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OCT 15 2003

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY (Lake Forest East CACR), )  
Petitioner, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 05- 71  
(UST Appeal – Ninety Day Extension)

NOTICE


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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
Suite 1700  
Chicago, IL 60606

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

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: October 13, 2004

OCT 15 2003

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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ILLINOIS STATE TOLL HIGHWAY	)	
AUTHORITY (Lake Forest East CACR),	)	
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v.	)	PCB No. 05- 71
ILLINOIS ENVIRONMENTAL	)	(UST 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 January 12, 2005, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On September 1, 2004, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)
2. On September 30, 2004, 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. Documents provided by the Petitioner represented that the final decision was received on September 8, 2004. (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  
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Dated: October 13, 2004



## 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

RENEE CIPRIANO, DIRECTOR

217/782-6762

**CERTIFIED MAIL**

7002 3150 0000 1113 5861

SEP 01 2004

Illinois State Toll Highway Authority  
Attention: Jeffrey S. Dailey, P.E.  
2700 Ogden Avenue  
Downers Grove, IL 60515

**RECEIVED**

SEP - 8 2004

OASIS PROJECT MGR.

Re: LPC #0970805037 -- Lake County  
Lake Forest / Lake Forest Oasis East  
Tri-State Tollway (I-94), Northbound  
LUST Incident No. 941628, 941813, 20011643, 20021646, 20030822  
LUST Technical File

Dear Mr. Dailey:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Completion Report submitted for the above-referenced incident. This information is dated April 22, 2004 and was received by the Illinois EPA on May 7, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The High Priority Corrective Action Completion Report and associated Professional Engineer Certification indicate corrective action for the above-referenced site was conducted in accordance with the Corrective Action Plan approved by the Illinois EPA. The Corrective Action Completion Report demonstrates that the requirements of Section 57.7(c)(1)(E) of the Act and 35 Ill. Adm. Code 732.409(a)(2) have been satisfied.

Based upon the certification by Jinan Yan, a Licensed Professional Engineer, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter (Letter), based on the certification of the Licensed Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the remediation of the occurrence has been completed; and (3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety, and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following parties:

1. Illinois State Toll Highway Authority, the owner or operator of the underground storage tank system(s).
2. Any parent corporation or subsidiary of such owner or operator.

**EXHIBIT**

A

3. Any co-owner or co-operator, either by joint tenancy, right-of-survivorship, or any other party sharing a legal relationship with the owner or operator to whom the Letter is issued.
4. Any holder of a beneficial interest of a land trust or inter vivos trust whether revocable or irrevocable.
5. Any mortgagee or trustee of a deed of trust of such owner or operator.
6. Any successor-in-interest of such owner or operator.
7. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.
8. Any heir or devisee of such owner or operator.

This Letter and all attachments, including but not limited to the Leaking Underground Storage Tank Environmental Notice, must be filed within 45 days of receipt as a single instrument with the Office of the Recorder or Registrar of Titles in the county in which the above-referenced site is located. This Letter shall not be effective until officially recorded by the Office of the Recorder or Registrar of Titles of the applicable county in accordance with Illinois law so it forms a permanent part of the chain of title for the above-referenced property. Within 30 days of this Letter being recorded, an accurate and official copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA. For recording purposes, it is recommended that the Leaking Underground Storage Tank Environmental Notice of this Letter be the first page of the instrument filed.

#### CONDITIONS AND TERMS OF APPROVAL

##### LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives have been established in accordance with an industrial/commercial land use limitation. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) rules.
2. As a result of the release from the underground storage tank system(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: The land use shall be industrial/commercial. The groundwater under the site shall not be used as a potable water supply.
3. The land use limitation specified in this Letter may be revised if:
  - a. Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and

- b. A new No Further Remediation Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. Preventive: The groundwater under the site described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter shall not be used as a potable supply of water. No person shall construct, install, maintain, or utilize a potable water supply well. In accordance with Section 3.65 of the Act, "potable" means generally fit for human consumption in accordance with accepted water supply principles and practices.  
  
Engineering: None.  
  
Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter.
5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved Corrective Action Plan, if applicable, may result in voidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed or excavated from, or disturbed at, the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations under 35 Ill. Adm. Code Subtitle G.
7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:  
  
Illinois Environmental Protection Agency  
Attention: Freedom of Information Act Officer  
Bureau of Land - #24  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276
8. Pursuant to 35 Ill. Adm. Code 732.704, should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide notice to the owner or operator of the leaking underground storage tank system(s) associated with the above-referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of the voidance. Specific acts or omissions that may result in the voidance of this Letter include, but shall not be limited to:

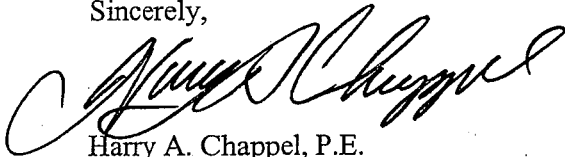
- a. Any violation of institutional controls or industrial/commercial land use restrictions;
- b. The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;
- c. The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;
- d. The failure to comply with the recording requirements for the Letter;
- e. Obtaining the Letter by fraud or misrepresentation; or
- f. Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Submit an accurate and official copy of this Letter, as recorded, 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

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Carol Hawbaker, at 217/782-5713.

Sincerely,



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

HAC:CLH

Attachments: Leaking Underground Storage Tank Environmental Notice

c: Wight  
Division File

**PREPARED BY:**

Name: Jeffrey S. Dailey, P.E.  
Illinois State Toll Highway Authority

Address: Tri-State Tollway (I-94) Northbound  
Lake Forest, IL 60045

**RETURN TO:**

Name: Jeffrey S. Dailey, P.E.  
Illinois State Toll Highway Authority

Address: 2700 Ogden Avenue  
Downers Grove, IL 60515

**(THE ABOVE SPACE FOR RECORDER'S OFFICE)**

**LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE**

**THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK SYSTEM(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF LAKE COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.**

Illinois EPA Number: 0970805037

LUST Incident No.: 941628, 941813, 20011643, 20021646 and 20030822

Illinois State Toll Highway Authority, the owner and/or operator of the leaking underground storage tank system(s) associated with the above-referenced incident, whose address is 2700 Ogden Avenue, Downers Grove, IL 60515, has performed investigative and/or remedial activities for the site identified as follows:

1. Legal Description or Reference to a Plat Showing the Boundaries: That part of Sections 25 and 36 in Township 44 North Range 11 East of the Third Principal Meridian described as follows: Commencing at the southwest corner of the southwest quarter of said section 25; thence south 89 degrees 46'22" East of the south line of said Southwest quarter, 865.23 feet to the westerly right of way of the Tri-State Tollway; thence north 44 degrees 22' 12" East 208.31 feet to point 125.00 feet west as measured perpendicular to, the centerline of said tri-state tollway; thence north 86 degrees 17' 33" East 181.81 feet to the point of beginning; thence north 86 degrees 17' 33" East 68.25 feet; thence south 44 degrees 07' 38" east 602.43 feet; thence south 00 degrees 06' 21" East 560.00 feet; thence south 46 degrees 01' 37" west 317.64 feet; thence south 26 degrees 27' 04" west 246.04 feet; thence south 12 degrees 25' 08" west, 230.57 feet; thence north 73 degrees 18' 24" west 94.18 feet; thence north 5 degrees 42' 41" east, 42.95 feet; thence north 08 degrees 28' 58" east 51.26 feet; thence north 04 degrees 27' 09" west 116.74 feet; thence north 00 degrees 06' 21" west 1188.34 feet; thence north 01 degrees 23' 00" west 182.70 feet; thence north 08 degrees 21' 04" west 46.64 feet to the point of beginning in Lake County Illinois.
2. Common Address: Tri-State Tollway (I-94) Northbound, Lake Forest, IL 60045
3. Real Estate Tax Index/Parcel Index Number: 11-36-100-018-8001 and 11-36-100-018-8002
4. Site Owner: Illinois State Toll Highway Authority



5. Land Use Limitation: The land use shall be industrial/commercial. The groundwater under the site shall not be used as a potable water supply.
6. See the attached No Further Remediation Letter for other terms.



## 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

RENEE CIPRIANO, DIRECTOR

### RECORDING REQUIREMENTS FOR NO FURTHER REMEDIATION LETTERS

#### Introduction

The Illinois Environmental Protection Agency's (Illinois EPA) Bureau of Land/Leaking Underground Storage Tank Section issues a No Further Remediation (NFR) Letter after a demonstration of compliance with Title XVI of the Environmental Protection Act and applicable regulations is made. The NFR Letter signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with, (2) all corrective action concerning the remediation of the occurrence has been completed, and (3) no further corrective action concerning the occurrence is necessary so long as the site is used in accordance with the terms and conditions of the NFR Letter.

