

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ESTATE OF GERALD D. SLIGHTOM,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(UST Fund Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY UST FUND DECISION

NOW COMES Petitioner, Estate of Gerald D. Slightom (hereinafter "the Estate"), pursuant to Sections 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Section 734.660(a)(3) of the Board's Regulations (35 Ill. Admin. Code § 734.660(a)(3)), and hereby appeals the UST Fund decision issued on March 20, 2014, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency determined an excess payment had been made from the UST Fund, stating further as follows:

1. The subject facility was at one time commonly referred to as Robinson's Amoco, and is located at 103 North Third Street, Girard, Macoupin County, Illinois.
2. The subject facility was operated as a service station for many years, and has been remediating contamination pursuant to the Leaking Underground Storage Tank Program, with the work provided and supervised by its consultant CSD Environmental Services, Inc.
3. In 2008 through 2010, the Estate submitted various plans and budgets to the Agency with the assistance of its consultant, and after these were approved, remediation work was performed as approved, and the actual costs of this work were approved by the Agency.
4. When the Estate asked for payment in the amount of \$83,912.58 for the work performed, the Agency improperly reconsidered its previous decisions by applying a different

deductible than had been used in the prior approvals. The Estate thereafter appealed this refusal to pay. See Estate of Slightom v. IEPA, PCB No. 2011-025.

5. During the pendency of that appeal, and after receiving unfavorable rulings to its position, on September 9, 2013, the Agency unilaterally issued a new determination on re-review, approving substantially the amount originally approved and requested.

6. At the same time the Agency issued the new determination on re-review, the Agency moved to dismiss PCB No. 2011-025 as moot. The Estate objected to the motion to the extent it sought to foreclose its request for reimbursement of its attorney's fees.

7. Shortly after the new determinations were made, the State of Illinois issued a check for \$83,908.73 made out to, and delivered to:

Slightom Gerald D Estate of

CSD Environmental Srvs Inc

P O Box 20912

Springfield IL 62708-0912.

8. Upon delivery of the check to the above address, the consultant's lender deposited the check against a line of credit used to finance the LUST cleanup. The Agency has only raised issue with the deductible amount under the insurance program, and has not disputed the work performed or its costs.

9. Subsequently, the Board denied the Agency's motion to dismiss the case as moot, followed by the Estate's Motion to Reconsider.

10. On March 20, 2014, the Agency issued a letter, stating that the \$83,908.73 was an "excess payment" due to "the Illinois Pollution Control Board's decision on November 7, 2013,

in PCB 2011-025.” A true and correct copy of said letter, received on March 21, 2014, is attached hereto as Exhibit A.

11. Under the Board’s regulations, an “excess payment” determination must be subject to appeal to the Board in the manner provided under Section 40 of the Act.

12. For the following reasons, the Board must reject the “excess payment” claim:

A. The Board has yet to make a final determination on the merits in PCB 2011-025, and its decision to deny a motion to dismiss was an interlocutory ruling. An interlocutory ruling is not binding until after a final determination on the merits and exhaustion of appeals.

B. Since the September 9, 2013, re-review letter was never appealed, the Board has never possessed jurisdiction to rule on any aspect of said letter. The Board only has possessed authority to rule that the letter was insufficient to cause dismissal of the pending appeal.

C. The Agency is barred by the voluntary payment doctrine. “[M]oney paid under a claim of right with full knowledge of the underlying facts and absent coercion, fraud or a superior bargaining position by the transferee nor money paid under a mistake of law is recoverable.” King v. First Capital Fin. Servs. Corp., 215 Ill. 2d 1, 29-30 (2005). The Board’s procedural rules contain a non-exhaustive list of grounds for “excess payment,” which can and should be construed as either mistakes of *fact* or fraud, (35 Ill. Adm. Code § 734.660(b)) and the Agency can claim neither here.

