

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 30 2006

STATE OF ILLINOIS
Pollution Control Board

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

PCB No. 06-179
(LUST Appeal - Ninety Day Extension)

NOTICE

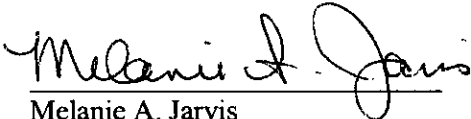
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

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



Melanie A. Jarvis
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: May 25, 2006

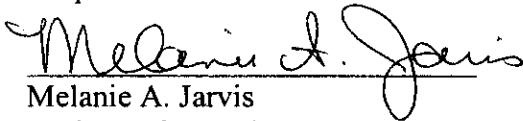
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 25, 2006, 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
Suite 1700
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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PROTECTION AGENCY,)
Respondent.)

PCB No. 06-179
(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, Melanie A. Jarvis, 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 August 28, 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. In support thereof, the Illinois EPA respectfully states as follows:

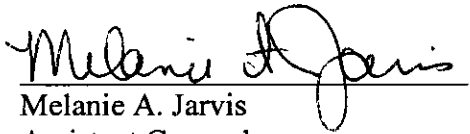
1. On April 20, 2006, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On May 22, 2006, the Petitioner made a written request via fax to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board 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 April 25, 2006. (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



Melanie A. Jarvis
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: May 25, 2006

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 8590 6518

APR 20 2006

Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515-1703

RE: LPC 0434525056 - Cook County
Hinsdale - Amoco; Exxon Mobil Service Station 05-A4H (east);
Illinois State Toll Highway Authority Hinsdale Oasis (east)
Interstate 294, Mile Post 25.2
LUST Incidents 860430, 890110 (east), 941726, 20040981 & 20041036
LUST TECHNICAL FILE

Gentlemen:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan & Budget & Completion Report submitted for the above referenced incidents. This information, dated December 7, 2005, was received by the Illinois EPA on December 30, 2005, and was prepared by Wight & Company. The report proposes the information which is summarized in Attachment 1. Citations in this letter are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code.

Pursuant to Section 57.7(c)(4) of the Act and 35 Illinois Administrative Code 732.405(c), 732.409(c) and 732.503(b), the High Priority Corrective Action Plan & Completion Report is rejected for the reasons which are explained in Attachment 2.

Pursuant to Sections 57.7(a)(1) and 57.7(c)(4) of the Act and 35 Illinois Administrative Code 732.405(e) and 732.503(b), the High Priority Corrective Action Budget is rejected for the reasons which are explained in Attachment 3.

The Illinois EPA also has additional comments. These comments are explained in Attachment 4.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 5.

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) 278-5
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., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

Exhibit A

Any questions regarding this letter should be directed to Michael Piggush via phone (217-782-3101), fax (217-524-4193), or e-mail (epa4200@epa.state.il.us).

Sincerely,



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

Attachments (5):

1. Summary of Report Proposal.
2. High Priority Corrective Action Plan & Completion Report Disapproval Reasons.
3. High Priority Corrective Action Budget Disapproval Reasons.
4. Additional Comments.
5. Appeal Rights.

cc: Deutsch, Levy & Engel
Wight & Company
Division File

ATTACHMENT 1

SUMMARY OF REPORT PROPOSAL

RE: LPC 0434525056 - Cook County
Hinsdale - Amoco; Exxon Mobil Service Station 05-A4H (east);
Illinois State Toll Highway Authority Hinsdale Oasis (east)
Interstate 294, Mile Post 25.2
LUST Incidents 860430, 890110 (east), 941726, 20040981 & 20041036
LUST TECHNICAL FILE

The report proposes the following information:

