

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

AUG 23 2004

JOHNSON OIL COMPANY, LLC,)

Petitioner,)

vs.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04-183
(LUST Appeal)

NOTICE OF FILING

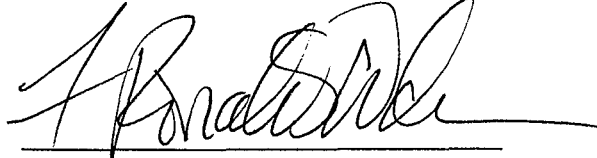
To: John Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

PLEASE TAKE NOTICE that I have today, August 20, 2004, filed with the Clerk of the Illinois Pollution Control Board an APPEARANCE OF F. RONALDS WALKER, a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

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STATE OF ILLINOIS
Pollution Control Board

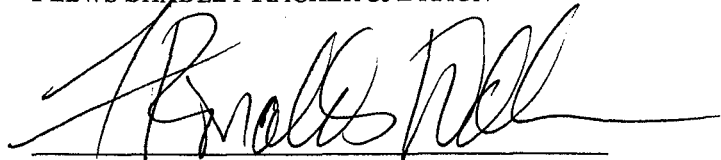
PCB No. 04-183
(LUST Appeal)

ATTORNEY APPEARANCE

F. Ronalds Walker an attorney with the law firm Plews Shadley Racher & Braun hereby enters his appearance on behalf of Petitioner, Johnson Oil Company, LLC.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



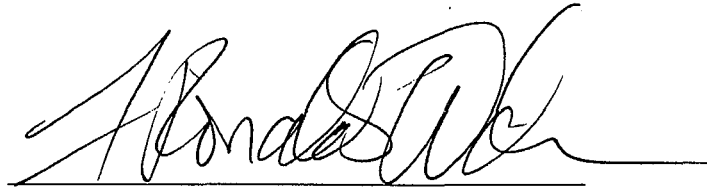
F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 27, 2004, I served true and correct copies of the Attorney Appearance, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

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



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Pollution Control Board

PCB No. 04-183
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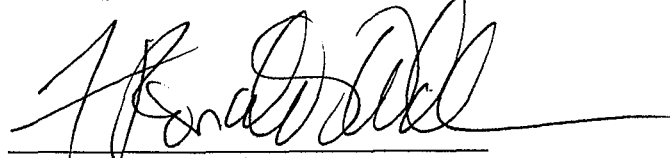
To: John Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

PLEASE TAKE NOTICE that I have today, August 20, 2004, filed with the Clerk of the Illinois Pollution Control Board an MOTION FOR ADMISSION OF JOHN D. MORIARTY COUNSEL PRO HAC VICE, a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
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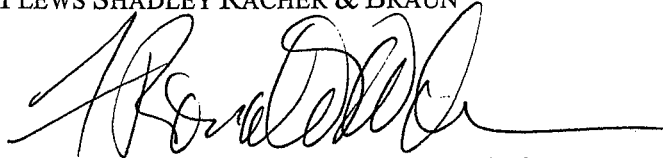
PCB No. 04-183
(LUST Appeal)

**MOTION FOR ADMISSION
OF JOHN D. MORIARTY AS COUNSEL *PRO HAC VICE***

Counsel for Petitioner Johnson Oil Company, LLC ("Johnson Oil"), R. Ronalds Walker, an attorney licensed to practice in the State of Illinois, moves the Court for an Order of Admission *Pro Hac Vice* of John D. Moriarty, who is a duly licensed attorney in the State of Indiana, to serve as counsel for Johnson Oil. An affidavit of John D. Moriarty is attached to this Motion as Exhibit A and is incorporated by reference.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



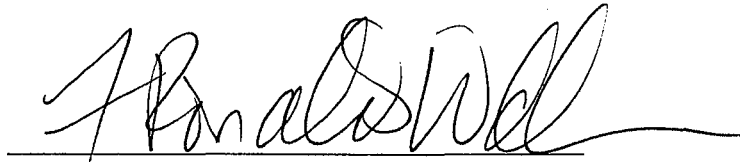
F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 20, 2004, I served true and correct copies of the Motion For Admission of Counsel *Pro Hac Vice*, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

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



A handwritten signature in cursive script, appearing to read "Ronald W. Wells", is written over a horizontal line.

