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APR 26 2005

STATE OF ILLINOIS  
Pollution Control Board

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

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

PCB No. 05- **189**  
(LUST Appeal - Ninety Day Extension)

NOTICE

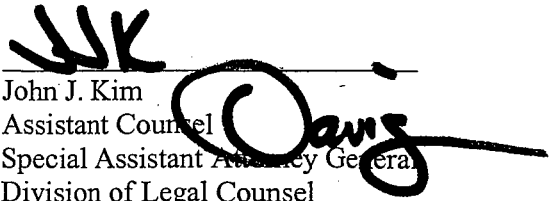
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

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

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

  
\_\_\_\_\_  
John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: April 22, 2005

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

**APR 26 2005**

STATE OF ILLINOIS  
Pollution Control Board

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

PCB No. 05- 189  
(LUST Appeal – Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION  
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to July 21, 2005, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:


1. On March 15, 2005, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)
2. On April 21, 2005, 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. Upon information and belief, the Petitioner did receive the information on March 18, 2005. (Exhibit B)


3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

  
\_\_\_\_\_  
John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: April 22, 2005



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

217782-6762

**CERTIFIED MAIL**

7002 3150 0000 1110 0326

**MAR 15 2005**

Wayne & Dennis Swanson  
Dennis Swanson  
2989 Riverside Plaza  
Steamboat Springs, CO 80489

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

Dear Mr. Swanson:

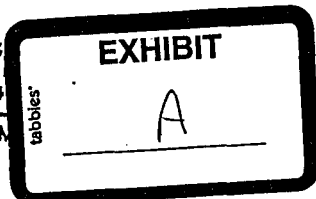
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 45-Day/Corrective Action Completion Report (report) submitted pursuant to 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.202(e) and 732.300(b). The report, dated «ReportDate», was received by the Illinois EPA on «ReceivedDate».

Pursuant to 35 Ill. Adm. Code 732.300(b)(1), an owner or operator may choose to remediate soil and groundwater in accordance with the remediation objectives in 35 Ill. Adm. Code 732.408 without conducting a site classification. If owners or operators choose not to characterize the site in accordance with the procedures established in Title XVI of the Environmental Protection Act and 35 Ill. Adm. Code 732, and to proceed under 35 Ill. Adm. Code 732.300(b)(1), they may not be entitled to full payment if a request for reimbursement from the Underground Storage Tank Fund is submitted.

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

1. The site is located within the setback of a CWS Phase 1 Wellhead Protection Area, therefore the Groundwater Ingestion pathway cannot be excluded and Class II Soil Objectives to groundwater ingestion cannot be used pursuant to Section 742.320 (c).
2. A roof overhang does not qualify as an engineered barrier pursuant to Section 742.1105.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-2300  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 342-2300  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 270-5800  
MARION - 2309 W. Main Street, Marion, IL 62959 - (618) 993-7200



1 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
University St., Peoria, IL 61614 - (309) 693-5463  
2125 South First Street, Champaign, IL 61820 - (217) 270-5800  
2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120  
(618) 993-7200

Page 2

3. There are several exceedences of benzo(a) anthracene for the soil component to groundwater ingestion, of which the highest is B-5 at 14.5 mg/kg. The groundwater ingestion exposure route cannot be eliminated pursuant to Section 742.320(c). The Agency is requiring either a Tier III evaluation pursuant to Section 742.900 or to remediate the PNA exceedences.
4. The engineered barrier if accepted by the Agency must also cover soil PNA exceedences B-1, B-3, and B-9 pursuant to Section 742.1105.
5. It is vague via the maps included as to where Mr. Dempsey's property lines are located. Please submit a map with property lines and depicting scale pursuant to Section 732.307(g)(2).
6. If contaminants travel off-site other Institutional Controls will have to be proposed.
7. A Professional Engineer Certification must accompany the Corrective Action Completion Report certifying the document is true, accurate, and complete pursuant to 35 Ill ADM Code 732.

It should be noted that the 45-Day Report is approved pursuant to 35 Ill. Adm. Code 732.503(b); therefore, the 45-day reporting requirements of 35 Ill. Adm. Code 732.202(e) or 731.163(b) have been satisfied. This action does not constitute any decision or determination regarding the timeliness of the submittal of the 45-Day Report, nor does it waive or otherwise preclude any enforcement action the Illinois EPA may initiate in response to such a violation.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

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



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

TAH:JSR

Attachment: Appeal Rights

**ALSCHULER, SIMANTZ & HEM, LLC**  
ATTORNEYS AT LAW

BENJAMIN P. ALSCHULER (1933-2001)  
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CAROL J. OWENS  
PARALEGAL  
JANICE S. PITTMAN  
PARALEGAL  
JULIE K. BROMANN  
PARALEGAL

April 21, 2005

Via Facsimile @ (217) 782-9807

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

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

Dear Mr. Kim:

This law firm represents Wayne and Dennis Swanson with respect to the above-referenced matter.

The Illinois Environmental Protection Agency issued its final decision with respect to the 45-Day/Corrective Action Completion Report filed for the above-referenced matter, by letter of March 15, 2005, received by our clients on March 18, 2005. On behalf of our clients, we are requesting a 90-day extension of the time to file an appeal in the above-referenced matter.

Following please find a copy of the final decision letter, dated March 15, 2005. If you require any further information, please contact the undersigned.

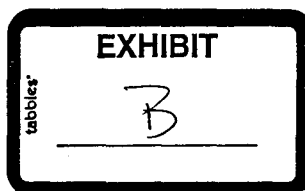
Sincerely yours,

ALSCHULER, SIMANTZ & HEM, LLC

*Daniel A. Reed*  
Daniel A. Reed

DAR/ci  
Attachment

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





## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on April 22, 2005, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

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

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

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Respondent

  
  
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