

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
DEC 21 2006
STATE OF ILLINOIS
Pollution Control Board

KNAPP OIL COMPANY, DON'S 66,)
Petitioner,)
)
v.) PCB 06-52
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE

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

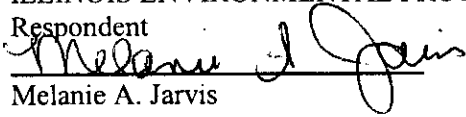
Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Carolyn S. Hesse
Barnes & Thornburg, LLP
One North Wacker Drive,
Suite 4400
Chicago, IL 60606-2833

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD AND MOTION TO STRIKE, MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, and REPLY TO PETITIONERS' RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT AND RESPONSE TO PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent


Melanie A. Jarvis
Assistant Counsel
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 19, 2006

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

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KNAPP OIL COMPANY, DON'S 66,)	
Petitioner,)	
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)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

**RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD AND
MOTION TO STRIKE**

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 35 Ill. Adm. Code 101.500(d) and 101.504, hereby requests that the Illinois Pollution Control Board ("Board") deny the Petitioner's motion to supplement the record. In support of this response, the Illinois EPA states as follows:

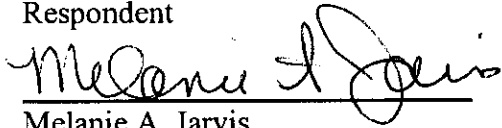
1. Section 105.212 of the Board's Regulations, 35 Ill. Adm. Code 105.212, sets forth the requirements of the Illinois EPA's record. Subsection (b) states that the record must include the following:
 - a) Any permit application or other request that resulted in the Agency's final decision;
 - b) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application.
 - c) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;

- d) The hearing file of any hearing that may have been held before the Agency, including any transcripts and exhibits; and
 - e) Any other information the Agency relied upon in making its final decision.
2. The Illinois EPA filed the Administrative Record on December 30, 2005. After discussion with Illinois EPA staff, it was determined that several documents that were relied upon in making the final decision were missing from the record. The Illinois EPA supplemented the record with these documents on September 22, 2006.
 3. The Illinois EPA technical staff did not rely upon the documents the Petitioner is requesting to use in supplementing the record in making its final decision. (See Exhibit 1)
 4. The Illinois EPA does not have the OSFM application in its file and therefore it could not have been relied upon in making the Illinois EPA's final decision.
 5. If every document in the Illinois EPA files pertaining to a site is required to be included in the Illinois EPA's record, the records would become vast and would contain superfluous documents. If these documents are included, the Illinois EPA would then have to move to supplement the record further with related documents in order to give the Board a clearer picture of the situation. (See Exhibit 2) If the Illinois EPA were required to file numerous copies of records containing all of the documents within its file, Illinois EPA resources would be wasted.
 6. The documents should be excluded from the Illinois EPA record and their mention should be stricken from the Petitioner's Response in Opposition to Motion for Summary Judgment and any future filings in this case.

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board enter an order denying Petitioner's Motion for Leave to Supplement Administrative Record and striking mention of said documents from pleadings in this case.

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: December 19, 2006

This filing submitted on recycled paper.

STATE OF ILLINOIS)
) SS
SANGAMON COUNTY)

AFFIDAVIT

I, Carol Hawbaker, upon my oath, do hereby state as follows:

1. I am employed as an Environmental Protection Specialist for the Illinois Environmental Protection Agency ("Illinois EPA").
2. I am the project manager of the Knapp Oil site at issue in PCB 06-52.
3. I have reviewed the documents attached to Petitioner's Motion for Leave to Supplement Administrative Record.
4. The aforementioned documents were not relied upon by the Illinois EPA in making the decision at issue in PCB 06-52.
5. The Application to the OSFM is not a document that can be located within Illinois EPA files.
6. To the best of my knowledge, the information provided herein is true and accurate.

FURTHER AFFIANT SAYETH NOT.

Carol Hawbaker
Carol Hawbaker

Subscribed and sworn to before me
this 14th day of December 2006.

Catherine R. Hunter
Notary Public

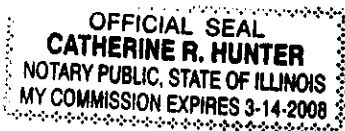


Exhibit 1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

RENEE CIPRIANO, DIRECTOR

217782-6762

CERTIFIED MAIL
7001-2510-0002-3280-1301

MAY 15 2002

Knapp Oil Company
Attention: Bill Knapp
Box 2
Xenia, IL 62899

Re: LPC #1590200007 -- Richland County
Olney / Knapp Oil Company
700 East Main
LUST Incident No. 901831
LUST Technical File

Dear Mr. Knapp:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan Budget submitted for the above-referenced incident. This information, dated February 14, 2002, was received by the Illinois EPA on February 14, 2002. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 IAC).

Pursuant to 35 IAC Sections 732.405(e) and 732.503(b) and Sections 57.7(a)(1) and 57.7(c)(4)(D) of the Act, the budget is rejected for the reasons listed in Attachment A.

Pursuant to 35 IAC Section 732.401, the Illinois EPA requires a revised High Priority Corrective Action Plan and budget if applicable be submitted within 90 days of the date of this letter to:

Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

RELEASABLE

MAY 29 2002

REVIEWER MM

Please submit all correspondence in duplicate and include the "Re:" block shown at the beginning of this letter.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.7(c)(4)(D) and Section 40 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

GEORGE H. RYAN, GOVERNOR

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:

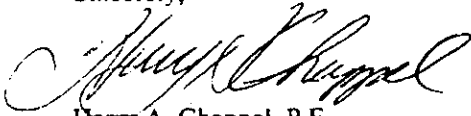
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, IL 62794-9276
217/782-5544

If you have any questions or need further information, please contact Carol Hawbaker at 217/782-5713.

Sincerely,



Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:CLH

Attachment: Attachment A

cc: CW3M Company
Division File

Attachment A

Re: LPC # 1590200007 -- Richland County
Olney / Knapp Oil Company
700 East Main
LUST Incident No. 901831
LUST Technical File

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Environmental Protection Act.

