

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD AUG 19 2004**

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

DIMUCCI DEVELOPMENT CORPORATION, )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
)  
Respondent. )  
)  
)

PCB No. 04-209  
(UST Appeal)

**NOTICE OF FILING AND PROOF OF SERVICE**

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

John J. Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**PLEASE TAKE NOTICE** that on Wednesday, August 18, 2004 I sent to the Clerk of the Illinois Pollution Control Board of the State of Illinois an original and nine (9) copies of each, via U.S. Mail, of a Petition for Review of Agency Decision to Reject Site Investigation Plan, Site Investigation Completion Report, Corrective Action Plan and Corrective Action Plan Budget and Appearance of Jeffrey R. Diver and Thomas S. Yu, for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that copies of the Notice of Filing, together with copies of the documents described above were served upon the Respondent, via certified mail, return receipt requested, and by depositing same in the United States Mail on August 18, 2004 properly addressed with postage prepaid.

Dated: August 18, 2004

Respectfully Submitted,

By: Thomas S. Yu  
Thomas S. Yu

The Jeff Diver Group, L.L.C.  
1749 S. Naperville Road, Suite 102  
Wheaton, IL 60187  
(630) 681-2530

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**  
CLERK'S OFFICE

AUG 19 2004

STATE OF ILLINOIS  
Pollution Control Board

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PCB No. 04-209  
(UST Appeal)

APPEARANCE

NOW COME the undersigned, Jeffrey R. Diver and Thomas S. Yu, and enter a Joint Appearance for the Petitioner, DiMucci Development Corporation, in the above captioned matter.

Dated: August 18, 2004

Respectfully Submitted,

By: 

Jeffrey R. Diver

By: 

Thomas S. Yu

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Thomas S. Yu  
The Jeff Diver Group, L.L.C.  
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PCB No. 04-209  
(UST Appeal)

**PETITION FOR REVIEW OF AGENCY DECISION TO REJECT  
SITE INVESTIGATION PLAN, SITE INVESTIGATION COMPLETION REPORT,  
CORRECTIVE ACTION PLAN AND CORRECTIVE ACTION PLAN BUDGET**

Now comes the Petitioner, DiMucci Development Corporation ("DiMucci"), by its attorneys, The Jeff Diver Group, L.L.C., pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. This petition is timely filed pursuant to Section 57.7(c)(4)(D) and Section 40 of the Act.

2. On May 10, 2004, DiMucci timely filed a notice to extend the appeal period for 90 days. On May 20, 2004, the Board issued an order granting an extension of 90 days to August 18, 2004. A copy of the extension order is attached as **Exhibit "A"**.

3. DiMucci acquired vacant real property at the northeast corner of South Cicero Avenue and 31<sup>st</sup> Street in Cicero, Illinois, with the purpose of redevelopment. Three underground petroleum storage tanks had been registered to that part of the property commonly known as 3035 S. Cicero Avenue, prior to DiMucci's acquisition: one 1,500-gallon and one

4,000-gallon gasoline UST and one 4,000-gallon diesel fuel UST. Prior to the start-up of development, the three registered USTs had been searched for, but not found.

4. During the course of active site development, particularly, the stripping of asphalt surfaces, a buried vent or fill pipe was struck, leading to the discovery, on February 13, 2003 of a 1,500-gallon gasoline UST. Because of the petroleum odors and soil discoloration in a test pit around the UST, DiMucci reported the incident to IEMA, receiving **Incident No. 20030198**.

5. Believing this UST was one of the three registered to the site, on February 18, 2003 DiMucci obtained an OSFM permit to remove all three of the registered tanks, although the two 4,000-gallon tanks had still not been discovered. On March 3, 2003 the first-discovered UST was removed, and, through an electromagnetic survey of the property, two 4,000-gallon USTs (one gasoline and one diesel fuel) were discovered, more than 200 feet to the northeast of the originally discovered UST. The two 4,000-gallon tanks were removed on March 4, 2003, and, at the request of the OSFM, a second incident was reported, **Incident No. 20030279**.

