

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 05 2006

STATE OF ILLINOIS
Pollution Control Board

Estate of William Eggert,

Petitioner,

PCB 07-22
(LUST Decision)

v.

Illinois Environmental
Protection Agency,

Respondent.

PETITION FOR REVIEW OF AGENCY'S FINAL DECISION

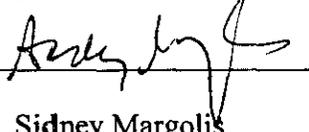
Now comes Petitioner, Estate of William Eggert ("Petitioner"), by their undersigned attorney, and hereby files this Petition for Review of the final decision of Respondent, Illinois Environmental Protection Agency ("Respondent"), pursuant to Title 35 of the Illinois Administrative Code, Part 105, Subpart D. In support of this Petition, Petitioner states as follows:

- 1) William Eggert owned the property located at 3917 South California Avenue, Chicago, Illinois 60632 on his death, and this property is now an asset of the Petitioner.
- 2) Petitioner obtained a final decision of the Office of the Illinois State Fire Marshal relating to Petitioner's Reimbursement Eligibility and Deductible Application stating that Petitioner is eligible to seek payment of costs in excess of \$10,000. A copy of the Office's final decision is attached here as Exhibit 1.
- 3) Respondent reviewed the Site Investigation Plan and Budget of Petitioner relating to a leaking underground storage tank incident and

determined that the incident is not subject to "Title XVI of the Act or 35 Il. Adm. Code 731". A copy of the Respondent's determination, which is a final decision, is attached here as Exhibit 2.

- 4) Petitioner is appealing Respondent's determination because the Petitioner maintains that the incident is subject to "Title XVI of the Act or 35 Il. Adm. Code 731". At the same time, representatives of Petitioner's environmental consulting firm, Gabriel Laboratories, are negotiating with Respondent concerning their determination as set forth in Exhibit 2.
- 5) Respondent's determination (Exhibit 2) is dated August 31, 2006 and was sent by Certified Mail to Petitioner, Attention: Mr. William Eggert (the deceased's son). Mr. William Eggert is unaware when he received the determination by Certified Mail. However, this Petition is being filed within 35 days of Respondent's letter of determination, dated August 31, 2006.

Respectfully Submitted,



Sidney Margolis

Petitioner's Attorney

123 West Madison, Suite 606

Chicago, Illinois 60602

(312)578-9382



Office of the Illinois
State Fire Marshal

"Partnering With the Fire Service to Protect Illinois"

General Office

217-785-0969

FAX

217-782-1062

Divisions

ARSON INVESTIGATION

217-782-9116

BOILER and PRESSURE

VESSEL SAFETY

217-782-2696

FIRE PREVENTION

217-785-4714

MANAGEMENT SERVICES

217-782-9889

INFIRS

217-785-5826

HUMAN RESOURCES

217-785-1026

PERSONNEL STANDARDS

and EDUCATION

217-782-4542

PETROLEUM and

CHEMICAL SAFETY

217-785-5878

PUBLIC INFORMATION

217-785-1021

WEB SITE

www.state.il.us/osfm

CERTIFIED MAIL - RECEIPT REQUESTED #7003 3110 0004 1274 1853

May 8, 2006

Estate of William Eggert
9545 122 Way
Seminole, FL 33772

In Re:

Facility No. 2-010607
IEMA Incident No. 05-1557
William Eggert Service Station
3917 S. California Ave.
Chicago, Cook Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on April 14, 2006 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

- Tank 1 1,500 gallon Gasoline
- Tank 2 1,500 gallon Gasoline

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

"Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

EXHIBIT 1

1035 Stevenson Drive • Springfield, Illinois 62703-4259

Kerosene

Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

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, Illinois 60601
(312) 814-3620

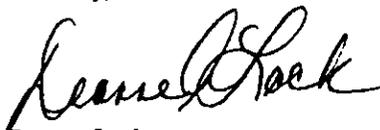
The following tanks are also listed for this site:

Tank 3 1,000 gallon Used Oil
Tank 4 1,000 gallon Heating Oil

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,



Deanne Lock
Administrative Assistant
Division of Petroleum and Chemical Safety

cc: IEPA
Facility File



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

7004 2510 0001 8587 3131

AUG 3 1 2006

Estate of William Eggert
Attention: Mr. William Eggert
9545 122 Way
Seminole, FL 33772

Re: LPC #0316305181 - Cook County
Chicago / Eggert Sr., William - The Estate of
3917 South California
Leaking UST Incident No. 20051557
Leaking UST Technical File

Dear Mr. Eggert:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Plan and Budget submitted for the above-referenced incident. This Site Investigation Plan and Budget, dated June 16, 2006, was received by the Illinois EPA on July 11, 2006. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Based on the information currently in the Illinois EPA's possession, this incident is not subject to Title XVI of the Act or 35 Ill. Adm. Code 731. Since the underground storage tank (UST) system was removed more than five years prior to the reporting of the LUST Incident, it cannot be confirmed that the contamination present at this site is from the UST system. Therefore, the Illinois EPA Leaking Underground Storage Tank Section has no reporting requirements regarding this incident.

This letter, however, does not address whether any remaining contamination at this site is being managed to protect human health or the environment. Any remaining contamination not the subject of this letter may be subject to other provisions of the Act.

If you wish to address any remaining contamination, or portion thereof, at the site and want Illinois EPA concurrence that any cleanup measures taken are protective of human health, you may wish to consider participation in the Illinois EPA's Site Remediation Program. The Site

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINGSVILLE - 2009 Mall Street, Collingsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

PRINTED ON RECYCLED PAPER

EXHIBIT 2

Page 2

Remediation Program has been developed to provide Illinois EPA guidance, assistance and determinations of successful completion for the voluntary conduct of remediation actions. The objectives of the program are as follows:

1. To provide Illinois EPA experience and assistance towards a timely, effective, and resource efficient cleanup of soil and/or groundwater contamination; and
2. To provide proper conclusion of participation in the program resulting in the issuance of either a No Further Remediation Letter or a Release of Responsibility Letter by the Illinois EPA.

Under the Site Remediation Program the Illinois EPA is authorized, and may agree, to provide review and evaluation services for actions at sites where hazardous substances, pesticides or petroleum may be present for which the owner or operator requested such services in writing. Any other person similarly may request review and evaluation services for actions at the site so long as that other person has provided the Illinois EPA with the written permission of the owner or operator to conduct those actions. Participants in the Program are required to reimburse the Illinois EPA for such services.

If you have any questions or require further assistance, please contact Michael A. Heaton at 217/524-3312.

Sincerely,



Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

MTL:mh\051557fi.doc

cc: Mr. Kara Golembiewski – Gabriel Environmental Services (Chicago, Illinois)
BOL File

CERTIFICATE OF SERVICE

I, Sidney Margolis, the undersigned attorney for the Petitioner, do hereby certify that he caused a copy of the foregoing Petition for Review of Agency's Final Decision to be served on Illinois Environmental Protection Agency, the Respondent, by mailing the said copy to the Illinois Environmental Protection Agency, Division of Legal Counsel, 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 in the U.S. Mail, postage prepaid, on October 5, 2006.

