

**RECEIVED**  
CLERK'S OFFICE

MAR 12 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

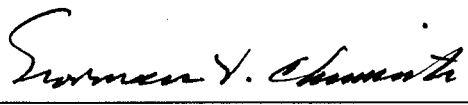
STATE OF ILLINOIS  
Pollution Control Board

*In the matter of:* )  
)  
ELSTON/WEBSTER, LP AND )  
RENAISSANCE REALTY GROUP LLC, )  
                                  ) Petitioners, )  
)  
                                  ) v. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
                                  ) Respondent. )  
)

PCB No. 04-155  
(High Priority Corrective Action  
Plan and Modeling Report)

**NOTICE OF FILING**

Please take notice that by mailing on March 10, 2004, I filed with the Clerk of the Illinois Pollution Control Board the attached Entry of Appearance in the captioned proceeding, a copy of which is herewith served upon you.

  
\_\_\_\_\_  
Norman V. Chimenti

Norman V. Chimenti, Esq.  
Martin, Craig, Chester & Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523  
(630) 472-3408

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STATE OF ILLINOIS  
Pollution Control Board

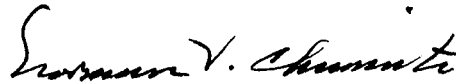
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

*In the matter of:* )  
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 ELSTON/WEBSTER, LP AND )  
 RENAISSANCE REALTY GROUP LLC, )  
 Petitioners, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 Respondent. )  
 )

PCB No. 04-155  
 (High Priority Corrective Action  
 Plan and Modeling Report)

ENTRY OF APPEARANCE

I hereby file my appearance in this proceeding on behalf of Petitioners, Elston/Webster, LP and Renaissance Realty Group LLC.



Norman V. Chimenti


Norman V. Chimenti, Esq.  
 Martin, Craig, Chester & Sonnenschein  
 2215 York Road, Suite 550  
 Oak Brook, Illinois 60523  
 (630) 472-3408

**PROOF OF SERVICE**

I, Norman V. Chimenti, being first duly sworn on oath, depose and state that on March 10, 2004, I served the attached Notice of Filing and Entry of Appearance upon the following person via certified mail, return receipt requested, by depositing same in the United States mail, properly addressed with postage prepaid, at 2215 York Road, Suite 550, Oak Brook, Illinois 60523:


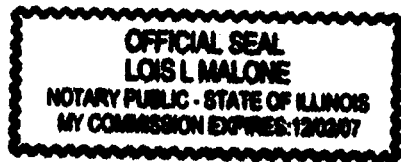
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601

John J. Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276



\_\_\_\_\_  
Norman V. Chimenti

Subscribed and sworn to before me  
this 10 day of March, 2004.

  
\_\_\_\_\_  
Notary Public

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CLERK'S OFFICE

MAR 12 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD, STATE OF ILLINOIS  
Pollution Control Board

*In the matter of:* )  
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 ELSTON/WEBSTER, LP AND )  
 RENAISSANCE REALTY GROUP LLC, )  
 Petitioners, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 Respondent. )  
 )

PCB No. 04-155  
 (High Priority Corrective Action  
 Plan and Modeling Report)

**NOTICE OF FILING**

Please take notice that by mailing on March 10, 2004, I filed with the Clerk of the Illinois Pollution Control Board the attached Petition for Review of High Priority Corrective Action Plan and Modeling Report Final Determination in the captioned proceeding, a copy of which is herewith served upon you.



Norman V. Chimenti

Norman V. Chimenti, Esq.  
Martin, Craig, Chester & Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523  
(630) 472-3408

MAR 12 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD Pollution Control Board  
STATE OF ILLINOIS

ELSTON/WEBSTER, LP AND )  
RENAISSANCE REALTY GROUP LLC, )  
Petitioners, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 04-155  
(High Priority Corrective Action  
Plan and Modeling Report)

**PETITION FOR REVIEW OF  
HIGH PRIORITY CORRECTIVE ACTION  
PLAN AND MODELING REPORT FINAL DETERMINATION**

NOW COMES the Petitioners, Elston/Webster, LP and Renaissance Realty Group LLC, by and through their attorney, Norman V. Chimenti, appealing from a final determination by the Illinois Environmental Protection Agency (the "Agency") on Petitioners' High Priority Corrective Action Plan and Modeling Report submitted to the Agency. In support, Petitioners state as follows:

1. This Petition is timely filed pursuant to Section 57.7(c)(4)(D) and Section 40 of the Illinois Environmental Protection Act (the "Act").
2. The site involved in this Petition is located at 2211 North Elston Avenue, Chicago in Cook County, Illinois. Underground storage tanks (the "Tanks") were removed from, and early action was taken at the site by Petitioners. A release from the tanks was reported to IEMA. The applicable identification numbers are LUST Incident No. 20011348 and LPC #0316075211 - Cook County. The site is enrolled in the Illinois Leaking Underground Storage Tank Program (the "Program").

3. The Tanks were 18 in number, and included four (4) Tanks which had been used for the storage of leaded gasoline from as early as 1930, or for a period of 71 years prior to their date of removal.

4. Following completion of early action at the site and submission of early action completion reports to the Agency, soil sampling laboratory analyses were submitted to the Agency demonstrating the existence of lead contamination of the soil at the site. The source of said lead contamination was the removed Tanks. The Agency has provided no information identifying another source for said lead contamination. Petitioners assert that there existed no other source for the lead contamination at the site, and the Agency previously has caused reimbursement from the LUST Fund of Petitioners' analysis cost for the lead contamination emanating from the Tanks..

