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CLERK'S OFFICE

OCT 20 2004

STATE OF ILLINOIS
Pollution Control Board

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

ROBERT AND TONY THOMPSON,)
)
 Petitioner,)
)
 v.) PCB 05- 72
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

NOTICE OF FILING

TO: John Kim Carol Sudman
Special Assistant Attorney General Hearing Officer
Illinois Environmental Protection Agency Illinois Pollution Control Board
1021 North Grand Avenue East 1021 North Grand Avenue East
P.O. Box 19276 P.O. Box 19274
Springfield, Illinois 62794-9276 Springfield, Illinois 62794-9274

PLEASE TAKE NOTICE that on October 20, 2004, 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 Decision.

Dated: October 20, 2004

Respectfully submitted,

Robert and Tony Thompson

By:



One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
206394v1

CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decision. by placing a copy 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, Illinois 62794-9276

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 20th Day of October, 2004.



Carolyn S. Hesse

4. The Agency approved the Site Investigation Completion Report (“SICR”), which delineated the extent of contamination in a letter dated September 13, 2004, a copy of which is attached hereto as Exhibit A.
5. The Agency denied the work proposed in the Corrective Action Plan (“CAP”) to remove the contaminated soil as delineated in the SICR in a letter dated September 15, 2004, a copy of which is attached hereto as Exhibit B.
6. Thompson is appealing this September 15, 2004 denial.
7. Thompson disagrees with the Agency’s decision and believes that the work described in the CAP are reasonable corrective action activities and are necessary to meet the minimum requirements under the Act and implementing regulations.
8. The Agency’s letter denying the CAP, Exhibit B, provides no further explanation of the Agency’s reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency’s denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner’s right to reimbursement under the UST Fund.

WHEREFORE, Robert and Tony Thompson respectfully requests that the Board enter an order ordering the Illinois Environmental Protection Agency to approve the Corrective Action Plan and for their attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Robert and Tony Thompson

By: Carolyn S. Hesse
One of Their Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313

242215v1



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 6899

SEP 13 2004

Robert Thompson
R.R. 1
Cairo, IL 62914

RECEIVED
SEP 14 2004
BY: *atg*

Re: LPC #0030055049 -- Alexander County
Cairo/Big Tony's Lounge
U.S. Route 37
LUST Incident No. 20020881
LUST Technical File

Dear Mr. Thompson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated May 19, 2004, was received by the Illinois EPA on May 19, 2004. 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 Illinois EPA has determined that the requirements of Title XVI of the Act have been satisfied (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 732.503(b)). Therefore, the report is approved.

Pursuant to Sections 57.7(b)(2) and (3) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 732.100 and 732.105, the Illinois EPA requires submittal of a Corrective Action Plan and budget within ninety (90) days from 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 note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek reimbursement from the Underground Storage Tank Fund.

ROCKFORD -- 4302 North Main Street, Rockford, IL 61103 -- (815) 987-7760 • DES PLAINES -- 9511 W. Harrison St., Des Plaines, IL
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
SPRINGFIELD -- 4500 S. Sixth Street Rd., Springfield, IL 62706 -- (217) 786-6892 • COLLINSVILLE -- 2009 Mall Street, Collinsville, IL 62234
MARION -- 2309 W. Main St., Suite 116, Marion, IL 62959 -- (618) 993-7200

EXHIBIT
A

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Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If you have any questions or need further assistance, please contact Chris Covert at 217/785-3943.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Henninger', with a long horizontal line extending to the right.

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

TAH:CC\

cc: CW³M Company, Inc.
Division File



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

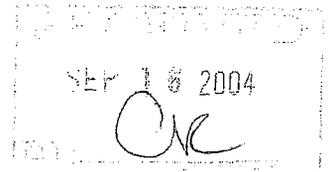
CERTIFIED MAIL

SEP 15 2004

7002 3150 0000 1113 7322

Robert Thompson
R.R. 1
Cairo, IL 62914

Re: LPC #0030055049 - Alexander County
Cairo/Big Tony's Lounge
4th & Jefferson
LUST Incident No. 20020881
LUST Technical File



Dear Mr. Thompson:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated May 19, 2004, was received by the Illinois EPA on May 19, 2004. 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 and the associated budget are rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

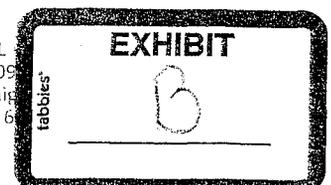
The plan is rejected for the following reason(s):

Based upon review of the Site Investigation Completion Report dated May 19, 2004, and further review of the Site Investigation Status Report dated August 7, 2004 and Site Investigation Plan dated January 13, 2003, the Agency has determined that the proposed plan exceeds the minimum requirements for remediation as set forth by Public Act 92-0554, and 35 Illinois Administrative Code (35 Ill. Adm. Code). According to analytical results presented in the Site Investigation Completion Report, no contamination was present in any of the soil borings advanced at the site. The Site Investigation Status Report indicated that contamination was present in three (3) grab samples taken from the former tank bed floor and the island pumps. The Agency has determined that analytical results from 3 grab samples does not adequately justify the removal of 935 cubic yards of soil.

The plan budget is rejected for the following reason(s):

The budget must be associated with an approved plan.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60018 - (708) 490-6000
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) 244-6892
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 993-7200
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200



Page 2

Pursuant to Sections 57.7(b) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 732.100 and 732.105, a plan and/or budget must be submitted within ninety (90) 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.

If you have any questions or need further assistance, please contact Chris Covert at 217/785-3943.

Sincerely,



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

TAH:CC\

Attachment: Appeal Rights

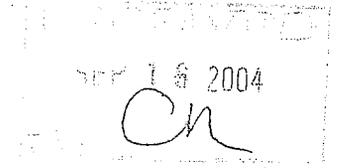
cc: CW³M Company, Inc.
Division File

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