

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

Carol Webb, Hearing Officer
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 the REPLY TO PETITIONER'S RESPONSE TO MOTION REQUESTING RULING ON MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR INTERLOCUTORY APPEAL, 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
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217/782-5544
217/782-9143 (TDD)
Dated: March 26, 2012

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ESTATE OF GERALD D. SLIGHTOM,)	
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**REPLY TO PETITIONER’S RESPONSE TO MOTION REQUESTING RULING ON
MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR
INTERLOCUTORY APPEAL**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.508 and 101.516, hereby respectfully moves the Illinois Pollution Control Board ("Board") to enter summary judgment in favor of the Illinois EPA and against the Petitioner, Estate of Gerald D. Slightom (“Estate”), in that there exist herein no genuine issues of material fact, and that the Illinois EPA is entitled to judgment as a matter of law with respect to the following grounds or pursuant to 35 Ill. Adm. Code 101.908, hereby respectfully moves the Illinois Pollution Control Board ("Board") to certify their January 19, 2012 order REGARDING ITS DECISION REGARDING THE ADMINISTRATIVE RECORD for interlocutory appeal. In support of said motion, the Illinois EPA states as follows:

I. ARGUMENT AND ANALYSIS

1. The Board’s order of January 19, 2012, required the Illinois EPA to file all of the documents in possession of the Leaking Underground Storage Tank Section of the Illinois EPA relating to this site’s Land Pollution Control Number. The Illinois EPA did so, under a continuing objection, and

while maintaining the issue for appeal. Again, in regards to the Administrative Record continuing objection, the January 19, 2012, Board decision was a final and appealable decision. That decision reversed a long history of case law that limited the information contained within the Administrative Record. It is well-settled that the Illinois EPA record in a permit appeal consists only of the information which the Illinois EPA considered in making its permitting decision. Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 516 N.E.2d 275 (5th Dist. 1987); Joliet Sand & Gravel v. PCB, 163 Ill. App. 3d 830, 516 N.E.2d 955 (3rd Dist. 1987). The Board has previously denied motions, in other cases, to supplement the Administrative Record with information that the Illinois EPA did not or should not have considered. CWM Chemical Services, Inc. v. IEPA, PCB 89-177 (July 11, 1991). United Disposal of Bradley, Inc., and Municipal Trust & Savings Bank as Trustee Under Trust 0799 v. IEPA, PCB 03-235 (June 17, 2004). The Illinois EPA intends to appeal the Board's decision reversing this long established case law.

2. Assuming the Board didn't merely hold the Illinois EPA's motion for summary judgment while awaiting the "record," the Illinois EPA submits that its prior motion on this issue is a new motion for summary judgment and states as follows:

a) There exists no genuine issue of material fact. The Petitioner has never once, after filing 4 motions and approximately 73 pages responding to Summary Judgment, pointed to an issue of material fact that is in dispute other than to say a phantom one exists.

b) On December 20, 1991, the Illinois EPA issued a decision letter that determined that the Petitioner's site was "eligible to seek reimbursement for corrective action costs, accrued on or after July 28, 1989, in excess of \$100,000.00."

c) On February 6, 2008, the OSFM issued a decision letter determining that the 5

tanks were “eligible to seek payment of costs in excess of \$10,000.

d) 35 Ill. Adm. Code 732.603(b)(4) states as follows:

“b) The following rules shall apply regarding deductibles:

4) *Where more than one deductible determination is made, the higher deductible shall apply.* (Emphasis added)

3) Petitioner, ad infinitum, tries to argue that it should have been able to have discovery, when both the hearing officer and the Board have denied that request. Once again, we are subjected to this tiresome tirade. Instead of arguing the facts and law in this matter, Petitioner throws another red herring at the Board.

II. CONCLUSION

Since the Board made the filing of the documents in question a requirement before the Board would rule on its Motion for Summary Judgment, the Illinois EPA complied, under objection and request for interlocutory appeal. The Illinois EPA now requests that the Board either rule on its Motion for Summary Judgment or Certify its January 19, 2012, decision regarding the Administrative Record for Interlocutory Appeal.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

Melanie A. Jarvis
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Dated: March 26, 2012

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 26, 2012, I served true and correct copies of a REPLY TO PETITIONER'S RESPONSE TO MOTION REQUESTING RULING ON MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE MOTION FOR INTERLOCUTORY APPEAL 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:

John Therriault, Acting Clerk
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James R. Thompson Center
100 West Randolph Street
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Chicago, IL 60601

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