

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

DEC 01 2004

MAC'S CONVENIENCE STORES LLC

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

STATE OF ILLINOIS  
Pollution Control Board

05-101  
PCB No. 04-  
(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, November 24, 2004, filed with the Clerk of the Illinois Pollution Control Board a PETITION FOR REVIEW of a certain final Illinois Environmental Protection Agency Decision, a copy of which is herewith served upon you through overnight courier or United States Mail.

Respectfully Submitted,

MAC'S CONVENIENCE STORES LLC  
Petitioner



Matt McCure, Director of Facilities  
Mac's Convenience Stores LLC  
P.O. Box 347  
Columbus, Indiana 47202

RECEIVED  
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

DEC 01 2004

STATE OF ILLINOIS  
Pollution Control Board

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

05-101  
PCB No. ~~04~~  
(LUST Appeal)

PETITION FOR REVIEW OF FINAL AGENCY  
LEAKING UNDERGROUND STORAGE TANK DECISION

The petitioner, Mac's Convenience Stores LLC ("Mac's"), 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, Mac's respectfully states as follows:

I. Facts and Procedural History

1. Mac's owns and operates a gasoline service station on property located at 105 South Front Street, Braidwood, Will County, Illinois (the "Site"). On December 31, 2003, Mac's reported a release of petroleum at the Site and the Site was assigned Incident No. 20031894 based on the presence of elevated concentrations of gasoline constituents in groundwater and hydrocarbon odors in the convenience store building. Mac's retained American Environmental Corporation to complete Early Action and Site Investigation and Corrective Action, including release investigation and confirmation, preparation of a 45 Day Report, and preparation of a Site Investigation Plan.
2. On February 12, 2004, American Environmental Corporation submitted on behalf of Mac's a 45 Day Report to document Early Action activities conducted at the site.

3. On June 21, 2004, American Environmental Corporation submitted on behalf of Mac's a Site Investigation Plan ("SIP") and Budget for investigation to determine the nature, concentration, direction of movement, rate of movement and extent of contamination as well as the physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment.
4. On October 21, 2004, the Agency issued a Final Decision to Mac's in which the SIP and associated budget and the 45 Day Report were rejected, a copy of which is attached hereto as Exhibit A.
5. On November 11, 2004, Mac's made written request to the Agency for an extension of time by which to file a petition for review and on November 24, 2004 Mac's forwarded a copy of the request via facsimile to the Agency, copies of which are attached hereto as Exhibits B and C, respectively. The Agency did not join or respond to Mac's request that the Board extend the thirty-five day period for filing a Petition for Review by an additional ninety days. The written request, which contained additional information to support the SIP, also made minor modifications to the SIP and budget and requested that the Agency re-review the SIP.
6. The grounds for the Petition for Review are as follows:

## **II. The SIP and Budget**

Mac's consultant, Kenneth M Miller, P.E., P.G. of American Environmental Corporation, prepared the June 21, 2004 SIP and Budget in accordance with the Environmental Protection Act ("Act"), in addition to generally accepted engineering practices. Mr. Miller is a Licensed Professional Engineer and Geologist with fourteen (14) years experience in the environmental consulting industry. The SIP detailed the procedures necessary to determine the nature, concentration, direction of movement, rate of movement and extent of contamination as well as the physical features of the site and surrounding area that may affect contaminant transport and risk to human health and safety and the environment.

In accordance with the Act 415 ILCS 5/57.7(a), the Budget included an accounting of all costs associated with the implementation and completion of the SIP.

These costs were reasonable and were necessary to perform the Site Investigation activities included in the SIP.

### **III. Release Investigation and Site Assessment**

Mac's contractors performed release investigation and confirmation steps including UST systems tightness testing in accordance with 35 Illinois Administrative Code 170.580. American Environmental conducted a site assessment to measure for the presence of a release where contamination is most likely to be present because environmental contamination was the basis for suspecting a release. The site assessment consisted of air, soil and groundwater sampling and analysis. Laboratory analyses confirmed the presence of gasoline indicator contaminants in soil and groundwater in concentrations in excess of the Tier 1 remediation objectives at 35 Illinois Administrative Code Part 742. Elevated concentrations of hydrocarbons were also detected by laboratory analysis in air samples from inside the convenience store building and from a recovery well installed for soil vapor extraction.

Based on the absence of UST system leaks and the presence of environmental contamination of soil, groundwater and air near the current UST systems, American Environmental concluded the release was caused by overfilling of one or more of the existing USTs.

