

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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DEC 06 2005

STATE OF ILLINOIS  
Pollution Control Board

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

PCB No. 06- 87  
(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, IL 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: December 2, 2005

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

WAYNE & DENNIS SWANSON,            )  
                                          Petitioner,                            )  
                                          v.                                            )  
ILLINOIS ENVIRONMENTAL            )     PCB No. 06-81  
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 March 6, 2006, 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 125<sup>th</sup> day is March 5, 2006, a Sunday, and the next business day is March 6, 2006. In support thereof, the Illinois EPA respectfully states as follows:

1. On October 27, 2005, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On November 15, 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. The Petitioner’s request did not represent when the final decision was received. However, using the certified mail tracking number on the final decision, the Illinois EPA has determined the final decision was received on October 31, 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: December 2, 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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

**CERTIFIED MAIL**

7004 2510 0001 8649 1259

**OCT 27 2005**

Wayne & Dennis Swanson  
 Attention: Dennis Swanson  
 2989 Riverside Plaza  
 Steamboat Springs Colorado 80487

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 Corrective Action Completion Report (report) submitted pursuant to 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.300(b). The report, dated June 30, 2005, was received by the Illinois EPA on July 5, 2005.

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 Soil Component of Groundwater Ingestion pathway cannot be excluded and Class II soil objectives of groundwater ingestion cannot be used pursuant to Section 742.320 (c).
2. The engineered barrier if accepted by the Agency must cover all Polynuclear Aromatic soil exceedences pursuant to Section 742.1105.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-2300  
 ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-2300  
 BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
 SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3397  
 MARION - 2309 W. Main Street, Marion, IL 62959 - (618) 993-7200



W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
 University St., Peoria, IL 61614 - (309) 693-5463  
 125 South First Street, Champaign, IL 61820 - (217) 278-5800  
 609 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
 (618) 993-7200

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3. There are several exceedences of Benzo (a) anthracene for the Soil Component of Groundwater Ingestion; of which B-9 (N) is the highest at 8.2 mg/kg. The Soil Component of Groundwater Ingestion exposure route cannot be eliminated pursuant to Section 742.320 (c). The Agency suggests a Tier III evaluation pursuant to Section 742.920 or remediate the Polynuclear Aromatic exceedences.
4. The Agency is requiring a resampling of MW-1 groundwater. There is an exceedence of five Polynuclear Aromatic compounds above groundwater objectives. If an exceedence occurs the Agency will require further investigation West of the property line.

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

c: Deuchler Environmental, Inc.  
Division File

### 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:

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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

**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

November 15, 2005

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**

**RECEIVED**  
Division of Legal Counsel  
NOV 18 2005  
Environmental Protection  
Agency

Dear Mr. Kim:

This law firm represents Wayne and Dennis Swanson with respect to the above-referenced matter. Please be advised that, 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 dated October 27, 2005. If you require any further information, please contact the undersigned. Thank you.

Sincerely yours,

**ALSCHULER, SIMANTZ & HEM, LLC**

  
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 December 2, 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  
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