

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

PCB - 04-10  
(UST Appeal)

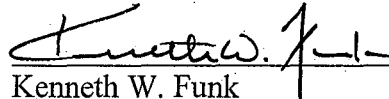
**RECEIVED**  
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OCT 16 2003  
STATE OF ILLINOIS  
Pollution Control Board

**NOTICE OF FILING**

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

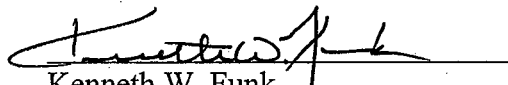
John Kim, Esq.  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

PLEASE TAKE NOTICE that on October 16, 2003 we filed with the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via personal delivery, of 1) **Appearance of Deutsch, Levy & Engel, Chartered** and 2) **Petition for Review of Agency Rejection of High Priority Corrective Action Completion Report for Belvidere Oasis North** for filing the above-entitled cause, copies of which are attached hereto.

  
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 16 day of October, 2003.

  
Kenneth W. Funk  
Special Assistant Attorney General

Kenneth W. Funk, Esq.  
Phillip J. Zisook, Esq.  
Karen Kavanagh Mack, Esq.  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street, Suite 1700  
Chicago, IL 60606  
(312) 346-1460 /Firm No. 90235

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

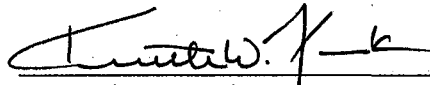
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APPEARANCE

I, Kenneth W. Funk, hereby file the appearance of Deutsch, Levy & Engel, Chartered in this proceeding on behalf of the Illinois State Toll Highway Authority.

  
\_\_\_\_\_  
Kenneth W. Funk  
Special Assistant Attorney General

Kenneth W. Funk, Esq.  
Phillip J. Zisook  
Karen Kavanagh Mack, Esq.  
Deutsch, Levy & Engel, Chartered  
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PCB - 04-10  
(UST Appeal)

**PETITION FOR REVIEW OF AGENCY REJECTION OF HIGH PRIORITY  
CORRECTIVE ACTION COMPLETION REPORT**

Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk, Phillip J. Zisook, Karen Kavanagh Mack, as Special Assistant Attorneys General, petitions the Illinois Pollution Control Board, pursuant to 415 ILCS 5/57.7(c)(4)(D) and 415 ICLS 5/40, for review of the final determination of Respondent, the Illinois Environmental Protection Agency (the "Agency"), with respect to Petitioner's High Priority Corrective Action Completion Report dated on or about April 8, 2003 relating to its Belvidere Oasis North 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 Belvidere Oasis North located on the I-90 Tollway in Belvidere, Illinois.
2. On or about January 19, 1989, ISTHA notified the Illinois Emergency Services and Disaster Agency (IESDA) of high levels of volatile organic compounds (VOCs) near existing underground storage tanks systems ("UST") at its facility to which the IESDA assigned Incident No. 89-0112.

3. On or about November 2, 1989, ISTHA notified the IESDA of water and soil contamination discovered during the UST removal at its facility to which the IESDA assigned Incident No. 89-2215.

4. In 1994, Wight and Company, on ISTHA's behalf, notified the Illinois Emergency Management Agency (IEMA) that gasoline, diesel and waste oil target analytes were detected above the Tier I Remediation Objectives, to which the IEMA assigned Incident No. 94-1815.

5. On September 4, 2002, at the Office of State Fire Marshall's request, Wight and Company, on ISTHA's behalf, notified the IEMA of a release from the USTs, to which the IEMA assigned Incident No. 2002-1277, and is considered a re-reporting of Incident No. 94-1815 since the release was reported during the removal of the tank system associated with Incident No. 94-1815.

6. On or about April 14, 2003, ISTHA submitted a Combined High Priority Corrective Action Plan, Budget and Completion Report ("Report") to the Agency; and, on or about June 13, 2003, the Agency responded by rejecting the Report. A true and complete copy of that rejection is attached hereto as Exhibit "A".

7. On or about July 10, 2003, ISTHA contacted the Agency by letter, and advised the Agency that it contested the Agency's rejection 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).)

8. On or about July 21, 2003 the Agency filed a request before the Board requesting a 90 extension of the 35 day appeal period.

9. On or about July 24, 2003, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including October 16, 2003.

10. ISTHA has requested that the Board reverse the Agency's determination effectively rejecting the Corrective Action Plan and Budget regarding the modifications to the analytical costs, the modifications to the proposed remedial investigations, the modifications to the proposed budget for preparation of the corrective action plan and budget, the modification to the remedial action activities for the time required to conduct the remedial action activities, the modifications to the proposed budget for preparation of the reimbursement request, and the modifications to the proposed budget for handling charges. (See ISTHA v. IEPA, PCB 04-11.)

11. Similarly, ISTHA requests that the Board to reverse the Agency's final determination with respect to its rejection of the Belvidere Oasis North- High Priority Corrective Action Report, because *inter alia*, the Report, which was predicated up the Corrective Action Plan, was completed in accordance with the requirements of Title XVI of the Act and complied with 35 Ill. Adm. Code 732.409(c).

