

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ZIGGY DEVELOPMENT, LLC,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 11-_____
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
(VIA U.S. MAIL)

**(PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies each of a **PETITION FOR REVIEW, ENTRY OF APPEARANCE OF EDWARD W. DWYER, and ENTRY OF APPEARANCE OF LAUREN C. LURKINS**, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

ZIGGY DEVELOPMENT, LLC,  
Petitioner.

By:   
One of Its Attorneys

Dated: May 6, 2011

Edward W. Dwyer  
Lauren C. Lurkins  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900


**CERTIFICATE OF SERVICE**

I, Lauren C. Lurkins, the undersigned, hereby certify that I have served the attached PETITION FOR REVIEW, ENTRY OF APPEARANCE OF EDWARD W. DWYER, and ENTRY OF APPEARANCE OF LAUREN C. LURKINS, upon:

Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on May 6, 2011.

  
\_\_\_\_\_  
Lauren C. Lurkins

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ZIGGY DEVELOPMENT, LLC,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 11-_____
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE OF EDWARD W. DWYER**

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER & DRIVER, and hereby enters his appearance on behalf of Petitioner, ZIGGY DEVELOPMENT, LLC.

Respectfully submitted,

ZIGGY DEVELOPMENT, LLC,  
Petitioner,

By: Edward W. Dwyer by LCL  
Edward W. Dwyer

Dated: May 6, 2011

Edward W. Dwyer  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

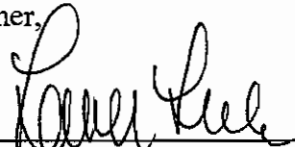
ZIGGY DEVELOPMENT, LLC,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 11-_____
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE OF LAUREN C. LURKINS**

NOW COMES Lauren C. Lurkins, of the law firm of HODGE DWYER & DRIVER, and hereby enters her appearance on behalf of Petitioner, ZIGGY DEVELOPMENT, LLC.

Respectfully submitted,

ZIGGY DEVELOPMENT, LLC,  
Petitioner,

By:   
Lauren C. Lurkins

Dated: May 6, 2011

Lauren C. Lurkins  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ZIGGY DEVELOPMENT, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 11 -
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

NOW COMES Petitioner, ZIGGY DEVELOPMENT, LLC ("Petitioner"), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40 and 57.8(i), and 35 Ill. Admin. Code Part 105, hereby requests review of the decision by the Respondent, Illinois Environmental Protection Agency ("Agency"), regarding Petitioner's submittal of an Amended High Priority Corrective Action Plan & Budget. In support of this Petition, Petitioner states as follows:

1. Petitioner is the owner of the facility formerly known as Midwest Illinois Auto and Truck Plaza located at Illinois Route 127 and Interstate 70, in Greenville, Illinois.
2. On April 11, 2008, Petitioner filed an Election to Proceed as Owner.
3. On March 12, 2010, Petitioner, through its environmental consultant, Environmental Management, Inc., submitted to the Agency an Amended High Priority Corrective Action Plan & Budget seeking approval of the same. In addition to proposing corrective action, the report requested approval of a High Priority Corrective Action

Budget Amendment for an amount of \$726,865.04, which would be in addition to the existing High Priority Corrective Action Budget, which was previously approved by the Agency on March 17, 2009, for an amount of \$67,770.68.

4. By letter dated April 1, 2011, the Agency approved the Amended High Priority Corrective Action Plan, but rejected the High Priority Corrective Action Budget Amendment. See Letter from Agency to Ziggy Development, LLC, Attention: Bruce Franklin (April 1, 2011), attached hereto as Exhibit A.

5. The date of service of the Agency's April 1, 2011 final decision was April 2, 2011. This Petition for Review is being filed within 35 days after the date of service of the Agency's final decision in accordance with Board's rules governing service and LUST appeals. 35 Ill. Admin. Code §§ 101.300(c) and 105.404.

6. The Agency's rejection of the High Priority Corrective Action Budget Amendment contained in the Agency's April 1, 2011 letter is arbitrary and capricious.


WHEREFORE, for the above and foregoing reasons, Petitioner, ZIGGY DEVELOPMENT, LLC, respectfully requests that the Illinois Pollution Control Board grant the following relief:

- a. Find that the Agency's April 1, 2011 final decision rejecting the High Priority Corrective Action Budget Amendment is arbitrary and capricious;
- b. Reverse the Agency's determination rejecting the High Priority Corrective Action Budget Amendment;
- c. Find that the High Priority Corrective Action Budget Amendment was consistent with the requirements of the Act; and

d. Award such further relief as the Board deems just and equitable.

