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

**STATE OF ILLINOIS**  
**Pollution Control Board**

**INDIAN REFINING COMPANY, now part of the** )  
**AWR LIQUIDATING TRUST,** )

Petitioner, )

v. )

**ILLINOIS ENVIRONMENTAL** )  
**PROTECTION AGENCY,** )

Respondent. )

PCB No. 93-71  
(Permit Appeal)

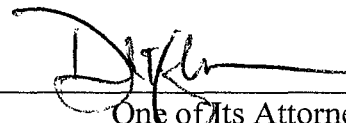
**NOTICE OF FILING**

To: **PERSONS ON ATTACHED SERVICE LIST**

PLEASE TAKE NOTICE that on August 21, 2003, we filed with the Clerk of the Illinois Pollution Control Board Petitioner's Status Report, a copy of which we served upon you. Pursuant to 35 Ill. Admin. Code § 101.103, we make this filing on recycled paper.

**INDIAN REFINING COMPANY, now**  
**part of the AWR LIQUIDATING TRUST**

By: \_\_\_\_\_

  
One of Its Attorneys

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Dated: August 21, 2003

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**SERVICE LIST**

Illinois Pollution Control Board  
Attention: Ms. Dorothy Gunn, Clerk  
State of Illinois Building  
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100 West Randolph Street  
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c/o Mr. Daniel P. Merriman  
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2200 Churchill Road  
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Ms. Carol Sudman  
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1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
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**PETITIONER'S STATUS REPORT**

Pursuant to the Hearing Officer Order dated August 7, 2003, Petitioner Indian Refining Company ("IRC"), now part of the AWR Liquidating Trust (the "Trust" and collectively referred to as the "Petitioner"), through its attorneys, Funkhouser Vegosen Liebman & Dunn Ltd., hereby submits this Status Report.

1. This appeal arises out of the IEPA's imposition of certain permit conditions on the closure of a land treatment unit (D081, commonly known as the "land farm") located in Lawrence County, Illinois under obligations imposed by the 1992 Consent Order entered by the Circuit Court of Lawrence County ("Consent Order") addressing environmental issues at the former Texaco-Lawrenceville Refinery (the "Site"). In the Consent Order, IRC pledged approximately \$2.9 million in the form of various irrevocable letters of credit (fully cash collateralized) to assure the completion of remedial investigations required by the Consent Order, of which \$1,873,300 has been pledged for closure activities associated with the RCRA closure plans for the RCRA tank systems and the land farm at the Site.

2. By agreement of the parties and with the approval of the Board, this appeal has been pending since April 12, 1993, without a hearing date having been set.

3. Over the past few years, much has changed in the relationship of the parties and with the enactment of new environmental laws and regulations that govern the closure of the land farm and the appropriateness of the original permit.

4. On March 24, 1994, IRC submitted a settlement proposal to the IEPA for its consideration that was substantially accepted by the IEPA. The parties conferred by conference call on August 9, 1994, which resulted in further agreement. A revised draft of the settlement proposal was circulated to the IEPA on August 23, 1994, and IRC believed that an agreement was imminent.

5. In mid-October 1994, IRC proceeded with additional soil sampling at the site pursuant to a sampling plan that previously had been approved by the IEPA. However, on October 31, 1994, the IEPA notified IRC that it was requesting additional sampling locations and parameters. Because IRC already had completed the originally approved sampling, it suggested that the IEPA hold its additional sampling proposals in abeyance until the IEPA had an opportunity to review and analyze IRC's initial sampling results. The IEPA agreed with IRC's suggestion.

6. In early 1995, IRC began preparing a report regarding the sampling results from the October 1994 sampling event that IRC intended to submit to the IEPA for its review. Due to events affecting IRC's financial status, the completion of the sampling report was delayed. IRC's delay was discussed with counsel for the IEPA and with other IEPA officials.

7. In late 1995, IRC's stock was sold by Castle Energy Corporation (CEC) to American Western Refining, L.P. ("AWR LP"), after which IRC resumed work on the report. IRC's only form of operational funding was through the IRC Note assumed by AWR LP from Indian Refining Limited Partnership, which was formed by CEC to operate the refinery.

8. On November 6, 1996, AWR LP filed for protection under Chapter 11 of the United States Bankruptcy Code. AWR LP's bankruptcy essentially eliminated IRC's ability to obtain funding in addition to the approximate \$2.9 million which IRC had already pledged pursuant in the letters of credit issued under the 1992 Consent Order to complete its investigative and closure activities. IRC did not file bankruptcy. In or around June 2000, pursuant to the request of IRC, the IEPA reduced the letters of credit requirements by \$100,000 to allow IRC to use the associated pledged funds for fulfilling their current operational and Consent Order requirements as requested by the IEPA.

