

RECEIVED
CLERK'S OFFICE

JAN 19 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CITY OF SULLIVAN,)
)
Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

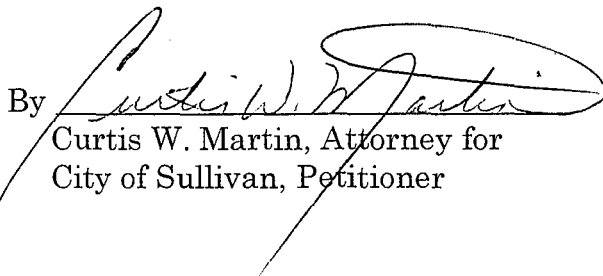
PCB No. 05-73
(UST Appeal)

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
City of Sullivan, Petitioner

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

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

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**STATE OF ILLINOIS
Pollution Control Board**

CITY OF SULLIVAN,)	
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Petitioner,)	
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vs.)	PCB No. 05-73
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

NOW COMES the Petitioner, City of Sullivan ("Sullivan"), 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, Sullivan respectfully states as follows:

1. On September 13, 2004, the Agency issued a final decision to Sullivan, a copy of which is attached hereto as Exhibit A.
2. On September 21, 2004, Sullivan 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 19, 2004, the Agency joined in Sullivan'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 4, 2004 the Board entered an Order extending the time by which Sullivan could file a Petition to and including January 17, 2005, a copy of which is attached hereto as Exhibit D.

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

On July 20, 2004, Sullivan submitted to the Agency, through its consultant, United Science Industries, Inc., an Amended High Priority Corrective Action Plan and Budget ("Amended Budget"). The Agency, by its letter dated September 13, 2004, rejected the Amended Budget which sought approval of \$13,885.64 in total costs consisting of \$6,808.00 in Investigation Costs, \$218.00 in Analysis Costs, \$1,320.00 in Personnel Costs, \$165.00 in Equipment Costs, \$3,150.00 in Field Purchases and Other Costs and \$2,224.64 in Handling Charges.

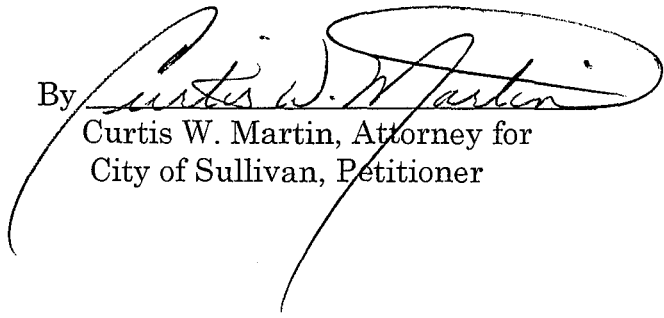
This appeal stems from a June 3, 2004 settlement between Sullivan and the Agency with regard to Sullivan's site. By that settlement, the Agency approved an additional \$12,278.40 in total costs. In accordance with the settlement agreement, Sullivan submitted the present Amended Budget seeking approval of the costs now rejected by the Agency. In its letter, the Agency asserts that the costs sought now to be approved in the Amended Budget were not a part of the June 3, 2004 settlement agreement and Sullivan agrees. However, the costs now sought to be approved were simply not included due to oversight. In addition, the Agency was made aware, during settlement negotiations, and by letter from United Science Industries, Inc. dated June 11, 2004, that approval of additional costs would be sought for which the Agency agreed would be requested by way of an Amended Budget. The costs for which Sullivan seeks approval now were incurred by Sullivan

completely separately from the costs included within the settlement agreement. Therefore, Sullivan should not be precluded, by the settlement agreement, or any other matter, from seeking approval of these additional costs. The Agency's rejection of these costs is arbitrary and capricious.

WHEREFORE, Petitioner, City of Sullivan, 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 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
City of Sullivan, 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

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

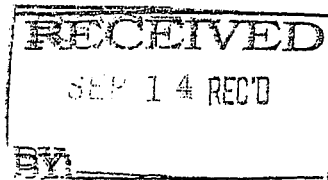
217/782-6762

CERTIFIED MAIL

7002 3150 0000 1113 6912

SEP 13 2004

City of Sullivan
Mr. Rick Bennett
2 West Harrison
Sullivan, IL 61951



Re: LPC #1390305024 -- Moultrie County
Sullivan/ City of Sullivan-Wyman Park
North Park Street
LUST Incident No. 20020216
LUST Technical File

Dear Mr. Bennett:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated July 20, 2004, was received by the Illinois EPA on July 21, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is approved for the amounts listed in Section 1 of Attachment A. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

All future correspondence must be submitted to:

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

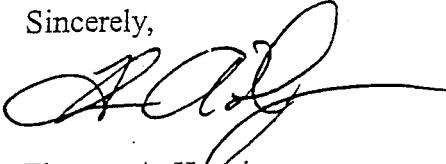
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

EXHIBIT A

Page 2

If you have any questions or need further assistance, please contact Dave Myers at 217/785-7491.