The Agency asserted that an UST system release has not been confirmed and alleges that the length of time between the tank testing and the release reporting is excessive and there is no report of a spill. The absence of an UST system leak does not confirm there has not been a reportable release. The regulations acknowledge that situations exist where test results for an UST system do not indicate that a leak exists but environmental contamination is the basis for suspecting a release (41 IAC 170.580(b)(3)). Although Mac's is not aware of a specific event involving a spill or overfill, either, or both may have occurred without Mac's knowledge. No potential sources of contamination were identified on adjacent properties to the southeast or southwest and roadways border the property in the other two directions. The State Fire Marshal routinely requires the reporting of releases based solely on environmental contamination in the absence of evidence of an UST system leak when UST systems are removed.

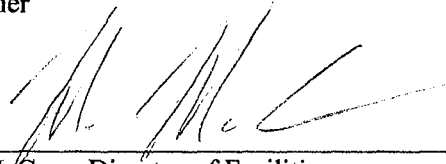
In addition, the Agency rejected the SIP because the plan does not include the investigation of the area most likely to be contaminated (i.e. the UST field and system). This area has already been investigated and evidence of a release has been identified and reported as discussed herein. Further investigation is proposed in the SIP to identify the areas with the highest concentrations and to determine the extent of contamination.

Mr. Miller, other environmental consultants from American Environmental Corporation, and other qualified experts will testify that the release investigation and site assessment is in accordance with industry norms.

WHEREFORE, Petitioner, Mac's Convenience Stores 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 approve the SIP and associated budget.

Respectfully Submitted,

MAC'S CONVENIENCE STORES LLC  
Petitioner



---

Matt McCure, Director of Facilities  
Mac's Convenience Stores LLC  
P.O. Box 347  
Columbus, Indiana 47202



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

Exhibit
A

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):

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

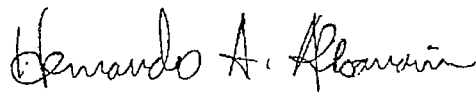
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Page 3

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



Exhibit  
B

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

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

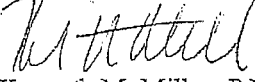
Mac's Convenience Stores LLC ("Mac's"), requests that the Illinois Environmental Protection Agency ("Agency") join them in requesting a 90-day extension to the 35-day deadline for filing a petition for a hearing before the Illinois Pollution Control Board ("IPCB"). This request is being made to preserve 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



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):

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

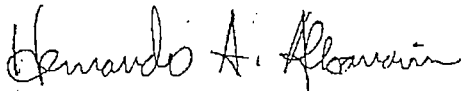
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Page 3

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



# American Environmental

American Environmental Corporation

3700 W. Grand Avenue, Suite A  
Springfield, Illinois 62707  
Phone: (217) 585-9517 Fax: 217-585-9518

8500 Georgetown Road, Indianapolis, IN 46268  
Phone: (317) 871-4090 Fax: (317) 871-4094

410 Production Court, Louisville, KY 40299  
Phone: (502) 491-0144 Fax: (502) 491-9271

# Fax

Exhibit  
C

<b>To:</b>	John Kim – IEPA Legal Division	<b>From:</b>	Ken Miller
<b>Fax:</b>	(217) 782-9807	<b>Pages:</b>	13
<b>Phone:</b>	(217) 782-5544	<b>Date:</b>	November 24, 2004
<b>Re:</b>	Mac's Convenience Store #186 in Braidwood, Illinois Incident 20031894	<b>CC:</b>	Lizz Schwartzkopf (Fax: 524-4193)

Urgent     For Review     Please Comment     Please Reply     For Information

### CONFIDENTIALITY NOTICE:

The documents constituting this facsimile transmittal may contain confidential information belonging to the sender which is legally privileged and exempt from disclosure under applicable law. The information is intended only for the use of the individual(s) or entity named above. If the reader is not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance upon the content of this facsimile transmittal is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at the number above to arrange for return of the original documents to us. Thank You.

Mr. Kim;

A copy of the letter I mentioned in my voice mail messages is attached. The deadline for filing a request for extension of the Agency 10/21/04 decision is tomorrow, 11/25/04.

Also attached is a letter requesting a 90-day extension for appealing an 11/10/04 Agency decision on the same site.

Please advise of the status of the Agency review of this request.