Respectfully submitted,

ZIGGY DEVELOPMENT, LLC,  
Petitioner,

By:   
One of Its Attorneys

Dated: May 6, 2011

Edward W. Dwyer  
Lauren C. Lurkins  
HODGE DWYER & DRIVER  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, Illinois 62705-5776  
(217) 523-4900

FRNK:001/Fil/ Petition for Review



## 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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217-782-6762

CERTIFIED MAIL

APR 01 2011

7009 2820 0001 7485 3167

Ziggy Development  
Attention: Bruce Franklin  
Post Office Box 952  
Riverton, Illinois 62561

RE: LPC 0058015001 - Bond County  
Greenville - Midwest Illinois Restaurant & Truck Plaza  
Interstate 70 & Route 127  
LUST Incidents 913653, 921319 & 982143  
LUST TECHNICAL FILE

Dear Mr. Franklin:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the March 12, 2010 Corrective Action Plan & Budget & supplemental information. This information was prepared by Environmental Management. The report proposes the information which is summarized in Attachment 1. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code.

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(a), the Corrective Action Plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. 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.

The proposed injection points are considered Class V wells and are regulated by the Illinois EPA's Underground Injection Control (UIC) Program. Pursuant to 35 Illinois Administrative Code 704.148, you must submit a Class V Injection Well Inventory Form to the UIC Program and attach a copy of this letter. The form, as well as its instructions and well codes, may be downloaded from <http://www.epa.state.il.us/land/regulatory-programs/underground-injection-control.html>. For additional information regarding the UIC Program, please contact Bur Filson at 217-782-6070.

In addition, the Corrective Action Budget is rejected for the reasons which are explained in Attachment 2 (Sections 57.7(b)(3) and 57.7(c)(4) of the Act and 35 Illinois Administrative Code 734.505(b) and 734.510(b)).

### EXHIBIT A



NOTE: The plan proposes activities that are technically acceptable. However, for the purpose of payment from the Underground Storage Tank Fund, some of the activities may be in excess of those necessary to meet the minimum requirements of the Act and regulations. Owners and operators are advised that they may not be entitled to full payment for this reason. The Illinois EPA will review your complete request for partial or final payment from the Fund after it is submitted to the Illinois EPA. In addition, please note that 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 paid.

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Illinois Administrative Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

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

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

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

Please be advised that, pursuant to Public Act 96-0908, effective June 8, 2010, all releases of petroleum from USTs are subject to Title XVI of the Act, as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code 734. The regulations at 35 Illinois Administrative Code 732 no longer exist, and the only releases subject to 35 Illinois Administrative Code 731 are those from hazardous substance USTs.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 3.

Any questions with regard to this letter should be directed to Michael Piggush via phone (217-782-3101), fax (217-524-4193), or electronic mail ([michael.piggush@illinois.gov](mailto:michael.piggush@illinois.gov)).

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

Attachments (3):

1. Summary of Report Proposal.
2. Corrective Action Budget Disapproval Reasons.
3. Appeal Rights.

cc: Environmental Management  
Hodge Dwyer Zeman  
Bureau of Land File

ATTACHMENT 1

SUMMARY OF REPORT PROPOSAL

RE: LPC 0058015001 - Bond County  
Greenville - Midwest Illinois Restaurant & Truck Plaza  
Interstate 70 & Route 127  
LUST Incidents 913653, 921319 & 982143  
LUST TECHNICAL FILE

The report proposes the following information:

1. The report proposes that releases have occurred from the following underground storage tank systems:
  - a. 3-8,500 gallon gasoline underground storage tank systems.
  - b. 2-8,500 gallon diesel fuel underground storage tank systems.
2. The report proposes that the indicator contaminants would be the following: BETX, MTBE & PNAs.
3. The report assumes a Class 1 groundwater designation.
4. The report proposes that 19,633 tons of contaminated soil have been previously excavated & disposed of.
5. The report proposes that site assessment activities were performed in October 2008, as follows:
  - a. The report proposes that 7 soil borings (soil borings SB-1 → SB-7) were performed.
  - b. The report proposes that 7 monitoring wells (monitoring wells MW-104 → MW-110) were installed.
  - c. The report proposes that a groundwater monitoring event was performed.
  - d. The report proposes that soil & groundwater samples were obtained, with analyses of the following: BETX, MTBE & PNAs.
  - e. The report proposes that an in situ hydraulic conductivity test was performed.

6. The report proposes that site assessment activities were performed in April 2009, as follows:
  - a. The report proposes that 4 soil borings (soil borings SB-8 → SB-11) were performed, with soil sample analyses of BETX, MTBE & PNAs.
  - b. The report proposes that 8 soil borings (soil borings S-1 → S-8) were performed, with soil sample analyses of bioremediation parameters.
  - c. The report proposes that a groundwater monitoring event was performed, with groundwater sample analyses of bioremediation parameters.
  
