

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

NOKOMIS OIL COMPANY,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. _____
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

NOTICE OF FILING

To:

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

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

October 17, 2007

NOKOMIS OIL COMPANY

By: 
Mandy L. Combs
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner Nokomis Oil Company

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14th & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

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

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

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PETITION FOR REVIEW

Pursuant to §§ 40 and 57.7 of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.7, to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the decision denying continuance of the filing hereof beyond today's date (see Exhibit 1), petitioner Nokomis Oil Company ("Nokomis") submits this *Petition for Review* of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying approval of Nokomis' Corrective Action Plan (the "Plan") and further denying approval of the budget associated therewith.

Pursuant to § 57.8(l) of the Act, Nokomis further requests the Board to order the Agency to pay Nokomis' legal costs for seeking payment in this appeal.

I. THE AGENCY'S FINAL DECISION

The Decision of which review is sought is contained in Exhibit 2 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed September 10, 2007. It was received by Nokomis on or about September 12, 2007 and this appeal is timely pursuant to William Ingersoll's letter dated October 10, 2007 of which a true copy is attached as Exhibit 1.

III. GROUNDS FOR APPEAL

A. The Agency's conclusion that the Plan failed to provide information demonstrating that the technology had a substantial likelihood of successfully achieving compliance with applicable regulations and corrective action remediation objectives and of protecting human health and the environment is erroneous, not supported by the evidence, arbitrary and capricious.

B. The Agency's denial of Nokomis' budget was erroneous, arbitrary, capricious, and contrary to law, in that the denial of the Plan with which the budget was associated was erroneous, arbitrary, capricious and contrary to law.

IV. CONCLUSION.

For all the foregoing reasons, petitioner Nokomis Oil Company respectfully submits that the Decision should be reversed and the Agency ordered to approve the Corrective Action Plan and the budget associated therewith, and order the Agency to pay Nokomis' attorneys' fees for this appeal.

October 17, 2007

NOKOMIS OIL COMPANY

By:  _____
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 – 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner Nokomis Oil Company
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

(217)782-5544
(TDD: 217-782-9143)

OCT 11 2007

BY: _____

Author's Direct Line: (217)782-9827
E-Mail: william.ingersoll@illinois.gov
Telefax: 217-782-9807

October 10, 2007

Beth Giacomo, Project Manager
United Science Industries, Inc.
P.O. Box 360
6295 East IL Highway 15
Woodlawn, IL 62898

Re: LPC # 1350455012 - Montgomery County
Nokomis/Nokomis Oil Company
100 South Hickory
LUST Incident No. 982761

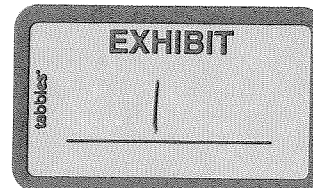
Dear Ms. Giacomo:

The Illinois Environmental Protection Agency ("Illinois EPA") is in receipt of your October 5, 2007, 2007 letter requesting a 90-day extension to the 35-day appeal period in regards to a September 10, 2007 decision regarding the above site and incident. The request is DENIED. It does not appear likely that the additional time would result in a resolution. The deadline for filing any appeal of this matter remains at October 17, 2007 based upon a September 12, 2007 received date of the decision.

Sincerely,

William D. Ingersoll, Manager
Enforcement Programs

cc: Harry A. Chappell, BOL/LUST



10/04/07 10:51 FAX

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

SEP 10 2007

7007 0220 0000 0152 7623

Nokomis Oil Company
Attn: Mike Oltman
602 West State Street
Nokomis, Illinois 62075

Re: LPC 1350455012 -- Montgomery County
Nokomis/ Nokomis Oil Company
100 South Hickory
LUST Incident No. 982761
LUST Technical File

Dear Mr. Oltman:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated June 29, 2007 was received by the Illinois EPA on July 9, 2007 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 rejected for the reason(s) listed below (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

1. The proposed injection of sodium persulfate is being denied at this time. Information has not been provided to demonstrate the technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health or the environment (35 Ill. Adm. Code 732.407(a)(1)). The Agency has approved of one site on which a pilot study is in progress on the remediation success of sodium persulfate. The Agency is not approving any use of sodium persulfate until the results of the pilot study are submitted and deemed effective in remediating petroleum contamination.



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The budget is rejected for the reason(s) listed below (Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.630 and 734.655):

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)).

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 plan and/or budget must be submitted within 120 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.

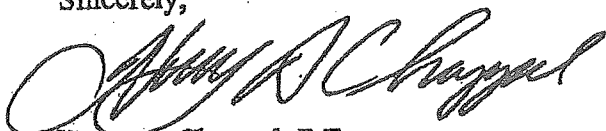
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If you have any questions or need further assistance, please contact James R. Malcom, III at 217/524-9140.

Sincerely,



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

HAC:JRM

cc: USI
BOL File

bcc: Harry Chappel
James Malcom