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

JOHNSON OIL COMPANY, LLC,)	
)	
Petitioner,)	
)	
vs.)	PCB No. 04-183
)	(LUST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

**AFFIDAVIT IN SUPPORT OF MOTION FOR ADMISSION
OF JOHN D. MORIARTY AS COUNSEL *PRO HAC VICE***

John D. Moriarty, being first duly sworn, upon oath, states as follows:

1. I am a duly licensed attorney and counselor at law admitted to practice, and currently in good standing, in the State of Indiana. My Indiana attorney identification number is 19202-49.

2. I plan to appear as counsel or associate counsel in one other case pending in the State of Illinois: Johnson Oil Company, LLC vs. Illinois Environmental Protection Agency, PCB 04-190. I have not appeared in any other cases in the Courts or administrative agencies in the State of Illinois.

3. I am familiar with the provisions of the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules, and I understand and agree that I will be bound by them all in all proceedings before this court in this cause.

4. In particular, I am familiar with Illinois Supreme Court Rule 137 relating to the signing of pleadings, motions and other papers and duties imposed upon litigants and counsel, and I understand and agree that I will follow and be bound by the provisions of said Supreme

Court Rule 137, and hereby submit myself to the jurisdiction of the court for any and all proceedings.

John D. Moriarty
John D. Moriarty
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, IN 46202
Ph: (317) 637-0700
Fax: (317) 637-0713

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

Subscribed and sworn before me this 20th day of August, 2004.

Jamie L. Morris

Notary Public

Jamie L. Morris

Printed Name

Commission Expires: 05/22/09

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

JOHNSON OIL COMPANY, LLC,)
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Petitioner,)
)
vs.) PCB No. 04-183
) (LUST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

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

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

PLEASE TAKE NOTICE that I have today, August 20, 2004, filed with the Clerk of the Illinois Pollution Control Board an AMENDED PETITION FOR REVIEW OF FINAL AGENCY LEAKING UNDERGROUND STORAGE TANK DECISION a copy of which is herewith served upon you through United States Mail return receipt requested.

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN



F. Ronalds Walker, Atty No. 2922223
PLEWS SHADLEY RACHER & BRAUN
1346 N. Delaware Street
Indianapolis, Indiana 46202
Ph: (317) 637-0700
Fax: (317) 637-0712

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
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Pollution Control Board

JOHNSON OIL COMPANY, LLC,)
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Petitioner,)
)
vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 04-183
(LUST Appeal)

**AMENDED PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISION**

Petitioner, Johnson Oil Company, LLC ("Johnson Oil"), pursuant to Sections 40(a)(1) and 57.7(c)(4)(D) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1) and 57.7(c)(4)(D)) and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above-referenced case. In support thereof, Johnson Oil respectfully states as follows:

I. Facts and Procedural History

1. Johnson Oil formerly owned and operated a gasoline service station on property located at 901 North Vermilion Street, Danville, Vermilion County, Illinois (the "Site"). On October 28, 1999, Johnson Oil reported a release of petroleum at the Site and the Site was assigned Incident No. 992440. Johnson Oil retained American Environmental Corporation ("American Environmental") to complete Site Investigation and Corrective Action, including preparation of Site Investigation and Corrective Action Plans.

2. On December 4, 2003, American Environmental submitted on behalf of Johnson Oil a High Priority Corrective Action Plan ("HPCAP") and Budget for investigation to define the

extent of free product and contaminated groundwater and for a pilot study to evaluate the Method of Soil Vapor Extraction to remediate contamination.

3. On March 12, 2004, the Agency issued a Final Decision to Johnson Oil in which the HPCAP was approved with modifications to the Budget, a copy of which is attached hereto as Exhibit A.