1. The report proposes that LUST Incidents 860430, 890110, 941726, 20040981 & 20041036 represent releases from 20 underground storage tank systems containing gasoline, diesel fuel, heating oil & waste oil. The report proposes that all of these underground storage tank systems have been removed.
2. The report proposes that 4 new 15,000 gallon underground storage tank systems (3 containing gasoline & 1 containing diesel fuel) are currently in operation.
3. The report proposes that the indicator contaminants would be the following: BETX & PNAs.
4. The report assumes a Class 1 groundwater designation, in accordance with 35 Illinois Administrative Code 620.210.
5. The report proposes that corrective action activities were performed from June 2004 → August 2004, as follows:
 - a. The report proposes that 5,595 cubic yards of contaminated soil were excavated & disposed of.
 - b. The report proposes that 175,000 gallons of contaminated groundwater were removed & disposed of.
 - c. The report proposes that free product was not encountered.
 - d. The report proposes that a total of 86 soil samples & 2 water samples were obtained. The report proposes that the samples were analyzed for the following: BETX & PNAs.

- e. The report proposes that the excavation areas were backfilled. The report proposes that a total of 1,957.79 tons of backfill material were used.
 - f. The report proposes that the potable water supply well for the site property was abandoned. The report proposes that a total of 3,000 pounds of bentonite & 1,880 pounds of concrete were used.
6. The report proposes the use of the following restrictions:
- a. The report proposes the use of an industrial / commercial land use restriction for the site property.
 - b. The report proposes the use of a groundwater use restriction for the site property.

(The report proposes a maximum compliance distance of 5.7 feet for groundwater contamination).
7. The report requests approval of the following, in accordance with 35 Illinois Administrative Code 732:
- a. The report requests approval of a High Priority Corrective Action Plan.
 - b. The report requests approval of a High Priority Corrective Action Budget, for an amount of \$616,751.35.
 - c. The report requests approval of a High Priority Corrective Action Completion Report.

ATTACHMENT 2

HIGH PRIORITY CORRECTIVE ACTION PLAN & COMPLETION REPORT DISAPPROVAL REASONS

RE: LPC 0434525056 - Cook County
Hinsdale - Amoco; Exxon Mobil Service Station 05-A4H (east);
Illinois State Toll Highway Authority Hinsdale Oasis (east)
Interstate 294, Mile Post 25.2
LUST Incidents 860430, 890110 (east), 941726, 20040981 & 20041036
LUST TECHNICAL FILE

The Illinois EPA does not approve of the High Priority Corrective Action Plan & Completion Report, for the following reasons:

1. The report proposes that LUST Incidents 20040981 & 20041036 apply to the 5-12,000 gallon underground storage tank systems which were installed in 1985 & removed in July 2004. The report also proposes that LUST Incidents 20040981 & 20041036 are a re-reporting of LUST Incident 941726. It is not clear how it was determined that LUST Incidents 20040981 & 20041036 are a re-reporting of LUST Incident 941726. It is not clear how it was determined that additional releases did not occur from the 5-12,000 gallon underground storage tank systems during the 10 years that the underground storage tank systems were in operation since LUST Incident 941726 was reported.

Please also note that LUST Incident 941726 was previously reported to apply to all 20 of the underground storage tank systems located at the east Oasis, rather than just the 5-12,000 gallon underground storage tank systems which were installed in 1985 & removed in July 2004.

The Illinois EPA deems that LUST Incidents 20040981 & 20041036 constitute a new occurrence.

2. In accordance with 35 Illinois Administrative Code 732.310(b), for releases of gasoline (from underground storage tank systems) which were reported to the Illinois Emergency Management Agency on or after June 1, 2002, all samples must be analyzed for MTBE (in addition to BETX & possibly Pb).

Based upon the information which was provided in Item (1) above, LUST Incidents 20040981 & 20041036 constitute a new occurrence. Therefore, MTBE is an additional indicator contaminant for these LUST Incidents. It does not appear that any of the closure samples were analyzed for MTBE.

3. Lead is an indicator contaminant for some of the underground storage tank systems. The report does not mention anything regarding lead.
4. The report does not contain the correct set of diagrams. The diagrams which were included with the report are for the west oasis, rather than the east oasis.

Please also note the following:

- a. The diagrams which were included with the report do not illustrate the complete site property boundaries.
 - b. The diagrams which were included with the report did not contain any cross-sections of any of the excavation areas.
5. The tabular summary of sample analyses does not indicate which sample results were subsequently excavated & replaced by other sample results.

