

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS STATE TOLL HIGHWAY)	
AUTHORITY (Lincoln Oasis South),)	
)	
Petitioner,)	
)	
v.)	PCB - 06-37
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

To:	Douglas Scott, 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
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PLEASE TAKE NOTICE that on December 19, 2005 we filed with the Clerk of the Illinois Pollution Control Board, via the Clerk's Office On-Line (COOL) System, the following : **1) Appearance of Deutsch, Levy & Engel, Chartered and 2) Petition for Review of Agency Rejection of High Priority Corrective Action Completion Report for Lincoln Oasis South** for filing the above-entitled cause, copies of which are attached hereto.



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 19th day of December, 2005.



Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
Special Assistant Attorneys General
225 W. Washington Street, Suite 1700
Chicago, IL 60606 • (312) 346-1460

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**PETITION FOR REVIEW OF AGENCY REJECTION OF HIGH PRIORITY
CORRECTIVE ACTION COMPLETION REPORT**

Petitioner, the Illinois State Toll Highway Authority ("ISTHA") by its attorneys, Kenneth W. Funk, Phillip J. Zisook, and Karen Kavanagh Mack, as Special Assistant Attorneys General, petitions the Illinois Pollution Control Board, pursuant to 415 ILCS 5/57.7(c)(4)(D) 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 Completion Report, dated April 8, 2005, relating to its Lincoln Oasis South 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 Lincoln Oasis South located on the I-294 Tollway (East Bound), in South Holland, Illinois (the "Oasis"). Mobil Oil Corporation ("Mobil") and its successor entity, ExxonMobil Oil Corporation ("ExxonMobil"), during all times relevant herein leased portions of the Oasis premises and operated the various tank systems located thereon, selling gasoline products to the public patrons of the Oasis.

2. On or about August 12, 1994, Wight and Company ("Wight"), 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 at the Oasis, to which the IEMA assigned Incident No. 94-1818.

3. On or about March 1, 1999, Mobil conducted a precision line test at the Oasis due to a variance of one thousand, one hundred (1,100) gallons of special grade gasoline in its monthly reconciliation at the Oasis. The precision line test indicated that the Mobil special grade line was leaking. Thus, on or about March 1, 1999, Tanknology - NDE, on behalf of Mobil, reported the release which was assigned Incident No. 99-0490.

4. In March, 2000, ExxonMobil, initiated an investigation at the Oasis after its UST gauging measurements and reconciliation indicated a variance in the regular unleaded fuel for the periods of January and February 2000. A line test was conducted on or about March 12 and 14, 2000, which indicated that the regular unleaded gasoline product piping was not maintaining pressure. On or about March 14, 2000, the incident was reported to IEMA and assigned Incident No.2000-0446.

5. On or about March 15, 2000, following a failed line test, Tanknology-NDE, a contractor working for ExxonMobil, reported a release to the IEMA which was assigned Incident No. 2000-0450. Incident No. 2000-0450 was apparently a re-reporting of Incident No. 2000-0446.

6. On or about August 16, 2000, during a portion of Wight's ongoing investigation of the Oasis conducted for ISTHA, free product was identified in a vapor well located adjacent to the existing UST field. Wight notified ISTHA, who subsequently notified ExxonMobil. On August 16, 2000, ExxonMobil reported the release to IEMA and Incident No. 2000-1562 was

assigned. In the 45-Day Report for this incident, Handex (a consultant for ExxonMobil) indicated that the free product may be the result of Incident No. 2000-0450, since two (2) separate UST system tightness tests indicated that the UST systems were operating within normal ranges.

7. In September of 2003, the Mobil station was demolished to prepare for site redevelopment. The site redevelopment included the replacement of the existing tanks. During tank removal activities, soil and groundwater was determined to contain concentrations of target analytes above IEPA Tier I Remediation Objectives for Industrial/Commercial Properties set forth in 35 Ill. Admin. Code 742. Under the direction of the Office of the State Fire Marshall, Wight, reported a release to IEMA on September 24, 2003 and Incident No. 2003-1416 was assigned to the site. Since the release was reported during the removal of the existing tank system associated with Incident No. 94-1818, Wight considered Incident No. 2003-1416 to be a re-reporting of Incident No. 94-1818.

8. On or about April 8, 2005, ISTHA submitted a High Priority Corrective Action Completion Report ("Report") to the Agency.

9. On or about August 10, 2005, the Agency responded by rejecting the Report. A true and complete copy of that rejection is attached hereto as Exhibit "A".

10. The Oasis has been remediated to a level which is protective of human health and the environment and complies with, but does not exceed, the minimum necessary requirements of the Act and the regulations promulgated thereunder.

11. The Report submitted by ISTHA sufficiently addresses and meets or exceeds all statutory and regulatory requirements of a high priority corrective action completion report,

including (but not limited to): the incident reporting history of the Oasis; ISTHA's investigation of the Oasis; the remedial objectives established for the Oasis; exposure route analyses; the remedial action taken; and a summary of the corrective action results.


