

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

ESTATE OF GERALD D. SLIGHTOM,)	
Petitioner,)	
)	
v.)	PCB 11-25
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

John Therriault, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

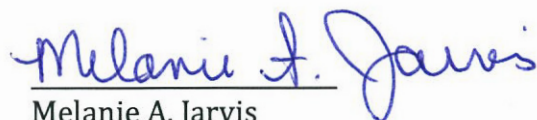
Carol Webb
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274

Patrick Shaw
Fred C. Prillaman
Mohan, Alewelt, Prillaman & Adami
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **MOTION TO DISMISS**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: September 10, 2013

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

ESTATE OF GERALD D. SLIGHTOM,)	
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MOTION TO DISMISS

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel, and, pursuant to 35 Ill. Adm. Code 101.500, 101.506 and 101.508, hereby respectfully moves the Illinois Pollution Control Board ("Board") to **DISMISS** the above case and in support of said motion, the Illinois EPA states as follows:

I. STANDARD FOR ISSUANCE AND REVIEW

The Board has consistently ruled that a motion to dismiss a pleading should be granted where the well-pleaded allegations, considered in the light most favorable to the non-movant, indicate that no set of facts could be proven upon which the petitioner would be entitled to the relief requested. (See Uptown Federal Savings & Loan Assoc. v. Kotsiopoulos (1982), 105 Ill. App. 3d 444, 434 N.E.2d 476; People v. Stein Steel Mills Services, Inc., PCB 02-1 (Nov. 15, 2001).) This motion will establish that the facts even taken in favor of Petitioner would not allow further eligible costs to be paid as there is no remaining litigable matter presented for the Board to hear. As such, the Board must dismiss the present action.

II. BURDEN OF PROOF

Pursuant to Section 105.112(a) of the Board's procedural rules (35 Ill. Adm. Code 105.112(a)), the burden of proof shall be on the petitioner. In reimbursement appeals, the burden is on the applicant for reimbursement to demonstrate that incurred costs are related to corrective action, properly accounted for, and reasonable. Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003), p. 9.

III. FACTS

The facts as presented in the Petitioner's Petition and in the Administrative Record are as follows:

1. On October 29, 2010, the Illinois EPA issued the decision letter currently under appeal. The decision letter was based upon an application for payment from the Fund dated July 14, 2010 and received on July 19, 2010. This letter stated, in part, "Pursuant to 35 Ill. Adm. Code Part 734.615(b)(4) where more than one deductible determination has been made, the higher deductible shall apply. On December 20, 1991, the Illinois Environmental Protection Agency issued an Eligibility and Deductibility Determination of \$100,000.00 for this site. A second Eligibility and Deductibility Determination of \$10,000.00 was issued on February 6, 2008 by the Office of the State Fire Marshal. The Illinois Environmental Protection Agency has determined that the \$100,000.00 deductible applies to this site." (AR, p.109)
2. The Estate filed an appeal of the Illinois EPA's October 29, 2010 decision on December 6, 2010 and amended its Petition on January 12, 2011.
3. After review of the appeal and a re-review of its decision based upon said appeal, the Illinois EPA issued a final decision on September 9, 2013 allowing the deductible of \$10,000 to apply

to the site and allowed the previously deducted amount of \$83,908.73. See Attachment.1

4. The contested issues presented in the Petition for Review have been rendered moot by the September 9, 2013 Illinois EPA letter.

IV. APPLICABLE LAW

A. POLLUTION CONTROL BOARD REGULATIONS:

35 Ill. Adm. Code 105.108 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

- a) The petition does not contain the informational requirements set forth in Section 105.210, 105.304, 105.408 or 105.506 of this Part;
- b) The petition is untimely pursuant to Section 105.206, 105.302, 105.404 or 105.504 of this Part;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information;
- d) The petitioner does not have standing under applicable law to petition the Board for review of the State agency's final decision; or
- e) Other grounds exist that bar the petitioner from proceeding.

V. ARGUMENT AND ANALYSIS

The Illinois Pollution Control Board is granted subject matter jurisdiction over contested cases between the Illinois EPA and the regulated community pursuant to Section 40 of the Act. In this case, the contested issues have been resolved and the contested status of this case has been rendered moot. Mootness occurs when a ruling can have no effect on the outcome of the case as in when there is no longer a real controversy. Therefore, due to the mootness of the issues presented, the case must be dismissed.

¹ Please note that the September 9, 2013 letter is revised. The original September 4 letter had the wrong dollar amount listed. Only the dollar amount was revised and a copy of both letters is attached.

VI. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board dismiss this action against the Illinois EPA for mootness.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



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Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: September 10, 2013

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 10, 2013, I served true and correct copies of a **MOTION TO DISMISS** via the Board's COOL system and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

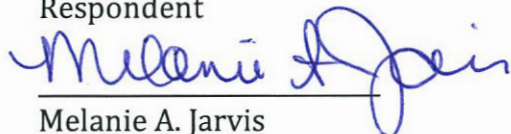
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Electronic Filing - Received, Clerk's Office : 09/10/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

SEP 04 2013

CERTIFIED MAIL #

7011 1150 0001 0863 1362

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

Re: LPC 1170455005 -- Macoupin County
Girard / Robison Service Station
103 North 3rd Street
Incident-Claim No.: 912456 -- 63569
Queue Date: July 19, 2010
Leaking UST Fiscal File

Dear Mr. Slightom:

The Illinois Environmental Protection Agency (Illinois EPA) has re- reviewed of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident. Re-review of the October 29, 2010 decision is warranted under information presented in an appeal filed with the Illinois Pollution Control Board December 6, 2010 and assigned case number PCB 2011-25 pursuant to Sections 40 and 57.8 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 information is dated July 14, 2010 and was received by the Illinois EPA on July 19, 2010. The application for payment covers the period from May 19, 2008 to June 30, 2010. The amount requested is \$89,908.73.

This letter addresses all issues presented in the aforementioned appeal in favor of the applicant. As a result of Illinois EPA's re-review of this application for payment, a voucher for \$89,908.73 will be prepared for submission to the Comptroller's Office for payment.

A deductible of \$10,000.00, was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire

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

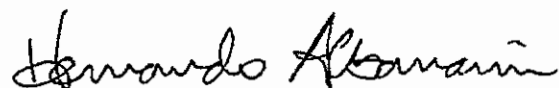
9511 Harrison St., Des Plaines, IL 60016 (847) 294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309) 693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312) 814-6026

Page 1

Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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::BB

c: Leaking UST Claims Unit



Electronic Filing - Received, Clerk's Office : 09/10/2013
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217/524-3300

Originally Issued: September 4, 2013

CERTIFIED MAIL #

7011 1150 0001 0863 1461

Revised SEP 09 2013

Estate of Gerald D. Slightom
Attn: CSD Environmental Services, Inc.
P.O. Box 20912
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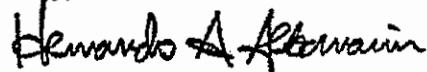
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If you have any questions or require further assistance, please contact Brian Bauer of my staff at 217/782-3335.

Sincerely,



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

HAA::BE 

c: Leaking UST Claims Unit