Based upon this, for purposes of this review, the Illinois EPA is assuming that, for example, soil sample PP-29A is a replacement of soil sample PP-29.

6. Corrective action is required for all contamination in excess of the most stringent remediation objectives which are outlined in 35 Illinois Administrative Code 742.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The Tier 1 Class 1 groundwater remediation objective for benzo (a) anthracene (0.000 13 mg/L) was exceeded for groundwater sample CTP-W (0.000 15 mg/L). The report does not address this issue.
7. The report proposes that the greatest remaining concentration of benzene (in soil) is at the location of soil sample PP-29A (0.083 mg/kg). This is not correct. The remaining concentration of benzene (in soil) is greater at the location of soil sample PP-35 (0.120 mg/kg).
 8. With regard to the proposed Tier 2 remediation objectives, the report states that the source area is the area of the current tank field. This is not correct. The source area is the area of the plume of contamination in excess of the most stringent Tier 1 remediation objectives.
 9. With regard to Equation R26, the report states that the proposed value for hydraulic conductivity (K) (0.0864 cm/day) was determined based upon an assumption. This is not adequate. Hydraulic conductivity must be determined via site specific field measurements.

10. Groundwater samples must be collected from either conventional monitoring wells, pre-pack monitoring wells (for monitoring periods of up to 1 year), or screen point samplers.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The 2 groundwater samples which were obtained for purposes of closure were obtained from open excavation areas.

11. Logs must be provided for all soil borings & monitoring wells. Logs must illustrate the following information (as applicable):

- a. Subsurface soil types.
b. Location of groundwater.
c. Soil boring recovery.
d. Field screening measurements.
e. Location of sample collection.
f. Monitoring well construction.

Logs must be drawn to vertical scale.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The report does not contain the soil boring logs for soil borings SP-66 → SP-69 (which were performed on May 5, 2003).

12. Chain of custody forms must be provided for all sample analyses.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The report does not contain the chain of custody forms for the soil samples which were obtained from soil borings SP-66 → SP-69 (which were performed on May 5, 2003).

13. The actual laboratory reports (from the laboratory) must be provided for all sample analyses.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The report does not contain the laboratory reports for the soil samples which were obtained from soil borings SP-66 → SP-69 (which were performed on May 5, 2003).

14. 35 Illinois Administrative Code 742.320(c) & (e) effectively set forth well survey requirements related to the exclusion of the groundwater ingestion exposure pathway. The report does not address this issue. The report does not contain any well survey information.
15. Waste manifests must be provided for all contaminated materials which are removed off-site.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The report does not contain all of the waste manifests for the 5,595 cubic yards of contaminated soil which were excavated & disposed of. The report only contains the waste manifests for 2,835 cubic yards of contaminated soil.
 - b. The report does not contain the waste manifests for the 175,000 gallons of contaminated groundwater which were removed & disposed of.
16. Some areas of the legal descriptions make reference to the locations of highway rights of way. This is not an acceptable legal description. If the locations of the highway rights of way were to change, then the legal description would no longer be correct.
 17. The form does not contain the correct version of the Professional Engineer Certification Form (for purposes of closure). The form which makes reference to 35 Illinois Administrative Code 742 is the form which should be used.