1. A budget must include a copy of the eligibility and deductibility decision(s) made for the above-referenced occurrence(s) for accessing the State Underground Storage Tank Fund (35 IAC Sections 732.305(b)(2) and 732.405(b)).
2. The Illinois EPA has not approved the plan with which the budget is associated. Therefore, the Illinois EPA cannot determine whether these costs exceed the minimum requirements necessary to comply with Title XVI (Section 57.5(a) of the Act) and 35 IAC Part 732 (35 IAC Section 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 IAC Section 732.606(o)). It also cannot be determined whether the costs are corrective action costs. "Corrective action" means an activity associated with compliance with the provision of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 IAC Section 732.103). One of the eligibility requirements for accessing the UST Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act). In addition, it cannot be determined whether these costs are reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 IAC Section 732.505(c) 732.606(hh)).
3. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services are reasonable (35 IAC Section 732.505(c)).

The budget includes costs that are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 IAC Section 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs submitted are reasonable.

The following costs in the budget are unreasonable: mobilization, monitoring well installation time (which should be included in the soil boring per foot cost), PID rental and BTEX soil.

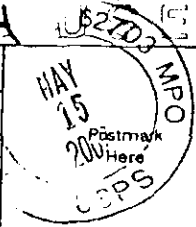
In addition the excessive use of Personnel is unreasonable. For example, 6 different titles on site to perform drilling, sampling, surveying and sampling is unreasonable. Also, 12 different titles to perform SAR, CAP Dev., Boring logs and Well Completion Reports is unreasonable. In addition, 5 different titles for Reimbursement is unreasonable as well.

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

7001 2510 0002 3280 1301

901831 HC CH 02703	
#	24
Postage	\$ 1.50
Certified Fee	2.10
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total	3.94
Sent To	Knapp Oil Company
Street, or PO Box	Attn: Bill Knapp
City, State	Box 2 Xenia, IL. 62899



PS Form 3800 January 2001 See Reverse for Instructions

PLACE STICKER AT TOP OF ENVELOPE TO THE LEFT OF THE RETURN ADDRESS FOLD AT BOTTOM

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Knapp Oil Company
Attn: Bill Knapp
Box 2
Xenia, IL. 62899

2. Article Number:
7001 2510 0002 3280 1301 HC CH 901831

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *Bill Knapp* Agent Addressee

B. Received by (Printed Name): *Bill Knapp* C. Date of Delivery: *5-16-02*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

3. Service Type: Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Illinois Environmental Protection Agency
P.O. Box 19276 Mail Code # *PC*
Springfield, IL 62794-9276



LUST TECHNICAL REVIEW NOTES

Reviewed by: Carol Hawbaker

Date Reviewed: 05/10/02

File Heading: LPC #1590200007 -- Richland County
Olney / Knapp Oil Company
700 East Main
LUST Incident No. 901831
LUST Technical File

Document(s) Reviewed:

HPCAP budget dated 02/14/02, received 02/14/02

General Site Information:

See previous notes

Review Note Comments:

There is no approved CAP in house. The budget contains "costs incurred thus far in site investigation and CAP preparation". Site Investigation activities were denied, due to the fact that adequate investigation was not done and the CAP was denied for reasons too numerous to list here (see letter dated 11/16/01).

As there is no approved CAP and investigation activities to date are not adequate, the budget is denied. Other denial points to mention:

Unreasonable costs for mobilization, and monitoring well installation time (the latter should be included in soil borings per foot charge), BTEX soil and PID rental.

In addition the budget total is \$21,812.62 with \$15,938.00 attributed to Personnel costs. According to the Personnel breakdown, 6 different titles were on site to install and sampling the SB's and MW's (including the administrative asst.) and 12 different titles were involved in the denied CAP development, boring logs and well completion reports. This is excessive use of personnel.

PMs Recommendation/Comments:

Denied for reasons listed above

Response Due:

HPCAP should have already been submitted, but it has not.

RELEASABLE

MAY 20 2002

REVIEWER MM



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

000816730497

JUL 16 2001

Knapp Oil company
Attention: Bill Knapp
Box 2
Xenia, IL 62899

Re: LPC #1590200007 -- Richland County
Olney / Knapp Oil Company
700 East Main
LUST Incident No. 901831
LUST Technical File

Dear Mr. Knapp:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Site Investigation Report and Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated July 27, 2001, was received by the Illinois EPA on July 30, 2001. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 IAC).

Pursuant to 35 IAC Section 732.405(c) and Section 57.7(c)(4)(D) of the Act, the High Priority Corrective Action Plan is rejected for the reasons listed in Attachment A.

Pursuant to 35 IAC Sections 732.405(e) and 732.503(b) and Sections 57.7(a)(1) and 57.7(c)(4)(D) of the Act, the associated budget is rejected for the reasons listed in Attachment B.

Pursuant to 35 IAC Section 732.401, the Illinois EPA requires a revised High Priority Corrective Action Plan and budget if applicable be submitted within 90 days of the date of this letter to:

bcc: Brian Bauer
Carol Hawbaker

GEORGE H. RYAN, GOVERNOR

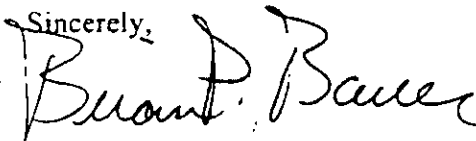
Illinois Environmental Protection Agency
Bureau of Land - #24
LUST Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Please submit all correspondence in duplicate and include the "Re:" block shown at the beginning of this letter.

Within 35 days after the date of mailing of this final decision, the owner or operator may petition for a hearing before the Illinois Pollution Control Board (Board) to contest the decision of the Illinois EPA. (For information regarding the filing of an appeal, please contact the Board at 312/814-3620.) However, the 35-day period for petitioning for a hearing may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the owner or operator and the Illinois EPA within the 35-day initial appeal period. (For information regarding the filing of an extension, please contact the Illinois EPA's Division of Legal Counsel at 217/782-5544.)

If you have any questions or need further information, please contact Carol Hawbaker at 217/782-5713.

