

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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SEP 12 2005

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 06- 31
(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

Karen Kavanagh Mack
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: September 8, 2005

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

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ILLINOIS STATE TOLL HIGHWAY)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB No. 06- **37**
(LUST Appeal – Ninety Day Extension)

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

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board ("Board") grant an extension of the thirty-five (35) day period for petitioning for a hearing to December 19, 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. The 125th day is December 18, 2005, a Sunday. In support thereof, the Illinois EPA respectfully states as follows:

1. On August 10, 2005, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)

2. On August 24, 2005, the Petitioner made a written request via electronic mail 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. Tracking information from the Certified Mail number on the final decision indicates the final decision was received on August 15, 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
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1021 North Grand Avenue, East
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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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

AUG 10 2005

7004 2510 0001 8647 4573

Illinois State Toll Highway Authority
Attention: Jeffrey S. Dailey
2700 Ogden Avenue
Downers Grove, Illinois 60515

Re: LPC #0312975141 -- Cook County
South Holland / Lincoln Oasis
I-294, East Bound
LUST Incident No. 941818, 990490, 20000446, 20000450 & 20001562
LUST Technical File

Dear Mr. Dailey:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Completion Report (report) for the above-referenced incident. The report was dated April 8, 2005, and was received by the Illinois EPA on April 12, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

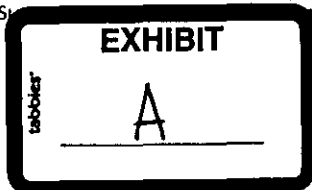
Pursuant to 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.409(c) and 732.503(b), the report is rejected for the reasons listed in Attachment A.

Pursuant to 35 Ill. Adm. Code 732.401, a response must be submitted within 120 days of the date of this letter 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 at the beginning of this letter.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Marion, IL 62959 - (217) 993-7200



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The Illinois EPA does not require the submission or approval of a budget if the owner or operator will not seek payment of corrective action costs from the Underground Storage Tank Fund.

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 Melinda Friedel, P.E. at 217/782-6762.

Sincerely,

Clifford Z Wheeler for MTL

Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachment: Attachment A
Appeal Rights

c: Erin Burke / Wight & Company
Division File

Attachment A

Re: LPC #0312975141 -- Cook County
South Holland / Lincoln Oasis
I-294, East Bound
LUST Incident No. 941818, 990490, 20000446, 20000450 & 20001562
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 732.409(a)(2)(B), a High Priority corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil borings logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. A High Priority corrective action completion report shall demonstrate the following:
 - a. For sites submitting a Site Classification Completion Report pursuant to 35 Ill. Adm. Code 732.312 (Classification by Exposure Pathway Exclusion), the concentrations of applicable indicator contaminants meet the remediation objectives developed under 35 Ill. Adm. Code 732.408 for any applicable exposure route not excluded from further consideration under 35 Ill. Adm. Code 732.312.

The report fails to meet the above requirements, and, therefore, the requirements of Section 57.7(c)(1)(E) of the Act, for the following reason(s):

Any modeled groundwater contamination predicted to extend off-site must be addressed before a No Further Remediation Letter can be issued. The soil inhalation exposure has not been excluded from further consideration based on the information included in the completion report.

2. Incident #20031416 cannot be considered a re-reporting of incident #941818. This decision was previously made in the Illinois EPA review letter dated May 7, 2004.
3. The owner/operator needs to clarify if free product continues to be encountered in the UST sumps. This should also include whether or not any product has been identified during recent gauging events.
4. The institutional controls proposed for site closure must be clarified. The submitted Owner/Operator Property Summary form included a construction worker caution statement and maintained engineered barrier consisting of a building that were not included in the closure report.

5. Hydraulic gradient calculations need to be provided along with any recent groundwater elevation data collected from the subject site.
6. The depths of the soil confirmation samples need to be specified along with the previously identified soil sample locations that were over-excavated.
7. The most conservative hydraulic conductivity value reported from this site (6.27×10^{-3} cm/s from MW-2) should be used in the Tier 2 evaluation.

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: "Karen Mack" <mack@dlec.com>
To: "John Kim" <John.Kim@epa.state.il.us>
Date: 8/24/2005 4:10:14 PM
Subject: ISTHA - Lincoln Oasis South (Agency Decision Letter, dated August 10, 2005 - rejection of CACR)

Hi, John:

Hope all is well with you. We just received a response from the Agency with rejecting the CACR for Lincoln South. I am attaching a copy for your review. While we have issues with respect to most of the responses, I am particularly concerned about the statement contained in paragraph 2 of the attachment which reads: "Incident #20031416 cannot be considered a re-reporting of incident #941818. This decision was previously made in the Illinois EPA review letter dated May 7, 2004." When we met at my office this past winter, you and I discussed this issue and it was my understanding from that meeting that the 2004 incident would be covered by the remediation being conducted at the Site and that the previous statements to this effect were not correct. Could you please confirm that my recollection is correct? It simply doesn't make sense that ISTHA would have to conduct a completely separate investigation, remediation, etc. for this incident, but the import from the August 10, 2005 letter suggests differently.

Given that this is just one of the issues raised in the letter, I am requesting that you file a 90 day extension request with the Board regarding the appeal of this decision. Please let me know if there is any additional information you need to process this request.

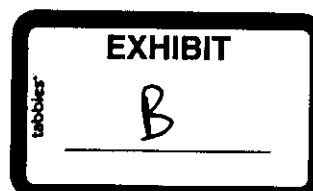
Regards,

Karen

Karen Kavanagh Mack
DEUTSCH, LEVY & ENGEL, CHARTERED
225 W. Washington St., Suite 1700
Chicago, IL 60606
312/346-1460
cell: 312/560-6854
fax: 312/346-1859
direct fax: 312/264-0425

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CC: "Kenneth W. Funk" <funk@dlec.com>



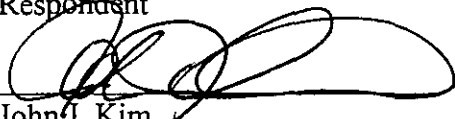
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 8, 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 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

Karen Kavanagh Mack
Deutsch, Levy & Engel
225 West Washington Street
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