

JUN 02 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Petitioner,


V.

Respondent.

PCB - 04-141
(UST Appeal)

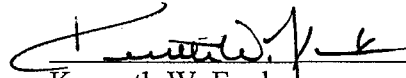
To: Renee Cipriano, Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

John Kim, Esq.
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794


Kenneth W. Funk
Special Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the above-named Respondent by enclosing same in envelope addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a U.S. Post Office Mail Box at Chicago, Illinois, with postage fully prepaid on the 2 day of June, 2004


Kenneth W. Funk
Special Assistant Attorney General

Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
Special Assistant Attorneys General
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 02 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Lincoln South HPCAP/B)),)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Respondent.)

PCB - 04-141
(UST Appeal)

MOTION TO FILE AN AMENDED PETITION FOR REVIEW
OF AGENCY MODIFICATION OF HIGH PRIORITY CORRECTIVE
ACTION PLAN AND BUDGET

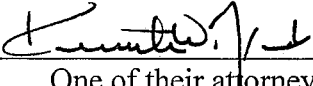
Now comes the Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk, Phillip J. Zisook, and Karen Kavanagh Mack, as Special Assistant Attorneys General, and respectfully states as follows:

1. On May 10, 2004, Petitioner filed a Petition for Review of the Illinois Environmental Protection Agency's Modification of Petitioner's High Priority Corrective Action Plan and Budget.
2. Petitioner inadvertently attached Exhibit B to the Petition. Exhibit B was a document relevant to the Des Plaines Oasis South, and not relevant to the Lincoln Oasis South.
3. Petitioner seeks leave to file an Amended Petition in this matter, omitting any reference to previously filed Exhibit B, and substituting in place thereof the amended petition attached hereto.
4. Counsel for Petitioner has spoken with Counsel for the Illinois Environmental Protection Agency ("IEPA") regarding this Motion, and Counsel for the IEPA has no objection to this motion.

WHEREFORE, the Petitioner, the Illinois State Toll Highway Authority, respectfully requests that this Board grant its Motion to file an Amended Petition for review in this matter.

Respectfully submitted,

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____
One of their attorneys

Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
Special Assistant Attorneys General
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460

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CLERK'S OFFICE

JUN 02 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Lincoln South HPCAP/B)),)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Respondent.)

PCB - 04-141
(UST Appeal)

AMENDED PETITION FOR REVIEW
OF AGENCY MODIFICATION OF HIGH PRIORITY CORRECTIVE
ACTION PLAN AND BUDGET

Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk, Phillip J. Zisook, and Karen Kavanagh Mack, as Special Assistant Attorneys General, petitions the Illinois Pollution Control Board, pursuant to 415 ILCS 5/57.7(c)(4)(D), 415 ILCS 57.8(I) and 415 ILCS 5/40, for review of the final determination of Respondent, the Illinois Environmental Protection Agency (the "Agency"), dated January 6, 2004, with respect to Petitioner's High Priority Corrective Action Plan and Budget, relating to its Lincoln Oasis South facility, and in support thereof, states:

1. ISTHA is the owner of the facility, including underground storage tanks and related piping, commonly known as the Lincoln Oasis South located at milepost 1.1 on Southbound Interstate 294 in South Holland, Illinois.

2. In 1994, Wight and Company, on ISTHA's behalf, notified the Illinois Emergency Management Agency that gasoline, diesel and waste oil target analytes were detected above the Tier I Remediation Objectives, to which the IEMA assigned Incident No. 94-1818.

3. On or about September 5, 2003, ISTHA submitted a High Priority Corrective Action Plan ("Plan"), including a Budget, to the Agency; and, on or about January 6, 2004, the Agency responded by materially modifying both the Plan and the Budget (the "Final Determination"). A true and complete copy of that Final Determination is attached hereto as Exhibit "A".

4. On or about January 27, 2004, ISTHA contacted the Agency by letter, and advised the Agency that it contested the Agency's modifications and requested a 90 day extension of the 35 day appeal period pursuant to §40 of the Environmental Protection Act. (415 ILCS 5/40(a)(1).)

5. On or about February 10, 2004, the Agency filed a request before the Board requesting a 90 day extension of the 35 day appeal period.

