

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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JUN 04 2007

STATE OF ILLINOIS
Pollution Control Board

WILLINGHAM FARMS,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 07- 121
(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

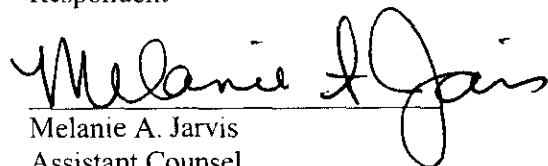
Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

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 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 31, 2007

JUN 04 2007

STATE OF ILLINOIS
Pollution Control Board

PCB No. 07- 
(LUST Appeal – Ninety Day Extension)

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 September 7, 2007, 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:

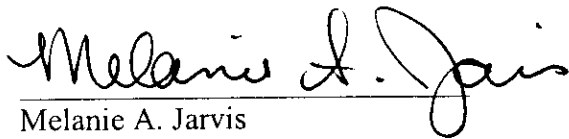
1. On May 2, 2007, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
 2. On May 30, 2007, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. (Exhibit B)
- Tracking information from the Certified Mail number on the final decision indicates the final decision was received on May 5, 2007. (Exhibit C)

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

A handwritten signature in black ink, reading "Melanie A. Jarvis". The signature is fluid and cursive, with the first name "Melanie" and last name "Jarvis" clearly legible. It is positioned above a horizontal line.

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 31, 2007



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) 314-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

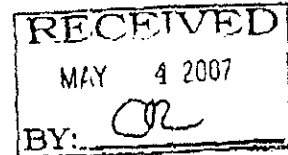
217/782-6762

CERTIFIED MAIL

7004 2510 0001 8616 2630

MAY 03 2007

Willingham Farms
Attention: Jerry Willingham
2704 East 9th Street
Lehigh Acres, Florida 33972



Re: LPC #1530355008 - Pajaski County
Ullin/Willingham Farms
5713 Shawnee College Road
Leaking UST Incident No. 20040141
Leaking UST Technical File

Dear Mr. Willingham:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated January 4, 2007 and March 19, 2007, was received by the Illinois EPA on January 4, 2007 and March 19, 2007. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The plan and the associated budget are rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), 734.510(a) and 734.510(b)).

The plan is rejected for the following reason(s):

1. The plan has indicated that both the early action contaminated backfill soils were removed and disposed and that no contaminated backfill materials were removed. Please clarify if the confirmed contaminated backfill soils were removed during early action. It is not indicated as such in the 45 Day Addendum Report.

If the original backfill still exists, then a sample of it should have been collected and analyzed to determine if it is above the Tier I cleanup objectives and requires removal. The results of the soils sampled from the gasoline UST excavation area were determined to be below Tier I cleanup objectives. Therefore, that area does not appear to require any additional remediation activities.

Exhibit A

Page 2

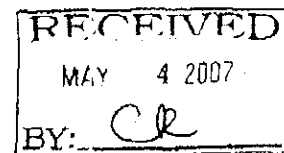
2. The plan indicates Tier I remediation objectives were calculated using the parameters required by 35 Ill. Adm. Code Section 734.410. However, the plan fails to include the lab analysis results for such parameters. In addition, the plan fails to include worksheets showing the equations and how they were calculated. Further, the plan fails to include the values used for "foc" and the "dilution factor".
3. The plan indicates the soils of the site will be excavated to a depth of 12 feet below ground surface. However, all soil sampling results indicate soil contamination exists at nine (9) feet below ground surface. The Illinois EPA does not approve of excavating into the groundwater table. In addition, the area proposed for soil remediation appears to be excessive since there is at least 40 feet between the areas found contaminated and the areas found clean.

Further, the soil boring logs with PID readings of each soil boring completed does not indicate the soils are contaminated from surface to eight (8) feet below ground surface. Please justify the necessity to excavate and dispose of the soils on site that have not been found to contain contamination above the applicable cleanup objectives.
4. The plan indicates a building on the site must be demolished in order to excavate contaminated soils. However, the plan fails to include information/justification that indicates the necessity to demolish the building. Additional information clarifying the necessity to demolish the building for remedial purposes is required.
5. The Illinois EPA is requesting copies of the photos that were budgeted for in the Site Investigation Plans since they were not included in the Site Investigation Completion Report. In addition, please include the information indicating the depths to water of the groundwater monitoring wells that was completed when previously sampled for site investigation purposes pursuant to 35 Ill. Adm. Code Section 734.430(c). This information shall be submitted in tabular format.