9. Effective July 1, 1997, the Board adopted the TACAO rules that govern standards for remediation of certain contaminated properties in Illinois.

10. On July 28, 1998, the United States Environmental Protection Agency ("USEPA") proposed adding the Site to the National Priorities List ("NPL"). 63 Fed. Reg. 40247, 40252 (July 28, 1998). On October 9, 1998, the USEPA issued to potentially responsible parties a Special Notice Letter and a draft Administrative Order by Consent to, including among other parties, IRC, AWR LP, Texaco, and CEC. On December 1, 2000, the Site was listed on the NPL. The State of Illinois has taken the lead in the environmental investigation of the Site.

11. In or around November 1998, Texaco began discussions with the IEPA and EPA concerning remedial investigations at the Site. It was agreed among IRC and the IEPA that the remedial studies and land farm closure activities as outlined in the Consent Order would be postponed pending resolution of the Texaco negotiations. On or about June 15, 1999, Texaco entered into an Administrative Order by Consent ("EPA Texaco AOC") with the IEPA and EPA to perform a remedial investigation and feasibility study for the Site, including, but not limited to, the land farm ("Texaco RI/FS"). On or around December 13, 2000, Texaco entered into an Administrative Order by Consent ("Texaco AOC") with the IEPA, superceding the EPA Texaco AOC. The Texaco AOC provided, among other things, for Texaco to develop a work plan and implement the Texaco RI/FS. The Texaco RI/FS activities required Texaco to perform many of the same investigations/studies as required by the IRC Consent Order. On information and belief, Texaco has completed its work plan for the RI/FS.

12. On May 21, 1999, IRC and its counsel conducted a telephone conference with the IEPA, again, to discuss, among other things, resolution of this Appeal. The IRC and IEPA also discussed IRC's proposed Five-Year Maintenance Plan for the Lawrenceville Site, which was sent to the IEPA on March 22, 1999.

13. IRC and its counsel again met with representatives from the IEPA and the Illinois Attorney General's Office on July 22, 1999 to discuss the resolution of this Appeal and the proposed five-year plan. Those discussions were renewed in 2000.

14. On October 4, 2000, a meeting was held with IEPA representatives to discuss the IRC Consent Order and the land farm closure issues in an effort to revise the Consent Order to eliminate the duplicate investigations/studies that Texaco is currently obligated to

perform under the EPA Texaco AOC. At that time, further discussions were tabled as the IEPA had not received a final version of the draft Texaco work plan for its RI/FS to determine whether the land farm would be kept operational for proposed remediation activities or closed pursuant to the Consent Order.

15. As part of the Governmental Agency Global Settlement negotiations (which continued through the end of December 2001 and included the IEPA, EPA and other agencies) pursuant the AWR LP's First Amended Joint Chapter 11 Plan of Liquidation (the "AWR Plan"), the IEPA and IRC agreed the Consent Order would not be amended or modified until such time as appropriate work requirements could be determined and the current work requirements as outlined in the Consent Order would be suspended until such determinations were made. Such determination was to be made upon approval, or shortly thereafter, of the AWR Plan.

16. On or about April 23, 2003, the United States Bankruptcy Court approved the AWR Plan and entered appropriate orders confirming it. Under the AWR Plan, AWR LP ceased to exist and AWR Liquidating Trust ("Trust") was formed as a Delaware trust to manage the environmental issues relating the Site, including IRC's obligations under the Consent Order. Pursuant to the AWR Plan, such IRC obligations assumed by the Trust were limited to the Consent Order and any amendments thereof and to the funds currently pledged by IRC to the IEPA under the Consent Order. As reflected in Section 6.7 of the confirmed AWR Plan, the IEPA and the Trust agreed to suspend work activities under the Consent Order in order to begin negotiations of a new work plan and a continued pledge of funds to complete each identified task:

Due to the uncertainty surrounding which of the IRC investigation and remediation obligations under the 1992 Consent [Order] may be undertaken by Texaco, and upon agreement between the IEPA and IRC, the 1992 Consent [Order] will not be amended or modified until such time as appropriate work requirements for the environmental studies and remediation/closure activities for the IRC Property have been established by the IEPA and IRC. \*\*\* [A]ll of the IRC assets and compliance obligations under the 1992 Consent [Order] and any contractual obligations shall become assets and compliance/contractual obligations of the AWR Liquidating Trust. \*\*\* Discussions and negotiations related to revising the work plans and financial assurance requirements associated with the 1992 Consent [Order] are ongoing and are expected to continue after confirmation of the [AWR] Plan.