6. On or about February 19, 2004, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including May 11, 2004.

7. ISTHA requests that the Board reverse the Agency's Final Determination with respect to its modification of the Lincoln Oasis South Corrective Action Plan and Budget, because *inter alia*, the Plan and remedial activities described therein are necessary and appropriate for the protection of human health and the environment and do not exceed the minimum necessary requirements of the Act or the regulations promulgated thereunder. Additionally, the Budget included investigation costs, analytical costs, personnel costs, equipment costs and handling charges that were necessary and reasonable to execute the approved Plan.

8. With regard to the Plan, the Agency stated the following:

- (1) Additional information needs to be provided concerning free product recovery if product continues to be encountered at the site.

- (2) The owner/operator needs to clarify whether or not all of the incidents reported at the site are to be addressed at the same time.
- (3) It is not acceptable to model the extent of contamination to surface water quality standards. Tier 2 calculations should be based on Class I groundwater objectives. All modeled off-site exceedences based on a Class I groundwater designation must be addressed.
- (4) Tier 2 migration to groundwater objectives should not be calculated based on soil inhalation and ingestion objectives.
- (5) All existing monitoring wells should be sampled six months after excavation activities are completed to determine contaminant levels and verify that Tier 2 objectives will be met.
- (6) The Owner/Operator Property Summary form included in the submittal was for a different site.

On behalf of ISTHA, Wight and Company submitted additional information to the Agency on February 20, 2004, in response to the Agency's comments regarding the Plan. Wight and Company responded that:

- (1) Any free product had been removed on or before December 20, 2000; no free product was detected during the UST removal in September of 2003.
- (2) The remediation activities would address all of the incidents.
- (3) Equation R26 modeling can be used in accordance with the Tier 2 Groundwater Remediation Objectives in 35 Ill. Adm. Code 742.805 to show that the concentration of any contaminant of concern in groundwater discharging into a surface water will meet the applicable water quality standard under 35 Ill. Adm. Code 742.805.
- (4) The Tier 2 Remediation Objective for the migration to groundwater for Benzene and Toluene were calculated independently of the soil inhalation and soil ingestion routes. Using the methods in the Plan, the calculated values of the Migration to Class I Groundwater for Benzene and Toluene were determined to be less stringent than those established for the Ingestion or Inhalation Route for Industrial/Commercial or Construction Worker standard. Therefore, the site would be remediated to the Ingestion or Inhalation Route

for Industrial/Commercial or Construction Worker standards, the more stringent of the remediation objectives.

- (5) The existing monitoring wells will be sampled six months after the excavation.
- (6) Wight and Company attached the correct Owner/Operator Property Summary Form to the February 20, 2004 correspondence.

9. ISTHA also appeals the Agency's modifications to the Budget that found that investigation, analysis, personnel and equipment costs were unreasonable. ISTHA asserts that the costs for those categories were required to develop the Corrective Action Plan.

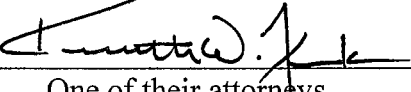
10. ISTHA further appeals the Agency's modifications to the Budget that seek to apportion ISTHA's corrective action costs. The Agency's bases for apportionment were that (a) ISTHA was deemed eligible to access the LUST Fund for payment of corrective action costs for some, but not all of the USTs at the site; and (b) ISTHA failed to justify that all costs were attributable to each [eligible] UST at the site. However, on information and belief, the amount of contaminants from the eligible USTs exceeded the amount the Agency approved as eligible for apportionment by the Agency. Additionally, ISTHA demonstrated that the corrective action costs it incurred were attributable to the eligible USTs at the site. Accordingly, ISTHA's budget information provided to the Agency sufficiently demonstrated the costs that were necessary and reasonable to execute the approved Plan, and the Agency erroneously apportioned ISTHA's corrective action costs. Therefore, the Agency's decision to apportion the costs should be reversed.

11. ISTHA reserves the right to present additional grounds for reversal of the Agency's determination, as they appear during the course of this Appeal.