4. On April 13, 2004, Johnson Oil made a written request to the Agency for an extension of time by which to file a petition for review. The Agency joined in Johnson Oil's request that the Board extend the period for filing a Petition for Review to ninety days, a copy of which is attached hereto as Exhibit B.

5. On May 6, 2004 the Board entered an Order granting Johnson Oil an additional ninety days, up to and including July 15, 2004 to file the Petition for Review. A copy of the Order is attached as Exhibit C.

6. Johnson Oil filed its Petition for Review on or before the July 15, 2004. On July 28, 2004, the Board entered an order requiring Johnson Oil to file an Amended Petition for Review accompanied by the appearance of an attorney on or before August 23, 2004. A copy of the Board's Order is attached as Exhibit D.

II. The HPCAP and Budget

- The grounds for the Petition for Review are as follows:

Johnson Oil's consultant, Simon P. Broomhead, P.G. of American Environmental, prepared the December 4, 2003 HPCAP and Budget in accordance with the Environmental Protection Act ("Act") and regulations, in addition to generally accepted engineering practices. Mr. Broomhead is a Licensed Professional Geologist with ten (10) years experience in the environmental consulting industry. The HPCAP detailed the procedures necessary to define the

extent of residual contamination and evaluate the proposed method of corrective action. In accordance with 35 Ill. Adm. Code 732.404(f), the Budget included an estimate of all costs associated with the implementation and completion of the Corrective Action Plan. The Budget also included personnel costs for activities which had been completed and for which copies of invoices were provided to document such costs. These costs were reasonable and were necessary to achieve the applicable remediation objectives. The personnel activities included in the Budget consisted of:

- Free product recovery, monitoring, and report preparation completed throughout the Site Classification and Corrective Action Investigations,
- Obtaining permits and access agreements for neighboring properties and right-of-ways,
- Aquifer testing and risk-based contaminant modeling to calculate remediation objectives,
- Preparation of Corrective Action Plan and Budget,
- Complicated drilling at greater-than-typical depths in a highly permeable, heaving sand,
- Preparation of reimbursement claims,
- Completion of additional investigation, including soil and groundwater sampling, and free product monitoring, and
- Completion of a pilot study to evaluate the method of Soil Vapor Extraction for the remediation of residual contamination.

III. Budget Expenses That Were Improperly Disallowed

The Agency approved the HPCAP by letter dated March 12, 2004 to Johnson Oil. However, the personnel costs in the associated Budget were modified down to an unreasonable level with no justification for the reductions. The Agency improperly reduced the Budget for personnel costs from \$49,780.25 to \$14,000.00 with no technical justification. The amount approved (\$14,000) was less than necessary to complete the required Corrective Action. Furthermore, portions of the personnel costs in the amount of \$29,224.25 were already completed and appropriate documentation was provided to the Agency. Mr. Broomhead and other qualified environmental consultants will testify that the approved Budget for the HPCAP is vastly below industry norms, is not reasonable, and violates 35 Ill. Adm. Code 732.505 and 732.605.

Furthermore, the HPCAP cannot be implemented with the unreasonably small Budget approved by the Agency. The Budget approved by the Agency is unreasonable, is arbitrary and capricious, and does not account for the several investigation and corrective action activities which were proposed in the approved HPCAP.

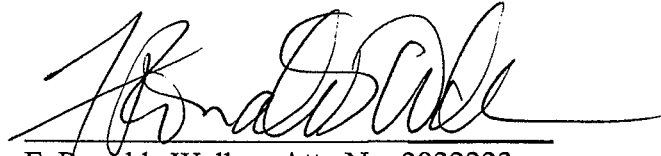
In addition, upon information and belief, Johnson Oil alleges that the Agency improperly utilized certain rate sheets to reduce the Budget. These rate sheets were not promulgated pursuant to the Illinois Administrative Procedure Act (APA) and Illinois Ayers Oil Company vs. IEPA, PCB 03-214. Thus, the Budget approved by the Agency is invalid and is arbitrary and capricious.