Sincerely,



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

TAH:DM:drm\HPam4BUDapp.doc

Attachment: Attachment A

c: United Science Industries, Inc.
Division File

Attachment A

Re: LPC #1390305024 -- Moultrie County
Sullivan/ City of Sullivan-Wyman Park
North Park Street
LUST Incident No. 20020216
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:

\$10,986.55	Investigation Costs
\$14,640.00	Analysis Costs
\$79,623.00	Personnel Costs
\$28,252.00	Equipment Costs
\$66,263.75	Field Purchases and Other Costs
\$720.87	Handling Charges

The following amounts are approved as a part of a settlement agreement dated June 3, 2004 with the Illinois Environmental Protection Agency :

\$195.00	Investigation Costs
\$0.00	Analysis Costs
\$3547.00	Personnel Costs
\$1530.00	Equipment Costs
\$7006.40	Field Purchases and Other Costs
\$0.00	Handling Charges

The following amounts in this budget amendment are not allowed. In accordance with Section 57.7(c)(4) of the Act, 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 Illinois EPA previously notified the owner or operator of its final action. These amended amounts were not a part of the June 3, 2004 settlement agreement. Further, in accordance with Section 57.7(c)(4) of the Act, any action by the Illinois EPA to disapprove or modify a plan or budget, or the rejection of any plan or budget by operation of law, shall be subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action.

\$6808.00 Investigation Costs
\$218.00 Analysis Costs
\$1320.00 Personnel Costs
\$165.00 Equipment Costs
\$3150.00 Field Purchases and Other Costs
\$2224.64 Handling Charges

Therefore, the total cumulative budget is approved for:

\$11,181.55 Investigation Costs
\$14,640.00 Analysis Costs
\$83,170.00 Personnel Costs
\$29,782.00 Equipment Costs
\$73,270.15 Field Purchases and Other Costs
\$720.87 Handling Charges

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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

September 21, 2004

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

Re: LPC# 1390305024—Moultrie County
Sullivan / City of Sullivan – Wyman Park
North Park Street
LUST Incident No. 20020216
LUST Technical File
USI Project #1800038

RECEIVED
Division of Legal Counsel

SEP 23 2004

Environmental Protection
Agency

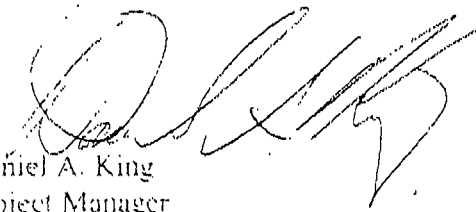
To Whom It May Concern:

United Science Industries, Inc. (USI), on behalf of our client, the City of Sullivan, is requesting a 90-day extension of 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 extension 131.

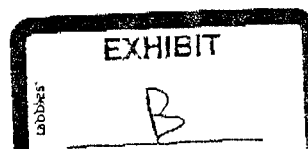
Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.


Daniel A. King
Project Manager

Enclosures

DAK:jlr



BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CITY OF SULLIVAN,)
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

Daniel A. King, 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: October 19, 2004

EXHIBIT C

ILLINOIS POLLUTION CONTROL BOARD
November 4, 2004

CITY OF SULLIVAN,)	
)	
Petitioner,)	
)	
v.)	PCB 05-73
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

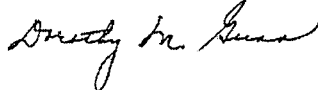
ORDER OF THE BOARD (by J.P. Novak):

On October 21, 2004, the parties timely filed a joint notice to extend the 35-day period within which City of Sullivan may appeal a September 13, 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. 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 modified petitioner's high priority corrective action plan budget for City of Sullivan's leaking underground petroleum storage tank facility located at North Park Street, Sullivan, Moultrie County.

The Board extends the appeal period until January 17, 2005.¹ See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If City of Sullivan 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 4, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The request was for January 18, 2005, which is beyond the time allowed under the Environmental Protection Act.

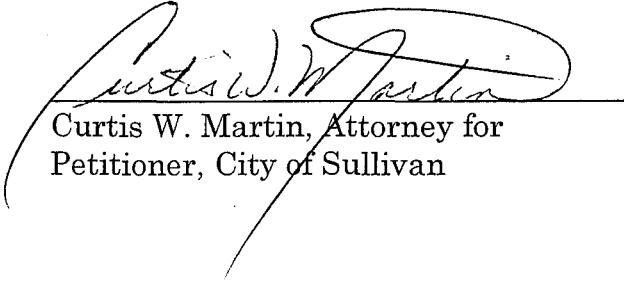
EXHIBIT D

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 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, City of Sullivan