WHEREFORE, the Petitioner, the Illinois State Toll Highway Authority, respectfully requests that this Board grant a hearing in this matter, reverse the Agency's January 6, 2004 determination (modification) of ISTHA's High Priority Corrective Action Completion Plan and Budget for Lincoln Oasis South, and remand this matter to the Agency with instructions to approve the Budget as aforesaid, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: 
One of their attorneys

Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
Special Assistant Attorneys General
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460



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

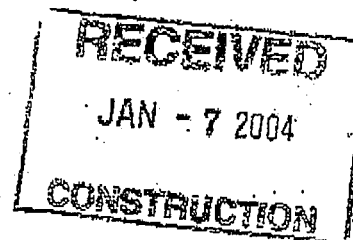
CERTIFIED MAIL

7002 3150 0000 1227 5290

JAN 06 2004

Illinois State Toll Highway Authority
Attention: Steve Gillen
2700 Ogden Avenue
Downers Grove, Illinois 60515

Re: LPC #0312975141 - Cook County
South Holland / Lincoln Oasis
I-294, East Bound
LUST Incident No. 941818
LUST Technical File



Dear Mr. Gillen:

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 September 5, 2003, was received by the Illinois EPA on September 10, 2003. 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 modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

1. Additional information needs to be provided concerning free product recovery if product continues to be encountered at this site.
2. The owner/operator needs to clarify whether or not all of the incidents reported at the subject site are to be addressed at the same time.
3. Please note that it is not acceptable to model the extent of contamination to surface water quality standards. Tier 2 calculations should be based on Class I groundwater objectives. All modeled off-site exceedences based on a Class I groundwater designation must be addressed.
4. Tier 2 migration to groundwater objectives should not be calculated based on soil inhalation and ingestion objectives.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-1234
ELGIN - 595 South State, Elgin, IL 60123 - (847) 601-1234
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3397
MARION - 2309 W. Main Street, Marion, IL 62959 - (217) 993-7200

EXHIBIT

A

W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
University St., Peoria, IL 61614 - (309) 693-5463
125 South First Street, Champaign, IL 61820 - (217) 278-5800
609 Mall Street, Collinsville, IL 62234 - (618) 346-5120
(618) 993-7200

Page 2

5. All existing monitoring wells should be sampled six months after excavation activities are completed to determine contaminant levels and verify that Tier 2 objectives will be met.
6. The Owner/Operator Property Summary form included with this submittal was for a different site.

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.

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If you have any questions or need further assistance, please contact Melinda Friedel, P.E. at 217/782-6762.

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachment: Attachment A
Appeal Rights

cc: Mary Kruk / Wight & Company
Division File

Attachment A

Re: LPC #0312975141 -- Cook County
 South Holland / Lincoln Oasis
 I-294, East Bound
 LUST Incident No. 941818
 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 A, the following amounts are approved:

\$2,083.33	Investigation Costs
\$8,682.50	Analysis Costs
\$13,850.00	Personnel Costs
\$4,461.67	Equipment Costs
\$284,949.58	Field Purchases and Other Costs
\$7,949.05	Handling Charges

SECTION 2

1. \$209,076.18 for an adjustment in investigation, analysis, personnel, equipment costs, field purchases and handling 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.

Investigation costs	—	\$12,534.00 (adjustment made based on borings for site classification activities that were not previously approved; approvable amounts were also exceeded)
Analysis costs	--	\$6,182.00 (adjustment made based on costs for site classification activities, costs associated with bioremediation analyses, and approvable amounts were exceeded)
Personnel costs	--	\$17,520.00 (excessive hours for the work being performed)
Equipment costs	--	\$7,092.00 (excessive time charged for the work to be performed and approvable amounts were exceeded)
Field purchases/other	—	\$162,133.00 (allowable amount exceeded for ice and disposable gloves. \$128,443 - above the allowable rate for excavation and backfill activities. \$33620 - above the allowable rate for pavement removal/replacement activities.)
Handling charges	—	\$3,615.18 (adjustment made based on previous cuts)

Page 2

2. \$450,766.57 for an apportionment of costs. The Illinois EPA has determined that the apportionment shall be based on seven of the twelve USTs listed for this site were deemed ineligible for reimbursement (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).

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