

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KB SULLIVAN INC.,)	
Petitioner,)	
v.)	PCB: _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
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 19th day of March, 2021.

Respectfully submitted,
KB SULLIVAN INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KB SULLIVAN INC.,)	
Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, KB SULLIVAN INC., pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals a final decision of the Illinois Environmental Protection Agency (hereinafter "the Agency") to reject an application for payment, stating as follows:

1. Since 2010, Petitioner has been the owner or operator of a service station in the City of Sullivan, County of Moultrie, Illinois, which has been assigned LPC # 1390305014.
2. On July 8, 2004, a release was reported from several underground storage tanks on the property, which was assigned Incident Number 2004-0969.
3. After the incident was reported all tanks were removed and replaced, and various site investigation activities took place.
4. On February 17, 2012, Petitioner's consultants submitted a corrective action plan and budget, which was approved in all respects by the Agency on May 6, 2012.
5. The corrective action plan proposed no soil remediation, as there is no contamination on-site above applicable site remediation objectives. However, investigation identified soil contamination along the property boundary, which will need to be addressed by obtaining the agreement of one neighboring property owner to an Environmental Land Use

Control, restricting the use of the property to industrial or commercial purposes, and highway authority agreements from the City of Sullivan and from the Illinois Department of Transportation pertaining to potential soil contamination under their right of ways. Furthermore, groundwater contamination will need to be addressed by a municipal groundwater ordinance effectively prohibiting the installation of potable water supply wells in the area.

6. The corrective action plan provided that once the highway authority agreements, groundwater ordinance and offsite Environmental Land Use Controls are approved and in place, a corrective action completion report will be submitted to the Agency accompanied by a certification from a licensed professional engineer.

7. Thereafter, from time to time, Petitioner sought and obtained reimbursement for various activities approved in the plan and budget.

8. On October 20, 2020, Petitioner submitted an application for payment for work to procure an environmental land use control agreement, a groundwater ordinance, and multiple highway authority agreements, as well as to document the same for the corrective action completion report.

9. On February 5, 2020, the Agency denied the application for payment entirely. A true and correct copy of the Agency decision is attached hereto as Exhibit A.

10. The Agency denial letter states in relevant part:

The claim requests costs associated with a Corrective Action Completion Report. To date the IEPA has not received this Corrective Action Completion Report and has not received any technical documentation since February 17, 2012.

11. This denial reason is in direct contravention of the Illinois Environmental Protection Act, which expressly authorizes partial payment from time to time: "An owner or

operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days.” (415 ILCS 5/57.8) It has been more than ninety days since the last application for payment.

12. The letter also states that the application is not approved pursuant to Section 57.7(c)(3) of the Act. (415 ILCS 5/57.7(c)(3)) That provision applies to plans and budgets, not payment applications and therefore the letter is not legally authorized.

13. The application for payment was complete as a matter of law, containing all of the information required by Section 57.8(a)(6) of the Act (415 ILCS 5/57.8(a)(6)), and there is no legal requirement to complete corrective action activities before seeking partial payment, so long as such applications are not submitted more frequently than every 90 days.

14. The subject Illinois EPA letter was received by certified mail on February 13, 2021, which is 34 days from the date this appeal is being filed, and therefore timely.

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 payment application, (e) the Board award payment of attorney’s fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

KB SULLIVAN INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

7017 2680 0001 0209 6065

FEB 05 2021

KB Food & Gas
CWM Company, Inc.
P.O. Box 571
Carlinville, Illinois 62626

RECEIVED
FEB 1 2021

BY: CR

Re: 1390305014 -- Moultrie County
Sullivan / KB Food & Gas
111 West Jackson Street/Routes 121 & 132
Incident-Claim No.: 20040969 -- 71556
Queue Date: October 28, 2020
Leaking UST Fiscal File

Dear Mr. Patel:

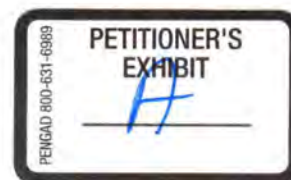
The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated October 20,2020 and was received by the Illinois EPA on October 28,2020. The application for payment covers the period from January 1, 2015 to March 31, 2020. The amount requested is \$2,125.96.

On October 28, 2020, the Illinois EPA received your 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.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

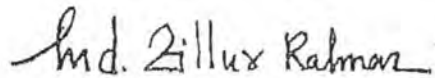
An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.



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If you have any questions or require further assistance, please contact Stephanie Kincaid of my staff at (217) 558-2693.

Sincerely,



Mohammed Z. Rahman, Manager
Leaking Underground Storage Tank Section
Bureau of Land



c: CWM Company, Inc.
Leaking UST Claims Unit

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Attachment A
Accounting Deductions

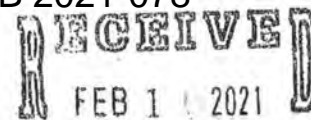
Re: 1390305014 -- Moultrie County
Sullivan/KB Food & Gas
111 West Jackson Street/Routes 121 & 132
Incident-Claim No.: 20040969 -- 71556
Queue Date: October 28, 2020
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$2,125.96, deduction for all costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The claim requests costs associated with a Corrective Action Completion Report. To date the IEPA has not received this Corrective Action Completion Report and has not received any technical documentation since February 17, 2012.



Appeal Rights

BY:

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 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:

Clerk of the Board
Illinois Pollution Control Board
James R. Thompson 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
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544