#### Significance

When properly recorded, the NFR Letter holds legal significance for all applicable parties outlined at Section 57.10(d) of the Environmental Protection Act. (See 415 ILCS 5/57.10(d).) If not properly recorded, the Illinois EPA *will* take steps to void the NFR Letter in accordance with the regulations.

#### Duty to Record

The duty to record the NFR Letter is *mandatory*. You *must* submit the NFR Letter, with a copy of any applicable institutional controls proposed as part of a corrective action completion report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located *within 45 days after receipt of the NFR Letter*. You must record the NFR Letter and any attachments. The NFR Letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title to ensure current and future users of the property will be informed of the conditions and terms of approval including level of remediation; land use limitations; and preventive, engineering, and institutional controls. A certified or otherwise accurate and official copy of the NFR Letter and any attachments, as recorded, must be submitted to the Illinois EPA. Failure to record the NFR Letter in accordance with the regulations will make the NFR Letter voidable.

#### For More Information

Please refer to Tiered Approach to Corrective Action Objectives (TACO) Fact Sheet 3 available from the Illinois EPA by calling 1-888-299-9533 or by accessing it on the Illinois EPA Web site at <http://www.epa.state.il.us/land/taco/3-no-further-remediation-letters.html>.

EARL A. DEUTSCH  
PAUL M. LEVY  
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MICHAEL J. DEVINE  
STUART BERKS  
KENNETH W. FUNK  
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AARON B. ZARKOWSKY  
LEO G. AUBEL  
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JEFFREY B. HORWITZ  
MOYENDA MUTHARIKA KNAPP  
DAVID J. BEN-DOV  
CATHERINE GLENN JOELSON  
GREGORY A. FREZADOS  
LEE E. FARBMAN

LAW OFFICES

## DEUTSCH, LEVY & ENGEL

CHARTERED

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E-mail: [lawyers@dleec.com](mailto:lawyers@dleec.com)  
Website: [www.dleec.com](http://www.dleec.com)  
FACSIMILE: (312) 346-1859

COUNSEL  
MARSHALL D. KROLICK  
ARTHUR J. SABIN

September 30, 2004

**Via Facsimile: (217)782-9807**

**And Regular U. S. Mail**

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Attention: John Kim, Esq.

**RECEIVED**  
Division of Legal Counsel

OCT 04 2004

Environmental Protection  
Agency

**Re: LPC #0970805037 - Lake County;  
Lake Forest/Lake Forest Oasis East  
Tri-State Tollway (I-94), Northbound  
Lust Incident Nos. 941628, 941813, 20011643, 20021646 and 20030822**

Dear Mr. Kim:

The undersigned, as a Special Assistant Attorney General, represents the Illinois State Toll Highway Authority in connection with the referenced LUST Incidents. I have received a copy of the Agency's letters, dated September 1, 2004, modifying the Authority's Corrective Action Completion Report previously submitted to the Agency. A copy of that letter is enclosed.

Please be advised that the Authority does not agree with the Agency's decision as set forth in its letter of September 1, 2004 nor with its decision modifying the underlying High Priority Action Plan and Budget; however, in hopes of resolving the open issues with the Agency, and avoiding the necessity of an appeal to the Illinois Pollution Control Board, our client hereby requests an extension, pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act, to extend the period within which it may appeal the Agency's decision for an additional ninety (90) days.

- 193295.1

EXHIBIT

B

Illinois Environmental Protection Agency

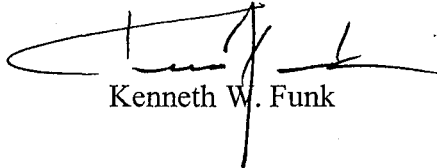
September 30, 2004

Page Two

It is our understanding that upon receipt of this letter you will proceed to prepare the necessary motion for filing with Illinois Pollution Control Board to effectuate the extension. If your understanding is other than as indicated herein or if I can provide any further information, please let us know immediately.

Your assistance and cooperation is appreciated.

Very truly yours,



Kenneth W. Funk

KWF/alj

Enclosures

cc: Victor Azar, Esq.  
Mr. Robin Martel

## CERTIFICATE OF SERVICE


I, the undersigned attorney at law, hereby certify that on October 13, 2004, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

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

Kenneth W. Funk  
Deutsch, Levy & Engel  
225 West Washington Street  
Suite 1700  
Chicago, IL 60606

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
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P.O. Box 19276  
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