

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAR 23 2004

STATE OF ILLINOIS
Pollution Control Board

ILLINOIS STATE TOLL HIGHWAY)
AUTHORITY (Des Plaines Oasis South),)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)

Respondent.)


PCB - 04-103
(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

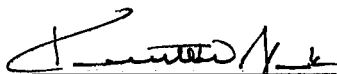
John Kim, Esq.
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794

PLEASE TAKE NOTICE that on March 23, 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 Special Assistant Attorneys General and 2) Petition for Review of Agency Modification of Budget for High Priority Corrective Action Plan for Des Plaines South** for filing the above-entitled cause, copies of which are attached hereto.


Kenneth W. Funk
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 23 day of March, 2004



Kenneth W. Funk
Special Assistant Attorney General

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

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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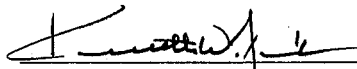
STATE OF ILLINOIS
Pollution Control Board

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

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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
225 W. Washington Street
Suite 1700
Chicago, IL 60606
(312) 346-1460
Firm No. 90235

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

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

PCB - 04-103
(UST Appeal)

PETITION FOR REVIEW OF AGENCY MODIFICATION OF BUDGET FOR HIGH PRIORITY CORRECTIVE ACTION PLAN

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), 415 ILCS 57.8(I) and 415 ILCS 5/40, for review of the final determination of Respondent, the Illinois Environmental Protection Agency (the "Agency"), dated November 18, 2003, with respect to Petitioner's Budget for the High Priority Corrective Action Plan, 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 High Priority Corrective Action Plan ("Plan"), including a Budget, to the Agency; and, on or about November 18, 2003, the Agency responded by approving the Plan, but materially modifying the Budget (the "Final Determination"). A true and complete copy of that Final Determination 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 modification 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 December 23, 2003 the Agency filed a request before the Board requesting a 90 day extension of the 35 day appeal period.

7. On or about January 8, 2004, the Board granted the Agency's request and extended the period within which Petitioner may file its appeal through and including March 24, 2004.

8. ISTHA requests that the Board reverse the Agency's Final Determination with respect to its modification of the Des Plaines Oasis South Corrective Action Plan Budget, because *inter alia*, the Budget included investigation costs, analytical costs, personnel costs, equipment costs and handling charges that were necessary and reasonable to execute the approved Plan.

9. Additionally, ISTHA appeals the Agency's modifications to the Budget that seek to apportion ISTHA's corrective action costs. The Agency's bases for apportionment were that (a)

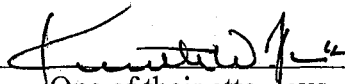
ISTHA was deemed eligible to access the LUST Fund for payment of corrective action costs for some, but not all of the USTs at the site; and (b) ISTHA failed to justify that all costs were attributable to each [eligible] UST at the site. However, on information and belief, the contaminants remediated by ISTHA under the approved Plan emanated from the USTs registered in 1986, which were found eligible for reimbursement by the Office of the Illinois State Fire Marshal and identified as a source of the 1994 release. Additionally, ISTHA demonstrated that the corrective action costs it incurred by ISTHA were attributable to the eligible USTs at the site. Accordingly, ISTHA's budget information provided to the Agency sufficiently demonstrated the costs that were necessary and reasonable to execute the approved Plan, and the Agency erroneously apportioned ISTHA's corrective action costs. Therefore, the Agency's decision to apportion the costs should be reversed.

10. ISTHA reserves the right to present additional grounds for reversal of the Agency's 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, reverse the Agency's November 18, 2003 determination (modification) of ISTHA's Budget for the High Priority Corrective Action Completion Plan for the Des Plaines Oasis South, and remand this matter to the Agency with instructions to approve the Budget 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
225 W. Washington Street, Suite 1700
Chicago, IL 60606
(312) 346-1460



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

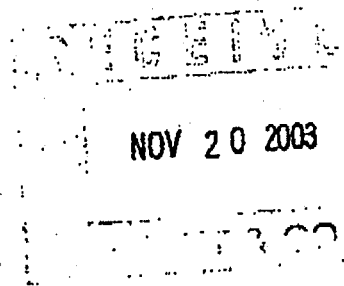
217/782-6762

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

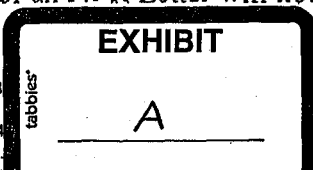
Dear Mr. Wagner:

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.



Page 2

All future correspondence must be submitted to:

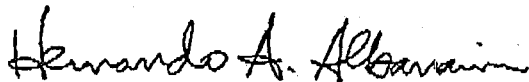
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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:SKISTHA 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

↖
SJ\STHA Des Plaines South Oasis 941812 & 20021210 CAP & Budget.doc

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