6. From March 14, 2003 through April 29, 2003, DiMucci tested and excavated contaminated site soils around the two UST areas: Area 1, the 1,500-gallon UST; and Area 2, the two 4,000-gallon USTs. On March 19, 2003, while uncovering soil around the piping for the twin 4,000-gallon USTs, DiMucci discovered a second 1,500-gallon (diesel) UST. DiMucci immediately registered the newly discovered tank, and, on March 31, 2003, OSFM issued a permit to remove the tank. It was removed on April 4, 2003 in the presence of an OSFM representative.

7. On March 31, 2003 DiMucci filed a 45-Day Report with the Agency, describing its early actions at Areas 1 and 2. On April 22, 2003, an Amended 45-Day Report was filed, describing early actions with respect to the last-discovered 1,500-gallon tank. The Agency had previously provided written extensions of the early action period to July 2003.

8. DiMucci sought reimbursement for its early action activities through an application filed with the Agency on or about April 25, 2003. Both Incident Numbers were

covered in the application, as OSFM and the Agency had agreed both should be treated as a single site. On July 9, 2003, the Agency approved reimbursement of some of the requested funds, but denied others because the costs appeared to be for corrective, rather than early action.

9. On May 15, 2003, DiMucci submitted its Site Investigation Plan, Site Investigation Completion Report, Corrective Action Plan, Corrective Action Plan Budget and Corrective Action Completion Report. On September 15, 2003 and December 23, 2003, Addenda were submitted to the Agency.

10. On April 15, 2004, the Agency issued DiMucci a No Further Remediation letter with respect to the two Incident Numbers. It granted the NFR, based upon the amended Corrective Action Completion Report, which had demonstrated that the remediation objectives consistent with an industrial/commercial land use had been achieved.

11. **Determination for Which Review is Sought.** On the same day it issued its NFR, April 15, 2004, the Agency rejected the amended Site Investigation Plan, Site Investigation Completion Report, Corrective Action Plan and Corrective Action Plan Budget. A copy of the final determination letter is attached as **Exhibit "B"**.

12. The Agency denied the Site Investigation Plan, stating that the plan did not contain sufficient information as to how to define the full extent of contamination. DiMucci asserts that the plan does contain sufficient information to delineate the full extent of contamination. The Agency further states that the Site Investigation Plan is not based on soil samples collected from early action activity. DiMucci asserts that the plan is based on soil samples collected from early action activity. DiMucci further asserts that the sampling, testing, and excavation protocol which it followed has been accepted by the Agency at multiple LUST sites, and such past practice was relied upon by DiMucci.

13. The Agency denied the Site Investigation Completion Report, stating that the report did not provide sufficient documentation to define the full extent of contamination to Tier 1

residential remediation objectives. DiMucci asserts that the submitted documents are sufficient to define the full extent of contamination to Tier 1 remediation objectives.

14. The Agency denied the Corrective Action Plan, stating that supporting documentation did not clearly describe when and where the early action activities were conducted and that a map was not provided to show the limits of the early action excavation or the results of the early action soil sampling required pursuant to 732.202(h). DiMucci asserts supporting documentation provided to the Agency clearly describes when and where early action activities were conducted and that a map was provided to show the limits of the early action excavation and the results of the early action soil sampling required pursuant to 732.202(h). The Agency states that the Site Investigation did not demonstrate that the soils removed were contaminated above the applicable remediation objective or that all the contamination was attributable to the USTs at the site, and the Agency further states that the Corrective Action Plan includes the removal of soil that does not appear to be associated with the USTs and is below the proposed industrial/commercial remediation objectives. DiMucci asserts that the Site Investigation demonstrates that the soils removed were contaminated above the applicable remediation objective and that there is no credible information or data indicating that the contamination removed by DiMucci originated from any source other than the USTs at the site.

