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MAY 24 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

DIMUCCI DEVELOPMENT )  
CORPORATION, )  
 )  
 ) Petitioner, )  
 )  
 ) v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
 ) Respondent. )

PCB No. 04- 209  
(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

Larry Kowalczyk  
DiMucci Companies  
285 West Dundee Road  
Palatine, IL 60074

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: May 20, 2004

MAY 24 2004

STATE OF ILLINOIS  
Pollution Control Board

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

DIMUCCI DEVELOPMENT )  
CORPORATION, )  
Petitioner, )  
v. ) PCB No. 04- 209  
ILLINOIS ENVIRONMENTAL ) (LUST 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 August 18, 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:

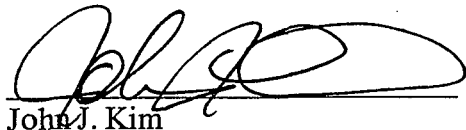
1. On April 15, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On May 10, 2004, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. 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: May 20, 2004

This filing submitted on recycled paper.



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 1257 0906

APR 15 2004

DiMucci Development Corporation
Larry Kowalczyk
100 West Dundee Road
Palatine, Illinois 60067

Re: LPC #0310515271 -- Cook County
Cicero / DeMucci
3035 South Cicero
LUST Incident No. 20030198 and 20030279
LUST Technical File

Dear Mr. Kowalczyk:

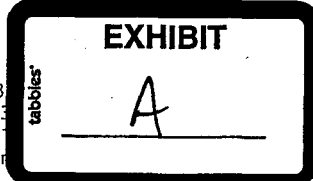
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan Budget Amendment, Site Investigation Plan, Site Investigation Completion Report, and Corrective Action Plan submitted for the above-referenced incident. The Illinois EPA received the plans and reports, dated December 23, 2003 on December 26, 2003 respectively. 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 Site Investigation Plan is rejected for the reason(s) listed below (Sections 57.7(a)(1) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)):

- 1. The plan did not contain sufficient information as to how the full extent of contamination would be defined both vertically and horizontally. The Site Investigation must be based on the results of the soil samples collected from the limits of the early action excavation pursuant to 35 IAC Section 732.202(h). The results of these soil samples have not been submitted to the Agency. Please note that soil samples collected from the limits of an over excavation during early action over the limits allowed in 732.Appendix C are not acceptable for defining the extent in the Site Investigation stage of the project.

The Site Investigation Completion Report is rejected for the reason(s) listed below (Sections 57.7(a)(5) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)):

- 1. The report did not provide sufficient documentation as to how the full extent of contamination was defined both vertically and horizontally.



2. The full extent of contamination has not been defined to the most stringent Tier 1 remediation objective. For purposes of define the extent Tier 1 residential remediation objectives must be used.

The Corrective Action 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 Corrective Action Plan is rejected for the following reason(s):

1. An explanation and supporting documentation must be provided that clearly describes when and where the early action activities were conducted. A map must be provided that shows the limits of the early action excavation and the results of the early action soil sampling required pursuant to 35 IAC Part 732.202(h).
2. A demonstration through Site Investigation must be conducted that the soils removed were contaminated above the applicable remediation objective. In addition, a demonstration must be made that all contamination is attributable to the USTs at the site.
3. The plan includes the removal of soil that does not appear to be associated with the USTs.
4. The plan includes the removal of soil that are below the proposed industrial/commercial remediation objectives.

The Corrective Action Plan Budget is rejected for the reason(s) listed in attachment A.

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 Brian Bauer at 217/782-3335.

Sincerely,



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

HAC:BB\

Attachment: Attachment A  
cc: Environmental Protection Industries  
Division File

Attachment A

Re: LPC #0310515271 -- Cook County  
Cicero / DeMucci  
3035 South Cicero  
LUST Incident No. 20030198 and 20030279  
LUST Technical File

Citations in this attachment 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).

1. The budget includes costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan (Section 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)).
2. The budget includes costs that the owner or operator failed to justify are attributable to each underground storage tank at the site (Section 57.8(m)(2) of the Act.).
3. Costs incurred after completion of early action activities in accordance with 35 Ill. Adm. Code 732.Subpart B by owners or operators choosing to conduct remediation sufficient to satisfy the remediation objectives upon completion of early action activities are ineligible for payment from the Fund. These costs are for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Sections 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)). The budget includes such costs.
4. 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)). The budget includes costs that are not reasonable as submitted (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The following items are not reasonable:

1. Professional Engineer rate;
2. Amount of personnel time to prepare the corrective action plan;
3. Amount of personnel time to oversee corrective action activities;
4. Amount of personnel time to prepare the corrective action completion report;
5. The company vehicle rate;
6. The rate for excavation, disposal and transportation;
7. The rate for backfilling the excavation;

5. The budget includes costs for the excavation, transportation, and disposal of soil contaminated below the proposed remediation objectives. These costs are not corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)).
6. The Illinois EPA has not approved the plan with which the budget is associated. Therefore, the Illinois EPA cannot determine whether these costs are for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)). It also cannot be determined whether the costs are corrective action costs. "Corrective action" means an activity associated with compliance with the provision of Section 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)). In addition, it cannot be determined whether these costs are reasonable as submitted (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(hh)).

BB\

## 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



**CERTIFIED MAIL**

May 10, 2004

Mr. John J. Kim, Esp.  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

**Re : LPC # 0310515271 – Cook County  
Cicero/DiMucci  
3055 South Cicero  
LUST Incident # 20030198 & 20030279**

**RECEIVED**  
Division of Legal Counsel  
MAY 14 2004  
Environmental Protection  
Agency

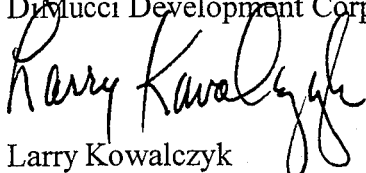
Dear Mr. Kim:

As Vice President for DiMucci Development Corporation, I am submitting this letter to request a 90-day extension for appeal period regarding the Illinois Environmental Protection Agency (IEPA) decision in the correspondence dated on April 15, 2004 (see attached copy of the correspondence).

We strongly believe that the corrective actions completed on the above referenced property are consistent with the requirements of Environmental Protection Act. In addition, we prefer to schedule a meeting with you, Mr. Chappel, Mr. Bauer, and Mr. Clay to discuss the matters instead of addressing the issues at the Pollution Control Board.

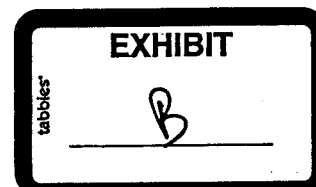
Thank you very much for your promptly attention. Should you have any questions, please do not hesitate to contact us at your convenience.

Sincerely,  
DiMucci Development Corporation



Larry Kowalczyk  
Vice President of Construction

Enclosure: Copy of the IEPA Correspondence dated April 15, 2004



**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on May 20, 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 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

Larry Kowalczyk  
DiMucci Companies  
285 West Dundee Road  
Palatine, IL 60074

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  
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