Sincerely,



Brian P. Bauer
Acting Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

BPB:CLH

Attachment: Attachment A and B

cc: CW3M Company
Division File

investigation. If off site sampling is included within an approved corrective action plan and if an adjoining property owner will not allow the owner or operator access to his or her property so as to ascertain information sufficient to satisfy this requirement or if the owner cannot be located, adequate documentation of the owner or operator's efforts to gain access to the property shall satisfy this Section (732.404(b) of Part 732;

2. Provide that, after complete performance of the corrective action plan. Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;
3. Remediate threats due to the presence or migration, through natural or manmade pathways, of petroleum in concentrations sufficient to harm human health or human safety or to cause explosions in basements, crawl spaces, utility conduits, storm or sanitary sewers, vaults or other confined spaces;
4. Remediate threats to potable water supplies; and
5. Remediate threats to bodies of surface water.

The plan submitted fails to meet the above requirements and, therefore, the requirements of 57.7(c)(1)(C) of the Environmental Protection Act for the following reason(s):

- a) The plan for excavation does not include provisions for contamination under the station building and the canopy. This area must be discussed in the corrective action plan.
- b) The corrective action plan does not address contamination if the roadways, if applicable. Once the extent has been defined and off-site contamination is verified as a factor, please include provisions for addressing these areas.
- c) The corrective action plan indicates a diesel tank may have leaked. This should be verified prior to corrective action. If contamination from the diesel tank is found to be present, the owner/operator must call in the tank and have an IEMA incident number assigned to the leak.
- d) The map of the proposed area of excavation included areas that have no contamination over Tier 1 remediation objectives. If contamination has been found to not be present, there is no reason to excavate this area.
- e) The corrective action plan proposes 1 groundwater sampling event after

completion of excavation activities. The Illinois EPA requires 2 groundwater sampling events after completion of these activities.

Attachment B

Re: LPC # 1590200007 -- Richland County
Olney / Knapp Oil Company
700 East Main
LUST Incident No. 901831
LUST Technical File

NOTE: Citations in this attachment are from 35 Illinois Administrative Code (35 IAC) and the Environmental Protection Act.

1. The Illinois EPA has not approved the plan with which the budget is associated. Therefore, the Illinois EPA cannot determine whether these costs exceed the minimum requirements necessary to comply with Title XVI (Section 57.5(a) of the Act) and 35 IAC Part 732 (35 IAC Section 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 IAC Section 732.606(o)). It also cannot be determined whether the costs are corrective action costs. "Corrective action" means an activity associated with compliance with the provision of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 IAC Section 732.103). One of the eligibility requirements for accessing the UST Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act). In addition, it cannot be determined whether these costs are reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 IAC Section 732.505(c) 732.606(hh)).

2. One of the overall goals of the financial review is to assure that costs associated with materials, activities and services are reasonable (35 IAC Section 732.505(c)).

The budget includes costs that are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 IAC Section 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs submitted are reasonable.

- a) The budget includes costs for a total of 87 trips at 350 miles per trip. This is an unreasonable numbers of trips.
 - b) Costs associated with excavation, transportation and disposal of contaminated soils are unreasonable for the work performed.
 - c) Costs associated with backfilling activities are unreasonable for the work performed.
3. Costs for the removal, disposal or abandonment of an underground storage tank that was removed or abandoned, or permitted for removal or abandonment by the Office of the

State Fire Marshal before the owner or operator provided notice to IEMA of the release of petroleum are ineligible for payment from the Fund (35 IAC Section 732.606(k)). The budget submitted includes such costs.

The budget includes costs for the removal of tanks not associated with this incident number. Therefore, those tanks are ineligible for reimbursement.

4. The budget submitted includes costs that lack supporting documentation (35 IAC Section 732.606(gg)). A corrective action plan budget for a site classified as high priority, must include but not be limited to, an accounting of all costs associated with the development, implementation and completion of the applicable activities (Section 57.7(c)(1)(B) of the Act and 35 IAC Section 732.405(b)). Since there is no supporting documentation of costs the Illinois EPA cannot determine if the minimum requirements have been exceeded. Therefore, these costs exceed the minimum requirements necessary to comply with Title XVI (Section 57.5(a) of the Act and 35 IAC Section 732.606(o)).
 - a) The Illinois EPA requires monitoring well installation materials to be broken as separate line items. One lump sum is not acceptable.
 - b) The Illinois EPA requires a detailed breakdown of all hours and tasks for personnel costs. The current task breakdown is not acceptable. Please provide a detailed breakdown of tasks performed attributable to each personnel hour.
 - c) The budget includes costs for film and film development in the site investigation phase. No photos were included in the report.
 - d) The budget includes costs for color copies. No color copies were included in the report.
 - e) The budget includes costs for waste characterization sample in the site investigation phase. No analyses of waste characterization were submitted with the report.
 - f) The budget includes costs for groundwater analysis of BTEX and PNA's in the corrective action phase. The plan states that one groundwater sample per each monitoring well will analyzed after excavation is complete. That would equal 7 analyses, not 28.
 - g) The budget includes personnel costs for groundwater monitoring in the corrective action phase. The plan states that one sampling event will take place after excavation. Therefore, the hours assigned to groundwater monitoring exceed the minimum requirements.

- h) The budget includes costs for canopy removal in the excavation and disposal phase. The costs are listed at 1,500 gallons at \$1.00 each. The plan does not provide documentation for canopy removal and it is unclear why the costs would be listed in gallons.
 - i) The budget includes costs for groundwater remediation. The plan does not discuss groundwater remediation. Therefore, these costs exceed the minimum requirements.
- 5. The budget submitted includes costs in which the owner or operator failed to justify that all costs are attributable to each underground storage tank at the site. (Section 57.8(m)(2) of the Act.) The budget submitted includes costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund. (Section 57.8(m)(1) of the Act.)
 - a) The budget includes costs for soil PNA analysis in the excavation and disposal phase. The only eligible tank associated with this incident number is a gasoline tank
 - b) The budget includes costs for groundwater PNA testing. The only eligible tank associated with this incident number is a gasoline tank. PNA testing exceeds the minimum requirements.

BPB:CLH

LUST TECHNICAL REVIEW NOTES

Reviewed by: Carol Hawbaker
Date Reviewed: 12/14/04

File Heading: LPC #1590200007 -- Richland County
Olney / Knapp Oil
700 East Main
LUST Incident No. 901831
LUST Technical File

Document(s) Reviewed:

HPCAP and Budget dated 10/04/04, rcvd 10/05/04

General Site Information:

See Previous notes
SWAP map generated 12/14/04

RELEASABLE

JAN 18 2005

REVIEWER MM

Review Note Comments:

Additional activities conducted to determine full extent of soil and GW contamination.

