

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRIME LOCATION PROPERTIES, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 09-67
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Clerk Illinois Pollution Control Board 100 West Randolph Street State of Illinois Building, Suite 11-500 Chicago, IL 60601	Carol Webb Hearing Officer Illinois Pollution Control Board 1021 North Grand Avenue East P.O. Box 19274 Springfield, Illinois 62794-9274
	William Ingersoll Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276	

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), an Amended Petition for Review, a copy of which is herewith served upon the hearing officer and upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys and to said hearing officer with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 20th day of April, 2009.

Respectfully submitted,
PRIME LOCATION PROPERTIES, LLC, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: 
Patrick D. Shaw

Fred C. Prillaman
Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517
Facsimile: 217/528-2553

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AMENDED PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Prime Location Properties, LLC ("Prime"), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued January 27, 2009, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected the plan and associated budget, and in support thereof states as follows:

1. Prime is the owner of the underground petroleum storage tanks at the service station located at 600 West 10th Street, Metropolis, Illinois, LPC #1270155017, Incident # 20011314.
2. On November 14, 2008, the Agency received from Prime its amended corrective action plan with associated budget, together with all required engineers' certifications, owner/operator billing certifications, and related Agency forms duly completed, and all required supporting documentation and justification, as required by applicable law.
3. Nevertheless, on January 27, 2009, the Agency prepared its letter notifying Prime that it was denying the amended corrective action plan for the reason that the work sought to be performed is considered to be in remediation of a new release, specifically Incident #20061558. This conclusion appears to be the basis for all of the reasons given for rejecting the plan and

associated budget. A true and correct copy of the Agency letter is attached hereto as Exhibit 1.

4. Within 35 days of service of the Agency denial letter, Prime timely filed a petition asking the Board to review the January 27, 2009, determination. See Board Opinion herein, dated March 19, 2009. In response to said Board order, Petitioner is filing this Amended Petition for Review and Entry of Appearance today.

5. The grounds for appeal given in the initial Petition for Review are correct, but they can more succinctly be described as follows: The Agency has erred in concluding that the plan relates to a new incident, as opposed to the same incident that has been the subject of continuing remediation efforts, and/or a re-reporting of the same.

6. Since the issue of whether the plan relates to a new release appears to be basis for all of the reasons given for rejecting the plan and associated budget, Petitioner asks that the Board find that the Agency erred, and direct the approval of the plan and budget forthwith.


7. Furthermore, Petitioner asks for payment of the associated attorney's fees in the event that the Agency's decision is reversed in full or in part.

WHEREFORE, Petitioner, Prime, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in denying the plan and associated budget, (d) the Board direct the Agency to approve the plan and associated budget, (e) the Board award payment of attorney's fees; and (f) the Board grant Prime such other and further relief as it just.

PRIME LOCATION PROPERTIES, LLC,
Petitioner

By his attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:



Patrick D. Shaw

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

EXHIBIT I



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
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

JAN 27 2009

7008 1830 0004 1767 9227

Prime Location Properties, LLC
Attn: Joe Keibler
P.O. Box 242
Carbondale, IL 62903

Re: LPC #1270155017 - Massac County
Metropolis/Prime Location Properties, LLC
600 West 10th Street
Leaking UST Incident No. 20061558
Leaking UST Technical File

Dear Mr. Keibler:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated November 10, 2008, was received by the Illinois EPA on November 14, 2008. 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):

- A) During the investigation activities associated with Incident #20011314 soil and groundwater contamination were not identified in the vicinity of USTs #3 through #7. However, three years later during the removal of these USTs, soil contamination was identified in these areas. Therefore, Incident #20061558 is a new release and is not considered a re-reporting of Incident #20011314.
- B) Pursuant to 35 Ill. Adm. Code 734.210(c) and 734.210(e), the 20- and 45-Day reporting requirements must be fulfilled.
- C) In addition, pursuant to 35 Ill. Adm. Code 734.310(a), prior to conducting site investigation activities pursuant to Section 734.315, 734.320 or 734.325 of this Part, the owner or operator must submit to the Agency for review a site investigation plan.

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

- A). 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 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)).

In addition, please note most of the costs in the proposed budget will have to be submitted as Early Action costs.

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 Stage 1 Site Investigation Plan (Incident #20061558) and a Corrective Action Completion Report (Incident #20011314) must be submitted within 60 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.

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If you have any questions or need further assistance, please contact Jason Donnelly at (217) 557-8764.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry A. Chappel". The signature is fluid and cursive, with a large initial "H" and "C".

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

HAC:JD\061558&011314-sicap&bud

Attachment: Appeal Rights

c: Environmental Management, Inc., Jeremy VanScyoc
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 request for an extension, please contact:

Illinois Environmental Protection Agency⁶
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

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

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