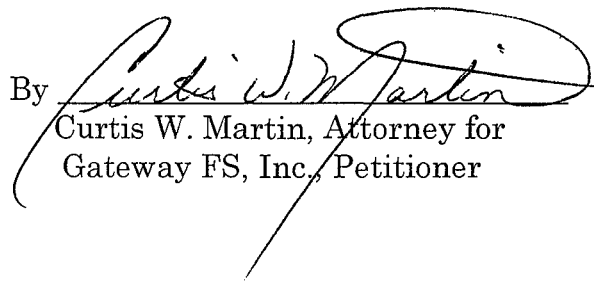
PCB No. 05-84
(UST Appeal)

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
Gateway FS, Inc., Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
Attorneys at Law
123 S. 10th Street, Suite 302
P.O. Box 1789
Mt. Vernon, Illinois 62864
Telephone (618) 244-1788

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
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GATEWAY FS, INC.,)
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Petitioner,)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 05-84
(UST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION

NOW COMES the Petitioner, Gateway FS, Inc. ("Gateway"), 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, Gateway respectfully states as follows:

1. On October 1, 2004, the Agency issued a final decision to Gateway, a copy of which is attached hereto as Exhibit A.
2. On October 6, 2004, Gateway 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 November 5, 2004, the Agency joined in Gateway'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 November 18, 2004, the Board entered an Order extending the time by which Gateway could file a petition to February 7, 2005, a copy of which is attached hereto as Exhibit D.

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

On August 4, 2004, Gateway submitted an Amended High Priority Corrective Action Plan ("Amended Plan") and Amended Budget ("Amended Budget") which was rejected by the Agency by letter dated October 1, 2004 with reference to 40 ILCS 5/57.7(c)(4) and 35 Ill. Adm. Code 732.503(b). In its letter, the Agency indicated that the investigation costs, analysis costs, personnel costs, equipment costs, field purchases, and other costs and handling charges within the Amended Budget were identical to those presented in the original Corrective Action Plan and Budget, "with a few exceptions." As a result, the Agency asserted that it had previously notified Gateway of its action regarding these costs, presumably referring to its letter dated January 6, 2004.

The costs included in the Amended Budget consisting of investigation costs of \$1,449.96, analysis costs of \$1,080.00, personnel costs of \$19,291.42, equipment costs of \$870.00, field purchases and other costs of \$48,201.58 and handling charges of \$19.20, totaling \$70,912.16, are by their very nature those that were included within the original budget addressed by the Agency's letter of

January 6, 2004. However, the Agency, in that January 6, 2004 letter modified the original budget by adjusting numerous proposed costs and requiring an additional scope of work for those same adjusted costs.

The Agency's initial modification of the original Plan under its January 6, 2004 letter was to extend the soil excavation in order to remove the soil that was contributing to the groundwater contamination and to provide for removal and proper disposal of accumulated groundwater. However, within that extension of the Plan, the Agency conversely adjusted costs for investigation (\$371.02), analysis (\$578.00), personnel (\$17,682.83), equipment (\$300.00), field purchases and other costs (\$28,206.42), and handling charges (\$19.20), for a total in adjustments of \$47,157.47 .

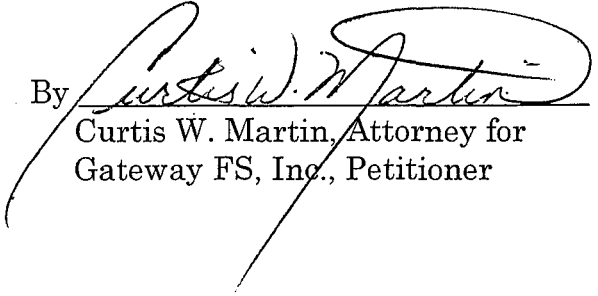
Upon submitting an amendment to the Plan and Budget on January 16, 2004, Gateway included costs of the expanded groundwater treatment along with the costs of the original Budget which were necessarily included in the costs of the Amended Budget. The Agency responded by letter dated May 20, 2004 by approving an additional \$208.00 in analysis costs. The Amended Plan and Budget then submitted by Gateway on August 4, 2004 contains new and different information and justification for the Amended Plan not already addressed by the Agency. Therefore, the Agency's letter of October 1, 2004, in response to the Amended Budget of August 4, 2004, is a new basis from which Gateway now appeals. Moreover, the Agency's various adjustments described above are without technical justification and are arbitrary and capricious and should be reversed.

WHEREFORE, Petitioner, Gateway FS, Inc., for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of Petitioner's request for approval of its 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(g).

Respectfully submitted,

SHAW & MARTIN, P.C.

By


Curtis W. Martin, Attorney for
Gateway FS, Inc., Petitioner

Robert E. Shaw
IL ARDC No. 03123632
Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
Attorneys at Law
123 S. 10th Street, Suite 302
P.O. Box 1789
Mt. Vernon, Illinois 62864
Telephone (618) 244-1788

1899240 - P.D



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

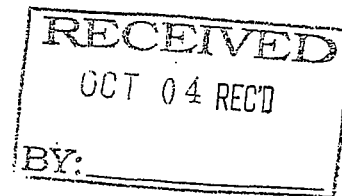
217/782-6762

CERTIFIED MAIL

OCT 04 2004

7002 3150 0000 1113 8879

Gateway FS, Inc.
221 East Pine Street
Red Bud, IL 62278



Re: LPC #1570405003 - Randolph County
Prairie Du Rocher/Gateway FS, Inc.
"C" Avenue
LUST Incident Nos. 20000027 and 20000698
LUST Technical File

Dear Mr. Birchler:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amendment to the High Priority Corrective Action Plan Budget submitted for the above-referenced incident. The Illinois EPA received this amendment, dated August 4, 2004, on August 5, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The amendment to the High Priority Corrective Action Plan Budget is rejected for the reason listed in Attachment A (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

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.