Table 3-1 UST summary – all tanks leaked, based on site assessment. Tanks at the site 1 – 8,000 gal and 1 – 6,000 gal gasoline, 1 – 1,000 gal diesel. Note – Incident no. 901831 was reported as the result of FP found in an observation sump in the gasoline tank basin (diesel tank is in a separate basin). Substance released was reported as gasoline only. IC's for 901831 are BTEX. No release has been reported to IEMA regarding the diesel tank. If activities indicate diesel tank has leaked, then an incident must be called in for the diesel tank. PNA's are not applicable IC's for this release. CAP denial letter dated 11/16/01 states that a release must be called in for the diesel tank if diesel contamination is found to be present. This has not been done.

Activities to date to define plume:

03/27/01: MW5, SB3, MW6, SB4, MW7, SB5 were advanced. **These SB/MW's were analyzed for BTEX only (correctly) in response to 901831.** Soil benzene exceedences were noted in SB3, SB4. GW benzene exceedences were noted in MW5 and MW6.

02/20/02: Additional boring was drilled next to SB3 to determine PNA contamination in that area. **This is not eligible for reimbursement, because PNA's are not IC's for release 901831.** SB7, SB8, additional water sample from MWB for PNA's **Not eligible.** Soil benzene exceedences were noted in SB7 and SB8. In addition, SB8 had ethylbenzene and xylene exceedences. SB8 also had a naphthalene exceedence **Although this is a PNA, it is common to see this contaminant in gasoline releases.** All other PNA's below detection limits. **Still no evidence of a diesel release.** GW samples for PNA's from MWB were below detection limits.

08/27/02: Samples were collected from existing MW's and analyzed for PNA's. SB's were advanced in prior locations of SB's not analyzed for PNA's. **This work is not eligible for reimbursement. See above.** Soil results show exceedences for benzo(a)pyrene only in SB5a, SB1a, SB4a and SB11. **Based on these exceedences, a release should have been called at this time, however there is still no record of a diesel release.** MWD had only PNA GW exceedence for

Benzo(a) anthracene, Benzo(a)pyrene, Benzo(b)fluoranthene, and Benzo(k)fluoranthene. **Note this well is located upgradient at the edge of the property boundary. MW5 is closer to the diesel tank basin with non-detect results. MWD is the farthest upgradient well on the property. These PNA exceedences are not associated with a release from the diesel tank.**

02/05/03: SB15 was advanced. All results ND.

Off-site Access: Soil and GW BTEX plumes extend off-site to the N and W.

06/05/02: McDonald's property across Route 50 (S) was investigated for GW plume only. MW8 and MW9 were installed and sampled. Both were ND.

08/27/02: Thomson property to the immediate N of the site was investigated for soil and GW. SB9 and MW10 were installed on this property. SB9 was installed near the southern property boundary dividing the site and the property. MW10 was installed near the northernmost property boundary. SB9, and MW10 had soil benzene and ethylbenzene exceedences. In addition MW10 had a soil toluene exceedence. **Chain of Custody form for samples sent to Prairie Analytical (08/28/02) shows a temp. of 11.9 degrees. VOC's (BTEX) will volatilize unless preserved and maintained at a temp. of 4 to 6 degrees. Lab should not have run the BTEX samples, because temp exceeded limits.**

02/05/03: MW10 was sampled, and Lawless property to the north of Thomson property was investigated for soil and GW contamination. MW11 was installed on the northernmost edge of the Lawless property. MW11 had a benzene soil exceedence. MW10 and MW11 had GW benzene exceedences. MW10 also had a toluene exceedence. **Chain of Custody form for samples sent to Prairie Analytical (02/06/03) shows a temp. of 1.7 degrees. VOC's (BTEX) will volatilize unless preserved and maintained at a temp. of 4 to 6 degrees. Lab should not have run the BTEX samples, because temp exceeded limits. Lab. Cert. for samples collected after 01/01/03 must indicate whether this lab is accredited for these constituents. This has not been supplied.**

SB13 and SB14 were advanced at the McDonald's property to assess soil conditions. Soil plume has already been defined in that direction and the soil plume is limited to the site. This extent area was defined in 2001. There is no reason for these borings to be advanced. If O/O thought soil analysis was necessary in this area, then it could have been sampled from MW8 and MW9. Soil boring logs for MW8 and MW9 state "No soil samples were collected for laboratory analysis, as extent of soil contamination had been determined on site". Activities associated with these borings are not eligible for reimbursement.

03/24/02: MW12 and MW13 were installed on Thomson property. MW14 was installed on the Keller property, located North of the Lawless property and across York Street. MW13 had soil benzene, ethylbenzene and xylene exceedences. MW12 and MW14 were ND for GW. MW13 had a benzene exceedence.

Issues with soil and GW plume definition:

Across North Elliot St. to the W of the site has not been investigated. Off-site access requests were sent to the Bank of Olney for the block across Elliot and the empty lot on the NW corner of Elliot and York. Access was denied. No affidavits were included. I will request the Highway Authority responsible for Elliot road be approached to see if investigation can be conducted in the right of way next to the bank.

CAP for soil:

Gasoline and diesel tanks will be removed (no report of release from diesel tank), along with pumps and piping.

1,900 cy soil (est) to be removed to 10' (estimated depth of GW) – see proposed excavation map. SB's included in excavation are SB2, SB3, SB4, MW5, SB7, SB8, SB9, MW10, MW11. **On-site borings included in excavation area (SB2, SB3, SB4, SB7, SB8) show contamination at 3'. It is unclear why this area needs to be excavated to 10'. Soil samples will be collected every 20'.**

Contaminated soils off-site will be remediated by in-situ bioremediation. **Bioremediation of unsaturated soils has not been proven an effective technology. Under specific circumstances, it may assist in cleaning up GW, however there is no data supporting the use of bioremediation in unsaturated soils.**

CAP for GW:

In-situ Bioremediation.

See Section 6.2 for reference

Proposing a combination of aerobic and anaerobic bioremediation.