15. The Agency denied the Corrective Action Plan Budget, stating that the budget lacks supporting documentation of costs associated with the implementation and completion of the corrective action plan. DiMucci asserts that documentation of costs associated with the implementation and completion of the Corrective Action Plan have been provided. Second, the Agency states that the budget includes costs that are not attributable to the registered USTs at the site. DiMucci asserts that the costs have been justified as attributable to each UST at the site. Third, the Agency states that the budget includes costs for activities in excess of the minimum requirements of the Act. DiMucci asserts that the costs are for activities in compliance

with the minimum requirements of the Act. Fourth, the Agency states that the costs as submitted are unreasonable. DiMucci asserts that the costs as submitted are reasonable. Fifth, the Agency asserts that the budget includes costs for the removal of soil below remediation objectives. The Agency also states that removal of such soils is not corrective action and is not subject to reimbursement. DiMucci asserts the soil removed was above soil remediation objectives and the costs are therefore corrective action costs subject to a claim for reimbursement. Last, the Agency states that the budget is associated with a Corrective Action Plan that has not been approved. DiMucci asserts that the Agency should approve the Corrective Action Plan and the Corrective Action Plan Budget. DiMucci further states that it has not yet submitted a claim for reimbursement of its corrective action costs

16. Additionally, the Agency's explanation in denying the plans submitted by DiMucci did not comply with the requirements of the Act under 415 ILCS 57.7(c). The Act requires an explanation as to the specific reasons why plans are denied, as well as the specific sections of the Act that are not satisfied by the plans. In particular, the Agency's explanation does not specify in what respects DiMucci has not documented the contamination from the four USTs. Therefore, the Agency's decision to deny the plans should be reversed.

Wherefore, DiMucci Development Corporation respectfully requests that the Illinois Pollution Control Board (the "Board") enter an order directing the Agency to approve the Petitioner's Site Investigation Plan, Site Investigation Completion Report, Corrective Action Plan, and Corrective Action Budget, as well as grant Petitioner such further relief as the Board deems appropriate.

Respectfully submitted,

DiMucci Development Corporation

By: Tom L  
One of its attorneys

Jeffrey R. Diver  
Thomas S. Yu  
The Jeff Diver Group, L.L.C.  
1749 S. Naperville Road, Suite 102  
Wheaton, IL 60187  
(630) 681-2530



ILLINOIS POLLUTION CONTROL BOARD  
June 3, 2004

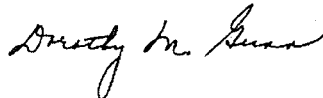
DIMUCCI DEVELOPMENT CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 04-209
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	(90-Day Extension)
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.P. Novak):

On May 24, 2004, the parties timely filed a joint notice to extend the 35-day period within which DiMucci Development Corporation may appeal an April 15, 2004 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency rejected petitioner's corrective action plan budget amendment for DiMucci Development Corporation's leaking underground petroleum storage tank facility located at 3035 South Cicero, Cicero, Cook County. The Board extends the appeal period until August 18, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If DiMucci Development Corporation fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 3, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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

ROD R. BLAGOJEVICH, GOVERNOR      RENEE CIPRIANO, DIRECTOR

217/782-6762

**CERTIFIED MAIL**

7002 3150 0000 1257 0906

**APR 15 2004**

DiMucci Development Corporation  
Larry Kowalczyk  
100 West Dundee Road  
Palatine, Illinois 60067

Re:   LPC #0310515271 -- Cook County  
      Cicero / DeMucci  
      3035 South Cicero  
      LUST Incident No. 20030198 and 20030279  
      LUST Technical File

Dear Mr. Kowalczyk:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget Amendment, Site Investigation Plan, Site Investigation Completion Report, and Corrective Action Plan submitted for the above-referenced incident. The Illinois EPA received the plans and reports, dated December 23, 2003 on December 26, 2003 respectively. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Site Investigation Plan is rejected for the reason(s) listed below (Sections 57.7(a)(1) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)):

1. The plan did not contain sufficient information as to how the full extent of contamination would be defined both vertically and horizontally. The Site Investigation must be based on the results of the soil samples collected from the limits of the early action excavation pursuant to 35 IAC Section 732.202(h). The results of these soil samples have not been submitted to the Agency. Please note that soil samples collected from the limits of an over excavation during early action over the limits allowed in 732.Appendix C are not acceptable for defining the extent in the Site Investigation stage of the project.

