

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

RECEIVED

DEC 26 2007

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Belvidere Oasis- South Side))
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Respondent.)

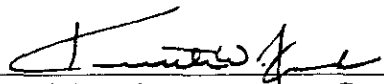
PCB - 08-040
(UST Appeal)

NOTICE OF FILING

To: Douglas P. Scott, Director
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

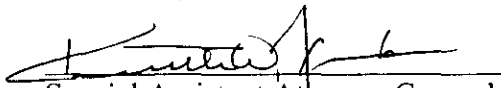
PLEASE TAKE NOTICE that on December 26, 2007 we filed with the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via personal delivery, of 1) **Appearance of Deutsch, Levy & Engel, Chartered** and 2) **Petition for Review of Agency Modification of High Priority Corrective Action Plan and Budget for Belvidere Oasis South** for filing the above-entitled cause, copies of which are attached hereto.


Special Assistant Attorney General

Kenneth W. Funk
Karen Kavanagh Mack
Special Assistant Attorneys General
Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460 /Firm No. 90235

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the above-named Respondent by enclosing same in envelope addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a U.S. Post Office Mail Box at Chicago, Illinois, with postage fully prepaid on the 26th day of December, 2007.


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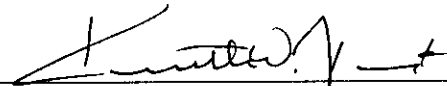
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APPEARANCE

We, Kenneth W. Funk and Karen Kavanagh Mack, hereby file the appearance of Deutsch, Levy & Engel, Chartered in this proceeding on behalf of the Illinois State Toll Highway Authority.



Special Assistant Attorney General

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 Karen Kavanagh Mack
 Special Assistant Attorneys General
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 Respondent.)

PCB - 08-040
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**PETITION FOR REVIEW OF AGENCY MODIFICATION OF HIGH PRIORITY
CORRECTIVE ACTION PLAN AND BUDGET**

Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk and Karen Kavanagh Mack, as Special Assistant Attorneys General, petitions the Illinois Pollution Control Board, pursuant to 415 ILCS 5/57.7(c)(4)(D), 415 ILCS 57.8(i), and 415 ILCS 5/40, for review of the final determination of Respondent, the Illinois Environmental Protection Agency (the "Agency"), with respect to Petitioner's High Priority Corrective Action Plan and Budget, dated on or about September 26, 2007, relating to its Belvidere Oasis South facility, and in support thereof, states:

1. ISTHA is the owner of the facility, including underground storage tanks ("UST") and related piping, commonly known as the Belvidere Oasis South located on the I-90 Tollway in Belvidere, Illinois.

2. In or about 1994, Wight & Company performed a Contaminated Soils Determination to confirm results of investigations near the existing and former UST dispensing systems and the former vehicle repair/service station at the Belvidere Oasis South facility. In or about 1994, Wight & Company, on ISTHA's behalf, notified the Illinois Emergency Management Agency (IEMA) that various gasoline, diesel, and waste oil target analytes were

detected above the Tier I Remediation Objectives, to which the IEMA assigned LUST incident number 94-1816.

3. In or about August of 2002, at the Office of the State Fire Marshall's (OSFM) request, Wight and Company, on ISTHA's behalf, notified IEMA of a release from the USTs, to which the IEMA assigned Incident No. 2002-1277, and is considered a re-reporting of Incident No. 94-1816 since the release was reported during the removal of the tank system associated with Incident No. 94-1816.

4. On or about September 26, 2007, ISTHA submitted a Combined High Priority Corrective Action Plan, Budget and Completion Report ("Report") to the Agency in accordance with the requirements of Title XVI of the Act and 35 Ill. Adm. Code 732.409(c); and, on or about November 20, 2007, the Agency approved with modification the Corrective Action Plan ("CAP") portion of the Report. A true and correct copy of said decision letter is attached hereto as Exhibit "1".

5. On or about November 20, 2007, the Agency also approved with modification the Budget portion of the Report. The Agency's modification decision is also contained in the letter attached hereto as Exhibit "1".

6. ISTHA requests that the Board reverse the Agency's determination modifying the CAP portion of the Report. Specifically, the Agency's decision letter states that "... the proposed alternative technologies (SVE and ORC) do not show a likelihood of success. No additional information submitted in this report supports these activities." (*See Ex. 1*). The Agency's failure to approve Oxygen Release Compound (ORC) injection technology is unreasonable because ORC injection technology is a valid remedial technology recognized by

the Agency. Furthermore, the CAP portion of the Report sufficiently establishes the likelihood of success to support these activities.

7. ISTHA also requests that the Board reverse the Agency's determination modifying the Budget portion of the Report. With respect to the Budget, ISTHA appeals the Agency's modifications to the investigation, analytical, personnel, equipment, field purchases, and other costs; the modifications to the Project Manager and boring rates; the modifications to excavation charges; the modifications to the costs associated with mobilization, well development, well materials; the modifications to the costs for alternative technologies in the amount of \$306,350.86; and the modifications to the Budget for costs for expedited sample returns. ISTHA asserts that the costs for those categories were reasonable and required to develop the CAP.

