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CLERK'S OFFICE

OCT 10 2003

STATE OF ILLINOIS  
*Pollution Control Board*

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

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Lincoln Oasis North), )  
Petitioner, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 04- 51  
(LUST Appeal – Ninety Day Extension)

**NOTICE**

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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
Suite 1700  
Chicago, IL 60606

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 8, 2003

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STATE OF ILLINOIS  
*Pollution Control Board*

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AUTHORITY (Lincoln Oasis North), )  
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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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PCB No. 04- 51  
(LUST Appeal – Ninety Day Extension)

**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 January 6, 2004, 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. In support thereof, the Illinois EPA respectfully states as follows:

1. On September 3, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On October 1, 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 did not represent when the final decision was received. (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: October 8, 2003



**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

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

**CERTIFIED MAIL**

7002 3150 0000 1224 5101

**SEP 03 2003**

Illinois State Toll Highway Authority  
Attention: Steve Gillen  
1 Authority Drive  
Downers Grove, IL 60515

RECEIVED  
SEP 5 2003

Re: LPC #0312975140 -- Cook County  
South Holland / Lincoln Oasis North  
Tri-State Tollway (I-294), North Bound, Mile Post 1.1  
LUST Incident No. 941817  
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 May 22, 2003, was received by the Illinois EPA on May 27, 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 modifications listed in Attachment A 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. 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 rejected for the reason(s) listed in Attachment B (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)).

NOTE: The plan proposes activities that are technically acceptable as modified in this letter. However, this letter does not constitute Illinois EPA approval of any costs incurred during the completion of such activities. For the purpose of reimbursement, these activities are in excess of those necessary to meet the minimum requirements of the Act and regulations. Owners and operators are advised that they may not be entitled to full payment or reimbursement for this

**A**

Page 2

reason. The Illinois EPA will review your complete request for partial or final payment from the Underground Storage Tank Fund after it is submitted to the Illinois EPA.

All future correspondence must be submitted to:

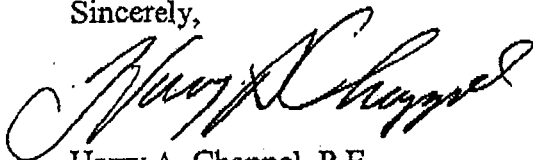
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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.

If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,



Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:CLH

Attachment: A and B

cc: Wight  
Division File

### 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

**Attachment A**

Re: LPC #0312975140 -- Cook County  
South Holland / Lincoln Oasis North  
Tri-State Tollway (I-294), Mile Post 1.1  
LUST Incident No. 941817  
LUST TECHNICAL FILE

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

1. The Illinois EPA wishes to clarify issues that were presented in the High Priority Corrective Action plan that exceed the minimum requirements to comply with Title XVI regulations.

- A. Pursuant to 35 IAC 620.210, Class I potable resource groundwater is groundwater 10 feet or more below the land surface. Based on the correspondence submitted to the Agency dated April 30, 2003, received on May 5, 2003, the site is a manmade mound on which a gas station is located. According to the correspondence, the actual native land surface is at 603.5 feet above mean sea level. As the groundwater wells are set above this native land surface level, the groundwater encountered in these wells are not within an aquifer. The groundwater encountered is perched water that has no ability to affect off-site properties as a clay aquitard allows for a seal between the perched water and the actual land surface. Therefore, modeling with R26 equations does not apply in this instance, as the contaminated groundwater is not located in an aquifer. In addition Class II groundwater remediation objectives apply at this site. The groundwater pathway may be excluded through the on-site groundwater use restriction proposed for this site.
- B. Soil excavation activities proposed in the plan exceed the minimum requirements to comply with Title XVI, as areas proposed to be excavated are beyond the area of soil contamination exceeding Tier 1 and site-specific Tier 2 remediation objectives. Exclusion of pathways may be addressed through institutional controls and the use of the concrete pavement resurfacing as an engineered barrier. Soil excavation may not be necessary to address the contamination at the site.

