

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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CLERK'S OFFICE

DEC 26 2003

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Des Plaines South),)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 04- 103
(LUST 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: December 23, 2003

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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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Pollution Control Board

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Des Plaines South),)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 04- /03
(LUST Appeal – Ninety Day Extension)

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 April 26, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On November 18, 2003, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On December 15, 2003, 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. The Petitioner did not represent when the final decision was received. (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
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: December 23, 2003



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

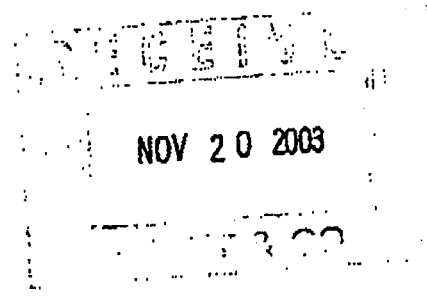
217/782-6762

CERTIFIED MAIL

7002 3150 0000 1227 1483

NOV 18 2003

Illinois State Toll Highway Authority
Attn: John Wagner
2700 Ogden Avenue
Downers Grove, IL 60515



Re: LPC #0310635373 -- Cook County
Des Plaines/Des Plaines Oasis (Des Plaines South)
Northwest Tollway (I-90), East Bound, Mile Post 4.5
LUST Incident No. 941812 & 20021210
LUST Technical File

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 August 4, 2003, was received by the Illinois EPA on August 7, 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 approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. 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.

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.

A

Page 2

All future correspondence must be submitted to:

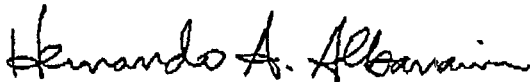
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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 the Illinois EPA project manager, Steve Jones, at 217/524-1253.

Sincerely,



Hernando A. Albarracin
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:SMSTHA Des Plaines South Oasis 941812 & 20021210 CAP & Budget.doc

Attachments: Attachment A
Appeal Rights

c: Wight & Co.
Division File

Attachment A

Re: LPC #0310635373 -- Cook County
 Des Plaines/Des Plaines Oasis (Des Plaines South)
 Northwest Tollway (I-90), East Bound, Mile Post 4.5
 LUST Incident No. 941812 & 20021210
 LUST Technical File

Citations 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:

\$1,002.19	Investigation Costs
\$3,217.26	Analysis Costs
\$7,501.84	Personnel Costs
\$1,279.80	Equipment Costs
\$99,176.60	Field Purchases and Other Costs
\$4,172.47	Handling Charges

SECTION 2

1. \$2,745.00 for an adjustment in costs for monitoring well abandonment. 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(hh)). 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.
2. \$38.00 for an adjustment in costs for groundwater BTEX/MTBE – 24 hour turnaround samples. 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(hh)). 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.
3. \$20,535.00 for an adjustment in personnel costs. 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(hh)). 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

Page 2

documentation may be provided to demonstrate the costs are reasonable.

4. \$450.00 for an adjustment in costs for support vehicle. 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(hh)). 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.
5. \$77,194.80 for an adjustment in costs for soil removal and disposal. 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(hh)). 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.
6. \$8,020.33 for an adjustment in costs for backfill. 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(hh)). 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.
7. \$2,169.31 for an apportionment of Investigation Costs. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).

Total number of USTs	19
Number of Eligible USTs	6
Number of Ineligible USTs	13
Percentage of Eligible USTs	31.6%
Total Volume of USTs (gallons)	261,500
Volume of Eligible USTs (gallons)	60,500
Volume of Ineligible USTs (gallons)	201,000
Percentage Volume of Eligible USTs	23.1%

Page 3

8. \$6,963.94 for an apportionment of Analysis Costs. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).
9. \$16,238.16 for an apportionment of Personnel Costs. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).
10. \$2,770.20 for an apportionment of Equipment Costs. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).
11. \$214,673.40 for an apportionment of Field Purchases and Other Costs. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code 732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).
12. \$9,031.55 for an apportionment of Handling Charges. The Illinois EPA has determined that the apportionment shall be based on the number of eligible USTs as listed in the Office of the Illinois State Fire Marshal's letter dated January 9, 1997 (35 Ill. Adm. Code

Page 4

732.608(b)). The Illinois EPA may apportion payment of costs for plans submitted under Section 57.7(c)(4)(E)(iii) of the Act if: (1) the owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and (2) the owner or operator failed to justify all costs attributable to each underground storage tank at the site (Section 57.8(m) of the Act and 35 Ill. Adm. Code 732.608).

Budget Adjustment Summary

CAP Budget Costs Category	Costs as listed in CAP Budget	Budget Modifications due to unreasonable costs	Approved Costs before Apportionment	Approved Costs after Apportionment (31.6%)	Budget Modifications due to Apportionment
Investigation	\$5,916.50	\$2,745.00	\$3,171.50	\$1,002.19	\$2,169.31
Analysis	\$10,219.20	\$38.00	\$10,181.20	\$3,217.26	\$6,963.94
Personnel	\$44,275.00	\$20,535.00	\$23,740.00	\$7,501.84	\$16,238.16
Equipment	\$4,500.00	\$450.00	\$4,050.00	\$1,279.80	\$2,770.20
Field Purchases	\$399,065.13	\$85,215.13	\$313,850.00	\$99,176.60	\$214,673.40
Handling	\$13,204.02	\$0.00	\$13,204.02	\$4,172.47	\$9,031.55
Total	\$477,179.85	\$108,983.13	\$368,196.72	\$116,350.16	\$251,846.56

SNISTHA Des Plaines South Oasis 941812 & 20021210 CAP & Budget.doc

EARL A. DEUTSCH
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CATHERINE GLENN JOELSON

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COUNSEL
MARSHALL D. KROLICK
ARTHUR J. SABIN

December 15, 2003

**VIA FACSIMILE 217-782-9807
AND REGULAR 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.

**Re: LPC #0310635373 - Cook County;
Des Plaines/Des Plaines Oasis (Des Plaines South)
Northwest Tollway (I-90), East Bound, Mile Post 4.5
LUST Incident Nos. 941812 and 20021210**

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 letter, dated November 18, 2003, modifying the Authority's High Priority Corrective Action Plan and Budget 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 position as set forth in its letter of November 18, 2003; 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.

RECEIVED
Division of Legal Counsel
DEC 17 2003
Environmental Protection
Agency

B

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/ccf

Enclosures

cc: Victor Azar, Esq.

Ms. Mary Kruk

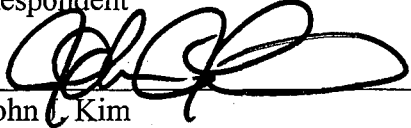
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 23, 2003, 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 Mail 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 L. Kim
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