17. On information the Trust has received, Texaco has submitted and/or discussed with the IEPA a plan to close the land farm under its current RI/FS (instead of retrofitting it for ongoing remediation activities as previously suggested). In these discussions, the closure was to be implemented at a cost substantially less than the \$1.8 million currently associated with the closure activities in the 1992 Consent Order. The Trust also believes that closure of the land farm under new regulations promulgated under current TACAO and/or similar laws would save over \$1.3 million as opposed to a closure under the permit at dispute in this Appeal, while continuing to protect public health and safety. Thus, the majority of the funds currently associated with the land farm closure could then be used to perform other remedial and security activities at the Site. To date, the Texaco proposals to the IEPA have not been made available to the Trust to enable the Trust to comment further on their efficacy.

18. Pursuant to the confirmed AWR Plan, the Trust has made several inquiries, both oral and written, of the IEPA to re-start the negotiations related to the amended work requirements and reduction in the financial assurance requirements. These negotiations should lead to modification of the Consent Order, the dismissal this Appeal and a determination of the remediation requirements at the Site.

19. Unfortunately, until recently, the IEPA had not provided a timetable for the negotiations of a revised set of work requirements as provided for in the AWR Plan. Nor had the IEPA answered repeated requests to confer with the Trust in order to file a joint status report as ordered by the Board on June 6, 2003. The IEPA has agreed to a meeting with the Trust personnel on August 21, 2003, to determine the IEPA's position on the negotiations of a revised Consent Order and reduction in the financial assurance requirements related thereto.

20. Without the IEPA's continued cooperation and direction as expected from the AWR Plan negotiations and confirmed in the AWR Plan by the Bankruptcy Court, Petitioner cannot inform this Board how it will proceed in this matter as the Trust's financial ability to comply with the Consent Order is limited to the funds currently pledged as financial assurances to the IEPA. If Petitioner dismisses this Appeal, which the IEPA has expressly requested that it not do, then the Trust will be required to begin closure activities as provided for under the current permit and the current Consent Order. The IEPA, however, may request Petitioner to seek a new permit application in light of the proposed RI/FS work as proposed by Texaco and under modern clean-up standards. In the alternative, the IEPA may require Texaco to perform some or all of the closure activities related to the land farm, thus necessitating further amendments to the Consent Order to be presented to the Circuit Court of Lawrence County and a dismissal of this Appeal.

21. While the IEPA has recently agreed to meet to discuss issues related to the Site, this Status Report must be filed by August 21 and, therefore, any further insights from the IEPA will not be included herewith prior to its filing. Petitioner will encourage the IEPA

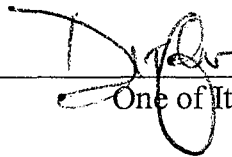
to report to the Board the progress, if any, on the issues addressed herein in its status report due on September 4, 2003.

22. Petitioner remains confident that a reasonable settlement can be reached with the IEPA. IRC has filed an indefinite waiver of the statutory decision date in this matter. IRC requests that no hearing date be set until these negotiations are completed and the parties have exhausted all settlement opportunities. A telephonic status hearing has been set in this matter for September 26, 2003, at 9:00 a.m.

Respectfully submitted,

**INDIAN REFINING COMPANY, now  
part of the AWR LIQUIDATING TRUST**

By: \_\_\_\_\_

  
One of Its Attorneys

Damon E. Dunn, Esq.  
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Dated: August 21, 2003

**CERTIFICATE OF SERVICE**

Daniel T. Graham certifies that he caused copies of the attached Status Report of Indian Refining Company, now part of the AWR Liquidating Trust, to be hand delivered to

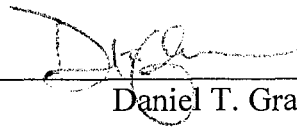
Illinois Pollution Control Board  
Attention: Ms. Dorothy Gunn, Clerk  
State of Illinois Building  
Suite 1150  
100 West Randolph Street  
Chicago, Illinois 60601

and served on

Mr. Kyle Davis  
c/o Mr. Daniel P. Merriman  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
2200 Churchill Road  
Springfield, Illinois 62794-9276  
**VIA FACSIMILE at 217-782-9807 and U.S. MAIL**

Ms. Carol Sudman  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, Illinois 62794-9274  
**VIA U.S. MAIL**

on August 21, 2003, before the hour of 5:00 p.m.

  
\_\_\_\_\_  
Daniel T. Graham