

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Belvidere North CAP), )  
 )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL PROTECTION )  
AGENCY, )  
 )  
Respondent. )

PCB - 04-11  
(UST Appeal)

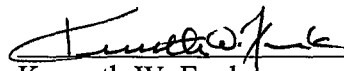
**RECEIVED**  
CLERK'S OFFICE  
OCT 16 2003  
STATE OF ILLINOIS  
*Pollution Control Board*

**NOTICE OF FILING**

To: Renee Cipriano, Director  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

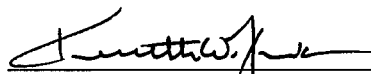
John Kim, Esq.  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794

PLEASE TAKE NOTICE that on October 16, 2003 we filed with the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via personal delivery, of 1) **Appearance of Deutsch, Levy & Engel, Chartered and 2) Petition for Review of Agency Modification of High Priority Corrective Action Plan and Budget for Belvidere Oasis North** for filing the above-entitled cause, copies of which are attached hereto.

  
\_\_\_\_\_  
Kenneth W. Funk  
Special Assistant Attorney General

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the above-named Respondent by enclosing same in envelope addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a U.S. Post Office Mail Box at Chicago, Illinois, with postage fully prepaid on the 6 day of October, 2003.

  
\_\_\_\_\_  
Kenneth W. Funk  
Special Assistant Attorney General

Kenneth W. Funk, Esq.  
Phillip J. Zisook, Esq.  
Karen Kavanagh Mack, Esq.  
Deutsch, Levy & Engel, Chartered  
225 W. Washington Street, Suite 1700  
Chicago, IL 60606  
(312) 346-1460 /Firm No. 90235

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

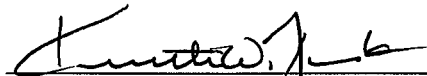
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APPEARANCE

I, Kenneth W. Funk, hereby file the appearance of Deutsch, Levy & Engel, Chartered in this proceeding on behalf of the Illinois State Toll Highway Authority.

  
 \_\_\_\_\_  
 Kenneth W. Funk  
 Special Assistant Attorney General

Kenneth W. Funk, Esq.  
 Phillip J. Zisook, Esq.  
 Karen Kavanagh Mack, Esq.  
 Deutsch, Levy & Engel, Chartered  
 225 W. Washington Street  
 Suite 1700  
 Chicago, IL 60606  
 (312) 346-1460  
 Firm No. 90235

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**PETITION FOR REVIEW OF AGENCY MODIFICATION OF HIGH PRIORITY  
CORRECTIVE ACTION PLAN AND BUDGET**

Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk, Phillip J. Zisook, Karen Kavanagh Mack, as Special Assistant Attorneys General, petitions the Illinois Pollution Control Board, pursuant to 415 ILCS 5/57.7(c)(4)(D), 415 ILCS 57.8(i) and 415 ICLS 5/40, for review of the final determination of Respondent, the Illinois Environmental Protection Agency (the "Agency"), with respect to Petitioner's High Priority Corrective Action Plan and Budget dated April 8, 2003 relating to its Belvidere Oasis North facility, and in support thereof, states:

1. ISTHA is the owner of the facility, including underground storage tanks and related piping, commonly known as the Belvidere Oasis North located on the I-90 Tollway in Belvidere, Illinois.
2. On or about January 19, 1989, ISTHA notified the Illinois Emergency Services and Disaster Agency (IESDA) of high levels of volatile organic compounds (VOCs) near existing

underground storage tanks systems ("UST") at its facility to which the IESDA assigned Incident No. 89-0112 for the north and south sides of the oasis.

3. On or about November 2, 1989, ISTHA notified the IESDA of water and soil contamination discovered during the UST removal at its facility to which the IESDA assigned Incident No. 89-2215.

4. In 1994, Wight and Company, on ISTHA's behalf, notified the Illinois Emergency Management Agency (IEMA) that gasoline, diesel and waste oil target analytes were detected above the Tier I Remediation Objectives, to which the IEMA assigned Incident No. 94-1815.

5. On September 4, 2002, at the Office of State Fire Marshall's request, Wight and Company, on ISTHA's behalf, notified the IEMA of a release from the USTs, to which the IEMA assigned Incident No. 2002-1277, and is considered a re-reporting of Incident No. 94-1815 since the release was reported during the removal of the tank system associated with Incident No. 94-1815.

6. On or about April 8, 2003, ISTHA submitted a High Priority Corrective Action Plan ("Plan"), including a Budget, to the Agency; and, on or about June 13, 2003, the Agency responded by materially modifying the plan and budget (the "Final Determination"). A true and complete copy of that Final Determination is attached hereto as Exhibit "A".

7. On or about July 10, 2003, ISTHA contacted the Agency by letter, and advised the Agency that it contested the Agency's determination and requested a 90 day extension of the 35 day appeal period pursuant to §40 of the Environmental Protection Act. (415 ILCS 5/40(a)(1).)

8. On or about July 21, 2003, the Agency filed a request before the Board requesting a 90 day extension of the 35 day appeal period.

9. On or about July 24, 2003, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including October 16, 2003.

10. ISTHA requests the Board to reverse the Agency's Final Determination with respect to its modification of the Belvidere Oasis North High Priority Corrective Action Plan and Budget, because *inter alia*, the Plan and remedial activities described therein are necessary and appropriate for the protection of human health and the environment and do not exceed the minimum necessary requirements of the Act or the regulations promulgated thereunder.

11. With regard to the Plan, the Agency did not approve the costs for pumping and disposing of groundwater. The Agency's failure to approve the removal of the groundwater is unreasonable, because removal of impacted groundwater from the UST and piping excavation site is necessary and appropriate to achieve applicable construction worker exposure objectives and to properly complete the excavation and backfill activities.