5. Petitioners submitted a High Priority Corrective Action Plan and Modeling Report (the "CAP") to the Agency on November 8 and December 18, 2003, in which Petitioners sought the issuance of a No Further Remediation ("NFR") letter for the site from the Agency.

6. Following its review of the CAP, the Agency issued a final determination which in part states that an NFR letter will be issued, but that the CAP is modified by requiring the NFR letter to state that the amounts of lead contamination remaining at the site "do not appear to be associated with the release from the USTs [the Tanks]." A copy of the Agency's final determination letter, dated February 9, 2004, is attached hereto as Exhibit "A."

7. The aforesaid modification to the CAP imposed by the Agency has the effect of excluding the lead contamination from the NFR letter, and is without basis.

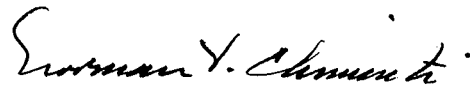
8. The sole reason stated by the Agency in its final determination for the modification of the CAP to exclude the lead contamination from the NFR letter is the high concentration of the lead contamination.

9. The consequences of excluding the lead contamination from the NFR letter are to require Petitioners to take additional corrective action to address the lead contamination at the site under applicable regulations, thereby imposing unnecessary and unwarranted delays and considerable additional cost on Petitioners.

10. The issue presented for review is whether the Agency properly modified Petitioners' CAP to exclude the lead contamination on site from the NFR letter.

WHEREFORE, Petitioners respectfully request that the Pollution Control Board grant it a hearing, set aside the action of the Illinois Environmental Protection Agency from which this appeal is taken, direct the Agency to approve that portion of Petitioners' CAP which includes the subject lead contamination in the NFR letter to be issued by the Agency, and grant Petitioners such further relief as the Board deems appropriate.

ELSTON/WEBSTER, LP and  
RENAISSANCE REALTY GROUP LLC

By:   
Their attorney

Norman V. Chimenti, Esq.  
Martin, Craig, Chester & Sonnenschein  
2215 York Road, Suite 550  
Oak Brook, Illinois 60523  
(630) 472-3408

EXHIBIT A

## 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

217/782-6762

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

**CERTIFIED MAIL**

7002 3150 0000 1255 0946

**FEB 09 2004**

Renaissance Realty Group LLC  
 Attn: Nancy Kapp  
 2001 West Churchill St.  
 Chicago, IL 60647

Re: LPC #0316075211 -- Cook County  
 Chicago/Renaissance Realty Group LLC  
 2211 North Elston Ave.  
 LUST Incident No. 20011348  
 LUST Technical File

Dear Ms. Kapp:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) and Modeling Report submitted for the above-referenced incident. This plan, dated November 8 & December 18, 2003 were received by the Illinois EPA on November 10 & December 26, 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. Please note if the soil contamination on the off-site property to the west is going to be left in place, an Illinois EPA approved Environmental Land Use Control (ELUC) in the form of an engineered barrier will be required before closure can be granted. The proposed ELUC must meet the requirements of 35 Ill Adm. Code 742.1010.
2. In addition, the Illinois EPA is approving the proposed impractical remediation request to leave contaminated soils to the east of the building in-place. Please note a paragraph will be included in the NFR letter stating extremely high amounts of lead contamination remain on-site; however, do not appear to be associated with the release from the USTs.

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.



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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.

If you have any questions or need further assistance, please contact Jason Donnelly at (217) 557-8764.

Sincerely,



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

HAC:JD\011348-hpcap&bud-4

Attachment: A  
Appeal Rights

c: EGLS, Gerald Kraemer  
Division File

## Attachment A

Re: LPC # 0316075211 -- Cook County  
 Chicago/Renaissance Reality Group LLC  
 2211 North Elston Ave.  
 LUST Incident No. 20011348  
 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

The budget was previously approved for:

\$3,655.00	Investigation Costs
\$5,920.00	Analysis Costs
\$5,755.00	Personnel Costs
\$100.00	Equipment Costs
\$5.00	Field Purchases and Other Costs
\$1,037.00	Handling Charges

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

\$910.00	Investigation Costs
\$1,020.00	Analysis Costs
\$4,077.50	Personnel Costs
\$75.00	Equipment Costs
\$7.00	Field Purchases and Other Costs
\$241.44	Handling Charges

Therefore, the total cumulative budget is approved for:

\$4,565.00	Investigation Costs
\$6,940.00	Analysis Costs
\$9,832.50	Personnel Costs
\$175.00	Equipment Costs
\$12.00	Field Purchases and Other Costs
\$1,278.44	Handling Charges

Page 2

**SECTION 2**

- 1. \$240.00 for an adjustment in drilling costs. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

Please note the plan proposes 20 feet of boring, while the budget includes costs for 30 feet.

- 2. \$20.00 for an adjustment in drilling costs (rate). Costs for investigative activities and related services or materials for developing a High Priority corrective action plan that are unnecessary or inconsistent with generally accepted practices or unreasonable costs for justifiable activities, materials, or services are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(cc)).
- 3. \$31.20 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 plus 8% of amount over \$15,000
\$50,001 - \$100,000	\$4,400 plus 5% of amount over \$50,000
\$100,001 - \$1,000,000	\$6,900 plus 2% of amount over \$100,000

HAC:JD\011348-hpcap&bud-4.A