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OCT 15 2003

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Lake Forest East CAP/B), )  
Petitioner, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 05- 68  
(UST 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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
Suite 1700  
Chicago, IL 60606

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: October 13, 2004

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Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
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ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Lake Forest East CAP/B), )  
Petitioner, )  
v. ) PCB No. 05-68  
ILLINOIS ENVIRONMENTAL ) (UST 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 January 12, 2005, 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 September 1, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On September 30, 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. Documents provided by the Petitioner represented that the final decision was received on September 8, 2004. (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: October 13, 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 1113 5854

SEP 01 2004

Illinois State Toll Highway Authority
Attention: Jeffery S. Dailey, P.E.
2700 Ogden Avenue
Downers Grove, IL 60515

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SEP - 8 2004

OASIS PROJECT MGR.

Re: LPC #0970805037 -- Lake County
Lake Forest / Lake Forest Oasis East
Tri-State Tollway (I-94), Northbound
LUST Incident Nos. 941628, 941813, 20011643, 20021646 and 20030822
LUST Technical File

Dear Mr. Dailey:

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 April 22, 2004, was received by the Illinois EPA on May 7, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

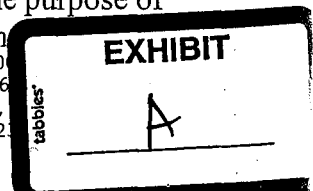
Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. Please note that all activities associated with the remediation of this 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.

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. However, for the purpose of reimbursement, these activities are in excess of those necessary to meet the minimum

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60018 - (708) 441-7400
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5462
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 244-2125
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62236 - (618) 244-2009
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200



requirements of the Act and regulations. Owners and operators are advised that they may not be entitled to full payment or reimbursement for this 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. In addition, please note that 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:

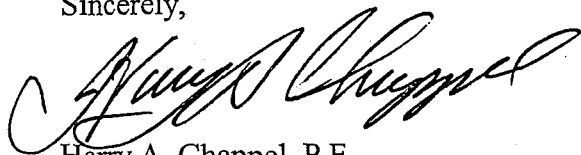
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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 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

c: Wight  
Division File

Attachment A

Re: LPC # 0970805037 -- Lake County  
Lake Forest / Lake Forest Oasis East  
Tri-State Tollway (I-94), Northbound  
LUST Incident No. 941628, 941813, 20011643, 20021646, 20030822  
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**

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

\$430.50	Investigation Costs
\$4,114.80	Analysis Costs
\$25,215.00	Personnel Costs
\$2,250.00	Equipment Costs
\$266,727.50	Field Purchases and Other Costs
\$6,908.81	Handling Charges

**SECTION 2**

1. \$716,020.21 for an apportionment of costs. The Illinois EPA has determined that the apportionment shall be based on the number of tanks at the site. (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).

Of 20 underground storage tanks, 6 are eligible. Therefore, allowable costs are 30% of proposed budget.

2. \$277.95 for Investigation 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 following items exceed the minimum requirements of Title XVI of the Act: physical soil boring and 1 mobilization.

3. \$115.50 for well abandonment fees. Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(y)). This cost is not a corrective action cost. "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)).
4. \$319.50 for 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)).

The following analysis costs exceed the minimum requirements to comply with Title XVI of the Act: ex-situ hydraulic conductivity, soil particle analysis and physical soil classification.

5. \$506.25 for Equipment 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)).

GPS use for sample tracking exceeds the minimum requirements to comply with Title XVI.

## 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



EARL A. DEUTSCH  
PAUL M. LEVY  
TERRY L. ENGEL  
FRANK R. COHEN  
JERRY I. RUDMAN  
MICHAEL J. DEVINE  
STUART BERKS  
KENNETH W. FUNK  
PHILLIP J. ZISOOK  
DENNIS E. FRISBY  
STEVEN B. ISAACSON  
ALVIN J. HELFGOT  
JOEL A. STEIN  
BRIAN D. SAUCIER  
JAMES E. O'HALLORAN  
AARON B. ZARKOWSKY  
LEO G. AUBEL  
KAREN KAVANAGH MACK  
JEFFREY B. HORWITZ  
MOYENDA MUTHARIKA KNAPP  
DAVID J. BEN-DOV  
CATHERINE GLENN JOELSON  
GREGORY A. FREZADOS  
LEE E. FARBMAN

LAW OFFICES

## DEUTSCH, LEVY & ENGEL

CHARTERED

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(312) 346-1460

E-mail: lawyers@dlec.com  
Website: www.dlec.com  
FACSIMILE: (312) 346-1859

COUNSEL  
MARSHALL D. KROLOCK  
ARTHUR J. SABIN

September 30, 2004

**Via Facsimile: (217)782-9807**

**And Regular U. S. Mail**

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

**RECEIVED**  
Division of Legal Counsel

OCT 04 2004

Environmental Protection  
Agency

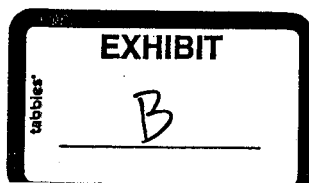
**Re: *LPC #0970805037 - Lake County;  
Lake Forest/Lake Forest Oasis East  
Tri-State Tollway (I-94), Northbound  
Lust Incident Nos. 941628, 941813, 20011643, 20021646 and 20030822***

Dear Mr. Kim:

The undersigned, as a Special Assistant Attorney General, represents the Illinois State Toll Highway Authority in connection with the referenced LUST Incidents. I have received a copy of the Agency's letter, dated September 1, 2004, modifying the Authority's High Priority Corrective Action Plan and Budget previously submitted to the Agency. A copy of that letter is enclosed.

Please be advised that the Authority does not agree with the Agency's decision as set forth in its letter of September 1, 2004; however, in hopes of resolving the open issues with the Agency, and avoiding the necessity of an appeal to the Illinois Pollution Control Board, our client hereby requests an extension, pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act, to extend the period within which it may appeal the Agency's decision for an additional ninety (90) days.

- 193294.1

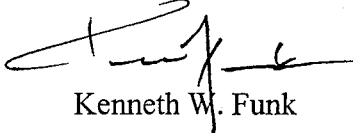


Illinois Environmental Protection Agency  
September 30, 2004  
Page Two

It is our understanding that upon receipt of this letter you will proceed to prepare the necessary motion for filing with Illinois Pollution Control Board to effectuate the extension. If your understanding is other than as indicated herein or if I can provide any further information, please let us know immediately.

Your assistance and cooperation is appreciated.

Very truly yours,



Kenneth W. Funk

KWF/alj

Enclosures

cc: Victor Azar, Esq.  
MS. Robin Martel

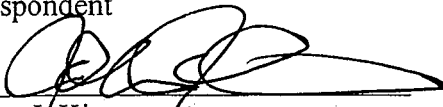
**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on October 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 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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
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