

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

RECEIVED
CLERK'S OFFICE

JUL 9 2003

STATE OF ILLINOIS
Pollution Control Board

PRIME TIME CITGO, INC.)
And ALPHONSUS OLIEH)
)
Petitioner,)
)
Vs.) PCB No. 03 - 188
) (UST Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

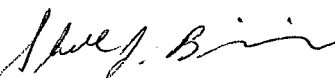
To: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. BOX 19276
Springfield, IL 62794-9276

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

PLEASE TAKE NOTICE that on Wednesday, July 9, 2003, I filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decisions, an Appearance for Shell J. Bleiweiss, and an Open Waiver.

Dated July 9, 2003

Respectfully Submitted,

By: 
Shell J. Bleiweiss

Shell J. Bleiweiss
IL ARDC No. 6183004
Law Offices of Shell J. Bleiweiss
321 South Plymouth Court
Suite 1200 Chicago IL 60604
312-360-8782

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

JUL 9 2003

STATE OF ILLINOIS
Pollution Control Board

| | | |
|------------------------|---|------------------|
| PRIME TIME CITGO, INC. |) | |
| And ALPHONSUS OLIEH |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| Vs. |) | PCB No. 03 - 188 |
| |) | (UST Appeal) |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

PETITION FOR REVIEW OF FINAL AGENCY
LEAKING UNDERGROUND STORAGE TANK DECISIONS

NOW COMES the Petitioner, Prime Time Citgo, Inc. and Alphonsus Olieh ("Prime Time"), by their attorney, Shell J. Bleiweiss, and, hereby requests that the Illinois Pollution Control Board ("Board") review the final decisions of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Prime Time respectfully states as follows:

1. On December 30, 2002, Prime Time submitted a budget and request for payment application to the Agency.
2. On March 3, 2003, the Agency issued a final decision to Prime Time (received March 6, 2003) denying the budget, a copy of which is attached hereto as Exhibit A.

3. On March 17, 2003, Prime Time made a written request to the Agency for an extension of time by which to file a petition for review, a copy of which is attached hereto as Exhibit B.

4. On April 18, 2003, the Agency joined in Prime Time's request that the Board extend the thirty-five day period for filing a petition, a copy of which is attached hereto as Exhibit C.

5. On April 4, 2003, the Agency issued a final decision to Prime Time (received on or about April 7, 2003) denying the request for payment application, a copy of which is attached hereto as Exhibit D.

6. On April 25, 2003, Prime Time made a written request to the Agency for an extension of time by which to file a petition for review, a copy of which is attached as Exhibit E.

7. On May 12, 2003, the Agency joined in Prime Time's request that the board extend the thirty-five day period for filing a petition, a copy of which is attached hereto as Exhibit F.

8. On April 17, 2003, the Board opened docket number PCB 03-188, and allowed Prime Time until July 9, 2003 to file this appeal of the Agency's budget denial.

9. On June 5, 2003, the Board opened docket number PCB-03-217, and allowed Prime Time until August 11, 2003 to file this appeal of the Agency's denial of Prime Time's payment request.

10. The grounds for the Petition herein are as follows:

11. The Agency's reason for denying Prime Time's budget and associated request for payment is that the alternate housing costs which are

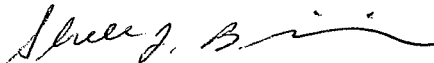
the subject of the budget and request are not corrective action costs, or, in the alternative, are costs in excess of those necessary to meet the minimum requirements of Title XVI of the Act.

12. Prime Time disagrees with the Agency decision, and believes that under the circumstances of this case these costs are corrective action costs, and do not exceed the minimum requirements of Title XVI.

13. In this case, the Agency sought and received a court order that Prime Time provide alternate housing (the costs at issue in this appeal) to the family next door, whose house had been rendered unsafe as a direct result of the release from Prime Time's neighboring service station.