12. ISTHA restates the allegations set forth in its Petition for Review of Agency Modification of High Priority Corrective Action Plan and Budget in PCB 04-11. Namely, with regard to the Plan, the Agency did not approve the costs for pumping and disposing of groundwater. The Agency's failure to approve the removal of the groundwater is unreasonable, because removal of impacted groundwater from the UST and piping excavation site is necessary and appropriate to achieve applicable construction worker exposure objectives and to properly complete the excavation and backfill activities. ISTHA also appeals the Agency modifying the plan to include Inhalation and Ingestion values for soils under Industrial/Commercial properties. This modification is unnecessary to the extent that the inhalation levels for construction workers are at least as restrictive or more restrictive than inhalation and ingestion levels for Industrial/Commercial properties. With regard

to the budget, ISTHA appeals *inter alia*, the modifications to the budgeted analytical costs, because a rate of \$136.50 per rush sample is necessary and reasonable for achieving the proposed corrective action objectives pursuant to 35 Ill. Adm. Code 732.505(c). Further, no deduction should be made for the investigation conducted to obtain the site-specific parameters necessary to evaluate the site and determine the appropriate remediation methods. The costs for the investigation are necessary and consistent with the applicable regulations. ISTHA further objects to the modifications to the proposed budget for preparation of the corrective action plan and budget, because they were necessary and consistent with generally accepted practices and are reasonable costs for necessary and required activities. Additionally, the Agency's modification to the time required to conduct the remedial action activities is improper because the time budgeted for the engineer and projects manager was reasonable. The modifications to the proposed budget for preparation of the reimbursement request was improper, because the costs for preparing the request is reasonable for the amount of documentation accumulated during the LUST project. The modifications to the proposed budget for handling charges should be adjusted pursuant to 35 Ill. Adm. Code 732.607, because the analytical costs increased.

13. The Belvidere Oasis North has been remediated to a level which is protective of human health and the environment and complies with, but does not exceed, the minimum necessary requirements of the Act and the regulations promulgated thereunder.


14. ISTHA reserves the right to present additional grounds for reversal of the Agency's final 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 and reverse the Agency's June 13, 2003

rejection of ISTHA's High Priority Corrective Action Completion Report for the Belvidere Oasis North and remand this matter to the Agency with instructions to approve the Amendment as aforesaid, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By:   
One of their attorneys

Kenneth W. Funk, Esq.  
Phillip J. Zisook, Esq.  
Karen Kavanagh Mack  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street, Suite 1700  
Chicago, IL 60606  
(312) 346-146  
Firm No. 90235





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

JUN 13 2003

CERTIFIED MAIL

7002 3150 0000 1223 2248

Illinois State Toll Highway Authority  
Attention: John R. Wagner, P.E.  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

Re: LPC 0070057092 -- Boone County  
Belvidere/ Illinois State Toll Highway Authority  
Belvidere Oasis (North Side)  
LUST Incident No. 890112, 892215, 941815 and 20021277  
LUST Technical File

Dear Mr. Wagner:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Completion Report (report) for the above-referenced incident. The report was dated April 8, 2003 and was received by the Illinois EPA on April 14, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.409(c) and 732.503(b), the report is rejected for the reasons listed in Attachment A.

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 Donna Wallace at 217/534-1283.

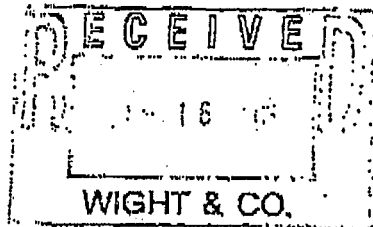
Sincerely,

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

TAH:DW:dwl

Attachment: Attachment A

c: Wight and Company  
Division File



ROCKFORD - 4302 North Main Street, Rockford, IL 61107 (815) 987-7760 • Des Plaines - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60120 (815) 708-7300 • JOLIET - 1000 N. University, Joliet, IL 61780 - (815) 724-5463  
BUREAU OF LAND - PEORIA - 7620 N. University, Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62794 - (217) 278-5800  
CHICAGO - 100 West Randolph, Suite 11-300, Chicago, IL 60601 - (312) 346-5120

A

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DEUTSCH LEVY & ENGEL CHARTERED

JUL-10-2003 13:46 2177829807  
JUL.10.2009 13:37 1312346-5244

## Attachment A

Re: LPC # 0070057092 -- Boone County  
Belvidere/ Illinois State Toll Highway Authority  
Belvidere Oasis (North Side)  
LUST Incident No. 890112, 892215, 941815 and 20021277  
LUST TECHNICAL FILE

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

- A. The owner/operator summary form was not completed. A tax parcel ID number must be provided as well as a legal description of the property. *Legal*
- B. Industrial/Commercial Soil Ingestion levels were exceeded at NW-1, TFW-2, TFM-2 and TFE-1 for Benzo(a)anthracene and Benzo(a)pyrene and must be addressed either by further remediation or a proposed barrier. *Clubs*
- C. Naphthalene was exceeded at TFE-1 for Inhalation levels for Construction Workers and must be addressed by further remediation or a Worker Caution control. The location of sample TFE-1 was not provided on your maps, please show the location of this sample on future maps. *1*
- D. If a barrier is to be proposed, the Agency requires a map to scale giving the dimensions of the barrier to be maintained. Also photos must be provided showing the barrier is in place. *N/A*
- E. A Professional Engineer Certification was not included with your Corrective Action Completion Report.

DW:dwl

**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