

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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OCT 21 2003

STATE OF ILLINOIS
Pollution Control Board

REPUBLIC BANK OF CHICAGO, as)
Trustee of Trust # 2234, ARISTOTLE)
HALIKIAS, LENA HALIKIAS, MICHAEL)
HALIKIAS, NIKOLAS HALIKIAS, NOULA)
HALIKIAS, and PATRICIA HALIKIAS, as)
beneficiaries of Trust # 2234,)

PCB- 04-69
(Citizen's Suit UST Enforcement)

Complainants,)

v.)

SUNOCO, INC. (R&M),)

Respondent.

NOTICE OF FILING

To: **SUNOCO, INC. (R&M), c/o CT Corporation System, Registered Agent, 208 South LaSalle Street, Chicago, Illinois 60604**

PLEASE TAKE NOTICE that on October 21, 2003, we filed with the Clerk of the Illinois Pollution Control Board ("Board"), 100 West Randolph Street, James R. Thompson Center Suite 11-500, Chicago, Illinois, 60601-3218, an original and nine (9) copies of a **COMPLAINT**; a copy of said Complaint is attached hereto and hereby served upon you. Counsel's **APPEARANCE** is also served upon you.

With regard to the attached complaint, you may be required to attend a hearing at a date set by the Board. Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

REPUBLIC BANK OF CHICAGO, as Trustee of Trust # 2234, ARISTOTLE HALIKIAS, LENA HALIKIAS, MICHAEL HALIKIAS, NIKOLAS HALIKIAS, NOULA HALIKIAS, and PATRICIA HALIKIAS, as beneficiaries of Trust # 2234

Andrew H. Perellis
SEYFARTH SHAW LLC
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603
(312) 346-8000

By: 
One of Their Attorneys

THIS FILING IS MADE ON RECYCLED PAPER

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SUNOCO, INC. (R&M),)

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APPEARANCE

Andrew H. Perellis of the law firm, SEYFARTH SHAW LLC, hereby enters is appearance as counsel for Complainants. Andrew H. Perellis is designated as the lead attorney for purposes of mail and phone contact pertaining to this proceeding.

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Trustee of Trust # 2234, ARISTOTLE
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One of Their Attorneys

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SUNOCO, INC. (R&M),)

Respondent.)

COMPLAINT

REPUBLIC BANK OF CHICAGO, as Trustee of Trust # 2234, ARISTOTLE HALIKIAS, LENA HALIKIAS, MICHAEL HALIKIAS, NIKOLAS HALIKIAS, NOULA HALIKIAS and PATRICIA HALIKIAS, as beneficiaries of Trust # 2234 (collectively, the "Property Owners"), by their attorneys, Seyfarth Shaw LLP, complain as follows against SUNOCO, INC. (R&M), as successor in interest to Sun Oil Company of Pennsylvania ("Sunoco").

Summary of the Complaint

1. Property Owners bring this action for cost recovery pursuant to Section 31(d) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/31(d). Property Owners hold title to real estate commonly known as 960 North McLean Blvd, in Elgin, Illinois. Releases of petroleum-related substances from underground storage tanks on the Facility have contaminated soils and groundwater, necessitating response actions

by Property Owners. The releases resulted from the actions and failures to act of Sunoco. Property Owners seek to recover from Sunoco for the costs incurred and to be incurred in removing the USTs, cleaning up contaminated soils, and investigating and remediating threats to groundwater.

Parties

2. Republic Bank of Chicago is trustee of Land Trust # 2234. Land Trust #2234 holds legal title to the property commonly known as 960 North McLean Blvd, in Elgin, Illinois.
3. Republic Bank of Chicago is a person within the meaning of 415 ILCS 5/3.315.
4. Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noula Halikias and Patricia Halikias are the beneficial owners of Land Trust # 2234.
5. Aristotle Halikias, Lena Halikias, Michael Halikias, Nikolas Halikias, Noula Halikias and Patricia Halikias are persons within the meaning of 415 ILCS 5/3.315.
6. On information and belief, Sunoco, Inc. (R&M) ("Sunoco") is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania. Sunoco is the successor in interest to Sun Oil Company of Pennsylvania. Sunoco is a person within the meaning of 415 ILCS 5/3.315.

Common Allegations

7. Prior to April 1981, Sun Oil Company of Pennsylvania owned the property commonly known as 960 N. McLean Boulevard, Elgin, Illinois ("the Facility").
8. Prior to April 1981, the Facility was the site of a gas station containing five underground storage tanks ("USTs").

