

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ZERVOS THREE, INC., )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent )

PCB 10-54  
(LUST FUND APPEAL)

**RECEIVED**  
**CLERK'S OFFICE**  
**AUG 30 2010**  
**STATE OF ILLINOIS**  
**Pollution Control Board**

**STIPULATION OF FACTS**

Now comes Petitioner, Zervos Three, Inc., and Respondent, Illinois Environmental Protection Agency, each by counsel, (collectively "the Parties"), and hereby stipulate that the following facts are true and accurate; and supported by admissible evidence:

1. On May 21, 1991, a petroleum release was reported at a site commonly known as Schiller Park Clark Service Station 1516, located at 9999 West Irving Park Road, Schiller Park, Cook County, Illinois (the "Site").
2. The Illinois Emergency Management Agency assigned the May 21, 1999 release at the Site as Incident No. 911366.
3. Respondent acknowledged receipt of the notice of the May 21, 1991 release at the Site and assigned the matter LPC #0312855092.
4. Earlier corrective action had been undertaken at the Site in response to Incident No. 911366.

5. Respondent's record of UST FUND reimbursement payments related to the corrective action associated with Incident No. 911366 is attached hereto at Exhibit A.

6. Petitioner became the owner of the Site on November 24, 2003 pursuant to Quitclaim Deed, a copy of which is attached hereto at Exhibit B.

7. From sometime before November 24, 2003 through the date hereof, the Site is one that had contained one or more registered underground storage tanks, which had been removed, but for which corrective action had not yet resulted in the issuance of a "No Further Remediation" letter from Respondent.

8. On January 31, 2008, Respondent notified Petitioner that Respondent had been notified by the Illinois Emergency Management Agency that a release from an underground storage tank system had occurred at 9999 Irving Park Road in Schiller Park, Illinois (LPC #031285509, Leaking UST Incident Number 20080126). A copy of Respondent's letter dated January 31, 2008 is attached hereto, at Exhibit C.

9. On March 31, 2008, Respondent notified Petitioner of the reported failure to file a 20 Day Certification and a 45 Day Report. A copy of Respondent's March 31, 2008 letter is attached at Exhibit D.

10. Since November 24, 2003, through the date hereof, Petitioner has been and is the owner of the Site.

11. From September 1, 2006 through May 31, 2009, Petitioner performed additional corrective action activities and incurred additional expense at the Site each related to Incident No. 911366.

12. Petitioner, as the owner of the Site, prepared and delivered to Respondent written notice dated June 1, 2009 therein electing to proceed as owner in the Underground Storage Tank Program pursuant to 415 ILCS 5/57.2. A copy of Petitioner's Notice dated June 1, 2009 is attached hereto at Exhibit E.

13. Respondent received Petitioner's written election to proceed as owner on June 8, 2009, and forwarded Petitioner an Acceptance of Election to proceed as Owner on June 18, 2009. A copy of Respondent's Acceptance of Election to Proceed as Owner is attached hereto at Exhibit F.

14. On June 11, 2009, Petitioner identified and notified Respondent of the additional corrective action activities and expense Petitioner had performed and incurred at the Site related to Incident No. 911366, and sought reimbursement from the UST FUND for those expenses. A copy of Petitioner's Application for UST FUND Reimbursement dated June 2009 is attached hereto at Exhibit G.

15. On September 3, 2009, the Illinois Office of the State Fire Marshal determined that Petitioner was eligible for reimbursement of reimbursable expenses in excess of \$10,000 for expenses incurred in response to Incident No. 911366. A copy of the letter from the Office of the State Fire Marshal is attached hereto as Exhibit H.

16. On December 21, 2009, Respondent denied Petitioner's Application for Reimbursement. A copy of Respondent's letter denying Petitioner's Application for Reimbursement is attached hereto at Exhibit I.

17. Respondent's letter dated December 21, 2009 denying Petitioner's Application for Reimbursement is final agency action.

18. Respondent's letter dated December 21, 2009 was served on Petitioner by Certified Mail on December 24, 2009. A copy of the USPS's confirmation of delivery is attached hereto at Exhibit J.