- D. Claims against estates must be timely presented to the estate or be barred by the Probate Act. (755 ILCS 5/18-12)
- E. There is no statutory authority for the Agency to amend or change its September 9, 2013 decision and seek a so-called “excess payment.”

WHEREFORE, Petitioner, ESTATE OF GERALD D. SLIGHTOM, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board order the Agency to desist from seeking to collect the payment made herein, (e) the Board award payment of attorney’s fees; and (f) the Board grant the Estate such other and further relief as it deems meet and just.

ESTATE OF GERALD D. SLIGHTOM,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
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THIS FILING IS SUBMITTED ON RECYCLED PAPER



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829
PAT QUINN, GOVERNOR LISA BONNETT, DIRECTOR

217/524-3300

MAR 20 2014

CERTIFIED MAIL #

7012 0470 0001 2999 9901

Estate of Gerald D. Slightom
CSD Environmental Services, Inc.
P.O. Box 20912
Springfield, IL 62708-0912

Re: LPC #1170455005 -- Macoupin County
Girard/Estate of Gerald D. Slightom (formerly Robinson Service Station)
103 North 3rd Street (a.k.a. 3rd & Center)
Leaking UST Incident No.: 912456
Leaking UST Fiscal File

Dear Sirs:

On September 9, 2013, the Illinois Environmental Protection Agency (Illinois EPA) issued a letter regarding a re-review of your applications for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Sections 40 and 57.8 of 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 (35 Ill. Adm. Code) 734.Subpart F.

The application for payment was dated July 14, 2010, and was received by the Illinois EPA on July 19, 2010. The amount of the request was \$83,912.58, of which \$83,908.73 was approved for payment by Illinois EPA letter dated September 9, 2013. On October 3, 2013, the Illinois Office of the Comptroller issued a check for \$83,908.73 to the Estate of Gerald D. Slightom.

Pursuant to 35 Ill. Adm. Code 734.660(a), the Illinois EPA is notifying you that the \$83,908.73 payment from the UST Fund is an excess payment. The Illinois EPA has made the determination that this is an excess payment due to the Illinois Pollution Control Board's decision on November 7, 2013, in PCB 2011-025. (Motion to Reconsider denied on January 23, 2014.)

The Illinois EPA has determined that the excess payment amount must be collected. The Estate of Gerald D. Slightom may repay the \$83,908.73 in full to the UST Fund or, in accordance with 35 Ill. Adm. Code 734.660(c)(1), negotiate a payment schedule with the Illinois EPA. Please note that the Illinois EPA may use the procedures at 35 Ill. Adm. Code 734.660(c), including any other collection methods available to the Illinois EPA by law, to collect the excess payment.

4302 N. Main St., Rockford, IL 61103 (815)987-7760.
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)5407 N. University St., Arbor 113, Peoria, IL 2309 W. Main St., Suite 116, Marion, IL 629100 W. Randolph, Suite 10-300, Chicago, IL

PLEASE PRINT ON RECYCLED PAPER

EXHIBIT

A

Pursuant to 35 Ill. Adm. Code 734.660(c) the Illinois EPA is requiring repayment in full or a proposed payment schedule within 14 days of the date of this letter. This correspondence should be sent 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


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 require further assistance, please contact Brian Bauer of my staff at 217/782-3335.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BBZ


Attachment: Appeal Rights

c: Estate of Gerald D. Slightom ✓
Leaking UST Claims Unit

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 57.8(i) 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:

Illinois Pollution Control Board, Clerk
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

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ESTATE OF GERALD D.)	
SLIGHTOM,)	
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v.)	PCB No. _____
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PROTECTION AGENCY,)	
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NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Melanie Jarvis
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	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), an PETITION FOR REVIEW OF THE AGENCY UST FUND DECISION, a copy of which is herewith served 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 counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 4th day of April, 2014.

Respectfully submitted,
ESTATE OF GERALD D. SLIGHTOM, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
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