12. ISTHA also appeals the Agency modifying the plan to include Inhalation and Ingestion values for soils under Industrial/Commercial properties. This modification is unnecessary to the extent that the inhalation levels for construction workers are at least as restrictive or more restrictive than inhalation and ingestion levels for Industrial/Commercial properties.

13. With regard to the budget, ISTHA appeals *inter alia*, the modifications to the budgeted analytical costs, because a rate of \$136.50 per rush sample is necessary and reasonable for achieving the proposed corrective action objectives pursuant to 35 Ill. Adm. Code 732.505(c). Further, no deduction should be made for the investigation conducted to obtain the site-specific parameters necessary to evaluate the site and determine the appropriate remediation methods. The costs for the investigation are necessary and consistent with the applicable regulations. ISTHA

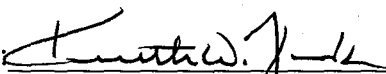
further objects to the modifications to the proposed budget for preparation of the corrective action plan and budget, because they were necessary and consistent with generally accepted practices and are reasonable costs for necessary and required activities. Additionally, the Agency's modification to the time required to conduct the remedial action activities is improper because the time budgeted for the engineer and projects manager was reasonable. The modifications to the proposed budget for preparation of the reimbursement request was improper, because the costs for preparing the request is reasonable for the amount of documentation accumulated during the LUST project. The modifications to the proposed budget for handling charges should be adjusted pursuant to 35 Ill. Adm. Code 732.607, because the analytical costs increased.

14. ISTHA reserves the right to present additional grounds for reversal of the Agency's determination, as they appear during the course of this Appeal.

WHEREFORE, the Petitioner, The Illinois State Toll Highway Authority, respectfully requests that this Board grant a hearing in this matter, reverse the Agency's June 13, 2003 modification (rejection) of ISTHA's High Priority Corrective Action Completion Plan and Budget for the Belvidere Oasis North, and remand this matter to the Agency with instructions to approve the Amendment as aforesaid, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,

ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By:   
One of their attorneys

Kenneth W. Funk, Esq.  
Phillip J. Zisook, Esq.  
Karen Kavanagh Mack  
Deutsch, Levy & Engel, Chartered

225 W. Washington Street, Suite 1700  
Chicago, IL 60606  
(312) 346-1460  
Firm No. 90235





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 RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1223 2255

JUN 13 2003

Illinois State Toll Highway Authority  
John R. Wagner, P.E.  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

RECEIVED

JUN 17 2003

CHIEF ENGINEER

Re: LPC #0070057092 - Boone County  
BelVidere/ Illinois State Toll Highway Authority  
Belvidere Oasis (North Side)  
LUST Incident No. 890112, 892215, 941815 and 20021277  
LUST Technical File

RECEIVED  
JUN 19 2003  
LEGAL DEPARTMENT

Dear Mr. Wagner:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated April 8, 2003, was received by the Illinois EPA on April 14, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

- A. The Agency will not approve the cost for pumping and disposal of groundwater. Your report proposes to restrict groundwater use on site. This activity would be considered excessive.
- B. Your plan states that you will excavate until Inhalation levels for the Construction Worker scenario have been met. The Agency is modifying this to include Inhalation and Ingestion values for soils under Industrial/ Commercial properties.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

In addition, the budget for the High Priority Corrective Action Plan is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an

Rockford - 4302 North Main Street, Rockford, IL 61105 - (815) 987-7760 • Des Plaines - 8511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
Elgin - 595 South State, Elgin, IL 60120 - (847) 608-3131 • Peoria - 5415 N. University St., Peoria, IL 61614 - (309) 693-3463  
BUREAU OF LAND - PEORIA - 7620 N. University, Peoria, IL 61614 - (309) 693-3463  
Champaign, IL 61820 - (217) 276-6800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62234 - (618) 346-5120

A

Page 2

amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if reimbursement will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

All future correspondence must be submitted to:

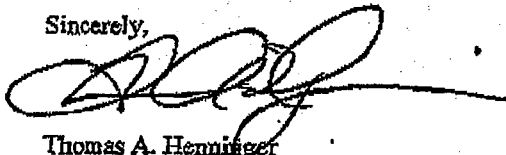
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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 Donna Wallace at 217/ 524-1283.

Sincerely,



Thomas A. Henniger  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

TAH:DW:dw\

Attachment: A

c: Wight & Company  
Division File

**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)(D) 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

Allen:  
John Kim, Esq.  
217 792 9907

Attachment A

Re: LPC # 0070057092 - Boone County  
Belvidere/ Illinois State Toll Highway Authority  
Belvidere Oasis (North Side)  
LUST Incident No. 890112, 892215, 941815 and 20021277  
LUST Technical File

Chations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

\$5,396.50	Investigation Costs
\$2,478.50	Analysis Costs
\$14,830.00	Personnel Costs
\$1,500.00	Equipment Costs
\$139,089.74	Field Purchases and Other Costs
\$7,816.30	Handling Charges

SECTION 2

- A. \$54,291.96 for an adjustment in well abandonment charges, mobilization charges, turn-a-round time charges, pH sample costs, excessive personnel hours and costs of soil removal. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(bh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
- B. \$58,200.00 for an adjustment in water removal costs. Costs for investigative activities and related services or materials for developing a High Priority corrective action plan that are unnecessary or inconsistent with generally accepted practices or unreasonable costs for justifiable activities, materials, or services are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(cc)).
- C. \$1,883.14 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 plus 8% of amount over \$15,000
\$50,001 - \$100,000	\$4,400 plus 5% of amount over \$50,000
\$100,001 - \$1,000,000	\$6,900 plus 2% of amount over \$100,000

Handling charges were adjusted to meet budget modifications.

DW:dwl