

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DOBB'S TIRE AND AUTO CENTER, INC.)	
Petitioners,)	
)	
v.)	PCB 24-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
AGENCY,)	
Respondent.)	


NOTICE

Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

DDL Partnership, L.P.
c/o Thompson Coburn
Attn: Ryan Russel Kemper, esq.
 Timothy B. Briscoe, esq.
One US Bank Plaza
St. Louis, MO 63101
rkemper@thompsoncoburn.com
tbriscoe@thompsoncoburn.com

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



Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
melanie.jarvis@illinois.gov

Dated: October 12, 2023

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DOBB'S TIRE AND AUTO CENTER, INC.)	
Petitioners,)	
)	
v.)	PCB 24-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
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, Melanie A. Jarvis, Deputy Chief 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 January 10, 2024, 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 or about September 7, 2023, the Illinois EPA issued a final decision to the Petitioner.
2. On October 9, 2023, 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, Petitioner received the final decision on or about September 12, 2023.

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



Melanie A Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
866/273-5488 (TDD)
melanie.jarvis@illinois.gov
Dated: October 12, 2023

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

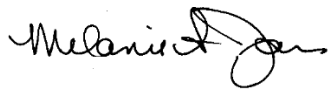
I, the undersigned attorney at law, hereby certify that on October 12, 2023, I served true and correct copies of a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** by the method(s) and to the persons identified below:

Electronic and Mail Service

Don Brown, Clerk
Illinois Pollution Control Board
60 East Van Buren St., Suite 630
Chicago, IL 60605
don.brown@illinois.gov

DDL Partnership, L.P.
c/o Thompson Coburn
Attn: Ryan Russel Kemper, esq.
Timothy B. Briscoe, esq.
One US Bank Plaza
St. Louis, MO 63101
rkemper@thompsoncoburn.com
tbriscoe@thompsoncoburn.com

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
866/273-5488 (TDD)
melanie.jarvis@illinois.gov



Ryan Russell Kemper
314 552 6321 direct
rkemper@thompsoncoburn.com

October 9, 2023

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
VIA EMAIL TO STEPHANIE.M.KINCAID@ILLINOIS.GOV
VIA EMAIL TO MELANIE.JARVIS@ILLINOIS.GOV**

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: LPC #1631405008 – St. Clair County
Swansea / Dobb's Tire & Auto Center, Inc.
1206 North Belt West
Incident-Claim No.: 930043 – 73439
Leaking UST Fiscal File
Request for 90-Day Extension of Filing Petition for Appeal

Dear Division of Legal Counsel:

This firm represents DDL Partnership, L.P. ("DDL") with respect to DDL's application for payment from the Underground Storage Tank ("UST") Fund for the above-referenced Leaking UST incident. Pursuant to Sections 5/57.7(c)(4) and 5/40(a)(1) of the Illinois Environmental Protection Act, DDL requests a ninety (90) day extension to appeal the final decision of the Illinois Environmental Protection Agency ("Illinois EPA"), rejecting DDL's payment application based on alleged late submittal of the payment application.

The Illinois EPA's final decision was issued by letter dated September 7, 2023, a copy of which is attached hereto. DDL received the letter on September 12, 2023. Using the issue date on the final decision, DDL's appeal would be due by October 12, 2023. DDL is continuing to investigate the facts on which Illinois EPA's final decision was based as set forth in the final decision. Accordingly, DDL requests an extension of ninety (90) days to file an appeal, with a new deadline of January 10, 2024.

We are working with Terracon Consultants, Inc. ("Terracon"), the engineering consulting firm which submitted original and supplemental payment applications on DDL's behalf and corresponded with Illinois EPA regarding the applications, to identify the date(s) on which the applications were submitted to Illinois EPA.

Our preliminary investigation indicates that both the original and supplemental payment applications were timely submitted before May 5, 2023. Illinois EPA states in its final decision that the NFR Letter was issued to DDL on May 5, 2022 so the insurance application was due by

May 5, 2023 under 35 Ill. Adm. Code 734.605(j). Illinois EPA asserts DDL's payment application was not timely because Illinois EPA did not receive the application for payment until May 15, 2023. However, Illinois EPA re-issued a corrected NFR Letter for the site on May 19, 2022, which would make the one-year due date May 19, 2023. Therefore, based on Illinois EPA's assertion that it received the application for payment on May 15, 2023, the submittal was timely made. In addition, DDL's payment application was for \$67,639.12, not \$65,776.44 as stated in the final decision.

A ninety (90) day extension would thus allow DDL to complete the investigation and potentially reach an agreement with the Illinois EPA without resorting to a hearing before the Illinois Pollution Control Board.

We therefore request the Illinois EPA's consent for an additional ninety (90) days to file a petition for a hearing to appeal the Illinois EPA's September 7, 2023 final decision.

We appreciate the agency's consideration of this request for extension. If you have any questions, please let us know.

Sincerely,

Thompson Coburn LLP



By

Ryan R. Kemper
Partner

cc: Stephanie Kincaid, Illinois EPA (electronic copy)
Melanie Jarvis, Illinois EPA (electronic copy)
Karen Rieken, Terracon (electronic copy)
Crystal M. Kennedy (electronic copy)
Timothy B. Briscoe (electronic copy)



(217) 524-3300

CERTIFIED MAIL #

7021 2720 0000 2257 4704

SEP 07 2023

DDL Partnership, L.P.
c/o David W. Dobbs
1983 Brennan Plaza
High Ridge, MO 63049

Re: LPC #1631405008 – St. Clair County
Swansea/Dobb's Tire & Auto Center, Inc.
1206 North Belt West
Incident-Claim No.: 930043 -- 73439
Leaking UST Fiscal File

Dear Mr. Dobbs:

The Illinois Environmental Protection Agency (Illinois EPA) has rejected your request for partial or final payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.6(a) of the Environmental Protection Act (Act) (415 ILCS 5) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

The No Further Remediation Letter for the above-referenced incident was issued on May 5, 2022. The application for payment for \$65,776.44 was received by the Illinois EPA on May 15 2023, more than one year after said date. It covers the billing period from October 1, 2018 to April 30, 2022.

Pursuant to 35 Ill. Adm. Code 734.605(j), all applications for payment of corrective action costs must be submitted no later than one year after the date the Illinois EPA issues a No Further Remediation Letter pursuant to Subpart G of 35 Ill. Adm. Code 734. For releases for which the Illinois EPA issued a No Further Remediation Letter prior to March 1, 2006, all applications for payment must be submitted no later than March 1, 2007. Pursuant to 35 Ill. Adm. Code 734.630(nn), these costs are ineligible for payment from the UST Fund.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

If you have any questions or require further assistance, please contact Stephanie Kincaid of my staff at (217) 558-2693 or at Stephanie.M.Kincaid@Illinois.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B.P. Bauer". The signature is written in a cursive style with a large initial "B".

✂ Brian P. Bauer
Leaking UST Claims
Leaking Underground Storage Tank Section
Bureau of Land

c: Terracon Consultants, Inc.
Leaking UST Claims Unit

Attachment: Appeal Rights

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 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:

Clerk of the Board
Illinois Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, IL 60605
(312) 814-3461

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544