

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

<b>ONKEN'S, INCORPORATED,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>PCB _____</b>
	)	<b>(LUST Permit Appeal)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To: John T. Therriault, Acting Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
State of Illinois Building, Suite 11-500  
Chicago, IL 60601

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

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF AGENCY LUST DECISION, a copy of which is herewith served upon the hearing officer and upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys and to said hearing officer with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 20<sup>th</sup> day of July, 2009.

Respectfully submitted,  
Onken's, Incorporated, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:   
Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING SUBMITTED ON RECYCLED PAPER

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>ONKEN'S, INCORPORATED,</b>	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>PCB _____</b>
	)	<b>(LUST Permit Appeal)</b>
<b>ILLINOIS ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
<b>Respondent.</b>	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, ONKEN'S, INCORPORATED (hereinafter "Onken's"), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, and hereby appeals the LUST decision issued on June 16, 2009, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected the plan and associated budget, and in support thereof states as follows:

1. Onken's is the owner or operator of underground storage tanks located at a facility in Easton, Mason County, Illinois. In 2008, a release was reported from a heating underground storage tank at the facility and the release was assigned IEMA Incident #20080544.
2. On June 3, 2008, the Agency received a Stage 1 Site Investigation Plan and Budget, which was approved by the Agency on June 11, 2008.
3. Subsequently, Onken's consultants performed the work set forth in the approved plan and budget.
4. On February 24, 2009, the Agency received the Site Investigation Completion Report and the Stage 1 Actual Costs. The report stated that the "investigation work was completed in accordance with the approved June 3, 2008 Stage 1 Site Investigation Certification." Furthermore, the results of the completed investigation indicated that the Agency

should approve closure of the site and issue a No Further Remediation Letter.

5. On June 16, 2009, the Agency rejected the Site Investigation Completion Report and Stage 1 Actual Costs, stating as follows:

**The Amended 45-Day Report received September 28, 2008, contained the required information needed for closure of this site. No further documentation was requested by the Agency.**

**In addition, the budget for Stage 1 is rejected because the plan is rejected.**

(Exhibit A)

6. Also on June 16, 2009, the Agency issued a No Further Remediation Letter for the site, based upon the Amended 45 Day Report received September 23, 2008. (Exhibit B)

7. While Petitioner agrees that a No Further Remediation Letter should be issued for the site, it should be issued based upon the completion of the approved site investigation work. Without prior notice, the Agency has retroactively attempted to close the site to avoid payment for the work needed to ensure compliance with all applicable environmental laws and regulations. In particular, the monitoring wells developed for the site in October of 2008 were necessary to conduct the groundwater investigation required by the Board's regulations. (35 Ill. Admin. Code § 734.315(a)(2))

8. Because the Agency's decision is not necessary to ensure compliance with applicable environmental laws and regulations, Petitioner asks the Board to reverse the Agency's June 16, 2009 decision and direct payment of the related site investigation activities, and the associated attorney's fees incurred in the event that the Agency's decision is reversed in full or in part.

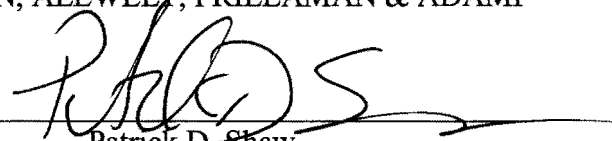
WHEREFORE, Petitioner prays that: (a) the Agency produce the Record; (b) a hearing

be held; (c) the Board find the Agency erred in denying the report, (d) the Board direct the Agency to approve the report, and if necessary, reissue an NFR letter, (e) the Board award payment of attorney's fees; and (f) the Board grant Onken's such other and further relief as it just.

ONKEN'S INCORPORATED,  
Petitioner,

By his attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:

  
Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Suite 325  
Springfield, IL 62701  
Tel: (217) 528-2517  
Fax: (217) 528-2553



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

JUN 16 2009

7008 1830 0001 4717 4344

Onken's, Incorporated.