5. Section (I) of the budget contains costs which are associated with the replacement of concrete. The report does not indicate the thickness of the concrete.
6. Section (E)(1) of the budget contains costs which are associated with 8 soil borings. It is not clear which specific soil borings this is for.
7. Sections (E)(1) & (I) of the budget both contain \$7,500.00 in costs which are associated with abandonment of wells. It is not clear if these costs have been duplicated.
8. Section (G) of the budget contains personnel costs which are associated with the compaction of backfill material. In accordance with 35 Illinois Administrative Code 732.606(w), costs which are associated with the compaction & density testing of backfill material are not reimbursable.
9. The report states that 5,595 cubic yards of contaminated soil were excavated & disposed of. However, the proposed budget is for 5,955 cubic yards of contaminated soil. This information is not consistent.
10. In accordance with 35 Illinois Administrative Code 732.606(hh), all costs must be reasonable.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The proposed cost for the Project Manager (\$171.00 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse for these costs in excess of \$90.00 per hour.
- b. The proposed cost for the clerical (\$65.78 per hour) (Section (G) of the budget) is not reasonable. The Illinois EPA does not reimburse for these costs in excess of \$45.00 per hour.
- c. The proposed cost for backfill material (\$28.85 per cubic yard & \$22.65 per cubic yard) (Section (I) of the budget) is not reasonable. The Illinois EPA does not reimburse for these costs in excess of \$20.00 per cubic yard.
11. The Illinois EPA is concerned if the proposed cost for mobilization (\$8,180.00) (Section (I) of the budget) is reasonable.
12. Budget Certification Forms must be signed & notarized on the same date.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. With regard to the signature of the owner / operator of the underground storage tank systems, the form was signed on September 23, 2005, but was notarized on December 6, 2005.

ATTACHMENT 4

ADDITIONAL COMMENTS

RE: LPC 0434525056 - Cook County
Hinsdale - Amoco; Exxon Mobil Service Station 05-A4H (east);
Illinois State Toll Highway Authority Hinsdale Oasis (east)
Interstate 294, Mile Post 25.2
LUST Incidents 860430, 890110 (east), 941726, 20040981 & 20041036
LUST TECHNICAL FILE

The Illinois EPA has the following additional comments:

1. The tabular summary of sample analyses does not indicate the detection limits at which some of the sample results were listed as being not detected.
2. Please note that LUST Incident 890110 was previously reported to apply to both sides of the tollway oasis. The report does not acknowledge this.

ATTACHMENT 5

APPEAL RIGHTS

An underground storage tank system owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) 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, 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
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-5544

EARL A. DEUTSCH
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BRIAN D. SAUCIER
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May 22, 2006

Via Facsimile: (217)782-9807

And Certified U. S. Mail

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
Attention: William Ingersoll, Esq.

**Re: *LPC #0434525056 - Cook County
Hinsdale -Amoco: Exxon Mobil Service Station 05-A4H (East);
Illinois State Toll highway Authority Hinsdale Oasis (East)
Interstate 294, Mile Post 25.2
LUST Incident Nos. 860430, 890110, 941726, 20040981 & 20041036
LUST Technical File***

Dear Mr. Ingersoll:

The undersigned, as a Special Assistant Attorney General, represents the Illinois State Toll Highway Authority in connection with the referenced LUST Incident. I have received a copy of the Agency's letter, dated April 20, 2006, regarding the Authority's High Priority Corrective Action Plan, related Budget and Completion Report, dated December 7, 2005, for the above referenced LUST Incident previously submitted to the Agency. A copy of that letter is enclosed.

Please be advised that the Authority does not agree with the Agency's bases for rejecting these submittals, as set forth in its letter of April 20, 2006; however, in hopes of resolving the open issues with the Agency, and avoiding the necessity of an appeal to the Illinois Pollution Control Board, our client hereby requests an extension, pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act, to extend the period within which it may appeal the Agency's decision for an additional ninety (90) days.

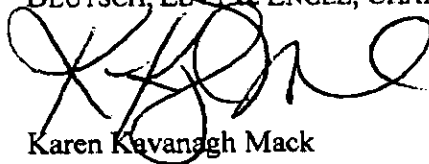
- 229548.1

Exhibit B

William Ingersoll
Illinois Environmental Protection Agency
May 22, 2006
Page Two

It is our understanding that upon receipt of this letter you will proceed to prepare the necessary motion for filing with Illinois Pollution Control Board to effectuate the extension. By my calculations, the extension request is due by May 25, 2006. If your understanding is other than as indicated herein or if I can provide any further information, please let us know immediately. I would greatly appreciate it if you would acknowledge receipt of this request by telephone or e-mail, given the time sensitive nature of the matter.

Very truly yours,
DEUTSCH, LEVY & ENGEL, CHARTERED



Karen Kavanagh Mack

KKM

Enclosures

cc: Victor Azar, Esq.
Kenneth W. Funk, Esq.

- 229548.1