WHEREFORE, Petitioner, Johnson Oil Company, LLC, for the reasons stated above and others that may be discerned through the course of discovery, requests that the Board reverse the Final Decision of the Agency and restore the personnel amount as submitted in Johnson Oil's

Budget associated with the December 4, 2003 HPCAP and award consultant and attorney's fees pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully Submitted,

PLEWS SHADLEY RACHER & BRAUN

A handwritten signature in black ink, appearing to read "F. Ronalds Walker", written over a horizontal line.

F. Ronalds Walker, Atty No. 2922223

PLEWS SHADLEY RACHER & BRAUN

1346 N. Delaware Street

Indianapolis, Indiana 46202

Ph: (317) 637-0700

Fax: (317) 637-0712

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 20, 2004, I served true and correct copies of the Amended Petition For Review Of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail box with sufficient postage affixed thereto, upon the following named persons:

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

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



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 1255 4913

MAR 12 2004

Johnson Oil Company, LLC
Attn: Rick Johnson
P.O. Box 27
Columbus, IN 47202

Re: LPC #1830205196 -- Vermilion County
Danville/Johnson Oil Company
901 N. Vermilion St.
LUST Incident No. 992440
LUST Technical File

Dear Mr. Johnson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated December 4, 2003, was received by the Illinois EPA on December 5, 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 approved. The activities proposed in the plan are appropriate 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 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.

Exhibit

A

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 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

Page 2

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 Scott McGill at (217)/524-5137.

Sincerely,



Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachments: Attachment A
Appeal Rights

cc: American Environmental Corporation
Division File

Attachment A

Re: LPC # 1830205196 -- Vermilion County
Danville/Johnson Oil Company
901 N. Vermilion St.
LUST Incident No. 992440
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:

\$24,008.40	Investigation Costs
\$3,030.00	Analysis Costs
\$46,296.50	Personnel Costs
\$2,465.00	Equipment Costs
\$6,190.10	Field Purchases and Other Costs
\$3,076.00	Handling Charges

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

\$9,191.02	Investigation Costs
\$2,056.00	Analysis Costs
\$14,000.00	Personnel Costs
\$1,815.00	Equipment Costs
\$5,799.80	Field Purchases and Other Costs
\$13,411.02	Handling Charges

Therefore, the total cumulative budget is approved for:

\$33,199.42	Investigation Costs
\$5,086.00	Analysis Costs
\$60,296.50	Personnel Costs
\$4,280.00	Equipment Costs
\$11,989.90	Field Purchases and Other Costs
\$16,487.02	Handling Charges

SECTION 2

1. \$43.00 for excessive analysis costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Costs associated with TCLP lead were reduced to \$16/sample. The analysis costs were reduced from \$2,100.00 to \$2,056.00.

2. \$35,780.25 for excessive personnel costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

The Agency has reviewed the activities to be completed as part of the plan and approved a reasonable amount of personnel dollars for this effort.

We do not specify number of hours or type of personnel expected to complete the proposed activities, only a reasonable total amount. How a consultant chooses to use this amount (type of personnel used and number of hours) is up to them as long as the approved total amount is not exceeded and the personnel rates are reasonable.

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

Exhibit B

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

JOHNSON OIL COMPANY,)	
Petitioner,)	
v.)	PCB No. 04-
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,)	
Respondent.)	

**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 July 15, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On March 12, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On April 13, 2004, 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



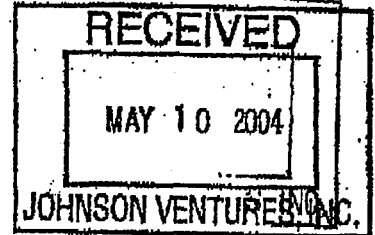
John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: April 13, 2004

This filing submitted on recycled paper.