09/16/04: Soil and GW samples were collected from the most contaminated area and from the edge of the contamination plumes. Samples were shipped to MiL and Prairie Analytical for "aerobic treatability testing" to determine presence and quantities of indigenous bacteria present to degrade the petroleum and to determine the most effective microbe and nutrient blend. Soil samples were also tested for nutrients, pH and moisture content.

Supporting analytical documentation: Biofeasibility

Soil samples marked "BIO-1" and "BIO-2" were advanced 09/16/04. **No soil boring logs. It is unclear at what depths these samples were taken.** BIO-1 was advanced in an area of known contamination and BIO-2 appears to be in an area with little or no soil impact. **BIO-1 is located in an area that will be excavated.**

GW samples were collected from MW6 and MWB. **Both of these wells are located in contaminated areas proposed to be excavated. They will be destroyed during the excavation process.**

All samples (BIO-1, BIO-2, MW6 and MWB) were analyzed for the following:

	BIO-1 mg/kg	BIO-2 mg/kg	MW6 mg/l	MWB mg/l
Nitrate/nitrite (anions)	<2.95	<3.09	<0.250	<0.250
Phosphorus	170	10	0.31	0.821
Toc	1940	14600	0.3	12.4
PH	6.8	7.4	6.4	7.0
Moisture content	17.9 %	20.3 %		
Total Microbial Plate Count	7.7E5	8.9E5	4.8E2	2.6E3

Microbial levels indicate an adequate population to degrade contaminants. Additions to the existing population are unnecessary.

Low nitrogen anions indicate an oxygen deficient atmosphere, or a low nitrogen level.

Toc is adequate to sustain the microbial population

pH is within acceptable limits.

Moisture content is low, however it is unclear at what depth the sample was collected.

Problems with these analyses:

There is no information regarding O2 demand.

There is no information regarding heavy metal concentrations (iron, copper, zinc, lead). These metals may create an unfavorable environment for bioremediation.

Microbial plate counts show an active population, there is no need for the addition of microbes.

2 soil samples is not an adequate representation of activity within plume. At least 5 soil samples for a plume this size is necessary to determine an appropriate method of remediation. These five samples should be collected from the soil below the water table as contaminants will sorb to the soil. We are actually treating the soil below the water table, not the GW. By reducing contaminants concentrations in the soil below the water table, we thereby reduce the GW contamination.

As the soil is going to be excavated, conditions at the site will be altered dramatically. These samples will no longer be representative of conditions at the site. After excavation, samples should be collected as stated above and analyzed for the following parameters:

Chemical O2 demand

Nutrient availability (C:N:P) from the soil

PH of the soil and GW

Heavy metal concentrations from the GW

Microbial plate count from the soil

Site-specific total soil porosity (not an estimate)

Design Specifications – Biomass will be injected into the vadose zone and GW through injection trenches (?) and wells.

A slurry volume of 1% of the pore volume is generally used. Material quantities for the biomass will be composed of a slurry “composed of some or all the materials listed below”: calcium and ferric sulfates, bulking compost (?), Micro-nutrients(?), Quick- and slow - release fertilizers (?), biological stimulant and liquid biological stimulant (?), organic degrading bacteria and water. Based on the information supplied, there is not enough data to develop the specific nutrient and mineral requirements for optimum degradation of contaminants. In addition, an active microbial population already exists at the site. The injection of microorganisms should not be necessary once the adequate demands of oxygen and nutrients are established. Once demands are established, a more-specific “ingredient” list with volume calculations will be required. “if the plate counts are extremely low...oxygen producing socks may be installed in the injection wells to increase bacterial levels”.

Injection Design – design will consist of a series of injection trenches (?) and 3 injection wells located within the soil and groundwater plume. These trenches and wells will facilitate movement of the bioslurry to the vadose zone and contaminated groundwater. The 3 injection wells will be placed in excavated area on site. Injection trenches will be excavated to a 10' depth and 4' wide. Trench will be backfilled with septic gravel and capped with CA6. Access to the trenches will be through 4" perforated pipe set vertically at each corner of the trench layout. Injection will be achieved by gravity feeding. If necessary, pressure injection may be used. As gravity feeding vs. pressure injection will change the radius of influence and time required for each injection, it is unclear how the system was designed without determining the method of transport for the slurry to reach the affected areas. For the purposes of this review, I will assume gravity feed is the preferential method.

Assuming the proposal is gravity feed from the injection trenches (again this is not clear), rate of movement of the biomass from the trenches through the GW would be equal to the HC of the GW ($2.72E-6$) cm/sec. The maximum distance biomass would have to travel through soil is estimated from attached map. Estimated maximum distance = 160'

Therefore,

$$2.72E-6 \text{ cm/sec} = 0.0003212598 \text{ ft/hr} = 0.0077102352 \text{ ft/day} = 2.8142355848 \text{ ft/yr.}$$

With the maximum distance of 160'/ $2.8142355848 \text{ ft/yr} = 56.85380459$ yrs for biomass to treat full distance of estimated plume.

This is an unacceptable time period.

Estimated Volume of contamination = 3,493 cy.

It is unclear how this volume was calculated. Based on the GW contaminant plume map, L parallel to GW is 225' (the area in US Route 50 has been subtracted as the injection trenches will not affect GW upgradient of trenches). W perpendicular to GW flow is 180ft. As petroleum constituents are lighter than water, it can be assumed that most of the contamination is located in the upper 1 ft of the groundwater. $L \times W \times 1\text{ft} = 40,500 \text{ cf} = 1500 \text{ cy}$. This is the volume of groundwater to be treated.

PMs Recommendation/Comments:

On-site soil excavation plan is denied, PNA's are not an indicator contaminant and explanation is needed for why a 10' excavation depth across the site is necessary.

Off-site soil bioremediation plan is denied, there is no data supporting the technology as a method for remediation unsaturated soils.

GW bioremediation plan is denied, information is insufficient to develop an appropriate remediation design, and the estimated time for remediation (my estimate) is an unacceptable time period for remediation to take place.

GW migrating into Main street has not been addressed and the proposed bioremediation system will not treat upgradient GW.

Budget is denied because plan is denied. In addition, all activities associated with PNA analysis is not reimbursable.

Budget has not been fully reviewed because, based on all technical denial points, plan (therefore budget) will have to be re-evaluated after denial issues and additional supporting documentation are provided.

