

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

DEC 16 2004

MAC'S CONVENIENCE STORES, LLC,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05- 111
(LUST Appeal - Ninety Day Extension)

NOTICE

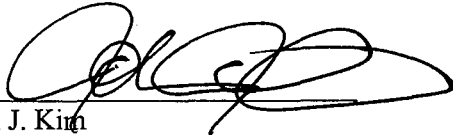
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Kenneth M. Miller
American Environmental Corporation
3700 West Grand Avenue
Suite A
Springfield, IL 62711

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 14, 2004

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

DEC 16 2004

STATE OF ILLINOIS
Pollution Control Board

MAC'S CONVENIENCE STORES, LLC,)
Petitioner,)
v.)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 05- 111
(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 March 17, 2005, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On November 10, 2004, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On November 24, 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 earliest the final decision could have been served upon the Petitioner was on November 12, 2004 (as November 11, 2004 was a State and Federal holiday). (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 14, 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

217782-6762

NOV 10 2004

Mac's Convenience Stores, LLC
Attention: Matt McCure
Post Office Box 347
Columbus, IN 47202

Re: LPC #1970155005 -- Will County
Braidwood/Mac's Convenience Stores
105 South Front Street
LUST Incident No. 20031894
LUST FISCAL FILE

Dear Mr. McCure:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated July 15, 2004 and was received by the Agency on July 16, 2004. The application for payment covers the period from January 9, 2004 to May 28, 2004. The amount requested is \$8,787.43.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the billing submittal received by the Agency on June 4, 2004 for \$43,750.11. There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

On July 16, 2004, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 998-3300
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3300
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 782-3300
MARKES - 2309 W. Main

EXHIBIT
A

HARRISON ST., DES PLAINES, IL 60016 - (847) 294-4000
V. ST., PEORIA, IL 61614 - (309) 693-5463
SOUTH FIRST STREET, CHAMPAIGN, IL 61820 - (217) 278-5800
MAIL STREET, COLLINSVILLE, IL 62234 - (618) 346-5120
3) 993-7200

Page 2

applicant 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:

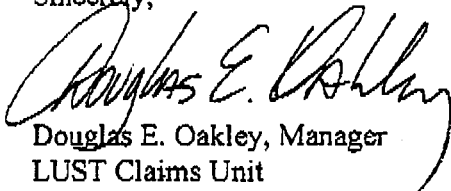
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions or require further assistance, please contact Doug Tolan of my staff and/or Lizz Schwartzkopf at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager
LUST Claims Unit
Planning & Reporting Section
Bureau of Land

DEO:DT:jk\040642.doc

Attachment

cc: American Environmental Corporation

Attachment A
Technical Deductions

Re: LPC #1970155005 -- Will County
Braidwood/Mac's Convenience Store
105 South Front Street
LUST Incident No. 200318941
LUST Fiscal File

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

Item # Description of Deductions

1. \$2,992.56, deduction for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Documentation of measurements/methods used to confirm the release have not been provided. In addition, the release has not been demonstrated to be from the USTs.

Please note these costs are also deducted for additional reasons listed below. Only one deduction was made.

2. \$2,992.56, deduction for costs in which the owner or operator failed to justify that all costs were attributable to each underground storage tank at the site. (Section 57.8(m)(2) of the Act and 35 Ill. Adm. Code 732.608)

A determination of which USTs are related to this release has not been made. Illinois EPA cannot determine the eligibility of these costs without this information. This reason would also apply to other costs submitted in relation to this incident.

3. \$2,992.56, deduction for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the Fund (Section 57.8(m)(1) of the Act and 35 Ill. Adm. Code 732.608).

Six of the nine USTs on-site have been determined ineligible to access the LUST Fund. All costs related to this incident may be ineligible if the release is determined to be from the ineligible USTs, or costs may be required to be prorated according to established procedures.

4. \$2,992.56, deduction for costs associated with sites that have not reported a release to the Illinois Emergency Management Agency (IEMA) or are not required to report a release to IEMA (35 Ill. Adm. Code 732.606(x)). An owner or operator is eligible to access the Fund if the owner or operator notified the IEMA of a confirmed release and the costs were incurred after the notification was made (Section 57.9(a)(5) of the Act).

Page 2

If the spills and/or overfills were less than the required quantity, a reporting of a release would not have been required.

If the spills and/or overfills were equal to or greater than the required quantity a release may not have been reported in the required time frame.