Exhibit C

ILLINOIS POLLUTION CONTROL BOARD

May 6, 2004



JOHNSON OIL COMPANY,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 04-183
(UST Appeal)
(90-Day Extension)

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

On April 15, 2004, the parties timely filed a joint notice to extend the 35-day period within which Johnson Oil Company may appeal a March 12, 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. The Agency approved petitioner's amended high priority corrective action plan, with modifications, for Johnson Oil Company's leaking underground petroleum storage tank facility located at 901 N. Vermilion St., Danville, Vermilion County. The Board extends the appeal period until July 15, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Johnson Oil Company 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 May 6, 2004, by a vote of 5-0.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Exhibit
C



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

RÓD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217782-6762

CERTIFIED MAIL

7002 3150 0000 1255 4923

MAR 12 2004

Johnson Oil Company, LLC
Attn: Rick Johnson
P.O. Box 27
Columbus, IN 47202

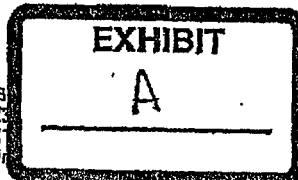
Re: LPC #1830205196 - Vermilion County
Danville/Johnson Oil Company
901 N. Vermilion St.
LUST Incident No. 992440
LUST Technical File

Dear Mr. Johnson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated December 4, 2003, was received by the Illinois EPA on December 5, 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 approved. The activities proposed in the plan are appropriate 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 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.



ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815)
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309)
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217)
MARION - 2305 W. Main

Harrison St., Des Plaines, IL 60016 - (847) 294-4000
City St., Peoria, IL 61614 - (309) 693-5463
5 South First Street, Champaign, IL 61820 - (217) 278-5800
3 Mall Street, Collinsville, IL 62234 - (618) 346-5120
(618) 993-7200

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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 Scott McGill at (217)524-5137.

Sincerely,



Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachments: Attachment A
Appeal Rights

cc: American Environmental Corporation
Division File

Attachment A

Re: LPC # 1830205196 - Vermilion County
Danville/Johnson Oil Company
901 N. Vermilion St.
LUST Incident No. 992440
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:

\$24,008.40	Investigation Costs
\$3,030.00	Analysis Costs
\$46,296.50	Personnel Costs
\$2,465.00	Equipment Costs
\$6,190.10	Field Purchases and Other Costs
\$3,076.00	Handling Charges

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

\$9,191.02	Investigation Costs
\$2,056.00	Analysis Costs
\$14,000.00	Personnel Costs
\$1,815.00	Equipment Costs
\$5,799.80	Field Purchases and Other Costs
\$13,411.02	Handling Charges

Therefore, the total cumulative budget is approved for:

\$33,199.42	Investigation Costs
\$5,086.00	Analysis Costs
\$60,296.50	Personnel Costs
\$4,280.00	Equipment Costs
\$11,989.90	Field Purchases and Other Costs
\$16,487.02	Handling Charges

SECTION 2

1. \$43.00 for excessive analysis costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Costs associated with TCLP lead were reduced to \$16/sample. The analysis costs were reduced from \$2,100.00 to \$2,056.00.

2. \$35,780.25 for excessive personnel costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

The Agency has reviewed the activities to be completed as part of the plan and approved a reasonable amount of personnel dollars for this effort.

We do not specify number of hours or type of personnel expected to complete the proposed activities, only a reasonable total amount. How a consultant chooses to use this amount (type of personnel used and number of hours) is up to them as long as the approved total amount is not exceeded and the personnel rates are reasonable.

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



**American
Environmental**

From Springfield Regional Office

April 13, 2004

VIA FACSIMILE
782-9807

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

Re: Request for Extension for Petitioning the IPCB
LPC #1830205196 - Vermilion County
Johnson Oil #147- Danville/Johnson Oil Company, LLC of Indiana
901 North Vermilion Street
LUST Incident No. 992440
American Environmental Project Number 207012

Dear Mr. Kim

Johnson Oil Company, LLC of Indiana ("Johnson Oil"), requests that the Illinois Environmental Protection Agency ("Agency") join them in requesting a 90-day extension to the 35-day deadline for filing a petition for a hearing before the Illinois Pollution Control Board (IPCB). This request is being made to preserve Johnson Oil's right to appeal the Agency decision contained in a March 12, 2004 letter regarding a December 4, 2003 Corrective Action Plan and Budget for the above referenced LUST incident. A copy of the Agency letter is attached.