WHEREFORE, Petitioner, for the reasons stated above, requests that the Board reverse the decisions of the Agency and rule in favor of Petitioner's request for approval of its budget and payment request as being necessary corrective action costs, and eligible for payment from the UST Fund, and that Petitioner recover its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(g).

Respectfully submitted,

By: 

Shell J. Bleiweiss, Attorney
For Petitioner.

Shell J. Bleiweiss
IL ARDC No. 6183004
Law Offices of Shell J. Bleiweiss
321 South Plymouth Court
Suite 1200 Chicago IL 60604
312-360-8782

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

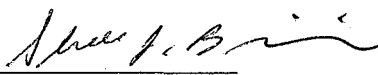
| | | |
|------------------------|---|------------------|
| PRIME TIME CITGO, INC. |) | |
| And ALPHONSUS OLIEH |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| Vs. |) | PCB No. 03 - 188 |
| |) | (UST Appeal) |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

APPEARANCE

NOW COMES the undersigned, Shell J. Bleiweiss, and enters an appearance for the Petitioner in the above captioned matter.

Dated: July 9, 2003.

Prime Time Citgo, Inc. and
Alphonsus Olieh

By: 
Shell J. Bleiweiss

Shell J. Bleiweiss
IL ARDC No. 6183004
Law Offices of Shell J. Bleiweiss
321 South Plymouth Court
Suite 1200 Chicago II 60604
312-360-8782

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

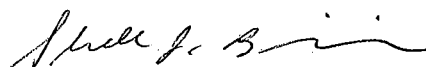
| | | |
|-------------------------------|---|------------------|
| PRIME TIME CITGO, INC. |) | |
| And ALPHONSUS OLIEH |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| Vs. |) | PCB No. 03 - 188 |
| |) | (UST Appeal) |
| |) | |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

OPEN WAIVER

NOW COMES the undersigned, Shell J. Bleiweiss, and waives the decision deadline completely and unequivocally.

Dated: July 9, 2003.

Prime Time Citgo, Inc. and
Alphonsus Olieh

By: 
Shell J. Bleiweiss

Shell J. Bleiweiss
IL ARDC No. 6183004
Law Offices of Shell J. Bleiweiss
321 South Plymouth Court
Suite 1200 Chicago IL 60604
312-360-8782

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DECISIONS and APPEARANCE for Shell J. Bleiweiss and Open Waiver by placing copies in an envelope addressed to:

John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. BOX 19276
Springfield, IL 62794-9276

Via U.S. mail this 9th day of July, 2003.

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

Via hand delivery this 9th day of July, 2003.



Shell J. Bleiweiss

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENEI CIPRIANO, DIRECTOR

Recd.
3/6/03

217/782-6762

MAR 03 2003

CERTIFIED MAIL

7002 2030 0001 1521 0396

Citgo
Attn: Al Olieh
1700 N. Farnsworth Ave., Suite 24
Aurora, IL. 60505

Re: LPC #0894075871 -- Kane County
Aurora/Citgo
420 N. Farnsworth Ave.
LUST Incident No. 20010859
LUST Technical File

Dear Mr. Olieh:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amendment to the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated December 31, 2002, was received by the Illinois EPA on January 2, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed in Attachment A (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

All future correspondence must be submitted 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

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) 693-5462
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) 278-5800 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 (618) 346-5120
MARKON - 2309 W. Main St., Springfield, IL 62761 (217) 993-7200



Page 2

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.

If you have any questions or need further assistance, please contact Scott McGill at (217)524-5137.