9. Prior to April 1981, Sun Oil Company of Pennsylvania owned five USTs located at the Facility.

10. The USTs had capacities of approximately 8,000 (1 tank), 6,000 (2 tanks), and 550 (2 tanks) gallons, respectively.

11. Prior to April 1981, the three USTs with capacities of 8,000 gallons and 6,000 were used to contain gasoline (hereinafter, the "UST system"). One 550 gallon tank was used to store used oil, and the other 550 gallon tank was used to store heating oil.

12. Prior to April 1981, Sun Oil Company of Pennsylvania leased the property to Clyde Korlaske, who operated the service station.

13. Korlaske ceased his business selling gasoline in April 1981 and subleased the property to Auto Ecology L & R, Inc.

14. Auto Ecology L & R, Inc. did not sell gasoline or operate the UST system that was present on the property. In fact, following the sublease, the UST system was no longer used or operated by anyone, including the Property Owners.

15. On or about June 18, 1981, Sun Oil Company of Pennsylvania deeded the real property to Korlaske.

16. After purchase, Korlaske, in October 1981, sold the real estate to Republic Bank of Chicago Trust # 2234, and Auto Ecology L & R, Inc. continued to operate its muffler and brake business for a period of time before ceasing business. Since that time, the property has been vacant.

17. The UST system was in use before November 8, 1984, but was no longer in use on that date.

18. Sunoco, as successor to Sun Oil Company of Pennsylvania, owned the UST system immediately before the discontinuation of its use.

19. The Property Owners have conducted soil investigations of the Facility. The soil investigations indicate that the UST System leaked petroleum-related substances into the soil and groundwater at the Facility.

20. The Property Owners filed a notification of the release with the Illinois Emergency Management Agency and a 20-day certification with the Illinois Environmental Protection Agency.

21. Property Owners have requested that Sunoco fulfill its legal obligations to perform corrective action regarding the USTs. Given Sunoco's failure to do so, Property Owners are proceeding to remediate the contamination caused by the leaking UST system owned and formerly owned by Sunoco.

COUNT I

(Violation of 415 ILCS 5/21(a))

22. The allegations of paragraphs 1 to 21 above are incorporated by reference as though set forth in full.

23. Section 21(a) of the Act, 415 ILCS 5/21(a), states:

No person shall: (a) Cause or allow the open dumping of any waste.

24. Section 3.305 of the Act, 415 ILCS 5/3.305, defines "open dumping" as follows:

the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

25. Section 3.185 of the Act, 415 ILCS 5/3.185 defines "disposal" as follows:

the discharge, deposit, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or constituent thereof may enter the

environment or be emitted into the air or discharged into any waters, including ground waters.

26. Section 5/3.385 of the Act, 415 ILCS 5/3.385, defines "refuse" as "waste."

27. Section 3.535 of the Act, 415 ILCS 5/3.535 defines "waste" as follows:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities

28. Petroleum constituents became a "waste" when they were discharged from the UST system into the soils beneath the Facility, at which time the Facility became a "disposal site."

29. Sunoco owned the UST system at the time of the petroleum discharge and/or otherwise possessed sufficient control or had authority to prevent the discharges from occurring.

30. Sunoco caused or allowed open dumping of a waste into the environment by allowing the USTs to leak petroleum constituents onto the soils and groundwater beneath the Facility and by allowing the petroleum constituents to remain on the property.

31. The acts and omissions as stated above constitute a violation of Section 21(a) of the Act, 415 ILCS 5/21(a).

WHEREFORE, the Property Owners pray that the Board grant the following relief:

A. Determine that Sunoco has violated Section 21(a) of the Act, 415 ILCS 5/21(a);

B. Order Sunoco to remediate the petroleum-related contaminated soil and groundwater;

C. Order Sunoco to reimburse Property Owners for all costs that they have incurred and will incur due to the contamination of the Facility; and

D. Order any other relief that the Board deems appropriate.

COUNT II

(Violation of 415 ILCS 5/21(d)(2))

32. The allegations of paragraphs 1 to 30 above are incorporated by reference as though set forth in full.

33. Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2) states:

No person shall: . . . (d) conduct any waste-storage, waste-treatment, or waste-disposal operation . . . (2) in violation of any regulations or standards adopted by the Board under this Act.

34. By allowing petroleum constituents to be released from the UST system, Sunoco conducted a waste-disposal operation at a disposal site that does not fulfill the requirements of a sanitary landfill and is in violation of regulations and standards adopted by the Board under the Act.