Ken



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):

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

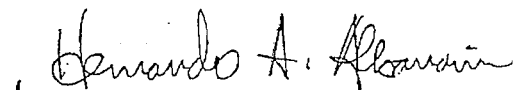
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

Page 3

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



American  
Environmental

From Springfield Regional Office

VIA FACSIMILE (217-782-9807)

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

November 24, 2004

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 a November 11, 2004 letter regarding a July 15, 2004 application for payment from the Underground Storage Tank Fund 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 November 11, 2004 by American Environmental and reconsider their deductions to the application amount. It appears the reasons for the deductions are similar to the reasons stated in the Agency's October 21, 2004 letter for rejecting the Site Investigation Plan. 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 December 15, 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



# 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

NOV 10 2004

Mac's Convenience Stores, LLC  
Attention: Matt McCure  
Post Office Box 347  
Columbus, IN 47202

Re: LPC #1970155005 -- Will County  
Braidwood/Mac's Convenience Stores  
105 South Front Street  
LUST Incident No. 20031894  
LUST FISCAL FILE

Dear Mr. McCure:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated July 15, 2004 and was received by the Agency on July 16, 2004. The application for payment covers the period from January 9, 2004 to May 28, 2004. The amount requested is \$8,787.43.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the billing submittal received by the Agency on June 4, 2004 for \$43,750.11. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On July 16, 2004, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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

Page 2

applicant 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:

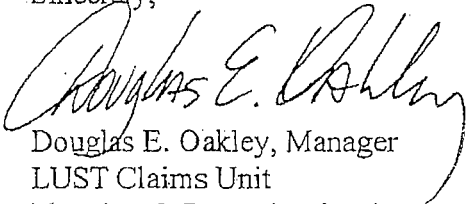
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions or require further assistance, please contact Doug Tolan of my staff and/or Lizz Schwartzkopf at 217/782-6762.**

Sincerely,



Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:DT:jk\040642.doc

Attachment

cc: American Environmental Corporation

Attachment A  
Technical Deductions

Re: LPC #1970155005 -- Will County  
Braidwood/Mac's Convenience Store  
105 South Front Street  
LUST Incident No. 200318941  
LUST Fiscal File

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

Item #      Description of Deductions

1.      \$2,992.56, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used 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)).

Documentation of measurements/methods used to confirm the release have not been provided. In addition, the release has not been demonstrated to be from the USTs.

Please note these costs are also deducted for additional reasons listed below. Only one deduction was made.

2.      \$2,992.56, deduction for costs in which the owner or operator failed to justify that all costs were attributable to each underground storage tank at the site. (Section 57.8(m)(2) of the Act and 35 Ill. Adm. Code 732.608)

A determination of which USTs are related to this release has not been made. Illinois EPA cannot determine the eligibility of these costs without this information. This reason would also apply to other costs submitted in relation to this incident.

3.      \$2,992.56, deduction for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund (Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 732.608).

Six of the nine USTs on-site have been determined ineligible to access the LUST Fund. All costs related to this incident may be ineligible if the release is determined to be from the ineligible USTs, or costs may be required to be prorated according to established procedures.

4.      \$2,992.56, deduction for costs associated with sites that have not reported a release to the Illinois Emergency Management Agency (IEMA) or are not required to report a release to IEMA (35 Ill. Adm. Code 732.606(x)). An owner or operator is eligible to access the Fund if the owner or operator notified the IEMA of a confirmed release and the costs were incurred after the notification was made (Section 57.9(a)(5) of the Act).

If the spills and/or overfills were less than the required quantity, a reporting of a release would not have been required.

If the spills and/or overfills were equal to or greater than the required quantity a release may not have been reported in the required time frame.

Either case may affect the eligibility of the release/incident to access the UST Fund. (Please see 41 LAC Part 170.)

5. \$2,992.56, deduction for 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 (35 Ill. Adm. Code 732.606(y)). 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)).

Without additional information, Illinois EPA cannot determine if these costs exceed minimum requirements.

6. \$2,992.56, deduction for costs of alternative technology that exceed the costs of conventional technology (35 Ill. Adm. Code 732.606(bb)). 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)).

Without additional information, Illinois EPA cannot determine if these costs exceed minimum requirements.

7. \$2,992.56, deduction for costs due to excessive early action activities. (Section 57.6(b) of the Act and 35 Ill. Adm. Code 732.606(o))
8. \$12.75, deduction for Ace Hardware receipt #00717849 21. These items do not appear to be related to the work at the site and also appear to exceed the minimum requirements.
9. \$860.75, deduction for costs associated with concrete and/or asphalt replacement. The Illinois EPA will only reimburse concrete and/or asphalt replacement once for this occurrence. Until the above-referenced site has received a No Further Remediation Letter, the Illinois EPA cannot determine if these costs are unreasonable or if they are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act, since at this time it is unclear whether additional remediation may be required. (Sections 57.5(a) and 57.7(c)(4)(C) of the Act; 35 Ill. Adm. Code 732.505(c) and 732.606(o))

Once the above-referenced site has received a No Further Remediation Letter, a resubmission with additional information of the costs associated with concrete and/or asphalt replacement (as well as any supporting documentation, including a copy of the No Further Remediation Letter) may be submitted to the Illinois EPA.

10. The billing(s) submitted includes costs that lack supporting documentation. Since there is no supporting documentation of costs, the Illinois EPA cannot determine that the costs were not used 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)).

HAC:LS