

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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NOV 29 2004

MAC'S CONVENIENCE STORES, LLC, )  
  ) Petitioner, )  
  ) v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
  ) Respondent. )

PCB No. 05-101  
(LUST Appeal – Ninety Day Extension)

STATE OF ILLINOIS  
Pollution Control Board

NOTICE

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

Kenneth M. Miller  
American Environmental Corporation  
3700 West Grand Avenue  
Suite A  
Springfield, IL 62711

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: November 24, 2004

NOV 29 2004

STATE OF ILLINOIS  
Pollution Control Board

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

|                                |             |                                      |
|--------------------------------|-------------|--------------------------------------|
| MAC'S CONVENIENCE STORES, LLC, | )           |                                      |
|                                | Petitioner, | )                                    |
|                                | v.          | )                                    |
| ILLINOIS ENVIRONMENTAL         | )           | PCB No. 05- 101                      |
| PROTECTION AGENCY,             | )           | (LUST Appeal – Ninety Day Extension) |
|                                | 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 February 24, 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 October 21, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
  
2. On November 11, 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 earliest the final decision could have been served upon the Petitioner was on October 22, 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: November 24, 2004



# 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

**OCT 21 2004**

**CERTIFIED MAIL**

7002 3150 0000 1257 2511

Mac's Convenience Stores  
Attn: Matt McCure  
P.O. Box 347  
Columbus, Indiana 47202

Re: LPC# 1970155005 -- Will County  
Braidwood/Macs Convenience Store  
105 South Front Street  
LUST Incident No. 20031894  
LUST Technical File

Dear Mr. McCure:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Plan (plan) submitted for the above-referenced incident. This plan, dated June 21, 2004, was received by the Illinois EPA on June 23, 2004. 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).

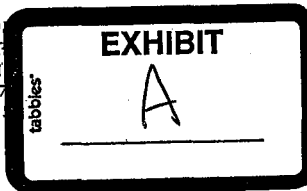
The plan and the associated budget are rejected for the reason(s) listed below (Sections 57.7(a) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

The plan is rejected for the following reason(s):

1. An UST system release has not been confirmed. The 45-Day Report and Site Investigation Plan indicate the USTs did not have a release and refer to tank tightness testing conducted on March 10, 2003. The length of time between the testing and the incident is too long to support tank tightness at the time of the suspected incident. Additional information received by Illinois EPA attributes the release to spills/overfills. However, there is no report of a spill or overfill of the magnitude requiring the actions taken.
2. The plan does not include investigation of the area most likely to be contaminated (i.e. the UST field and system).

The plan budget is rejected for the following reason(s):

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 998-3300  
 ELGIN - 595 South State, Elgin, IL 60123 - (815) 608-3300  
 BUREAU OF LANDS - PEORIA - 2620 N. University St., Peoria, IL 61614 - (317) 244-3300  
 SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (317) 244-3300  
 MARION - 2309 W. Main



HARRISON ST., Des Plaines, IL 60016 - (847) 294-1000  
 PEORIA ST., Peoria, IL 61614 - (309) 693-5463  
 SOUTH FIRST STREET, Champaign, IL 61820 - (217) 278-5800  
 MAIN STREET, Collinsville, IL 62234 - (618) 346-5130  
 (317) 244-3300

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1. Pursuant to Section 57.7 of the Act and 35 Ill. Adm. Code 732.503(b), the associated budget is rejected for the following reason:

A full financial review shall consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed shall include, but not be limited to, costs associated with any materials, activities, or services that are included in the budget plan. The overall goal of the financial review shall be to assure that costs associated with materials, activities, and services shall be reasonable, shall be consistent with the associated technical plan, shall be incurred in the performance of corrective action activities, and shall not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c)).

Without an approvable plan, the proposed budget cannot be fully reviewed.

In addition, the 45-Day Report was also reviewed in conjunction with this report. The 45-Day Report is rejected for the reason(s) listed in Attachment A (Section 57.7(c)(4) of the Act 35 Ill. Adm. Code 732.503(b)).

This action does not constitute any decision or determination regarding the timeliness of the submittal of the 45-Day Report. This decision does not waive or otherwise preclude any enforcement action the Illinois EPA may initiate in response to any apparent violation of timely submittal requirements.

If a release is confirmed, the 45-Day Report items listed in Attachment A must be submitted within 90 days of the date of this letter. A request to re-review the Site Investigation Plan and Budget submitted on June 23, 2004 should also be made at that time or a revised Site Investigation Plan and Budget should be submitted for review. These items should 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

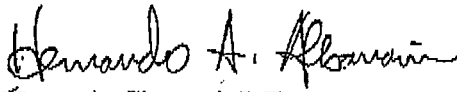
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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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 Lizz Schwartzkopf at 217/557-8763.

Sincerely,

  
for Harry A. Chappel, P.E.

Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:LS

Attachment: Attachment A  
Appeal Rights

c: American Environmental Corp.  
Division File

Attachment A

Re: LPC 1970155005 -- Will County  
Braidwood/Macs Convenience Store  
105 South Front Street  
LUST Incident No. 20031894  
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. Pursuant to 35 Ill. Adm. Code 732.202(d) or 731.163(a), owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in 35 Ill. Adm. Code 732.202(a) and 732.202(b) or 35 Ill. Adm. Code 731.161 and 731.162. This information must include, but is not limited to, the following:
  - a. Data on the nature and estimated quantity of release;
  - b. Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
  - c. Results of the site check required at 35 Ill. Adm. Code 732.202(b)(5) or 731.162(a)(5). Section 732.202(b)(5) or 731.162(a)(5) of 35 Ill. Adm. Code requires that the owner or operator measure for the presence of a release where contamination is most likely to be present at the underground storage tank site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the Office of the State Fire Marshal. In selecting sample types, sample locations, and measurement methods, the owner or operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors, as appropriate, for identifying the presence and source of the release;
  - d. Results of the free product investigations required at 35 Ill. Adm. Code 732.202(b)(6) or 731.162(a)(6), to be used by owners or operators to determine whether free product must be recovered under 35 Ill. Adm. Code 732.203 or 731.164. Section 732.202(b)(6) or 731.162(a)(6) of 35 Ill. Adm. Code requires that the owner or operator investigate to determine the possible presence of free product and begin free product removal as soon as practicable and in accordance with 35 Ill. Adm. Code 732.203 or 731.164.

The report fails to meet the above requirements and, therefore, the requirements of Section 57.6 of the Act for the following reason(s):

The items listed above have not been met. Specifically:

1. The nature and amount of the release has not been investigated.
  2. The tank tightness test is not within an acceptable time frame to support system tightness. A recent test is required to determine whether the system has a leak.
  3. There is no documentation supporting spills and overfills. The activities conducted to this point would indicate the need for a spill or overfill to have been reported to the Office of the State Fire Marshall (Title 41 Illinois Administrative Code Part 170). There is no indication that a spill/overfill of this magnitude was reported.
  4. Although the report indicates that a well survey was conducted, no supporting documentation or maps indicating the well locations were provided.
  5. It does not appear that all subsurface structures were indicated. Specifically, pipelines to the pumps were not indicated.
  6. Although results of limited testing was provided, measurements for the presence of a release where contamination is most likely to be present at the underground storage tank site was not conducted/provided. Specifically the areas surrounding the USTs and pumps have not been investigated. These same areas should be investigated for free product.
2. Pursuant to 35 Ill. Adm. Code 732.202(d), owners or operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in 35 Ill. Adm. Code 732.202(a) and 732.202(b). Within 20 days after confirmation of a release of petroleum from an underground storage tank (UST) system in accordance with regulations promulgated by the Office of the State Fire Marshal, the owner or operator shall remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment (35 Ill. Adm. Code 732.202(b)).

The 45-Day Report fails to demonstrate that enough petroleum was removed from the UST system as is necessary to prevent further release into the environment.

HAC:LS



### 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



From Springfield Regional Office

November 11, 2004

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

**RECEIVED**  
Division of Legal Counsel

**NOV 16 2004**

**Environmental Protection  
Agency**

Re: **Request for Extension for Petitioning the IPCB**  
LPC #1970155005 – Will County  
Mac's Convenience Store #186- Braidwood/Mac's Convenience Stores LLC  
105 South Front Street  
LUST Incident No. 20031894  
American Environmental Project Number 237021

Dear Mr. Kim

Mac's Convenience Stores LLC ("Mac's"), 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 Mac's right to appeal the Agency decision contained in an October 21, 2004 letter regarding a June 21, 2004 Site Investigation Plan and Budget for the above referenced LUST incident. A copy of the Agency letter is attached.

The additional time is needed for the Agency to review additional information submitted today by American Environmental and reconsider their rejection of the plan and associated budget. If necessary, we will participate in a teleconference and/or 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 November 25, 2004. If you need additional information, please advise.

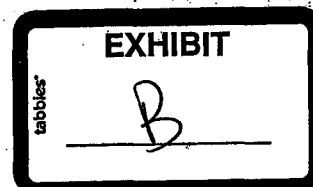
Sincerely,

AMERICAN ENVIRONMENTAL CORPORATION

  
Kenneth M. Miller, P.E., P.G.  
Regional Manager

pc: Kevin Merritt, Mac's Convenience Stores LLC  
Jacob Smith (cover letter only)

Enclosure



Corporate Office

8500 Georgetown Road  
Indianapolis, Indiana 46268-1647  
317-871-4090  
317-871-4094 Fax

Regional Office

3700 W. Grand Ave. Ste. A  
Springfield, IL 62711  
217-585-9517  
217-585-9518 Fax

Regional Office

410 Production Court  
Louisville, KY 40299  
502-491-0144  
502-491-9271 Fax

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on November 24, 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

Kenneth M. Miller  
American Environmental Corporation  
3700 West Grand Avenue  
Suite A  
Springfield, IL 62711

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  
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