

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

APR 07 2004

STATE OF ILLINOIS
Pollution Control Board

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

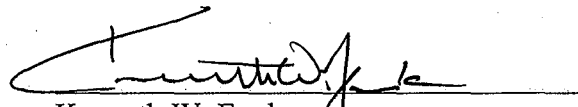
PCB - 04-119
(UST Appeal)

NOTICE OF FILING

To: Renee Cipriano, 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

PLEASE TAKE NOTICE that on April 7, 2004 we filed with the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via personal delivery, of 1) **Appearance of Deutsch, Levy & Engel, Chartered** and 2) **Petition for Review of Agency Rejection of High Priority Corrective Action Completion Report for Des Plaines Oasis South** for filing the above-entitled cause, copies of which are attached hereto.


 Kenneth W. Funk
 Special Assistant Attorney General

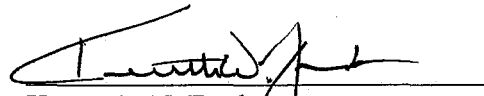
RECEIVED
CLERK'S OFFICE

APR 07 2004

STATE OF ILLINOIS
Pollution Control Board

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 7 day of April, 2004.


Kenneth W. Funk
Special Assistant Attorney General

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
Chicago, IL 60606
(312) 346-1460

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 07 2004

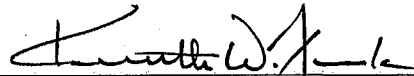
ILLINOIS STATE TOLL HIGHWAY)
 AUTHORITY (Des Plaines Oasis South),)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL PROTECTION)
 AGENCY,)
)
 Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB - 04-119
(UST Appeal)

APPEARANCE

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



Kenneth W. Funk
Special Assistant Attorney General

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
Chicago, IL 60606
(312) 346-1460

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

APR 07 2004

STATE OF ILLINOIS
Pollution Control Board

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

PCB - 04-119
(UST Appeal)

**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 on or about December 4, 2003 relating to its Des Plaines 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 Des Plaines Oasis South located on the I-90 Tollway (East Bound), in Des Plaines, Illinois.
2. In 1994, Wight and Company, on ISTHA's behalf, notified the IEMA that gasoline, diesel and waste oil target analytes were detected above the Tier I Remediation Objectives, to which the IEMA assigned Incident No. 94-1812.

3. On or about August 2002, Wight and Company, on ISTHA's behalf, notified the IEMA that soil and excavation water contained concentrations of target analytes above the Tier I Remediation Objectives, to which the IEMA assigned Incident No. 2002-1210, which was considered a re-reporting of Incident No. 94-1812, since the release was reported during the removal of the existing tank system associated with Incident No. 94-1812.

4. On or about August 4, 2003, ISTHA submitted a Combined High Priority Corrective Action Plan, Budget and Completion Report ("Report") to the Agency; and, on or about December 4, 2003, the Agency responded by rejecting the Report. A true and complete copy of that rejection is attached hereto as Exhibit "A".

5. On or about December 15, 2003, ISTHA contacted the Agency by letter, and advised the Agency that it contested the Agency's rejection and requested a 90 day extension of the 35 day appeal period pursuant to §40 of the Environmental Protection Act. (415 ILCS 5/40(a)(1).)

6. On or about January 7, 2004, the Agency filed a request before the Board requesting a 90 day extension of the 35 day appeal period.

7. On or about January 22, 2004, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including April 7, 2004.

8. ISTHA requests that the Board reverse the Agency's determination to reject the Des Plaines South High Priority Corrective Action Completion 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(c).

9. The Des Plaines Oasis South 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.

10. In particular response to the Agency's assertion that no site map or copy of "Table 11 for Appendix B" were attached to the report, ISTHA has subsequently provided both to the Agency.

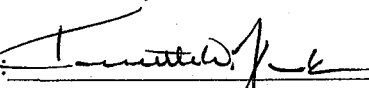
11. Although the Agency found that "the concentration of naphthalene in sample TR9 exceeded the construction worker inhalation objectives", the surface above the location of TR9 is comprised of approximately seven inches of concrete. Therefore, there is no exposure pathway between the naphthalene detected at TR9 and any construction workers.

12. 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 December 4, 2003 rejection of ISTHA's High Priority Corrective Action Completion Report for the Des Plaines Oasis South and remand this matter to the Agency with instructions to approve the Amendment as aforesaid, and for any other relief as the Board deems just and appropriate.

Respectfully submitted,

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: 
One of their 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
Chicago, IL 60606
(312) 346-146

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

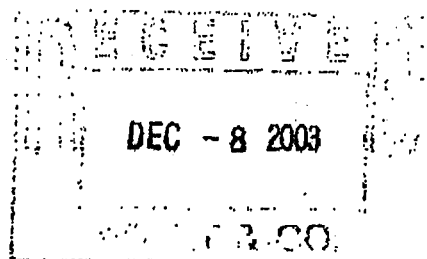
RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL.
7002 3150 8000 1227 2916

DEC 04 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:

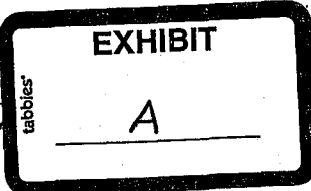
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Completion Report (report) for the above-referenced incident. The report was dated August 4, 2003 and was received by the Illinois EPA on August 7, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to 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 following reasons:

- 1) A site map must be submitted showing the current site layout and the areas to be addressed by the engineered barrier and the construction worker safety plan.
- 2) A copy of Table 11 for Appendix B (soil samples from the dispenser area) must be submitted.
- 3) The concentration of naphthalene in sample TR9 exceeds the construction worker inhalation remediation objective. The development of Tier 2 remediation objectives or the use of a construction worker safety plan may be appropriate.

Pursuant to 35 Ill. Adm. Code 732.401, a Corrective Action Completion Report must be submitted by March 1, 2004 to:

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 963-3300
ELGIN - 595 South State, Elgin, IL 60123 - (847) 708-3300
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 278-5800
MARION - 2309 W. N. Marion, IL 62450 - (618) 993-7200



11 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
University St., Peoria, IL 61614 - (309) 693-5463
- 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
- (618) 993-7200

Page 2

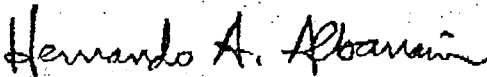
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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

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 CACR.doc

Attachments: Appeal Rights

c: Wight & Co.
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