Response Due:

CAP and Budget is 90-days.

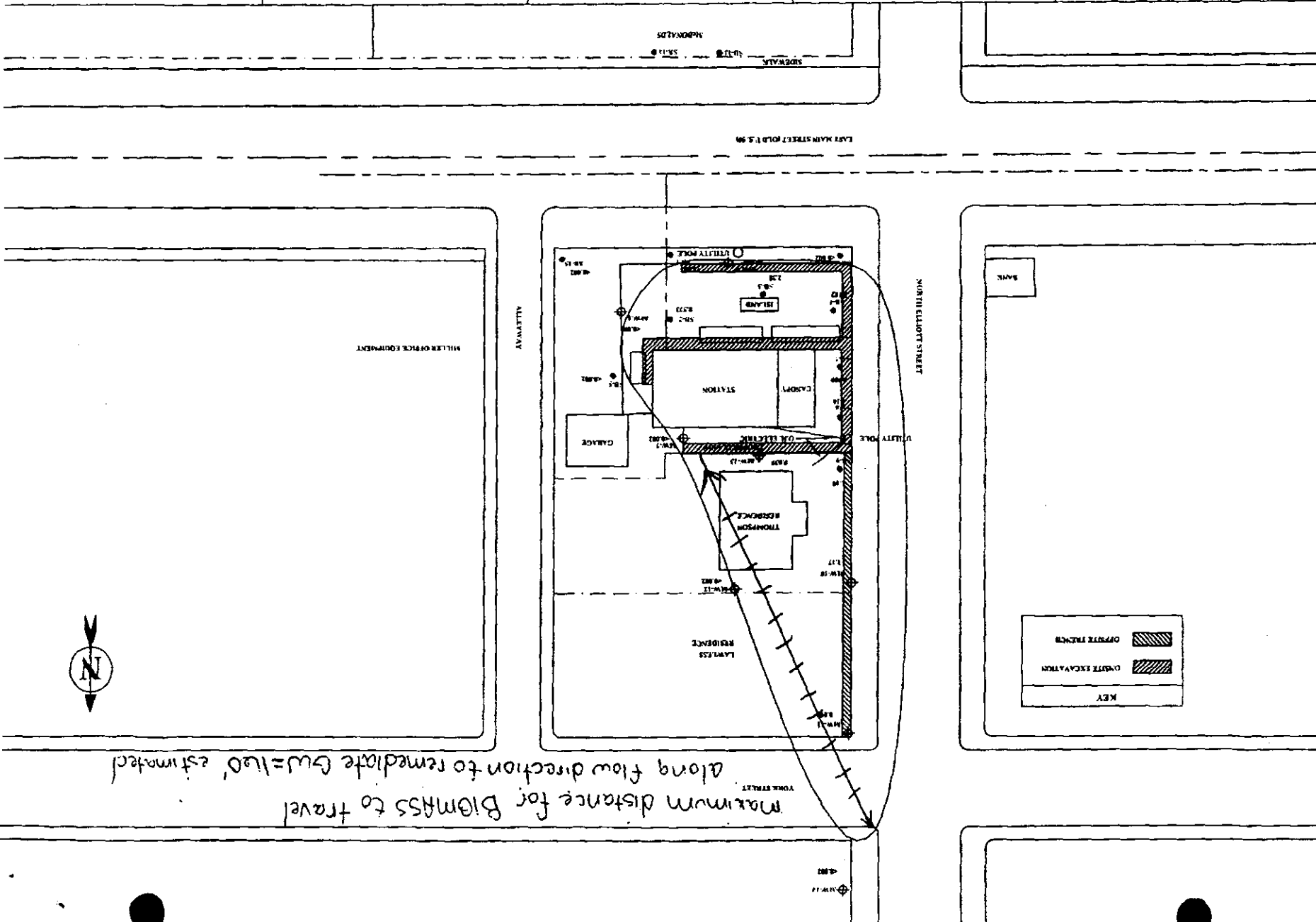
CWAM COMPANY, INC.
701 W. SOUTH GRAND
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KNAPP OIL
DONS 76
OLNEY, ILLINOIS
INCIDENT #90-1831
BUTCH AND COUNTY

INOCULATION TRENCH MAP

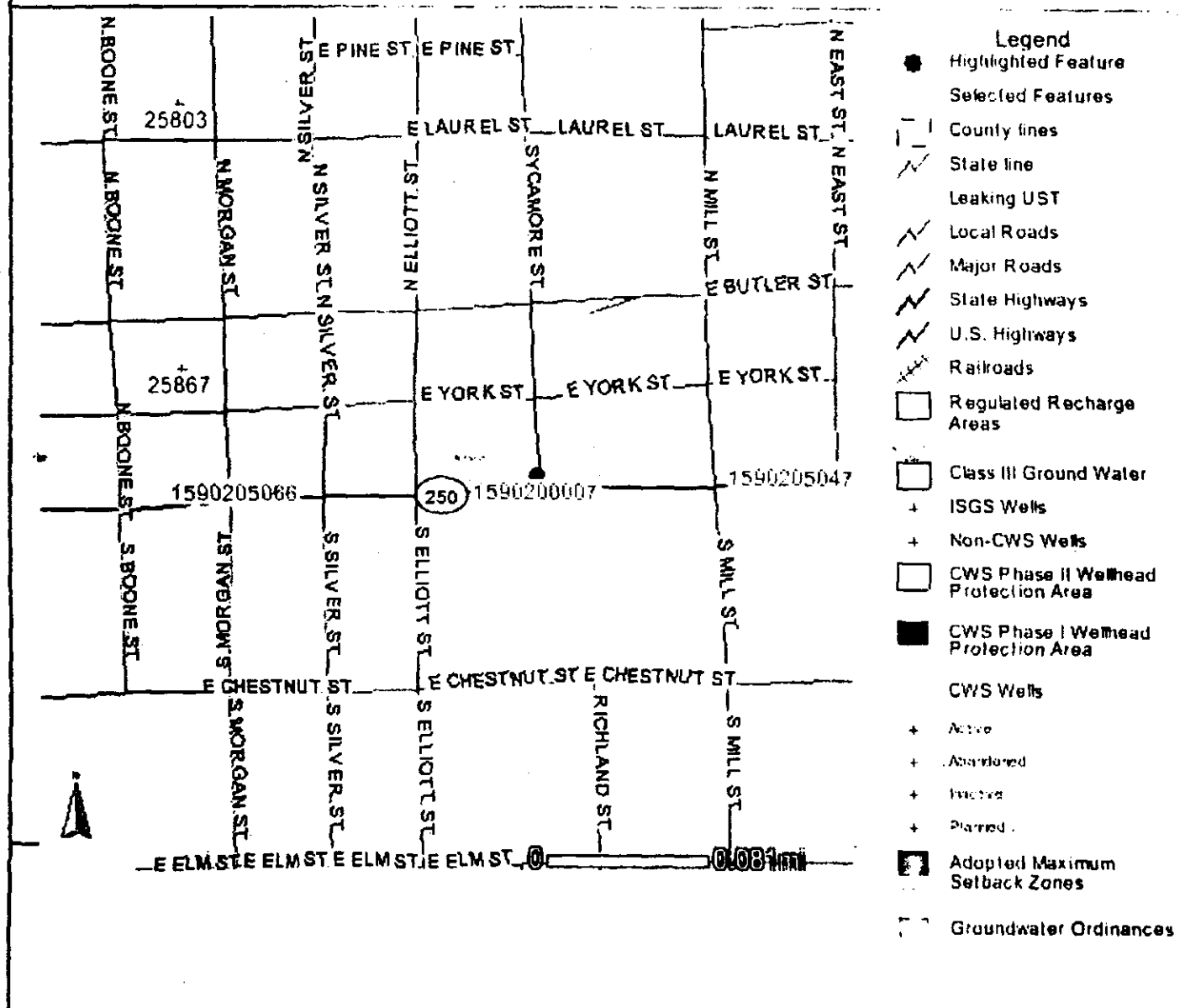
SCALE: 1"=50'
DATE: 9/29/04
REVISED DATE:
DRAWING: 0012

