

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ESTATE OF GERALD D.)	
SLIGHTOM,)	
Petitioner,)	
v.)	PCB _____
)	(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 6th of December, 2010.

Respectfully submitted,
ESTATE OF GERALD D. SLIGHTOM\, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
Fred C. Prillaman
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

ESTATE OF GERALD D. SLIGHTOM,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Estate of Gerlad D. Slightom (hereinafter "the Estate"), 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 October 29, 2010, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency rejected an application for payment for costs previously approved by imposing a new deductible, stating further as follows:

1. The subject facility was at one time commonly referred to as Robinson's Amoco, and is located at 109 North Third Street, Girard, Macoupin County, Illinois.
2. The subject facility was operated as a service station for many years, and contained five underground storage tanks, including a heating oil tank, the owner of which was Gerald Slightom.
3. On or about April 10, 1990, the Office of the State Fire Marshall (hereinafter "OSFM") inspected the facility and found that the tanks had been abandoned and though all of the tanks were registerable, they had not been registered.

4. On April 11, 1990, OSFM issued an administrative order, directing Mr. Slightom to register and remove the tanks.

5. Thereafter, Mr. Slightom registered the tanks with OSFM and then removed them.

6. When the tanks were removed, a significant release was identified, and incident number 91-2456 was assigned to it.

7. In 2007, Mr. Slightom passed away and thereafter his Estate undertook the requirements of the Probate Act to inventory and evaluate the assets and liabilities of the estate. Such investigation revealed that the subject property appeared to be the estate asset, but it had experienced a significant release that remained unabated and for which little, if any, work had been performed since the tanks had been removed. Such investigation also revealed the site's potential eligibility for payment from the Leaking Underground Storage Tank Fund, though no eligibility determination was found to have been made.

8. On January 24, 2008, the Estate applied to the OSFM for an eligibility and deductibility determination, and on February 6, 2008, the OSFM issued a letter enunciating "the final eligibility and deductibility determination," (415 ILCS 5/57.9(c)(2)) which was that the incident was eligible to access the LUST Fund, and that the deductible was \$10,000.

9. The OSFM eligibility and determination letter was never appealed and became the final determination.

10. In reliance upon the OSFM's letter, the Estate notified the Agency on February 22, 2008, of its election to proceed as "owner" and thereby subjecting itself to the responsibilities and liabilities for remediating the site, which the Agency claims can not be withdrawn.

11. Thereafter, the Estate performed substantial work to clean-up the site, including

submittal of plans and budgets which the Agency approved and paid based upon the OSFM eligibility and deductibility letter.

12. On February 22, 2008, submitted a stage one site investigation plan and budget, which included the OSFM determination that the release was subject to a \$10,000 deductible. The plan and budget were approved by the Agency on March 12, 2008. The Estate performed the approved work and filed its stage one site investigation costs, which were approved by the Agency on October 1, 2008. On October 20, 2008, the Estate submitted its bills for this work, totaling \$29,239.08, which was subsequently paid by the Agency after discounting the agreed \$10,000 deductible.

13. Thereafter, the Estate filed its stage three site investigation plan and budget, which again included the OSFM determination that the release was subject to a \$10,000 deductible. The plan and budget were approved by the Agency, and thereafter the Estate performed the approved work. On June 11, 2008, the Estate filed its stage three site investigation costs, which were approved by the Agency on July 8, 2010.

14. On July 19, 2010, the Estate submitted bills for the work and costs previously approved by the Agency, in the amount of \$83,912.58 for work performed from May 19, 2008 to June 30, 2010.

15. On October 29, 2010, the Agency refused payment, stating that it had located a heretofore unknown eligibility and determination letter from December 20, 1991, indicating that the deductible for the site is \$100,000. A true and correct copy of said decision is attached hereto as Exhibit A.

16. The Agency's own Leaking Underground Storage Tank database fails to reflect

that it ever issued, let alone sent, an eligibility and determination letter. A true and correct copy of a printout of that database as of November 3, 2010, is attached hereto as Exhibit B.

17. The proper deductible for this site is \$10,000. The Agency cannot modify its own final, appealable decisions, nor reject decisions within the jurisdiction of the OSFM to make. Pursuant to the Illinois Environmental Protection Act, the OSFM makes “the final eligibility and deductibility determination” and such determinations “shall be a final decision appealable to the Illinois Pollution Control Board.” (415 ILCS 5/57.9(c)(2))

18. Alternatively, the Agency should be estopped and barred by laches from changing legal positions upon which the Estate relied to its prejudice.

WHEREFORE, Petitioner, ESTATE OF GERALD D. SLIGHTOM, 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 Estate such other and further relief as it deems meet and just.

ESTATE OF GERALD D. SLIGHTOM,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Fred C. Prillaman
Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 N. Old Capitol Plaza, Ste. 325
Springfield, IL 62701
Telephone: 217/528-2517
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER

***** PCB 2011-025 *****



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

OCT 29 2010

CERTIFIED MAIL #

7009 2820 0001 7494 3820

Estate of Gerald D. Slightom
Attn: CSD Environmental Services, Inc.
PO Box 20912
Springfield, IL. 62708-0912

Re: LPC 1170455005 -- Macoupin County
Girard / Robinson Service Station
103 North 3rd Street
Incident-Claim No.: 912456 -- 58989
Queue Date: July 19, 2010
Leaking UST Fiscal File

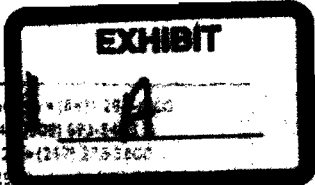
Dear Mr. Slightom:

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 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 \$83,912.58.