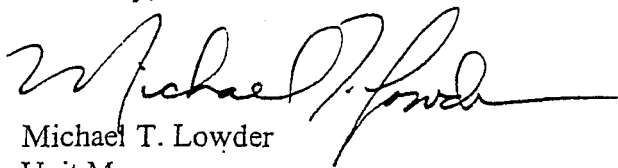
ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

EXHIBIT A

Page 2

If you have any questions or need further assistance, please contact Trent Benanti at 217/524-4649.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Lowder", with a long horizontal line extending to the right.

Michael T. Lowder

Unit Manager

Leaking Underground Storage Tank Section

Division of Remediation Management

Bureau of Land

MTL:TLB:H:\Projects\Gateway FS, Inc\Letter7a.doc

Attachments: Attachment A
Appeal Rights

c: United Science Industries, Inc.
Division File

Attachment A

Re: LPC #1570405003 – Randolph County
Prairie Du Rocher/Gateway FS, Inc.
“C” Avenue
LUST Incident Nos. 20000027 and 20000698
LUST Technical File

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

1. In accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b), any action by the Illinois EPA to disapprove or modify a plan or budget submitted pursuant to Title XVI of the Act shall be provided to the owner or operator in writing within 120 days of receipt.

The investigation costs, analysis costs, personnel costs, equipment costs, field purchases, other costs and handling charges are identical to those presented in the original High Priority Corrective Action Plan Budget (with a few exceptions). As such, the Illinois EPA previously notified the owner or operator of its final action regarding these costs.

In accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f), the Illinois EPA's action to reject or require modification of the High Priority Corrective Action Plan or High Priority Corrective Action Plan Budget, or the rejection of any High Priority Corrective Action Plan or High Priority Corrective Action Plan Budget by operation of law, was subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action.

If the owner or operator will seek reimbursement for any additional costs that may be incurred as a result of the Illinois EPA's modifications to the High Priority Corrective Action Plan, an amended High Priority Corrective Action Plan Budget must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter (Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e)). The amended budget must include only the costs over the previous budget.

MTL:TLB:H:\Projects\Gateway FS, Inc\7aa.doc

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

Copy

Mailed
10-7-04



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

October 6, 2004

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

Re: **LPC# 1570405003-Randolph County**
Prairie Du Rocher – Gateway FS, Inc.
“C” Avenue
LUST Incident No. 20000027 & 20000698
ATTN: John Kim

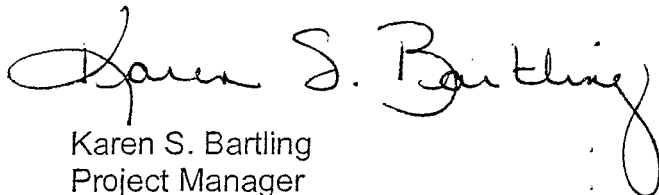
Dear Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Gateway FS, Inc. is requesting a 90-day extension to the 35-day appeal period in regards to the IEPA correspondence included.

I appreciate your time and consideration in this matter. If you have any questions or comments regarding this matter please contact me at (618) 735-2411 ext. 165.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.


Karen S. Bartling
Project Manager

Enclosures

EXHIBIT B

Kcd 11/8/04 -KB

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

GATEWAY FS, INC.,)	
)	
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: November 5, 2004

EXHIBIT c

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

GATEWAY FS, INC.,)	
)	
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 February 7, 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. The 125th day is February 6, 2005, a Sunday, and the next business day is February 7, 2005. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 1, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On October 6, 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 4, 2004. (Exhibit B)

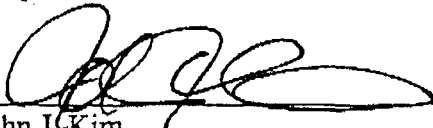
A

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: November 5, 2004

ILLINOIS POLLUTION CONTROL BOARD
November 18, 2004

GATEWAY FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 05-84
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

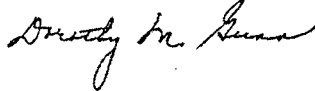
ORDER OF THE BOARD (by J.P. Novak):

On November 8, 2004, the parties timely filed a joint notice to extend the 35-day period within which Gateway FS, Inc. (Gateway FS) may appeal an October 1, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. The Agency rejected petitioner's amendment to the high priority corrective action plan budget for Gateway FS's leaking underground petroleum storage tank facility located at C Avenue, Prairie Du Rocher, Randolph County.

The Board extends the appeal period until February 7, 2005, as the parties request. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Gateway FS 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 November 18, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

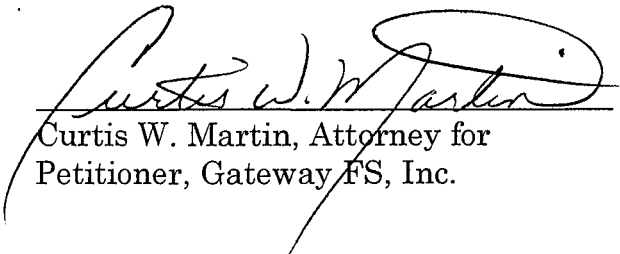
EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 10, 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, Gateway FS, Inc.