Either case may affect the eligibility of the release/incident to access the UST Fund. (Please see 41 IAC Part 170.)

5. \$2,992.56, deduction for costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations (35 Ill. Adm. Code 732.606(y)). 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)).

Without additional information, Illinois EPA cannot determine if these costs exceed minimum requirements.

6. \$2,992.56, deduction for costs of alternative technology that exceed the costs of conventional technology (35 Ill. Adm. Code 732.606(bb)). These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

Without additional information, Illinois EPA cannot determine if these costs exceed minimum requirements.

7. \$2,992.56, deduction for costs due to excessive early action activities. (Section 57.6(b) of the Act and 35 Ill. Adm. Code 732.606(o))

8. \$12.75, deduction for Acc Hardware receipt #00717849 21. These items do not appear to be related to the work at the site and also appear to exceed the minimum requirements.

9. \$860.75, deduction for costs associated with concrete and/or asphalt replacement. The Illinois EPA will only reimburse concrete and/or asphalt replacement once for this occurrence. Until the above-referenced site has received a No Further Remediation Letter, the Illinois EPA cannot determine if these costs are unreasonable or if they are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act, since at this time it is unclear whether additional remediation may be required. (Sections 57.5(a) and 57.7(c)(4)(C) of the Act; 35 Ill. Adm. Code 732.505(c) and 732.606(o))

Once the above-referenced site has received a No Further Remediation Letter, a resubmission with additional information of the costs associated with concrete and/or asphalt replacement (as well as any supporting documentation, including a copy of the No Further Remediation Letter) may be submitted to the Illinois EPA.

Page 3

10. The billing(s) submitted includes costs that lack supporting documentation. Since there is no supporting documentation of costs, the Illinois EPA cannot determine that the costs were not used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o)).

HAC:LS



From Springfield Regional Office

VIA FACSIMILE (217-782-9807)

Illinois Environmental Protection Agency
Attn: John Kim
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

November 24, 2004

Re: **Request for Extension for Petitioning the IPCB**
LPC #1970155005 -- Will County
Mac's Convenience Store #186- Braidwood/Mac's Convenience Stores LLC
105 South Front Street
LUST Incident No. 20031894
American Environmental Project Number 237021

Dear Mr. Kim

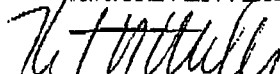
Mac's Convenience Stores LLC ("Mac's"), requests that the Illinois Environmental Protection Agency ("Agency") join them in requesting a 90-day extension to the 35-day deadline for filing a petition for a hearing before the Illinois Pollution Control Board ("IPCB"). This request is being made to preserve Mac's right to appeal the Agency decision contained in a November 11, 2004 letter regarding a July 15, 2004 application for payment from the Underground Storage Tank Fund for the above referenced LUST incident. A copy of the Agency letter is attached.

The additional time is needed for the Agency to review additional information submitted November 11, 2004 by American Environmental and reconsider their deductions to the application amount. It appears the reasons for the deductions are similar to the reasons stated in the Agency's October 21, 2004 letter for rejecting the Site Investigation Plan. If necessary, we will participate in a teleconference and/or meet with the Agency in an effort to resolve the issues without the need to submit a formal petition request.

Please take the necessary action to file this extension request before the 35-day appeal time expires on December 15, 2004. If you need additional information, please advise.

Sincerely,

AMERICAN ENVIRONMENTAL CORPORATION


Kenneth M. Miller, P.E., P.G.
Regional Manager

pc: Kevin Merritt, Mac's Convenience Stores LLC
Jacob Smith (cover letter only)

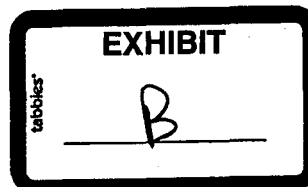
Enclosure

Corporate Office

8500 Georgetown Road
Indianapolis, Indiana 46288-1647
317-871-4090
317-871-4094 Fax

Regional Office

3700 W. Grand Ave. Ste. A
Springfield, IL 62711
217-585-9517
217-585-9518 Fax



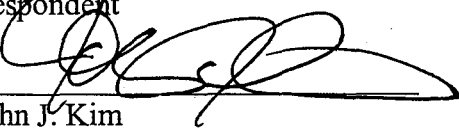
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 14, 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

Kenneth M. Miller
American Environmental Corporation
3700 West Grand Avenue
Suite A
Springfield, IL 62711

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)