8. With regard to the Budget, ISTHA appeals *inter alia*, the modifications to the budgeted investigation, analytical, personnel, equipment, field purchases and other costs because the Agency failed to provide a detailed breakdown regarding these modifications. Rather, the Agency provided a "lump sum" modification to the proposed Budget in Section 1 of IEPA modification letter. (Ex. 1, Attachment A). ISTHA's proposed budgeted amounts are necessary and reasonable for achieving the proposed corrective action objectives pursuant to 35 Ill. Adm. Code 732.505(c).

9. In addition, no deduction should be made for the investigation conducted to obtain the site-specific parameters necessary to evaluate the site and determine the appropriate remediation methods. The costs for the borings, excavation charges, mobilization, well development, well materials, are necessary and consistent with the applicable regulations. Additionally, the Agency's modification to the Project Manager rate is improper because the

proposed budgeted rate was reasonable and consistent with the scope of the remedial action activities.

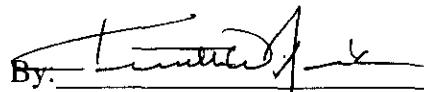
10. Furthermore, ISTHA objects to the Agency's modification to the Budget for costs pertaining to alternative technologies in the amount of \$306,350.86. The Agency's failure to approve the alternative technologies is unreasonable because ORC injection technology is a valid remedial technology recognized by the IEPA and the CAP portions of the Report sufficiently establishes the likelihood of success to support these activities.

11. Similarly, ISTHA further objects to the modifications to the proposed Budget for expedited sample returns because the rate per rush sample is necessary and reasonable for developing the proposed corrective action objectives pursuant to 35 Ill. Adm. Code 732.505(c).

12. ISTHA reserves the right to present additional grounds for reversal of the Agency's final determination, as they appear during the course of this Appeal.

WHEREFORE, the Petitioner, The Illinois State Toll Highway Authority, respectfully requests that this Board grant a hearing in this matter and reverse the Agency's November 20, 2007 modification of ISTHA's High Priority Corrective Action Plan and Budget for the Belvidere Oasis South and remand this matter to the Agency with instructions to approve the Amendment as aforesaid, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,
ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: 
Special Assistant Attorney General

Kenneth W. Funk
Karen Kavanagh Mack
Special Assistant Attorneys General
Deutsch, Levy & Engel, Chartered
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460
Firm No. 90235



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

7007 0220 0000 0153 2917

NOV 20 2007

Illinois State Toll Highway Authority
Attention: Mr. Jeffrey S. Dailey, P.E.
2700 Ogden Avenue
Downers Grove, Illinois 60515

Re: LPC #0070057092 -- Boone County
Belvidere/ Belvidere Oasis (South Side)
I-90 East Bound
Leaking UST Incident No. 941816 and No. 20021277
Leaking UST Technical File

Dear Mr. Dailey:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated September 26, 2007, was received by the Illinois EPA on September 27, 2007. Citations in this letter are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

As stated previously in an Agency letter dated January 10, 2002, the proposed alternative technologies (SVE and ORC) do not show a likelihood of success. No additional information submitted in this report supports these activities. Therefore the Agency is approving the excavation portion of the corrective action plan and the proposed barriers and institutional controls.

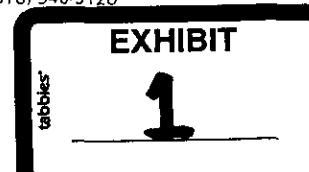
Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

In addition, the budget for the High Priority Corrective Action Plan is modified pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c) of the Act. Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if payment from the Fund will

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Majl Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid.

All future correspondence must be submitted to:

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

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

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

If you have any questions or need further assistance, please contact Donna Wallace at 217/ 524-1283.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:DW:dw\

Attachment: Attachment A

c: Deutsch, Levy & Engel/ Karen Kavanagh Mack
Division File

Appeal Rights

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

Attachment A

Re: LPC #0070057092 -- Boone County
Belvidere/ Belvidere Oasis (South Side)
I-90 East Bound
Leaking UST Incident No. 941816 and No. 20021277
Leaking UST Technical File

SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this attachment, the following amounts are approved:

\$24,444.50	Investigation Costs
\$22,656.00	Analysis Costs
\$75,994.07	Personnel Costs
\$4,525.00	Equipment Costs
\$3,207.72	Field Purchases and Other Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.8(f) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.607.

SECTION 2

- A. The Project Manager rate has been reduced to \$95.29/hour. Boring rates have been reduced to \$23.64 for augered borings and \$18.50 for push borings. An additional \$16.96 was included for those borings converted to monitoring wells. Excavation charges were reduced to \$58.59/cubic yard and backfill material to \$20.56/ cubic yard. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 732. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(ccc). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable.
Total deduction =\$10,397.01
- B. The costs associated with mobilization, well development, well materials are not approved as part of this budget. These charges are included in the per foot rate, for which a maximum rate of \$23.64 or \$18.50 per foot for borings and \$16.96 per foot for monitoring wells applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 732. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.606(ccc). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable.
Total deduction =\$7,484.63

- C. \$306,350.86 for costs for alternative technologies that are not approved. They are therefore inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.505(c).
- D. \$6,045.75 for costs for expedited sample returns, which exceed the minimum requirements necessary to comply with the Act. Costs associated with corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(o).
- E. \$4,000 for costs requested that are based on mathematical errors. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(ff). In addition, such costs are not approved pursuant to Section 57.7(c)(4)(C) of the Act because they are not reasonable.

Total in Field Purchases and Other Costs was incorrectly added to be \$123,432.55 and should have been \$119,432.55

DW:dw\