On July 19, 2010, the Illinois EPA received your complete application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

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



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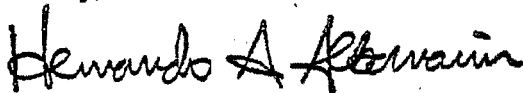
Environmental Protection Agency has determined that the \$ 100,000.00 deductible applies to this site.

Pursuant to 35 Ill. Adm. Code Part 734.660(a) the Illinois Environmental Protection Agency is notifying you that an excess payment was approved in the Illinois Environmental Protection Agency's letter dated January 29, 2009. The excess payment is for \$ 19,239.08. a portion of the \$100,000.00 deductible that was not withheld from your payments.


A portion of the deductible, \$10,000.00, was withheld from the claim received by the Agency on October 20, 2008 for \$ 29,239.08. The costs from this claim for \$ 83,912.58 have also been applied to the deductible, leaving a balance of \$6,091.27 to be met from future submittals. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire 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 Catherine S. Elston of my staff at 217-785-9351 or 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:CSE 

c: Leaking UST Claims Unit
Cathy Elston
Brian Bauer



www.epa.state.il.us

State of Illinois

[L.I.T. Search](#)

IEMA # 912456

LPC # 1170455005

IEMA Date: 8/30/1991

Site: Slightom, Gerald

Address: 3rd & Center

Girard, IL. 62640

County: Macoupin

Regulated by: 734

Products: Gasoline, Used Oil

20 Day Rpt: 11/19/1991

45 Day Rpt: 2/22/2008

Project Manager: Steve Putrich

Phone: (217) 524-4827

Email: Steve.Putrich@illinois.gov

Tank Operator	General	Title XVI	TACO	Claims	Search
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State of Illinois

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IEMA # 912456

LPC # 1170455005

Site: Slightom, Gerald

Date	Description
9/5/1991	Notice of Release Letter sent
12/15/1993	Review Letter sent
8/25/2003	Miscellaneous Correspondence received
9/17/2003	Review Letter sent
2/22/2008	Election to Proceed as "Owner"
3/3/2008	Acceptance of Election to Proceed as "Owner"
3/12/2008	45 Day Selection Received Letter sent

Site (Main)	Tank Operator	Title XVI	TACO	Claims	Search
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State of Illinois

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IEMA # 912456

LPC # 1170455005

IEMA Date: 8/30/1991

Site: Slightom, Gerald

Tank Owner/Operator: Estate of Gerald D. Slightom
Contact: Richard D. Slightom, Executor
Phone: (217) 965-1400

Address: P.O. Box 290, c/o Bill Nichelson, Atty at Law
Virden, IL. 62690

Site (Main)	General	TitleXVI	TACQ	Claims	Search
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State of Illinois

L.I.T. Search

IEMA # 912456

LPC # 1170455005

Site: Slightom, Gerald

Event Description	Date	Resp. Due	Decision	Mailed
Site Investigation Stage 1 Plan	2/22/2008	6/21/2008	APR	3/12/2008
Site Investigation Plan Budget Stage 1	2/22/2008	6/21/2008	APR	3/12/2008
Site Investigation Stage 3 Plan	8/27/2008	12/25/2008	MOD	10/1/2008
Site Investigation Plan Budget Stage 3	8/27/2008	12/25/2008	MOD	10/1/2008
Site Investigation Actual Costs Stage 1	8/27/2008	12/25/2008	APR	10/1/2008
Site Investigation Stage 3 Plan	3/4/2009	7/2/2009	APR	3/25/2009
Site Investigation Plan Budget Stage 3	3/4/2009	7/2/2009	APR	3/25/2009
Site Investigation Stage 3 Plan	7/2/2009	10/30/2009	APR	7/24/2009
Site Investigation Plan Budget Stage 3	7/2/2009	10/30/2009	MOD	7/24/2009
Site Investigation Stage 3 Plan	11/5/2009	3/5/2010	APR	11/25/2009
Site Investigation Plan Budget Stage 3	11/5/2009	3/5/2010	APR	11/25/2009
Site Investigation Completion Report	6/11/2010	10/9/2010	MOD	7/8/2010
Site Investigation Actual Costs Stage 3	6/11/2010	10/9/2010	APR	7/8/2010

Site (Main)	Tank Operator	General	TACO	Claims	Search
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State of Illinois

[L.I.T. Search](#)

IEMA # 912456

LPC # 1170455005

Site: Slightom, Gerald

Bills Received	Status Code	Amount Requested	Amount Paid	Voucher Date	Deductible
10/20/2008	VOF	29239.08	19239.08		10000
7/19/2010	NRE	83912.58	0		0

Site (Main)	Tank Operator	General	Title XVI	TACO	Search
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