DRAWN BY: VES
REVISED BY:
REVIEWED BY: CLR
INOC.DWG



maximum distance for BIOMASS to travel
along flow direction to remediate GW=100' estimated

LUST #901831 - Knapp Oil Date 12-15-04



**BEFORE THE POLLUTION CONTROL BOARD CLERK'S OFFICE
OF THE STATE OF ILLINOIS**

RECEIVED

DEC 21 2006

STATE OF ILLINOIS
Pollution Control Board

KNAPP OIL COMPANY, DON'S 66,)	
Petitioner,)	
)	
v.)	PCB 06-52
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

**MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S RESPONSE IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

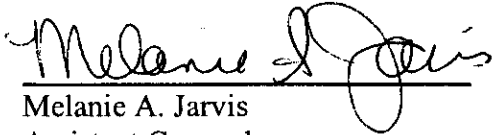
NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules (35 Ill. Adm. Code 101.500(e)), hereby files a motion for leave to file a reply to the Petitioner's Response in Opposition to Motion for Summary Judgment. In support of this motion for leave, the Illinois EPA provides as follows.

1. The Illinois EPA filed its Motion for Summary Judgment on September 22, 2006.
2. The Petitioner filed its Response on December 7, 2006.
3. Material prejudice may result if the Illinois EPA is not allowed to reply.
4. The Petitioner's arguments require a full reply from the Illinois EPA so that the

Board can be fully briefed when making its decision on the case.

5. For the reasons stated herein, the Illinois EPA hereby respectfully requests that the Hearing Officer allow the Illinois EPA to file a reply to the Petitioner's response to prevent material prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
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P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: December 19, 2006

This filing submitted on recycled paper.

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

DEC 21 2006

STATE OF ILLINOIS
Pollution Control Board

KNAPP OIL COMPANY, DON'S 66,)
Petitioner,)
v.) PCB 06-52
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

**REPLY TO PETITIONERS' RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY
JUDGEMENT AND RESPONSE TO PETITIONER'S CROSS-MOTION FOR SUMMARY
JUDGMENT**

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 35 Ill. Adm. Code 101.500(e), hereby respectfully responds to the Response in Opposition to Motion for Summary Judgment and Cross-Motion for Summary Judgment ("Petitioners' response") filed by the Petitioners, Knapp Oil. In response to the Petitioners' response and cross-motion for summary judgment, the Illinois EPA states as follows:

I. INTRODUCTION

The Petitioner argues in its response that the Illinois EPA wrongly denied a High Priority Corrective Action Plan that includes remediation of a release that was never reported to the Illinois Emergency Management Agency (IEMA). The Illinois EPA strongly disagrees with the Petitioner's assertion. Petitioner attempts to add and argue several documents that the Illinois EPA either did not rely upon in making its decision, or were never in the Illinois EPA's files. The Illinois EPA has filed a separate objection to their inclusion and a motion to strike. It should be pointed out that the included decision letters issued by the Illinois EPA were not appealed and should not be reargued here.

For the reasons that will be explained below, the Illinois EPA's decision comported with the law and facts as presented, and the Illinois Pollution Control Board ("Board") should affirm the Illinois EPA's decision.

II. APPLICABLE LAW

35 Ill. Adm. Code 732.202(a), Early Action, states as follows:

- a) Upon confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:
 - 1) ***Report the release to IEMA (e.g., by telephone or electronic mail);***
 - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
 - 3) Identify and mitigate fire, explosion and vapor hazards. (Emphasis added)

35 Ill. Adm. Code 732.404, High Priority Site, states as follows:

- a) The owner or operator of a site classified as High Priority shall develop a corrective action plan and perform corrective action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.
- b) The owner or operator shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:
 - 1) For sites that have submitted a site classification report under Section 732.309, provide that:
 - A) After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part at the property boundary line or 200 feet from the UST system, whichever is less;
 - B) After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;

- C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill. Adm. Code 742;
 - D) Threats to potable water supplies are remediated; and
 - E) Threats to bodies of surface water are remediated.
- 2) For sites that have submitted a site classification completion report under Section 732.312 of this Part, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.
- c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under subsection (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.
 - d) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.
 - e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.
- 1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary,

or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

- A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - B) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.
- 2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but is not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).
- f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action budget plan also shall be submitted to the Agency for review.
 - g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.
 - h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

35 Ill. Adm. Code 732.606(o) and (n), Ineligible Corrective Action Costs, states as follows:

Costs ineligible for payment from the Fund include but are not limited to:

- n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

III. THE ILLINOIS EPA CANNOT APPROVE A HIGH PRIORITY CORRECTIVE ACTION PLAN THAT INCLUDES REMEDIATION OF A RELEASE THAT WAS NEVER REPORTED TO IEMA.

