

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

DEC 07 2005

STATE OF ILLINOIS
Pollution Control Board

DOWNTOWN SHELL
(GREENVILLE),

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 06-38
(UST Appeal)

NOTICE OF FILING

To: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

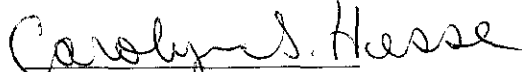
PLEASE TAKE NOTICE that on Wednesday, December 7, 2005, we filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decision.

Respectfully submitted,

Downtown Shell/Greenville

Dated: December 7, 2005

By:


One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606
(312) 357-1313

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.103(d).]

CERTIFICATE OF SERVICE

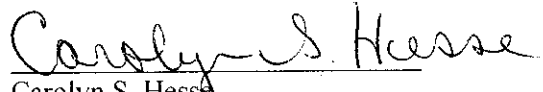
It is hereby certified that a true copy of the foregoing Petition for Review of Illinois Environmental Protection Agency Decision was mailed, first class, to the following on December 7, 2005:

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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

It is hereby certified that a true copy of the foregoing Petition for Review of Illinois Environmental Protection Agency Decision was hand delivered to the following on December 7, 2005:

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


Carolyn S. Hesse

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Barnes & Thornburg LLP
One North Wacker Drive, Suite 4400
Chicago, Illinois 60606
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**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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STATE OF ILLINOIS
Pollution Control Board

DOWNTOWN SHELL (GREENVILLE))	
)	
Petitioner,)	
)	
v.)	PCB 06-38
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISION**

Downtown Shell (Greenville) ("Downtown Shell"), by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Downtown Shell ("Petitioner"), is the owner of a former gasoline service station located 317 W. College Avenue, Greenville, Bond County, Illinois (the "Station"). This gasoline service station had underground storage tanks (UST's) on the property, which stored gasoline, used oil and kerosene.
2. LUST Incident Number 982949 was obtained following a site investigation. The site has also been assigned LPC #0050055056-Bond County.
3. On April 7, 2005, CW³M, the contractor hired by Downtown Shell to assist it with corrective action at the Station, sent to the Agency a High

Priority Corrective Action Plan and Budget to perform corrective action at the Station.

4. On August 5, 2005, the Agency sent a letter to Petitioner rejecting the April 7, 2005, High Priority Corrective Action Plan and Budget (the "Letter"). The Letter included a list of additional information requested by the Agency and acknowledged that the corrective action included bioremediation. (*See* Exhibit A.)
5. The Letter listed a number of questions/comments, including questions about the contents of the bioremediation slurry and level of oxygen in it.
6. CW³M, on behalf of Petitioner, had already provided to the Agency information relating to the bioremediation slurry and the Agency's Letter acknowledged that a list of materials that may be in the slurry had been provided.
7. CW³M on behalf of Petitioner had explained to the Agency previously that the exact concentrations of ingredients and other specifications for the bioremediation slurry vary from site to site and from time to time at the same site. The specifications for a particular bioremediation slurry mixture to be injected are determined only after testing and analyzing site conditions, which change over time and vary between sites.
8. The Agency's letter of August 5, 2005, provides no additional information regarding why IEPA disapproved a remediation technology that it had approved previously.

9. The Agency's August 5, 2005, letter includes an attachment labeled appeal rights as the Agency's decision is a final decision, appealable to the Illinois Pollution Control Board.
10. Petitioner is appealing the Agency's decision Letter dated August 5, 2005.
11. On September 12, 2005 the parties timely filed a joint notice to extend the 35 day period to appeal the Agency's August 5, 2005 decision. On September 15, 2005 the Board issued an order extending the time to appeal to December 9, 2005. (*See Exhibit B*).

WHEREFORE, Downtown Shell (Greenville) respectfully requests that the Board enter an order requiring the Agency to approve the Corrective Action Plan and Budget to allow the cleanup to proceed at this facility and for Downtown Shell's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Downtown Shell (Greenville)

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

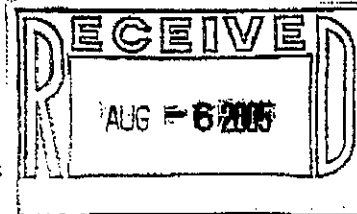
1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

AUG 05 2005



CERTIFIED MAIL

7004 2510 0001 8647 4399

Downtown Shell
Attention: Mr. Don McCray
Route 3, Box 58
Greenville, Illinois 62246

Re: LPC # 0050055056 - Bond County
Greenville / Downtown Shell
317 West College Avenue
LUST Incident 982949
LUST Technical File

Dear Mr. McCray:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated April 7, 2005, was received by the Illinois EPA on April 7, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is rejected for the following reasons:

1. Item Number 2 of Illinois EPA's denial letter comments in the December 12, 2003 letter have not been adequately addressed.

Specifically;

- a. Item 2.a asked for the contents of the bioremediation slurry. While Illinois EPA acknowledges that a list of materials that "may be included" has been provided, a list of what is actually in the biological slurry and at what quantities has not. The actual contents of this slurry must be provided.
- b. Item 2.b asked for the impact that the bioremediation slurry will have on groundwater quality. It is stated "There is no long term risk to groundwater

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) 782-3397 • COLLINSVILLE - 1001 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main Street, Marion, IL 62959 - (217) 993-7200

EXHIBIT

A

Page 3

While a full review of the budget has not been conducted, it is noted that the budget includes 3,320 square feet of 4" concrete replacement. The areal extent of the concrete to be replaced should be provided, as well as documentation that 4" of concrete currently exists over this area. Please note that only the replacement of concrete over those areas which have been excavated will be considered reasonable. In addition, it is noted that a line item of "Injection Point (Trench)", quantity of four, at a rate of \$500 per item. What this line item includes should be provided.

Pursuant to 35 Ill. Adm. Code 732.401, the Illinois EPA requires submittal of a revised plan, and budget if applicable, 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 shown at the beginning of this letter.

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 information, please contact Michael A. Heaton at 217/524-3312.

Sincerely,



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

MTL:mh\982949f9.doc

cc: Ms. Carol L. Rowe, PG - CW3M Company (Springfield, Illinois)
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:

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

ILLINOIS POLLUTION CONTROL BOARD
September 15, 2005

DOWNTOWN SHELL,)	
)	
Petitioner,)	
)	
v.)	PCB 06-38
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	(90-Day Extension)
PROTECTION AGENCY,)	
)	
Respondent.)	

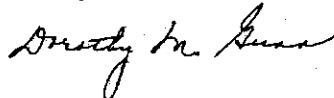
ORDER OF THE BOARD (by J.P. Novak):

On September 12, 2005, the parties timely filed a joint notice to extend the 35-day period within which Downtown Shell may appeal an August 5, 2005 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency rejected the high priority corrective action plan for Downtown Shell's leaking underground petroleum storage tank facility located at 317 West College Avenue, Greenville, Bond County.

The Board extends the appeal period until December 9, 2005, as the parties request. See 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 105.406. If Downtown Shell fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 15, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