35. Sunoco violated Section 5/21(d)(2) of the Act, 415 ILCS 5/21(d)(2).

WHEREFORE, Property Owners pray that the Board grant the following relief:

A. Determine that Sunoco has violated Section 21(d)(2) of the Act, 415 ILCS 5/21(d)(2);

B. Order Sunoco to remediate the petroleum-related contaminated soil and groundwater;

C. Order Sunoco to reimburse Property Owners for all costs that they have incurred and will incur due to the contamination of the Facility; and

D. Order any other relief that the Board deems appropriate.

COUNT III
(Violation of 415 ILCS 5/21(e))

36. The allegations of paragraphs 1 to 35 above are incorporated by reference as though set forth in full.

37. Section 21(e) of the Act, 415 ILCS 5/21(e), provides:

No person shall: Dispose, ... or abandon any waste, ... except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

38. Sunoco disposed of and/or abandoned wastes at the Facility.

39. The Facility was not a site that met the statutory and regulatory requirements for disposal or abandonment of wastes.

40. Sunoco violated Section 5/21(e) of the Act, 415 ILCS 5/21(e), by disposing and/or abandoning wastes consisting of petroleum constituents and soils contaminated with petroleum constituents at the Facility.

WHEREFORE, Property Owners pray that the Board grant the following relief:

- A. Determine that Sunoco has violated Section 21(e) of the Act, 415 ILCS 5/21(e);
- B. Order Sunoco to remediate the petroleum-related contaminated soil and groundwater;
- C. Order Sunoco to reimburse Property Owners for all costs that they have incurred and will incur due to the contamination of the Facility; and
- D. Order any other relief that the Board deems appropriate.

COUNT IV
(Violation of 415 ILCS 5/57.1(a) and related regulations)

41. The allegations of paragraphs 1 to 40 above are incorporated by reference as though set forth in full.

42. Section 57.1(a) of the Act, 415 ILCS 5/57.1(a) states:

An owner or operator of an underground storage tank who meets the definition of this Title [XVI: Petroleum Underground Storage Tanks] shall be required to conduct tank removal, abandonment and repair, site investigation, and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

43. Section 57.2 of the Act, 415 ILCS 5/57.2, states that "owner" shall have the same definition as that given in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901.

44. The definition of "owner" given under RCRA, 42 U.S.C. § 6991(3)(B), is:

in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

45. The Board has adopted regulations to implement Title XVI of the Act at 35 Ill. Adm. Code Part 732.

46. Section 732.103 defines "owner" as:

In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use. (Derived from 42 U.S.C. § 6991)

47. Pursuant to the state and federal RCRA definition, Sunoco is the owner of the UST System and the other USTs located on the Facility.

48. Sunoco has failed to (a) conduct tank removal, (b) abandonment and repair, (c) site investigation, and (d) corrective action, in accordance with the requirements of Title XVI of the Act and implementing regulations adopted by the Board and the Office of State Fire Marshal.

49. Sunoco has violated Sections 57.1(a), 57.5, 57.6, and 57.7 of the Act and implementing regulations adopted by the Board and the Office of State Fire Marshal.

WHEREFORE, Property Owners pray that the Board grant the following relief:

- A. Determination that Sunoco has violated Sections 57.1(a), 57.5, 57.6, and 57.7, of the Act, 415 ILCS 5/57.1(a), 5/57.5; 5/57.6 and 5/57.7 and implementing regulations adopted by the Board and the Office of State Fire Marshal;
- B. Order Sunoco to remediate the petroleum-related contaminated soil and groundwater;
- C. Order Sunoco to reimburse Property Owners for all costs that they have incurred and will incur due to the contamination of the Facility; and
- D. Order any other relief that the Board deems appropriate.

Respectfully Submitted,

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HALIKIAS, LENA HALIKIAS, MICHAEL
HALIKIAS, NIKOLAS HALIKIAS, NOULA
HALIKIAS, and PATRICIA HALIKIAS, as
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By: 
One of Their Attorneys

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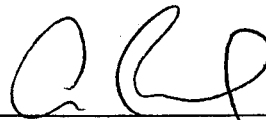
SUNOCO, INC. (R&M),)

Respondent.)

AFFIDAVIT OF SERVICE


The undersigned, an attorney, states that he caused a copy of the attached (i) COMPLAINT, (ii) APPEARANCE, and (iii) NOTICE OF FILING, to be served upon the following by Certified Mail, Return Receipt Requested, from 55 East Monroe St., Chicago, Illinois 60603, this 21st day of October, 2003:

SUNOCO, INC. (R&M)
c/o CT Corporation System, Registered Agent
208 South LaSalle Street
Chicago, Illinois 60604



Andrew H. Perellis

SUBSCRIBED TO AND SWORN BEFORE ME
THIS 21st DAY OF OCTOBER, 2003



NOTARY PUBLIC

