

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
MAR 10 2010
STATE OF ILLINOIS
Pollution Control Board

WHEELING/GWA AUTO SHOP,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 10- **70**
(LUST Appeal – Ninety Day Extension)

NOTICE

ORIGINAL

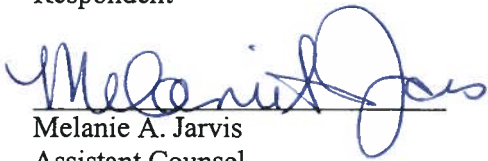
John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Dennis G. Walsh
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Ste 1660
Chicago, IL 60606-2903

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
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: March 8, 2010

BEFORE THE POLLUTION CONTROL BOARD
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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(LUST Appeal – Ninety Day Extension)

REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD

ORIGINAL

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, 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 June 10, 2010, 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:

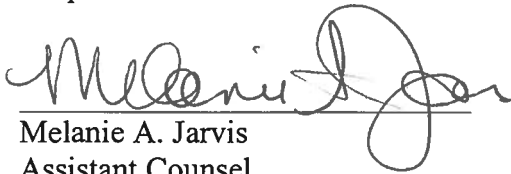
1. On February 2, 2010, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On March 4, 2010, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner calculated that date to be March 12, 2010. (Exhibit B)

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



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
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Dated: March 8, 2010

This filing submitted on recycled paper.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2629
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

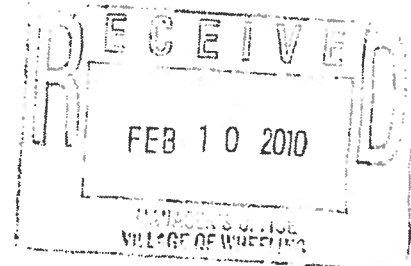
DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7008 1830 0001 4716 5786

FEB 02 2010
Village of Wheeling
Attention: Mark Rooney – Village Manager
2 Community Boulevard
Wheeling, IL 60090



Re: LPC # 0314975175 -- Cook County
Wheeling / GWA Auto Shop
434 South Milwaukee Avenue
Leaking UST Incident No. 951688
Leaking UST Technical File

Dear Mr. Rooney:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated October 13, 2009, was received by the Illinois EPA on October 14, 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).

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. 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 is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A have been 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(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

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).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will 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. 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 from the Fund.

Exhibit A

Rockford • 4102 N. Main St., Rockford, IL 61103 • (815) 997-7760

Elgin • 295 S. State, Elgin, IL 60120 • (847) 698-4111

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5460

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

Attachment A

Re: LPC # 0314975175 -- Cook County
Wheeling / GWA Auto Shop
434 South Milwaukee Avenue
Leaking UST Incident No. 951688
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:

\$5,293.76	Drilling and Monitoring Well Costs
\$7,948.59	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$24,149.13	Consulting Personnel Costs
\$1,169.00	Consultant's Materials 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 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

1. The costs associated with Remediation Materials are not approved as part of this budget. These charges are included in the Drilling and Monitoring Well costs rate. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

\$1,083.00 is deducted from the Remediation and Disposal Costs section for materials listed on the Remediation Materials Summary Sheet.

2. On January 23, 2006 the Illinois EPA received the Election to Proceed as "Owner" form from the present owner pursuant to Section 57.2 of the Act. Prior to this date the present "Owner" did not meet the definition of Owner or Operator in Section 57.2 of the Act therefore, all costs incurred prior to this date are not eligible for reimbursement from the Fund to the present "Owner".

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



20 N. Wacker Drive, Ste 1660
Chicago, Illinois 60606-2903
T 312 984 6400 F 312 984 6444

15010 S. Ravinia Avenue, Ste 10
Orland Park, Illinois 60462-5353
T 708 349 3888 F 708 349 1506

DD 312 984 6410
dgwalsh@ktjlaw.com

www.ktjlaw.com

March 4, 2010

Via E-Mail and U.S. Mail
Mr. William Ingersoll
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Re: Appeal Extension Request
Wheeling / GWA Auto Shop
434 South Milwaukee Avenue
LUST Incident No. 951688

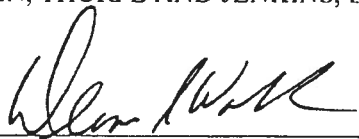
Bill,

It was nice speaking with you this morning. In furtherance of our discussion, please let this letter confirm that this office represents the Village of Wheeling. On February 2, 2010, the Illinois Environmental Protection Agency (IEPA) sent a letter to the Village of Wheeling regarding budgeting for environmental activities at the GWA Auto Shop site located at 434 S. Milwaukee Avenue in Wheeling, Illinois. That letter accompanies this request. The Village of Wheeling has questions regarding the IEPA's official recognition of the timing of their ownership of the property based on the Election to Proceed as Owner form submitted in 2006. Additional questions have also arisen regarding the owner's rights for reimbursement for work prior to the Election to Proceed as Owner submittal. Therefore, the Village is requesting a 90-day extension of its right to appeal as described in the Appeal Rights section of the aforementioned letter. On Friday, February 26, representatives of the Village of Wheeling spoke to Carol Hawbaker, Harry Chappel, and Hernando Albarracin of the LUST Section of the IEPA via a telephone conference call regarding this issue. The IEPA representatives stated that they believed similar cases were currently in appeal with the State and that they were agreeable to the Village of Wheeling being granted the 90-day extension. The Village of Wheeling would like to use the 90-day time period to allow the Illinois Pollution Control Board (IPCB) to rule on the similar matters already on appeal. The Village would then plan to discuss the IPCB's decision with the LUST Section employees and how it pertains to this site in the hopes of avoiding our own appeal to the IPCB.

It is my understanding from our discussion that your office will prepare and file on behalf of the Village of Wheeling and the Agency a joint request for extension within 35 days after the date of service of the Agency's final decision. We calculated that date to be March 12, 2010. Please forward me a copy of the request upon its filing. We very much appreciate the Agency's agreement to this extension. Please call me with any questions you may have.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.

By: 
Dennis G. Walsh on behalf of
the Village of Wheeling

RECEIVED
CLERK'S OFFICE

MAR 10 2010

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

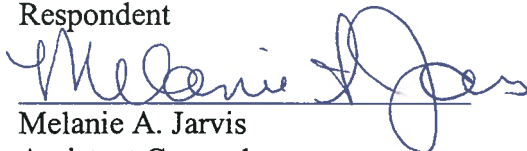
I, the undersigned attorney at law, hereby certify that on March 8, 2010, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, with the Board via electronic filing and by placing true and correct copies in properly sealed and addressed envelopes and by depositing said 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:

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

Dennis G. Walsh
Klein, Thorpe & Jenkins, Ltd.
20 N. Wacker Drive, Ste 1660
Chicago, IL 60606-2903

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Respondent



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