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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 26 2009

STATE OF ILLINOIS
Pollution Control Board

SPIRIT ENERGY, L.L.C.,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 09- 130
(LUST Appeal – Ninety Day
Extension)

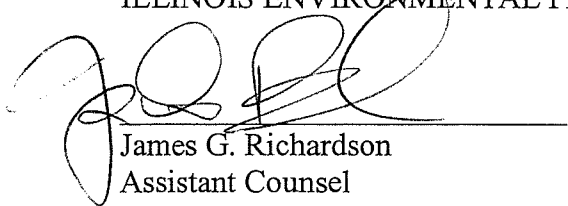
NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Donna Weil
Spirit Energy, L.L.C.
7751 Carondelet Avenue, Suite 202
St. Louis, Missouri 63105

PLEASE TAKE NOTICE that I have today caused to be filed a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY


James G. Richardson
Assistant Counsel

Dated: June 23, 2009
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SPIRIT ENERGY, L.L.C.,)
Petitioner,)
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v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 09- 130
(LUST Appeal - Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel, 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 23, 2009, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

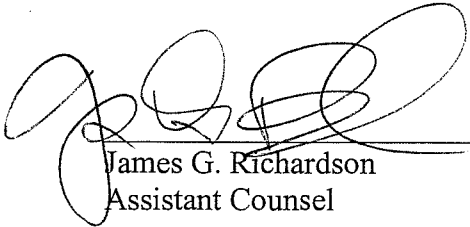
1. On May 18, 2009, the Illinois EPA issued a final decision to the Petitioner.
2. On June 18, 2009, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on May 21, 2009.

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



James G. Richardson
Assistant Counsel

Dated: June 23, 2009

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Free
MAY 20 2009



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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

MAY 18 2009

7008 1140 0004 7345 3315

Spirit Energy, LLC
Ms. Donna Weil
7751 Carondelet Avenue, Suite 202
St. Louis, MO 63105

Re: LPC #0770155076—Jackson County
Carbondale/ Spirit Energy, LLC
315 East Walnut Street
Leaking UST Incident No. 20081119, 20060627, 20041403 and 960121
Leaking UST Technical File

Dear Ms. Weil:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Free Product Removal Plan (plan) submitted for the above-referenced incident. The plan, dated May 4, 2009, was received by the Illinois EPA on May 6, 2009. 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 is modified, as follows (Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

1. Soil BETX with MTBE and soil PNA analysis must be performed on the seven requested soil borings that are to be completed as four-inch free product recovery wells.
2. For estimating purposes, it has been assumed that a total of approximately 18,000 gallons of free product and dissolved phase groundwater will be removed during the extraction events over a six-month period. This figure is, however, only an estimation. If the recovery wells are found to have less than one-eighth of an inch of free product at the beginning of any removal event, the free product removal activities are to cease and site investigation is to continue in accordance with 35 Ill. Adm. Code 734.310.

In addition, the corresponding budget is modified pursuant to Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based upon 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 UST Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630(s) and 734.655.

If, following approval of the free product removal plan or associated budget, it is determined that a revised removal plan or budget is necessary in order to complete free product removal, an amended free product removal plan or budget, as applicable, must be submitted to the Illinois EPA for review (35 Ill. Adm. Code 734.215(g)). Any such plan and budget shall be submitted to the Illinois EPA for review and approval, rejection, or modification prior to payment for any related costs or the issuance of a No Further Remediation Letter (35 Ill. Adm. Code 734.215(f)).

NOTE: None of the four incident numbers assigned to this site has been determined to be a re-reporting of another incident. In fact, there have been four separate occurrences on this site. Therefore, in accordance with 35 Ill. Adm. Code 734.615(b)(2) and (3), four separate eligibility and deductibility determinations are needed for this site. Each reported incident is a separate occurrence and is subject to its own deductibility determination.

Incident number 960121 was reported under 35 Ill. Adm. Code 732. If remedial activities are to pertain to all four incidents, as was stated in the report, then all four incidents must proceed under 35 Ill. Adm. Code 734. Please submit an "Election to Proceed under 35 Ill. Adm. Code 734" form for incident number 960121. The form can be found at <http://www.epa.state.il.us/land/lust/forms/technical-forms/index.html>. Also include a "Stage 1 Site Investigation Certification" for incidents 960121, 20041403 and 20081119.

In addition, it does not appear as if Stage 1 Site Investigation has been performed in accordance with 35 Ill. Adm. Code 734.315. A Stage 1 soil and groundwater investigation must be done in accordance with 35 Ill. Adm. Code 734.315(a) (1) and (2).

The Illinois EPA requires that the owner or operator submit a site investigation plan and budget for stage 2 of investigation (including the results of the Stage 1 site investigation and a summary of actual costs) within 60 days of the date of this letter pursuant to Sections 57.7(a) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.305.

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 Brad Dilbaitis at (217) 785-8378 or at Bradley.Dilbaitis@illinois.gov.

Sincerely,



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

TAH: BJD\FPPLANmodBUDmod.docx

Attachment: Attachment A
Appeal Rights

c: Geotechnology, Inc.
BOL File

Attachment A

Re: LPC # 0770155076—Jackson County
Carbondale/ Spirit Energy, LLC
315 East Walnut Street
Leaking UST Incident No. 20081119, 20060627, 20041403 and 960121
Leaking UST Technical File

SECTION 1

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

| | |
|-------------|--|
| \$5,426.40 | Drilling and Monitoring Well Costs |
| \$3,618.30 | Analytical Costs |
| \$26,280.00 | Remediation and Disposal Costs |
| \$0.00 | UST Removal and Abandonment Costs |
| \$0.00 | Paving, Demolition, and Well Abandonment Costs |
| \$37,449.02 | Consulting Personnel Costs |
| \$5,350.00 | Consultant's Materials Costs |

For your information, pursuant to 35 Ill. Adm. Code 734.855, the lowest bid for Remediation and Disposal Costs provided by Illini Environmental, Inc. is approved.

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 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

The Free Product Removal Plan was modified to include BETX soil with MTBE and PNA soil analysis. The budget approves two soil samples per soil boring, one for each five-foot interval. The depth to groundwater in the previous site assessment wells ranged from 1.9 feet below the ground surface to 9.0 feet below the ground surface. A total of 14 BETX soil with MTBE and 14 PNA soil samples have been approved at Subpart H maximum amounts of \$92.69 per sample and \$165.76 per sample, respectively, for a total of \$3,618.30.

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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 Agency
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

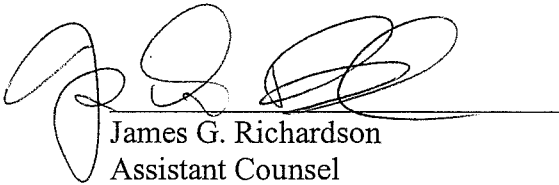
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 23, 2009 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Donna Weil
Spirit Energy, L.L.C.
7751 Carondelet Avenue, Suite 202
St. Louis, Missouri 63105

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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Assistant Counsel
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