1. The Petitioner repeatedly told the Illinois EPA that there was no release from the diesel tank in question. Further, the Petitioner continued to operate its facility for many years as if there were no release from the diesel tank. (SAR p.4, 12, 39, 65, 66, and 78)
2. The Illinois EPA repeatedly told the Petitioner that if there were a release in the diesel tank to report that release to IEMA. (SAR p. 299, 323)
3. The Petitioner never reported the release to IEMA.
4. Diesel contaminants were not analyzed at the site for a release from the diesel tank until 2001, eleven years after the reporting of Incident Number 901831. The PNA contamination found in samples taken eleven years after the reporting of a release does not indicate that a release from the diesel tank occurred in 1990 when the original gasoline release was reported. In fact all documents filed by the Petitioner around that time indicate that there was no release in the diesel tank. Further, the diesel tank was still in use between the 1990 gasoline release reported as Incident Number 901831 and the 2001 sampling, so it is possible that a release from the diesel tank could have occurred at any time during those eleven intervening years.
5. In the March 7, 2002 amended eligibility and deductibility application completed by the Petitioner and submitted to OSFM, the Petitioner incorrectly stated that IEMA was notified of a

release of all three tanks on July 3, 1990. The IESDA, now IEMA incident report for incident number 901831 does not mention a release in the diesel tank.

6. The OSFM eligibility determination requirements state that “the Owner/Operator notified the Illinois Emergency Management Agency of a confirmed release”. That was not done. The incident report clearly states that only the 6,000 gallon gasoline tank is associated with this incident number.
7. The Illinois EPA did not ignore the information provided by the Petitioner regarding the diesel tank as stated by the Petitioner in paragraph 18 of their petition. The January 19, 2005 denial letter referencing the previously submitted information stated that removal of the diesel tank and excavation of areas contaminated by PNA constituents did not remediate any of the criteria set forth in 35 Ill. Adm. Code 732.404(b). Because Incident Number 901831 related to a gasoline only release, activities relating to the diesel tank exceeded the minimum requirements to comply with Title XVI of the Act. Pursuant to 35 Ill. Adm. Code 732.310(b) indicator contaminants for a gasoline release, as reported to ESDA on July 3, 1990, are BTEX constituents only. Diesel tank removal is not applicable when remediating a gasoline tank release.
8. The Illinois EPA cannot approve a high priority corrective action plan when a release has never been reported. Further, the Illinois EPA cannot then reimburse for activities associated with the diesel tank because those activities do not address contamination associated with a reported release. The activities the Petitioner is requesting to have approved are not related to the release reported in incident number 901831.

IV. ADDITIONAL SAMPLING REQUIRED BY LAW

1. There is no genuine issue of material fact. All facts can be found within the Administrative Records.
2. Pursuant to 35 Ill. Adm. Code 732.404(e), the full extent of soil and groundwater contamination must be defined prior to developing a corrective action plan. The full extent of soil and groundwater contamination has not been analytically verified. Therefore, the Petitioner has not complied with the regulations.
3. Further, the Illinois EPA has not received any details regarding why the Petitioner cannot comply with the regulations. Off-site access refusal by a property owner, which has never been verified by the Petitioner, does not negate the regulatory need for full contamination definition. Properties beyond the refusing land owner must be evaluated to verify the soil and groundwater contamination has not migrated beyond the property that refused access.
4. Information submitted by the Petitioner shows that the greatest concentrations of contaminants are found east of the right-of-way of Elliot Avenue, just 50 feet from the bank property which is located on the west side of Elliot Avenue. Soil and groundwater contamination migration trends from this release are north/northwest. The off-site property at issue is located west/northwest of the release. No modeling calculations have been submitted to the Illinois EPA demonstrating that contamination would not reach the off-site property, let alone cross it. Additionally, modeling to determine contamination extent is not acceptable in areas where there is no ordinance prohibiting groundwater use. Soil and groundwater plumes must be analytically verified in areas with no groundwater ordinances.

5. The Illinois EPA merely requests summary judgment as to the point of law that the contamination plume must be fully delineated. The Petitioner has failed to do so and the Illinois EPA is correct in denying their High Priority Corrective Action Plan for failure to do so.

V. RESPONSE TO CROSS MOTION FOR SUMMARY JUDGMENT

The Illinois EPA is not attempting to make eligibility determination. As stated above, the Illinois EPA cannot approve a High Priority Corrective Action Plan that includes remediation of a release that was never reported to IEMA. Illinois EPA respectfully incorporates the arguments from Section III above in responding to the Petitioner's Cross Motion for Summary Judgment.

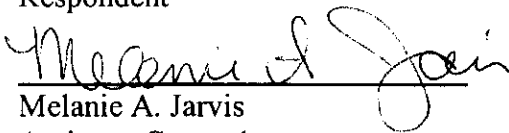
VI. CONCLUSION

For the reasons stated herein, as well as those previously made by the Illinois EPA, the Illinois EPA respectfully requests that the Board affirm its final decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
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217/782-5544
217/782-9143 (TDD)
Dated: December 19, 2006

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

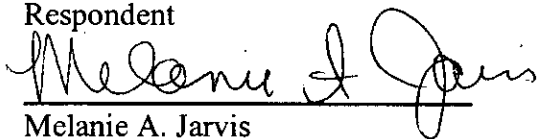
I, the undersigned attorney at law, hereby certify that on December 19, 2006 I served true and correct copies of a RESPONSE TO PETITIONER'S MOTION TO SUPPLEMENT THE RECORD AND MOTION TO STRIKE, MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, and REPLY TO PETITIONERS' RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGEMENT AND RESPONSE TO PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT by placing true and correct copies thereof 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

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

Carolyn S. Hesse
Barnes & Thornburg, LLP
One North Wacker Drive,
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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