Sincerely,

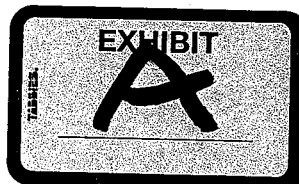
Clifford L. Wheeler

Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

CLW:SM: *SM*

Attachment: Attachment A
Appeal Rights

c: Conestoga-Rovers & Associates
Division File



Law Offices of

SHELL J. BLEIWEISS

Chicago Bar Association Building
321 South Plymouth Court
Suite 1200
Chicago, Illinois 60604-3990

Fax: (312) 360-9212

(312) 360-8782

E-mail: sbleiweiss@aol.com

March 17, 2003

Mr. John Kim, Attorney
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

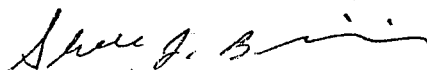
Re: Prime Time Citgo – LUST Incident No. 20010859

Dear John:

Prime Time Citgo wishes to extend its time to appeal from the IEPA's March 3, 2003 denial (received March 6, 2003) by 90 days. A copy of that denial letter is enclosed.

During the extended appeal timeframe we request a meeting or conference call to discuss possible reconsideration or compromise of the denial. We also request that IEPA consider the indemnification procedure of Section 57.8 of the Environmental Protection Act, in addition to LUST reimbursement.

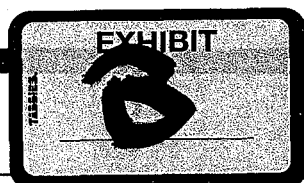
Very truly yours,



Shell J. Bleiweiss

cc: Al Olieh

RECEIVED
Division of Legal Counsel
MAR 19 2003
Environmental Protection
Agency



OSHA

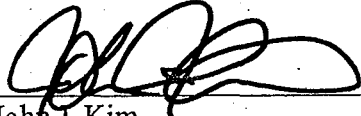
ENVIRONMENTAL LAW

LITIGATION

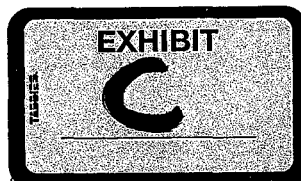
WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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
217/782-5544
217/782-9143 (TDD)
Dated: April 8, 2003



This filing submitted on recycled paper.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR RENE E CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL #
70012510000212811924

APR 04 2003

Prime Time Citgo, Inc.
Attn: S. J. Bleiweiss, Chicago Bar Association
321 South Plymouth Court, Suite 1200
Chicago, Illinois 60604

Re: LPC #20010859 -- Kane County
Aurora/Prime Time Citgo
420 North Farnsworth
LUST Incident No. 20010859
LUST FISCAL FILE

Dear Mr. Bleiweiss:

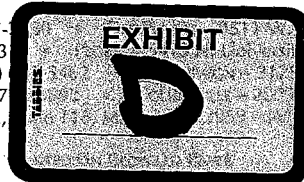
The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 20, 2003 and was received by the Agency on January 2, 2003. The application for payment covers the period from May 22, 2001 to December 31, 2002. The amount requested is \$38,914.99.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the billing submittal received by the Agency on April 25, 2002 for \$88,416.24. 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.

On January 2, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency'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 complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-313
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309)
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 7
MARION - 2309 W. Main St.,



arrison St., Des Plaines, IL 60016 - (847) 294-4000
St., Peoria, IL 61614 - (309) 693-5463
South First Street, Champaign, IL 61820 - (217) 278-5800
Hall Street, Collinsville, IL 62234 - (618) 346-5120
993-7200

the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant 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:

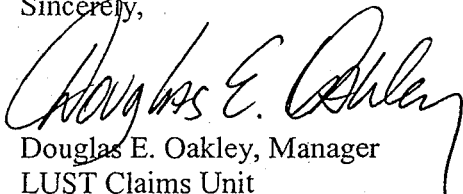
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Lieura Hackman of my staff at 217/782-6762.