7. The report requests approval of a Corrective Action Plan, as follows:
  - a. The report proposes that a total of 734 cubic yards of contaminated soil would be excavated & disposed of (from 2 separate soil excavation areas).
  - b. The report proposes that a total of 22 soil samples (soil samples SW-1 → SW-15 & SF-1 → SF-7) would be obtained from the soil excavation areas.
  - c. The report proposes that the soil samples would be analyzed for the following: BETX, MTBE & PNAs.
  - d. The report proposes that the soil excavation areas would be backfilled.
  - e. The report proposes that the portion of the soil excavation area in the roadway would be repaved with 2,113 square feet of 6 inch thick asphalt pavement.
  - f. The report proposes that Oxygen Release Compound Advanced would be injected into the subsurface. The report proposes that a total of 65,411 pounds of compound would be used, and would be injected through a total of 668 injection points over a total of 34 days. The report proposes that pneumatic fracturing would also be used.
  - g. The report proposes that 4 quarters of post remediation groundwater monitoring would be performed, from 15 monitoring wells (MW-101 → MW-110, NL-1 → NL-2 & MW-10 → MW-12).
  - h. The report proposes that the groundwater samples would be analyzed for the following: BETX, MTBE, PNAs, ORP, pH & dissolved oxygen.
  - i. The report proposes that the monitoring wells would be abandoned.

8. The report requests approval of a Corrective Action Budget Amendment, for an amount of \$726,865.04. The report proposes that this would be in addition to the existing Corrective Action Budget, which was previously approved of by the Illinois EPA on March 17, 2009, for an amount of \$67,770.68.

ATTACHMENT 2

CORRECTIVE ACTION BUDGET DISAPPROVAL REASONS

RE: LPC 0058015001 - Bond County  
Greenville - Midwest Illinois Restaurant & Truck Plaza  
Interstate 70 & Route 127  
LUST Incidents 913653, 921319 & 982143  
LUST TECHNICAL FILE

The Illinois EPA does not approve of the Corrective Action Budget, for the following reasons:

1. The Illinois EPA has determined that the requirements of Public Act 96-0908, effective June 8, 2010, should apply to this site at this time. For purposes of reimbursement, costs in excess of the following minimum requirements are no longer approvable:
  - a. For the site where the release occurred, the use of Tier 2 remediation objectives that are no more stringent than Tier 1 remediation objectives.
  - b. The use of industrial / commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or being developed into residential property.
  - c. The use of groundwater ordinances as institutional controls in accordance with Board rules.
  - d. The use of on site groundwater use restrictions as institutional controls in accordance with Board rules.

While the Corrective Action Plan is approved, for purposes of reimbursement, the Corrective Action Budget will need to be reevaluated according to these requirements.

ATTACHMENT 3

APPEAL RIGHTS

An underground storage tank system 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, 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  
Post Office Box 19276  
Springfield, Illinois 62794-9276  
217-782-5544

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*\*\*\* PCB 2011-091 \*\*\**





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# HODGE DWYER & DRIVER

ATTORNEYS AT LAW

LAUREN C. LURKINS  
E-mail: [llurkins@hddattorneys.com](mailto:llurkins@hddattorneys.com)

May 6, 2011

**VIA CERTIFIED MAIL**  
(Return Receipt Requested)

Mr. John Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph  
Suite 11-500  
Chicago, Illinois 60601

RE: *Ziggy Development, LLC v. IEPA*  
Petition for Review  
Our File No. – FRNK:001

Dear Mr. Therriault:

Enclosed please find an original and nine (9) copies each of a PETITION FOR REVIEW, ENTRY OF APPEARANCE OF EDWARD W. DWYER and ENTRY OF APPEARANCE OF LAUREN C. LURKINS for filing with your office. Also, enclosed please find this firm's check in the amount of \$75.00, for the filing fee.

Sincerely,

Lauren C. Lurkins

LCL:plt  
enclosures

FRNK:001/Corr/Therriault ltr - Petition

\*\*\*\*\* PCB 2011-09

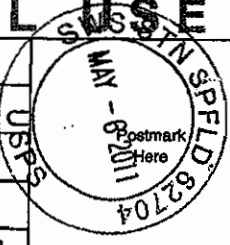
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\*\*\* \* PCB 2011-091 \* \* \* \* \*

**HODGE DWYER & DRIVER**

ATTORNEYS AT LAW  
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FRNK:001 - Petition for Review

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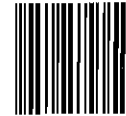


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