Attn: Donald Onken

P.O. Box 72

Easton, Illinois 62633 -

Re: LPC # 1250105005 -- Mason County  
Easton/ Onken's Incorporated  
12544 South Route 10  
Leaking UST Incident No. 20080544  
Leaking UST Technical File

Dear Mr. Onken:

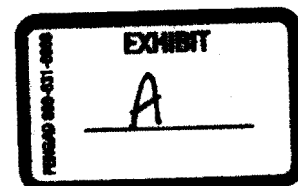
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report and Budget(report) submitted for the above-referenced incident. This report, dated February 23, 2009, was received by the Illinois EPA on February 24, 2009. Citations in this letter are from 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 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 734.505(b) and 734.510(a)):

The Amended 45-Day Report received September 28, 2008, contained the required information needed for closure of this site. No further documentation was requested by the Agency.

In addition, the budget for Stage 1 is rejected because the plan is rejected.

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



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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 Shirlene South at 217/558-0347.

Sincerely,

A handwritten signature in black ink, appearing to read "Harry A. Chappel". The signature is fluid and cursive, with a large initial "H" and "C".

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

HAC: SLS\

c: Environmental Management, Inc.  
BOL 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) 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



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7008 1830 0001 4717 4337

JUN 16 2009

Onken's, Incorporated.

Attn: Donald Onken

P.O. Box 72

Easton, Illinois 62633

Re: LPC # 1250105005 -- Mason County  
Easton/ Onken's Incorporated  
12544 South Route 10  
Leaking UST Incident No. 20080544 -- NFR Letter  
Leaking UST Technical File

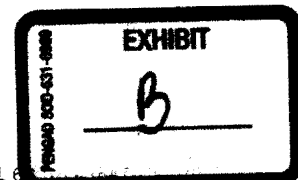
Dear Mr. Onken:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended 45 Day submitted for the above-referenced incident. This information was dated September 22, 2008 and was received by the Illinois EPA on September 23, 2008. 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 Corrective Action Completion Report and the Licensed Professional Engineer Certification submitted pursuant to Section 57.7(b)(1) of the Act and 35 Ill. Adm. Code 734.135(d) indicate the remediation objectives have been met.

Based upon the certification by Michael Keebler, a Licensed Professional Engineer, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter (Letter), based on the certification of the Licensed Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the remediation of the occurrence has been completed; and (3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety, and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following parties:





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1. Onken Incorporated, the owner or operator of the underground storage tank system(s).
2. Any parent corporation or subsidiary of such owner or operator.
3. Any co-owner or co-operator, either by joint tenancy, right-of-survivorship, or any other party sharing a legal relationship with the owner or operator to whom the Letter is issued.
4. Any holder of a beneficial interest of a land trust or inter vivos trust whether revocable or irrevocable.
5. Any mortgagee or trustee of a deed of trust of such owner or operator.
6. Any successor-in-interest of such owner or operator.
7. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.
8. Any heir or devisee of such owner or operator.

#### CONDITIONS AND TERMS OF APPROVAL

##### LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) rules.
2. As a result of the release from the underground storage tank system(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: There are no land use limitations.
3. The land use limitation specified in this Letter may be revised if:
  - a. Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and
  - b. A new No Further Remediation Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

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PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. Preventive: None.

Engineering: None.

Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter.

5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved corrective action plan, if applicable, may result in avoidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed or excavated from, or disturbed at, the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations under 35 Ill. Adm. Code Subtitle G.