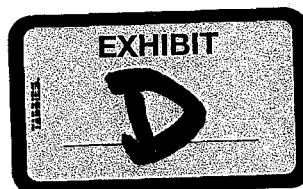
Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:LH;ct\0327212.doc

Attachment



Law Offices of
SHELL J. BLEIWEISS

Chicago Bar Association Building
321 South Plymouth Court
Suite 1200
Chicago, Illinois 60604-3990
(312) 360-8782

Fax: (312) 360-9212

sbleiweiss@shell-bleiweiss.com

April 25, 2003

Mr. John Kim, Attorney
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

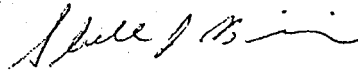
Re: Prime Time Citgo - LUST Incident No. 20010859

Dear John:

Prime Time Citgo wishes to extend its time to appeal from the IEPA's April 4, 2003 denial (received on or about April 7, 2003) by 90 days. A copy of that denial letter is enclosed.

During the extended appeal timeframe we request a meeting or conference call to discuss possible reconsideration or compromise of the denial. We also request that IEPA consider the indemnification procedure of Section 57.8 of the Environmental Protection Act, in addition to LUST reimbursement.

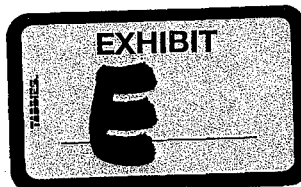
Very truly yours,



Shell J. Bleiweiss

Encl.

cc: Al Olieh



**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

| | | |
|------------------------|---|--------------------------------------|
| PRIME TIME CITGO, |) | |
| |) | |
| v. |) | PCB No. 03- |
| ILLINOIS ENVIRONMENTAL |) | (LUST Appeal – Ninety Day Extension) |
| PROTECTION AGENCY, |) | |
| Respondent. |) | |

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

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, 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 August 11, 2003, or any other date not more than a total of one hundred twenty-five (125) days from April 7, 2003, the date of service of the Illinois EPA’s final decision. The 125th day from the date of service is August 10, 2003, a Sunday, and the next business day is August 11, 2003. In support thereof, the Illinois EPA respectfully states as follows:

1. On April 4, 2003, the Illinois EPA issued a final decision to the Petitioner.
Exhibit A)
2. On April 25, 2003, 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 represented that the final decision was received on or about April 7, 2003. (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.

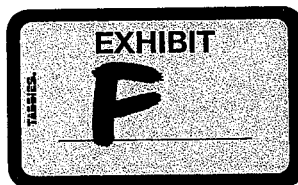
WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



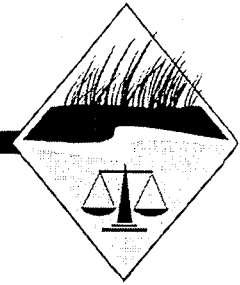
John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: May 12, 2003

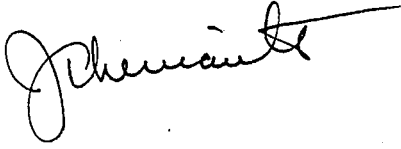


This filing submitted on recycled paper.

ILLINOIS POLLUTION CONTROL BOARD

MEMORANDUM



TO: Board Members
FROM: John Therriault, Clerk's Office 
DATE: July 9, 2003
RE: PCB 2003-188, Prime Time CITGO, Inc. v. IEPA

This petition, with a \$75.00 filing fee, was submitted seeking review of (a) the March 3, 2003, decision of the Agency to reject Petitioner's High Priority Corrective Action Plan Budget and (b) the April 4, 2003, decision of the Agency's denial of payment from the Underground Storage Tank Fund for \$38,914.99 covering the period from May 22, 2001 to December 31, 2002. Prime Time CITGO is also named in docket PCB 03-217 that is based on the appeal of letter (b) above and is extended until August 11, 2003.

I have advised the attorney for the Petitioner that the Board will accept the March 3, 2003, letter as the decision being appealed as docket PCB 2003-188, but that he will need to repetition the Board, with the appropriate filing fee, by August 11, 2003, under docket PCB 03-217. He can request that the two matters be consolidated, but they must still be submitted separately since two separate Agency decisions are being appealed.