**Attachment B**

Re: LPC # 0312975140 -- Cook County  
South Holland / Lincoln Oasis North  
Tri-State Tollway (I-294), North bound, Mile Post 1.1  
LUST Incident No. 941817  
LUST Technical File

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

1. The budget includes costs in which the owner or operator failed to justify that all costs are attributable to each underground storage tank at the site. (Section 57.8(m)(2) of the Act) . The budget includes costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. (Section 57.8(m)(1) of the Act)

According to Drawing 9 defining the area of soil contamination and extensive sample analyses conducted at the site, the extent of contamination appears to be from the tank system that was removed in 1986. Per the Eligibility and Deductibility determination made by the Office of the State Fire Marshall (OSFM) the tank system removed in 1986 is not eligible for reimbursement under the LUST program. Therefore, corrective action to achieve compliance under Title XVI is not eligible for reimbursement.



EARL A. DEUTSCH  
PAUL M. LEVY  
TERRY L. ENGEL  
FRANK R. COHEN  
JERRY I. RUDMAN  
MICHAEL J. DEVINE  
STUART BERKS  
KENNETH W. FUNK  
PHILLIP J. ZISOOK  
DENNIS E. FRISBY  
STEVEN B. ISAACSON  
ALVIN J. HELFGOT  
JOEL A. STEIN  
BRIAN D. SAUCIER  
JAMES E. O'HALLORAN  
AARON B. ŻARKOWSKY  
KAREN KAVANAGH MACK  
GREGG A. GAROFALO  
JEFFREY B. HORWITZ  
MOYENDA MUTHARIKA KNAPP  
DAVID J. BEN-DOV  
CATHERINE GLENN JOELSON

LAW OFFICES

**DEUTSCH, LEVY & ENGEL**

CHARTERED

SUITE 1700

225 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60606

(312) 346-1460

E-mail: lawyers@dleec.com  
Website: www.dleec.com  
FACSIMILE: (312) 346-1859

COUNSEL  
MARSHALL D. KROLICK  
ARTHUR J. SABIN

October 1, 2003

**VIA FACSIMILE 217-782-9807**

**AND REGULAR MAIL**

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Attention: John Kim, Esq.

**RECEIVED**  
Division of Legal Counsel  
**OCT 03 2003**  
Environmental Protection  
Agency

**Re: LPC #0312975140 - Cook County;  
South Holland/Lincoln Oasis North  
LUST Incident No. 941817**

Dear Mr. Kim:

The undersigned, as a Special Assistant Attorney General, represents the Illinois State Toll Highway Authority in connection with the referenced LUST Incident. I have received a copy of the Agency's letter, dated September 3, 2003, rejecting the Authority's High Priority Corrective Action Plan and related Budget previously submitted to the Agency. A copy of that letter is enclosed.

Please be advised that the Authority does not agree with the Agency's position as set forth in its letter of September 3, 2003; however, in hopes of resolving the open issues with the Agency, and avoiding the necessity of an appeal to the Illinois Pollution Control Board, our client hereby requests an extension, pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act, to extend the period within which it may appeal the Agency's decision for an additional ninety (90) days.

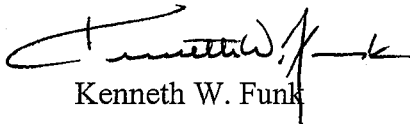
- 166257.1

**B**

It is our understanding that upon receipt of this letter you will proceed to prepare the necessary motion for filing with Illinois Pollution Control Board to effectuate the extension. If your understanding is other than as indicated herein or if I can provide any further information, please let us know immediately.

Your assistance and cooperation is appreciated.

Very truly yours,



Kenneth W. Funk

KWF/alj

Enclosures

cc: Victor Azar, Esq.

Ms. Mary Kruk


**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on October 8, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, 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 Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
Suite 1700  
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



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