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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

SEP 24 2004

STATE OF ILLINOIS
Pollution Control Board

WAYNE SWANSON &)
DENNIS SWANSON,)
Petitioners,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 05- 57
(LUST Appeal - Ninety Day Extension)

NOTICE

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

Daniel A. Reed
Alschuler, Simantz & Hem, LLC
Downer Place Executive Center
1961 West Downer Place
Aurora, IL 60506-4384

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

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: September 22, 2004

SEP 24 2004

STATE OF ILLINOIS
Pollution Control Board

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

WAYNE SWANSON &)
DENNIS SWANSON,)
)
Petitioners,)
)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 05- 51
(LUST Appeal – Ninety Day Extension)

**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 December 22, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On August 18, 2004, the Illinois EPA issued a final decision to the Petitioners. (Exhibit A)
2. On September 21, 2004, the Petitioners 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 Petitioners did not represent when the final decision was received, though the final decision could not have been received until at least one day after issuance. (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 Y. 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: September 22, 2004

This filing submitted on recycled paper.



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 1251 4399

AUG 18 2004

Wayne & Dennis Swanson
Attention: Dennis Swanson
2989 Riverside Plaza
Steamboat Springs, CO 80487

Re: LPC 0894133002 -- Kane County
Batavia/Swanson, Wayne & Dennis
122 West Wilson Street
Incident #20000253
LUST Technical File

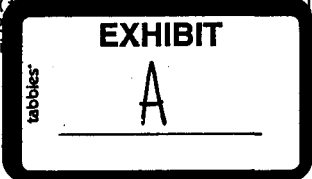
Dear Mr. Swanson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 45-Day/Corrective Action Completion Report (report) submitted pursuant to 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.202(e) and 732.300(b). The report, dated December 5, 2003, was received by the Illinois EPA on June 4, 2004.

Pursuant to 35 Ill. Adm. Code 732.300(b)(2), owners or operators subject to 35 Ill. Adm. Code 732 may proceed without conducting site classification activities pursuant to 35 Ill. Adm. Code 732.Subpart C if, upon completion of early action requirements pursuant to 35 Ill. Adm. Code 732.Subpart B, they can demonstrate compliance with the remediation objectives required in 35 Ill. Adm. Code 732.408. Upon completion of the early action requirements, the owner or operator shall submit a corrective action completion report demonstrating compliance with the required levels.

Pursuant to 35 Ill. Adm. Code 732.503(b), the report is rejected for the reason(s) described below:

1. Since monitoring well (MW-4) was never installed, it is difficult to ascertain whether contaminants of concern have not traveled to the North property line, onto and across Wilson Street. The Agency is requiring collection of groundwater and soil sampling for analysis at each appropriate depth.



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2. If an engineered barrier is to be used, a map depicting the surfaces to be covered by the barrier is required by the Agency pursuant to Section 742.1105.
3. The Agency is requiring R-14 and R-26 equations be run to determine if an on-site groundwater restriction will exclude the migration to groundwater route pursuant to Section 742.320.
4. Since soil sample B-10 had several PNA exceedances, the Agency is requiring further soil sampling and analysis to the East to further define extent.

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 questions or need further assistance, please contact Jim Ransdell at 217/557-6938.

Sincerely,



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

TAH:JSR:jk\041491.doc

Attachment: Appeal Rights

c: DEI
Schanlaber & Reed
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


CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 22, 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

Daniel A. Reed
Alschuler, Simantz & Hem, LLC
Downer Place Executive Center
1961 West Downer Place
Aurora, IL 60506-4384

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim
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Special Assistant Attorney General
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PARALEGAL
JANICE S. PITTMAN
PARALEGAL
JULIE K. BROMANN
PARALEGAL

September 21, 2004

Via Facsimile (217) 782-9807

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

Re: **LPC 0894133002 – Kane County**
Batavia/Swanson, Wayne & Dennis
122 West Wilson Street
Incident #20000253
LUST Technical File

Dear Mr. Kim:

This law firm represents Wayne and Dennis Swanson with respect to the above-referenced matter. Please be advised that on behalf of our clients, we are requesting a 90-day extension of the time to file an appeal in the above-referenced matter.

Following please find a copy of the Final Decision dated August 18, 2004. If you require any further information, please contact the undersigned.

Sincerely yours,

ALSCHULER, SIMANTZ & HEM, LLC

Daniel A. Reed
Daniel A. Reed

DAR/ik
Attachment

cc: Wayne E. Swanson
Dennis A. Swanson
Gerard R. Dempsey
Carrie Carter
James E. Saloga

