

10/20/09-11/28/09

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SPEEDWAY LLC,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 12- 22
(LUST Appeal – Ninety Day
Extension)
RECEIVED
CLERK'S OFFICE
JUL 27 2011
STATE OF ILLINOIS
Pollution Control Board

NOTICE

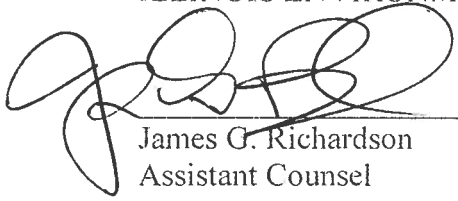
John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

Jose Luis Gonzalez, Jr.
Senior Attorney
Speedway LLC
500 Speedway Drive
Enon, Ohio 45323

ORIGINAL

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: July 25, 2011
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

RECEIVED
CLERK'S OFFICE

JUL 27 2011

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SPEEDWAY LLC,)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 12- 22
(LUST Appeal – Ninety Day
Extension)

ORIGINAL

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 November 9, 2011, 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:

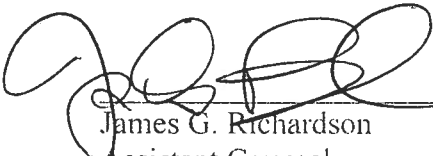
1. On July 5, 2011, the Illinois EPA issued a final decision to the Petitioner.
2. On July 22, 2011, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on or about July 7, 2011.

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: July 25, 2011

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



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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

→ D C G

217/782-6762

RECEIVED
ENVIRONMENTAL

JUL 07 2011

JUL 05 2011

CERTIFIED MAIL #

7009 3410 0002 3750 7536 **SPEEDWAY LLC**

Speedway SuperAmerica LLC
Attn: J. Mitchell Oliver
500 Speedway Drive
Enon, OH. 45323

Re: LPC #0310635183 -- Cook County
Des Plaines / Speedway #4250
885 East Touhy Avenue
Incident-Claim No.: 20031592 -- 59881
Queue Date: March 8, 2011
Leaking UST Fiscal File

Dear Mr. Oliver:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated February 23, 2011 and was received by the Illinois EPA on March 8, 2011. The application for payment covers the period from October 20, 2009 to November 28, 2009. The amount requested is \$5,658.76.

On March 8, 2011, the Illinois EPA received your complete application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$10,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60121 • (847) 608-3131

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) 693-5463

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

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

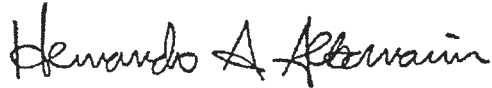
Page 2

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.


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 require further assistance, please contact Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:CSE 

ATTACHMENT

c: Practical Environmental Consultants, Inc.
Leaking UST Claims Unit
Cathy Elston

Attachment A
Accounting Deductions

Re: LPC #0310635183 -- Cook County
Des Plaines / Speedway #4250
885 East Touhy Avenue
Incident-Claim No.: 20031592 -- 59881
Queue Date: March 8, 2011
Leaking UST FISCAL FILE

Citations in this attachment 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).

Item # Description of Deductions

1. \$180.00, deduction for indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

Field equipment is an indirect cost billed as a direct cost.

2. \$5,478.76, deduction for costs which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 22.18b and Section 57.8 of the Act if an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of the State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9 of the Act, an application may be submitted to the Illinois EPA. An eligibility and deductibility determination for incident number 20031592 was issued to Speedway SuperAmerica LLC not MPC Investments LLC for which payment has been requested.

An owner or operator seeking payment from the Fund must submit to the Agency an application for payment on forms prescribed by the Agency pursuant to 35 Ill. Adm. Code 734.605(a). The application for payment did not contain all the information required to be submitted on Illinois EPA forms specifically a W-9 from the owner or operator deemed eligible to access the Fund by the Office of the State Fire Marshal.

In addition, MPC Investments LLC does not meet the definition of Owner or Operator in Section 57.2 or 22.18(e)(1)(B) of the Act therefore, all costs incurred regarding this incident are not eligible for reimbursement from the Fund to MPC Investments LLC.

cse

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

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on July 25, 2011 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

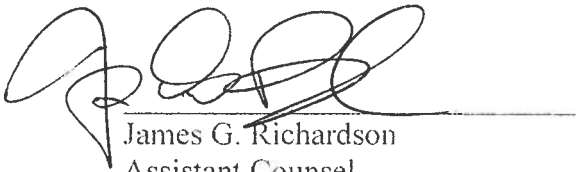
Jose Luis Gonzalez, Jr.
Senior Attorney
Speedway LLC
500 Speedway Drive
Enon, Ohio 45323

RECEIVED
CLERK'S OFFICE

JUL 27 2011

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
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)

ORIGINAL