

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

JAN - 6 2004

STATE OF ILLINOIS  
POLLUTION CONTROL BOARD

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Lincoln Oasis North), )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )

Respondent. )

PCB - 04-51  
(UST Appeal)

NOTICE OF FILING

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

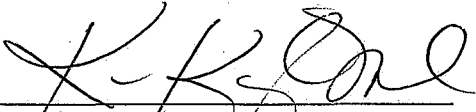
John Kim, Esq.  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

PLEASE TAKE NOTICE that on January 6, 2004 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 Modification of High Priority Corrective Action Plan and Budget for Lincoln Oasis North** for filing the above-entitled cause, copies of which are attached hereto.

  
\_\_\_\_\_  
Karen Kavanagh Mack  
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 6<sup>th</sup> day of January, 2004.

  
\_\_\_\_\_  
Karen Kavanagh Mack  
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

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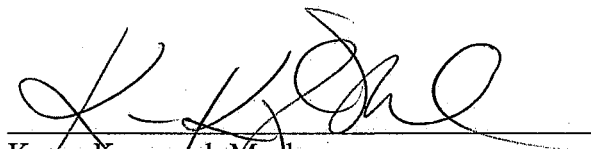
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )

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PCB - 04-51  
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APPEARANCE

I, Karen Kavanagh Mack, hereby file the appearance of Deutsch, Levy & Engel, Chartered in this proceeding on behalf of the Illinois State Toll Highway Authority.



Karen Kavanagh Mack  
Special Assistant Attorney General

Kenneth W. Funk, Esq.  
Phillip J. Zisook, Esq.  
Karen Kavanagh Mack, Esq.  
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ILLINOIS STATE TOLL HIGHWAY )  
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PCB - 04-51  
(UST Appeal)

**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, 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"), with respect to Petitioner's High Priority Corrective Action Plan and Budget, dated September 3, 2003, relating to its Lincoln 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 Lincoln Oasis North, located at milepost 1.1 on Interstate 294 in South Holland, Illinois.

2. Following the completion of a Contaminated Soils Determination in 1994 and due to finding water and soil contamination at the site, ISTHA reported a release to the Illinois Emergency Management Agency ("IEMA") and was assigned Incident No. 94-1817 for the site.

3. In compliance with applicable regulations, ISTHA subsequently submitted a 20-day Report, a 45-day Report, Site Classification Work Plan and Budget, Site Classification Completion Report and Corrective Action Work Plan for the facility.

4. On or about May 27, 2003, ISTHA submitted a High Priority Corrective Action Plan ("Plan"), including a Budget, to the Agency; and, on or about September 3, 2003, the Agency responded by materially modifying the plan and rejecting the budget (the "Final Determination"). A true and complete copy of that Final Determination is attached hereto as Exhibit "A".

5. On or about October 1, 2003, ISTHA contacted the Agency by letter, and advised the Agency that it contested the Agency's determination 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).)

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

7. On or about October 16, 2003, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including January 6, 2003.

8. ISTHA requests the Board reverse the Plan, because, *inter alia*, the Plan and the remedial activities described therein are necessary and appropriate for the protection of human health and the environment. Additionally, such remedial activities do not exceed the minimum necessary requirements of the Act or the regulations promulgated thereunder.

9. With regard to the Plan, the Agency found that ISTHA's use of modeling with R26 equations is not applicable in this instance, because they contend that the contaminated groundwater is not located in the aquifer. However, the Agency's determination concerning the use of R26

modeling is unreasonable, because the groundwater is within an aquifer, and modeling with the R26 equation is the correct method of ensuring compliance with the property boundaries.

10. ISTHA also appeals the Agency's finding that Class II groundwater remediation objectives apply at this site. Although the groundwater beneath the site is encountered within ten feet below grade and may be classified as Class II groundwater, the site contains sand with 5 feet or more in thickness, the groundwater extends beyond a depth of 10 feet, and the hydraulic conductivity is  $1.77 \times 10^{-2}$  cm/sec. Therefore, Class I groundwater is more appropriate for the site in accordance with 35 Ill. Adm. Code 620, as well as based on the fact that the tank field is located near a residential property boundary.

11. ISTHA also appeals the Agency's finding that the soil excavation activities proposed in the Plan exceed the minimum requirements to comply with Title XVI, (the areas proposed to be excavated are beyond the area of soil contamination exceeding Tier 1 and site-specific Tier 2 remediation objectives), because the Plan only proposed excavating the soil contamination containing target analytes above the Tier 1 remediation objectives for the Inhalation and Ingestion Exposure Routes; and by removing soil contamination in the areas of the existing and former tank field and dispensing areas, the Tier 1 remediation objectives will be achieved and the risk to human health can be eliminated. Despite the Agency's findings to the contrary, the Plan is tailored to satisfy the ISTHA policies and to achieve the Tier 1 remediation objectives and meet the minimum requirements of Title XVI and the Environmental Protection Act.

12. With regard to the rejection of the budget, ISTHA appeals the Agency's determination that "Drawing 9 defining the area of soil contamination and extensive sample analyses conducted at the site" show that the contamination is from the tank system that was removed in 1985, (*i.e.*, the

USTs installed in 1968) and, as such, is not eligible for reimbursement under the LUST program. ISTHA argues that the conclusion reached by the Agency is not supported by the data collection and that, in fact, no remediation activities were performed in the 1968 tank area since the soil samples collected from that farm area contained no concentrations of target analytes above the site remediation objectives. Rather, excavation was conducted in the area of the USTs installed and registered in 1985 (and removed in 2003), which are eligible for reimbursement.

13. 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 September 3, 2003 modification (rejection) of ISTHA's High Priority Corrective Action Completion Plan and Budget for the Lincoln Oasis North, and remand this matter to the Agency with instructions to approve the Plan, 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) 346-1460  
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

**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).

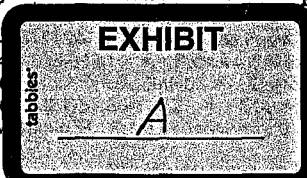
Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The modifications listed in Attachment A are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. Please 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103  
ELGIN - 595 South State, Elgin, IL 60123 - (815) 399-3300  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62777  
MARION - 2309 V



9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
University St., Peoria, IL 61614 - (309) 693-5463  
CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
MOUNTAIN VIEW - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
2959 - (618) 993-7200



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:

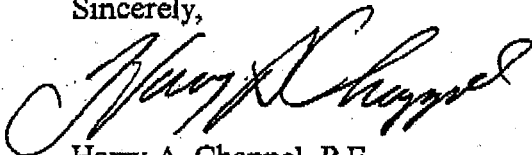
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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.