7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:

Illinois Environmental Protection Agency  
Attention: Freedom of Information Act Officer  
Bureau of Land - #24  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

8. Pursuant to 35 Ill. Adm. Code 734.720, should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide Notice of Avoidance to the owner or operator of the leaking underground storage tank system(s) associated with the above-referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the avoidance, explain the provisions for appeal, and describe the facts in support of the avoidance. Specific acts or omissions that may result in the avoidance of this Letter include, but shall not be limited to:

a. Any violation of institutional controls or industrial/commercial land use restrictions;

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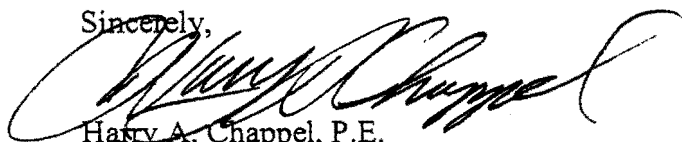
- b. The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;
- c. The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;
- d. The failure to comply with the recording requirements for the Letter;
- e. Obtaining the Letter by fraud or misrepresentation; or
- f. Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Submit an accurate and official copy of this Letter, as recorded, 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

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Shirlene South, at 217/558-0347.

Sincerely,



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

HAC: SLS\

Attachments: Leaking Underground Storage Tank Environmental Notice  
Legal Description

c: Environmental Management Incorporated  
BOL File

PREPARED BY:

Name: Donald Onken  
Onken Incorporated

Address: 12544 South Route 10  
Easton, Illinois 62633

RETURN TO:

Name: Donald Onken  
Onken Incorporated

Address: P.O. Box 72  
Easton, Illinois 62633

(THE ABOVE SPACE FOR RECORDER'S OFFICE)

**LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE**

**THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK SYSTEM(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF MASON COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.**

Illinois EPA Number: 1250105005

Leaking UST Incident No.: 20080544

Donald Onken, the owner and/or operator of the leaking underground storage tank system(s) associated with the above-referenced incident, whose address is P.O. Box 72, Easton Illinois, has performed investigative and/or remedial activities for the site identified as follows:

1. Legal Description or Reference to a Plat Showing the Boundaries: See Attached
2. Common Address: 12544 South Route 10, Illinois 62633
3. Real Estate Tax Index/Parcel Index Number: 11-25-300-010-0060
4. Site Owner: Donald Onken
5. Land Use Limitation: There are no land use limitations.
6. See the attached No Further Remediation Letter for other terms.

sls



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

DOUGLAS P. SCOTT, DIRECTOR

**RECORDING REQUIREMENTS FOR  
NO FURTHER REMEDIATION LETTERS**

**Introduction**

The Illinois Environmental Protection Agency's (Illinois EPA) Bureau of Land/Leaking Underground Storage Tank Section issues a No Further Remediation (NFR) Letter after a demonstration of compliance with Title XVI of the Environmental Protection Act and applicable regulations is made. The NFR Letter signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with, (2) all corrective action concerning the remediation of the occurrence has been completed, and (3) no further corrective action concerning the occurrence is necessary so long as the site is used in accordance with the terms and conditions of the NFR Letter.

**Significance**

When properly recorded, the NFR Letter holds legal significance for all applicable parties outlined at Section 57.10(d) of the Environmental Protection Act. (See 415 ILCS 5/57.10(d).) If not properly recorded, the Illinois EPA *will* take steps to void the NFR Letter in accordance with the regulations.

**Duty to Record**

**The duty to record the NFR Letter is *mandatory*. You *must* submit the NFR Letter, with a copy of any applicable institutional controls proposed as part of a corrective action completion report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located *within 45 days after receipt of the NFR Letter*. You must record the NFR Letter and any attachments. The NFR Letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title to ensure current and future users of the property will be informed of the conditions and terms of approval including level of remediation; land use limitations; and preventive, engineering, and institutional controls. A certified or otherwise accurate and official copy of the NFR Letter and any attachments, as recorded, must be submitted to the Illinois EPA. Failure to record the NFR Letter in accordance with the regulations will make the NFR Letter voidable.**

**For More Information**

Please refer to Tiered Approach to Corrective Action Objectives (TACO) Fact Sheet 3 available from the Illinois EPA by calling 1-888-299-9533 or by accessing it on the Illinois EPA Web site at <http://www.epa.state.il.us/land/taco/3-no-further-remediation-letters.html>.