

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	Legal Division
	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 23rd of January, 2012.

Respectfully submitted,
KB SULLIVAN, INC., 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

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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 28, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency authorized only a partial payment, stating further as follows:

1. The subject facility is located at 111 West Jackson Street, Sullivan, Moultrie County, Illinois and at one time was owned and operated by Convenience & Petroleum Marketing, LLC.
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 the removal of tanks, a release was reported and assigned IEMA Incident Number 20040969. The incident was determined to be a re-reporting of the previous incident by the Agency.
4. Thereafter, corrective action work was performed on the site, and payments and

claims were made through the LUST Program, subject to a \$10,000 deductible which was deducted from one of the payments.

5. The cleanup of the site did not result in the issuance of a No Further Remediation letter, and KB Sullivan, Inc. subsequently obtained ownership of the property.

6. 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 order to complete site investigation and corrective action with the goal of obtaining a No Further Remediation Letter.

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

8. 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.

9. On December 9, 2010, the Agency denied payment for the reason that the application for payment was incomplete for the lack of an eligibility and deductibility determination for incident number 900146 issued to KB Sullivan, as opposed to the prior owner. This decision was appealed to the Board and is still pending before the Board. See KB Sullivan, Inc. v. IEPA, PCB No. 11-41.

10. Thereafter, KB Sullivan, Inc. submitted information, including an eligibility and deductibility determinations for incidents number 900146 and 20040969 issued to KB Sullivan, Inc.

11. On December 28, 2011, the Agency made a determination that it had now received a complete application for payment and would issue a voucher of \$12,232.14, which is

the amount requested minus an additional \$10,000 deductible for incident number 20040969. A true and correct copy of this determination is attached hereto as Exhibit A. The letter acknowledges that a \$10,000 had previously been withheld for incident number 900146.

12. The Agency erred in assessing two deductibles. "Only one deductible shall apply per underground storage tank site." (415 ILCS 5/57.8(a)(4)) Furthermore, since it was determined that the incidents are re-reportings of the same occurrence, only one deductible applies. See Swif-T Food Mart v. IEPA, PCB 03-185 (May 20, 2004).

13. The appeal is timely filed twenty days from when the Agency's decision was received (January 3, 2012).

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 decision, (d) the Board direct the Agency to approve the application for payment at issue, (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

Patrick D. Shaw
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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, ILLINOIS 60601 - (312) 814-6026

PAT QUINN, GOVERNOR

JOHN J. KIM, INTERIM DIRECTOR

217/782-6762

CERTIFIED MAIL #

7009 2820 0001 7485 1873

DEC 28 2011

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

RECEIVED
JAN - 3 2012
BY: CR

Re: LPC #1390305014 -- Moultrie County
Sullivan / KB Sullivan Inc.
111 West Jackson Street
Incident-Claim No.: 900146 -- 61013
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 information is dated September 7, 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.

On September 7, 2010, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$12,232.14 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete 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.

The deductible amount of \$10,000.00 for lusted incident number 900146 was previously withheld from the July 26, 2006 voucher. The deductible amount of \$10,000.00 for lusted incident number 20040969 will be deducted from this claim. Pursuant to Section 57.8(a)(4) of the Act, any

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ELGIN - 595 SOUTH STATE, ELGIN, IL 60123 - (847) 608-3131
CHAMPAIGN - 2125 S. FIRST ST., CHAMPAIGN, IL 61820 - (217) 278-5800

DES PLAINES - 9511 HARRISON ST., DES PLAINES, IL 60016 - (847) 294-4000
PEORIA - 5407 N. UNIVERSITY, ARBOR HALL #113, PEORIA, IL 61614 - (309) 693-5463
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EXHIBIT
A
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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.

Sincerely,

Hernando A. Albarracin

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

RECEIVED
JAN - 3 2012
BY: CR

HAA:CSE *CB*

c: Leaking UST Claims Unit
Cathy Elston

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