The Site Investigation Completion Report is rejected for the reason(s) listed below (Sections 57.7(a)(5) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)):

1. The report did not provide sufficient documentation as to how the full extent of contamination was defined both vertically and horizontally.

## EXHIBIT B

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-3300      CHICAGO - 5511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
 ELGIN - 595 South State, Elgin, IL 60123 - (847) 398-3300      PEORIA - 5 N. University St., Peoria, IL 61614 - (309) 693-5463  
 BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462      CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
 SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892      COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
 MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

2. The full extent of contamination has not been defined to the most stringent Tier 1 remediation objective. For purposes of define the extent Tier 1 residential remediation objectives must be used.

The Corrective Action Plan and the associated budget are rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

The Corrective Action Plan is rejected for the following reason(s):

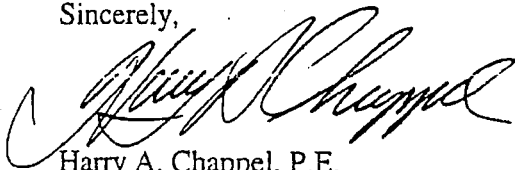
1. An explanation and supporting documentation must be provided that clearly describes when and where the early action activities were conducted. A map must be provided that shows the limits of the early action excavation and the results of the early action soil sampling required pursuant to 35 IAC Part 732.202(h).
2. A demonstration through Site Investigation must be conducted that the soils removed were contaminated above the applicable remediation objective. In addition, a demonstration must be made that all contamination is attributable to the USTs at the site.
3. The plan includes the removal of soil that does not appear to be associated with the USTs.
4. The plan includes the removal of soil that are below the proposed industrial/commercial remediation objectives.

The Corrective Action Plan Budget is rejected for the reason(s) 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 Brian Bauer at 217/782-3335.

Sincerely,



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

HAC:BB\

Attachment: Attachment A

cc: Environmental Protection Industries  
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 #0310515271 -- Cook County  
Cicero / DeMucci  
3035 South Cicero  
LUST Incident No. 20030198 and 20030279  
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. The budget includes costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan (Section 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)).
2. The budget includes costs that the owner or operator failed to justify are attributable to each underground storage tank at the site (Section 57.8(m)(2) of the Act.).
3. Costs incurred after completion of early action activities in accordance with 35 Ill. Adm. Code 732.Subpart B by owners or operators choosing to conduct remediation sufficient to satisfy the remediation objectives upon completion of early action activities are ineligible for payment from the Fund. These costs are for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Sections 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)). The budget includes such costs.
4. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). The budget includes costs that are not reasonable as submitted (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The following items are not reasonable:

1. Professional Engineer rate;
2. Amount of personnel time to prepare the corrective action plan;
3. Amount of personnel time to oversee corrective action activities;
4. Amount of personnel time to prepare the corrective action completion report;
5. The company vehicle rate;
6. The rate for excavation, disposal and transportation;
7. The rate for backfilling the excavation;

5. The budget includes costs for the excavation, transportation, and disposal of soil contaminated below the proposed remediation objectives. These costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)).
  
6. The Illinois EPA has not approved the plan with which the budget is associated. Therefore, the Illinois EPA cannot determine whether these costs are for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)). It also cannot be determined whether the costs are corrective action costs. "Corrective action" means an activity associated with compliance with the provision of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)). In addition, it cannot be determined whether these costs are reasonable as submitted (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(hh)).

BB\