17. Respondent denied Petitioner's Application for Reimbursement from the UST FUND because:

It appears that all of the bills in this package were billed to Zervos Three. However, it does not appear that Zervos Three was the owner/operator of the 3 – 7,500 gallon gasoline underground storage tank systems (which were removed in June 1991) during the billing period (September 2006 – May 2009). Based upon the Election to Proceed as Owner form dated June 1, 2009, Zervos Three was not the owner/operator of the underground storage tank systems until June 1, 2009. Therefore, the entire bill package is not reimbursable. Section 22.18b(a)(3) of the Illinois Environmental Protection Act.

18. Respondent also denied Petitioner's Application for Reimbursement from the UST FUND for specific charges as follows:

Please refer to RW Collins Invoice 486, dated September 30, 2007. This invoice includes costs associated with the removal and disposal of all of the pavement from the Site. The Illinois EPA will not reimburse costs associated with the removal and disposal of pavement which are beyond what was associated with the 705 cubic yards (1,008 tons) of contaminated soil which was excavated and disposed of in June 1991. Information submitted to the Illinois EPA does not indicate the amount of the pavement which was associated with the 705 cubic yards (1,008 tons) of contaminated soil which was excavated and disposed of in June 1991. Therefore, the entire invoice is not reimbursable. Section 22.18(e)(1)(c), 22.18b(a)(3) and 22.18b(d)(4)(c) of the Illinois Environmental Protection Act.

19. Respondent has filed an Administrative Record in this cause, and that record is included herein by reference.

20. The Illinois Environmental Protection Act provides, among other things, the following

When used in connection with, or when otherwise relating to, underground storage tanks, the terms, "facility," "owner," "operator," "underground storage tank," "(UST)," "petroleum" and "regulated substance" shall have the meanings ascribed to them in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616) of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580); ...**provided further however that the term "owner" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title.** [Emphasis Added.] See 415 ILCS 5/57.2 Definitions

**§ 22.18b.** Underground Storage Tank Fund; eligibility.

**(a) An owner or operator is eligible to receive money from the Underground Storage Tank Fund for costs of corrective action or indemnification only if all of the following requirements are satisfied:**

(1) Neither the owner nor operator of the underground storage tank is the United States Government.

(2) The underground storage tank does not contain fuel which is exempt from the provisions of Section 2a of The Motor Fuel Tax Law.<sup>1</sup>

**(3) The costs of corrective action or indemnification were incurred by an owner or operator as a result of a release of petroleum, but not including any hazardous substance, from an underground storage tank.**

(4) The owner or operator has registered the tank in accordance with Section 4 the Gasoline Storage Act <sup>2</sup> of and paid into the Underground Storage Tank Fund all fees required for the tank in accordance with Sections 4 and 5 of that Act <sup>3</sup> and regulations adopted by the Office of State Fire Marshal.

(5) The released petroleum is within one or more of the following categories:

(A) Fuel, as that term is defined in Section 1.19 of the Motor Fuel Tax Law.

(B) Aviation fuels, heating oil, or kerosene.

(C) Used oil. For purposes of this Section, "used oil" means any oil that has been refined from crude oil used in a motor vehicle, as that term is defined in Section 1.3 of the Motor Fuel Tax Law,<sup>4</sup> and that, as a result of that use, is contaminated by physical or chemical impurities.

(6) For costs of indemnification, in addition to items (1) through (5), the provisions of subsection (e) have been met.

\*\*\*\*\*

(d) \*\*\*\*\*

**(4) Requests for partial or final payment for claims under this Section shall be sent to the Agency and shall satisfy all of the following:**

(A) The owner and operator are eligible under subsections (a) and (c) of this Section.

(B) Approval of the payments requested will not result in the limitations set forth in subsection (b) of this Section being exceeded.

(C) The owner or operator provided an accounting of all costs, demonstrated the costs to be reasonable and provided either proof of payment of such costs or demonstrated the financial need for joint payment to the owner or operator and the owner's or operator's contractor in order to pay such costs.

\*\*\*\*\*

Respectfully submitted;

Respondent, Illinois Environmental Protection Agency

By: Melanie J. Jarvis  
Special Assistant Attorney General

Petitioner, Zervos Three, Inc.

By: William J. [Signature]