12. Accordingly, ISTHA requests that the Board reverse the Agency's determination to reject the Lincoln Oasis South Report, because *inter alia*, the Report was completed in accordance with the requirements of Title XVI of the Act and complied with 35 Ill. Adm. Code 732.409 and the bases asserted by the Agency for rejecting the Report are: a) inadequate and do not form a sufficient basis for rejecting the Report; and /or b) are inaccurate because the requested information is contained within the Report or has previously been provided to the Agency in prior submissions thereto.

13. ISTHA reserves the right to present additional grounds for reversal of the Agency's final 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 and reverse the Agency's August 10, 2005 rejection of ISTHA's High Priority Corrective Action Completion Report for the Lincoln Oasis South and remand this matter to the Agency with instructions to approve the Report as submitted, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,

THE ILLINOIS STATE TOLL
HIGHWAY AUTHORITY

By: _____
One of Its Attorneys

Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
Special Assistant Attorneys General
Deutsch, Levy & Engel, Chtd.
225 W. Washington Street, Suite 1700
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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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

AUG 10 2005

CERTIFIED MAIL

7004 2510 0001 8647 4573

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

Re: LPC #0312975141 -- Cook County
South Holland / Lincoln Oasis
I-294, East Bound
LUST Incident No. 941818, 990490, 20000446, 20000450 & 20001562
LUST Technical File

Dear Mr. Dailey:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Completion Report (report) for the above-referenced incident. The report was dated April 8, 2005, and was received by the Illinois EPA on April 12, 2005. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to 57.7(c)(4)(D) of the Act and 35 Ill. Adm. Code 732.409(c) and 732.503(b), the report is rejected for the reasons listed in Attachment A.

Pursuant to 35 Ill. Adm. Code 732.401, a response must be submitted within 120 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 at the beginning of this letter.

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) 693-5463
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) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

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Exhibit "A"

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The Illinois EPA does not require the submission or approval of a budget if the owner or operator will not seek payment of corrective action costs from the Underground Storage Tank Fund.

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 Melinda Friedel, P.E. at 217/782-6762.

Sincerely,

Clifford Z Wheeler, for MTL

Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachment: Attachment A
Appeal Rights

c: Erin Burke / Wight & Company
Division File

Attachment A

Re: LPC #0312975141 -- Cook County
South Holland / Lincoln Oasis
I-294, East Bound
LUST Incident No. 941818, 990490, 20000446, 20000450 & 20001562
LUST TECHNICAL FILE

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

1. Pursuant to 35 Ill. Adm. Code 732.409(a)(2)(B), a High Priority corrective action completion report shall include, but not be limited to, a narrative and timetable describing the implementation and completion of all elements of the corrective action plan and the procedures used for the collection and analysis of samples, soil borings logs, actual analytical results, laboratory certification, site maps, well logs, and any other information or documentation relied upon by the Licensed Professional Engineer in reaching the conclusion that the requirements of the Act and regulations have been satisfied and that no further remediation is required at the site. A High Priority corrective action completion report shall demonstrate the following:
 - a. For sites submitting a Site Classification Completion Report pursuant to 35 Ill. Adm. Code 732.312 (Classification by Exposure Pathway Exclusion), the concentrations of applicable indicator contaminants meet the remediation objectives developed under 35 Ill. Adm. Code 732.408 for any applicable exposure route not excluded from further consideration under 35 Ill. Adm. Code 732.312.

The report fails to meet the above requirements, and, therefore, the requirements of Section 57.7(c)(1)(E) of the Act, for the following reason(s):

Any modeled groundwater contamination predicted to extend off-site must be addressed before a No Further Remediation Letter can be issued. The soil inhalation exposure has not been excluded from further consideration based on the information included in the completion report.

2. Incident #20031416 cannot be considered a re-reporting of incident #941818. This decision was previously made in the Illinois EPA review letter dated May 7, 2004.
3. The owner/operator needs to clarify if free product continues to be encountered in the UST sumps. This should also include whether or not any product has been identified during recent gauging events.
4. The institutional controls proposed for site closure must be clarified. The submitted Owner/Operator Property Summary form included a construction worker caution statement and maintained engineered barrier consisting of a building that were not included in the closure report.

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5. Hydraulic gradient calculations need to be provided along with any recent groundwater elevation data collected from the subject site.
6. The depths of the soil confirmation samples need to be specified along with the previously identified soil sample locations that were over-excavated.
7. The most conservative hydraulic conductivity value reported from this site (6.27×10^{-3} cm/s from MW-2) should be used in the Tier 2 evaluation.

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

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APPEARANCE

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



Special Assistant Attorney General

Kenneth W. Funk, Esq.
Phillip J. Zisook, Esq.
Karen Kavanagh Mack, Esq.
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