The additional time is needed for American Environmental to submit information and a request for the Agency to reconsider some of their budget deductions. If necessary, we will also meet with the Agency in an effort to resolve the issues without the need to submit a formal petition request.

Please take the necessary action to file this extension request before the 35-day appeal time expires on April 16, 2004. If you need additional information, please advise.

Sincerely,

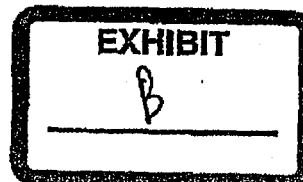
AMERICAN ENVIRONMENTAL CORPORATION

Simon P. Broomhead

Simon P. Broomhead, P.G.
Project Manager

pc: Rick Johnson, Johnson Oil Company, LLC of Indiana

Enclosure



Corporate Office

8500 Georgetown Road
Indianapolis, Indiana 46268-1847
317-571-4090
317-571-4094 Fax

Regional Office

8700 W. Grand Ave. Ste. A
Springfield, IL 62707
217-585-9517
217-585-9518 Fax

Regional Office

410 Production Court
Louisville, KY 40260
502-491-0144
502-491-9271 Fax

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 13, 2004, 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

Simon P. Broomhead, P.G.
American Environmental Corp.
3700 West Grand Avenue
Suite A
Springfield, IL 62707

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

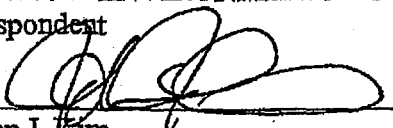
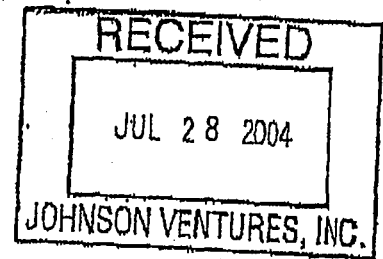

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

Exhibit D



ILLINOIS POLLUTION CONTROL BOARD
July 22, 2004

JOHNSON OIL COMPANY,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 04-183
(UST Appeal)

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

On May 6, 2004, the Board, at the parties' request, extended until July 15, 2004 the time period within which Johnson Oil Company may appeal a March 12, 2004 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On July 15, 2004, Johnson Oil Company filed a petition asking the Board to review the Agency's determination. The Agency approved petitioner's amended high priority corrective action plan and budget, with modifications, for Johnson Oil Company's leaking underground petroleum storage tank facility located at 901 N. Vermilion St., Danville, Vermilion County.

Johnson Oil Company appeals on the grounds that the budget approved by the Agency is arbitrary, capricious, and not based on corrective action activities in the approved high priority corrective action plan, and that that budget is inadequate to implement the high priority corrective action plan.

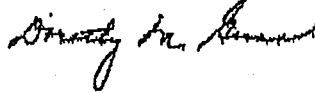
The Board accepts this matter as timely filed, pursuant to 35 Ill. Adm. Code 105.404. However, the Board finds that the petition was filed on behalf of Johnson Oil Company by Rick Johnson, Manager. The Board's procedural rules incorporate the requirement under Section 1 of the Illinois Attorney Act (705 ILCS 205/1 (2002)) and Section 1 of the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (2002)), that anyone other than an individual "must appear through an attorney-at-law licensed and registered to practice law." 35 Ill. Adm. Code 101.400(a)(2). The appeal filed by Rick Johnson on behalf of Johnson Oil Company does not identify him as an attorney, but as the Manager of Johnson Oil Company. Rick Johnson cannot represent Johnson Oil Company in this proceeding. See 35 Ill. Adm. Code 101.400(a)(2).

On or before August 23, 2004, Johnson Oil Company must file an amended petition for review accompanied by the appearance of an attorney. If an amended petition accompanied by an attorney's appearance is not timely filed, this petition will be dismissed. The filing of an amended petition will restart the Board's decision deadline. See 35 Ill. Adm. Code 105.114(b).

Exhibit D

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 22, 2004, by a vote of 5-0,



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board