

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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MAC'S CONVENIENCE STORES LLC,
Petitioner,

PCB 05-124
(UST APPEAL)

vs.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

FEB 02 2006
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the
Pollution Control Board a Motion to Dismiss, a copy of which is attached.

Respectfully submitted,

HATCHETT & HAUCK LLP

Dated: January 31, 2006



David L. Hatchett, IN Atty #19383-49
111 Monument Circle, Suite 301
Indianapolis, IN 46204-5124
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STATE OF ILLINOIS
Pollution Control Board

MOTION TO DISMISS

Petitioner Mac's Convenience Stores LLC ("Mac's") respectfully requests that the Illinois Pollution Control Board dismiss the above-captioned matter. In a letter dated January 19, 2006 and attached as Exhibit A, the Illinois Environmental Protection Agency ("Agency") has memorialized the agreement reached between Mac's and the Agency regarding the issues in this matter. As this dispute has been resolved, Mac's respectfully requests that this matter be dismissed.

WHEREFORE, Mac's respectfully requests that the Illinois Pollution Control Board dismiss this matter.

Respectfully submitted,

HATCHETT & HAUCK LLP

Dated: January 31, 2006



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CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on January 31, 2006, I served a true and accurate copy of the foregoing, by placing a true and correct copy in a properly sealed and addressed envelope and by depositing said sealed envelope in a U.S. mail drop box located within Indianapolis, Indiana, with sufficient First Class Mail postage affixed thereto, upon each of the following named persons:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276



David L. Hatchett



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

EXHIBIT A

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 – (217) 782-3397
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January 19, 2006

David L. Hatchett
Hatchett & Hauck, LLP
111 Monument Circle
Suite 301
Indianapolis, IN 46204-5124

Re: Mac's Convenience Stores LLC v. Illinois EPA
PCB No. 05-124
Illinois EPA LPC #1671205270
Springfield/Mac's Convenience Store #160
2901 Stevenson Drive
LUST Incident #2002-1336 & 2002-1337

Dear Mr. Hatchett:

As you are aware, the Illinois Environmental Protection Agency ("Illinois EPA") and your client have reached agreement on terms that will allow for the dismissal by your client, Mac's Convenience Store ("Mac's"), of the above-referenced appeal. Part of that agreement calls for the Illinois EPA to state its position as to whether or not the incident that was reported at the Mac's Convenience Store #160 site ("Mac's site") in 2002 is a re-reporting of the first incident at the site, as well as the implications of that position.

The Illinois EPA's position is that the gasoline contamination found at the Mac's site is from a release pre-dating Mac's operation (LUST Incident #920410). Further, the Illinois EPA takes the position that the No Further Remediation ("NFR") letter issued by the Illinois EPA's Leaking Underground Storage Tank Section on May 7, 2002, addresses this rediscovered contamination. Therefore, it is the Illinois EPA's position that Mac's has no liability or obligation to address the gasoline contamination, other than to continue to maintain compliance with the terms of the May 2002 NFR letter.

Also, any costs related to remediation of the separate diesel release may be eligible for reimbursement, and should be addressed separately. That release is considered separate and apart from the gasoline release, and should be handled accordingly.

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 Mall Street, Collinsville, IL 62234 – (618) 346-5120
MARION – 2309 W. Main St., Suite 116, Marion, IL 62959 – (618) 993-7200

The discussions concerning this site also touched on whether your client would be able to receive reimbursement for costs it has incurred to date regarding the 2002 incident and related handling. Since the 2002 incident is a re-reporting of the 1992 incident, and since that incident has been resolved via the issuance of the May 2002 NFR letter, no such reimbursement is possible.

Therefore, the agreement between the Illinois EPA and Mac's specifically includes that no further corrective action is necessary related to gasoline contamination stemming from the 2002 incident, and that no remediation costs related to gasoline contamination that were incurred after issuance of the May 2002 NFR letter can be reimbursed.

Finally, I would note that if your client wishes to further address the conditions that are contained within the May 2002 NFR letter, it is possible to pursue modifications or amendments by entering into the Illinois EPA's Site Remediation Program. For more details on how that process would work, I suggest they contact a member of that program at 217-782-6761.

Please let me know if you have any questions regarding this letter. Agreement to the terms of in the letter will require you take immediate steps on behalf of your client to dismiss the above-referenced appeal. Thank you for your continued patience and diligence in the resolution of this matter.

Sincerely,



John J. Kim
Assistant Counsel

cc: Mindy Weller