

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KB SULLIVAN, INC.)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	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), a PETITION FOR REVIEW OF THE AGENCY LUST 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 13th of January, 2011.

Respectfully submitted,
KB SULLIVAN, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ 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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KB SULLIVAN, INC.,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, KB Sullivan, Inc., pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/40 & 5/57.8(i), and hereby appeals the LUST decision issued on December 9, 2010, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected an application for payment for costs previously approved, stating further as follows:

1. The subject facility is located at 111 West Jackson Street, Sullivan, Moultrie County, Illinois.
2. The subject facility has been operated as a service station for many years, containing several underground storage tanks, from which a release was reported from one or more on January 17, 1990 and assigned IEMA Incident Number 900146.
3. On July 29, 2004, during removal of tanks, another release was reported and assigned IEMA Incident Number 20040969. By reason and belief, the Agency considers this to be a re-reporting of the previous incident.
4. Subsequently, the owner/operator of the underground storage tanks applied for and received eligibility determinations for the clean-up of both incidents and since all of the tanks were registered, a deductible of \$10,000 was assigned.

5. On February 15, 2010, KB Sullivan, Inc. notified the Agency in writing that it had acquired an ownership interest in the subject property and was electing to proceed as owner in completing site investigation and corrective action with the goal of obtaining a No Further Remediation Letter.

6. On March 4, 2010, the Agency accepted the election to proceed as owner.

7. On September 7, 2010, KB Sullivan, Inc. submitted an application for payment for site investigation activities performed at the site, seeking \$22,232.14 for site investigation activities performed pursuant to budgets approved by the Agency in 2006.

8. On December 9, 2010, the Agency denied payment in a letter attached hereto as Exhibit A, and which was received December 10, 2010, which is less than thirty-five days from the date of this filing.

9. The Agency erroneously states that KB Sullivan does not meet the definition of Owner in Section 57.2 or 22.18(e)(1)(B) of the Act. The Act specifically provides for ownership by election as was done by KB Sullivan:

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.

(415 ILCS 5/57.2)

10. The Agency erroneously states that KB Sullivan failed to comply with the Agency's rules requiring all payment applications to include a copy of the OSFM eligibility and

deductibility determination. See 35 Ill. Admin. Code § 734.605(b)(3). KB Sullivan in performing the site investigation work initiated by the prior owner, submitted the OSFM determination received by the prior owner after tanks were removed. There is nothing expressly in the Agency's rules that require additional OSFM determinations to be made by each future owner, particularly since OSFM determines the eligibility of tanks, not owners.

WHEREFORE, Petitioner, KB SULLIVAN, INC., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decisions, (d) the Board direct the Agency to approve the payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

KB SULLIVAN, INC.
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

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THIS FILING IS SUBMITTED ON RECYCLED PAPER

***** PCB 2011-041 *****



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

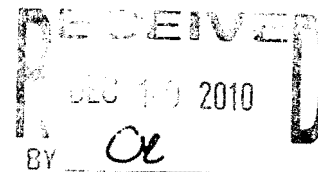
CERTIFIED MAIL #

DEC 09 2010

7009 2820 0001 7493 2985

KB Sullivan, Inc.
Attn: CWM Company
PO Box 571
Carlinville, IL. 62626

Re: LPC #1390305014 -- Moultrie County
Sullivan / CPM Store # 108
111 West Jackson Street
Incident-Claim No.: 900146 -- 59193
Queue Date: September 7, 2010
Leaking UST Fiscal File



Dear Mr. Patel:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This application for payment is dated September 6, 2010 and was received by the Illinois EPA on September 7, 2010. The application for payment covers the period from January 1, 2010 to June 30, 2010. The amount requested is \$22,232.14.

Pursuant to Section 22.18b and Section 57.8 of the Act if an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of the State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9 of the Act an application for payment may be submitted to the Illinois EPA. In addition, pursuant to 35 IAC Section 734.605(b)(3) a complete application for payment must contain a copy of the OSFM eligibility and deductibility determination. An eligibility and deductibility determination for incident number 900146 was issued to Convenience and Petroleum Marketing, LLC not KB Sullivan for which payment has been requested.

In addition, KB Sullivan does not meet the definition of Owner or Operator in Section 57.2 or 22.18(e)(1)(B) of the Act therefore, all costs incurred regarding this incident are not eligible for reimbursement from the Fund to KB Sullivan.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land — Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

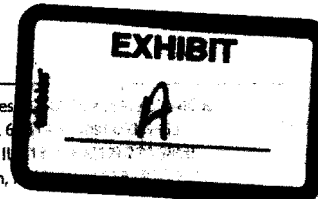
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60018 • (708) 291-1200

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5462

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 244-1200

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (217) 244-1200



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The Illinois EPA has determined that the claim is denied and a voucher cannot be prepared for submission to the Comptroller's Office for payment. This constitutes the Illinois EPA's final decision with regard to the above application for payment.

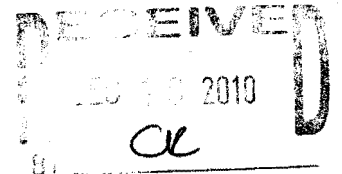
An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217-785-9351 or Brian Bauer of Hernando Albarracin's staff at 217-782-3335.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land



JS:CSE

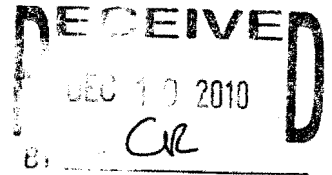
c: Leaking UST Claims Unit
Cathy Elston
Brian Bauer

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