The plan budget is rejected for the following reason(s):

1. Pursuant to Sections 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b), the associated budget is rejected for the following reason:

The Illinois EPA has not approved the plan with which the budget is associated. Until such time as the plan is approved, a determination regarding the associated budget— i.e., a determination as to whether costs associated with materials, activities, and services are reasonable; whether costs are consistent with the associated technical plan; whether costs will be incurred in the performance of corrective action activities; whether costs will not be used for corrective action



Page 3

activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and whether costs exceed the maximum payment amounts set forth in Subpart H of 35 Ill. Adm. Code 734—cannot be made (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b)).

2. The budget includes corrective action costs for Excavation, Transportation, Disposal, Backfill and Cap that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

A detailed time and materials cost breakdown is required from each bidder to demonstrate they are qualified and able to perform the work being bid pursuant to 35 Ill. Adm. Code Section 734.855(a). This information should include a time and materials breakdown of all subcontractors costs as well.

Pursuant to Sections 57.7(b) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, a plan and/or budget must be submitted within 90 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.

MAY-30-2007 16:26
05/30/2007 16:25 FAX

DLC LEGAL
3127595646

Barnes&Thornburg

P.06/07
006/007

05/04/2007 15:55

2175228009

CWM

PAGE 05

Page 4

If you have any questions or need further assistance, please contact Mindy Weller at 217/782-6762.

Sincerely,



Harry A. Chappel, P.E.

Unit Manager

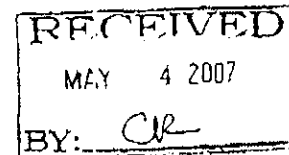
Leaking Underground Storage Tank Section

Division of Remediation Management

Bureau of Land

HAC:MW:C\20040141-5.DOC

cc: Carol Rowe, CWM Company, Inc.
BOL 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) 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

BARNES & THORNBURG LLP

Carolyn S. Hesse
(312) 214-8301
Email: chesse@btlaw.com

Suite 4400
One North Wacker Drive
Chicago, IL 60606-2833 U.S.A.
(312) 357-1313
Fax (312) 759-5646

www.btlaw.com

May 30, 2007

VIA FACSIMILE & FEDERAL EXPRESS

Mr. William Ingersoll
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Re: LPC #1530355008 - Pulaski
Ullin / Willingham Farms
5713 Shawnee College Road
LUST Incident #20040141

Dear Bill:


On May 2, 2007, the Agency issued a letter with respect to the above referenced LUST Incident. It is my understanding that the letter was received by Mr. Willingham on May 5, 2007. A copy of the letter is attached.

CW³M believes that, based upon discussions with you and others at the Illinois Environmental Protection Agency and for other reasons, that we will be able to resolve the issues raised in the IEPA letter. However, we believe that we will not be able to resolve these issues by the deadline for filing an appeal of these issues to the Illinois Pollution Control Board. Thus, this is a request for a 90 day extension pursuant to the Illinois Environmental Protection Act, Section 40(a)(1) and 35 IAC 105.406 to allow us the needed time to continue these discussions and to try to resolve the issues.

Earlier today we discussed this request for a time extension and agreed to such a time extension. If for any reason the Agency will not seek the 90 day extension, please notify me no later than the close of business on June 6, 2007, so that I may file the appropriate appeals to the Board. If you have any questions or comments, please do not hesitate to contact me

Sincerely yours,

BARNES & THORNBURG


Carolyn S. Hesse

CSH/jmr
Enclosure
cc: William Sinnott
Carol L. Rowe

Chicago Elkhart Fort Wayne Grand Rapids Indianapolis South Bend Washington, D.C.

Exhibit B

[Home](#) | [Help](#)[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: 7004 2510 0001 8616 2630
Status: **Delivered**

Your item was delivered at 12:23 PM on May 5, 2007 in LEHIGH
ACRES, FL 33972.

[Track & Confirm](#)

Enter Label/Receipt Number.

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)



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Exhibit C

CERTIFICATE OF SERVICE

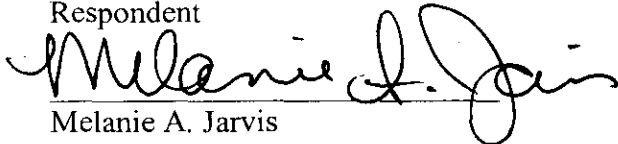
I, the undersigned attorney at law, hereby certify that on May 31, 2007, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box 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

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

A handwritten signature in black ink, appearing to read "Melanie A. Jarvis", is written over a horizontal line.

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)