

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF** : **SITE NO. RTN 1877**  
**(Appeal to UST Review Board)**

**GRACE WEITMAN** : **DECEMBER 19, 2002**

**PROPOSED FINAL DECISION**

**I**

**SUMMARY**

This matter involves an appeal from a decision of the Underground Storage Tank Petroleum Clean-Up Account Review Board (Board) to deny a homeowner's claim for reimbursement for costs incurred in connection with the remediation of a spill attributable to a residential underground heating oil storage tank system. General Statutes §§22a-449a through 22a-449m. The applicant, Grace Weitman, is appealing the Board's determination that her claim is not eligible for reimbursement because the prescribed application form was not included with her documentation of the remediation or filed by the statutory deadline. The applicant timely requested a hearing for reconsideration of the Board's decision. §22a-449f(c); Regs., Conn. State Agencies §22a-449e-1(h)(6).

The applicant and Department of Environmental Protection (DEP) staff responsible for the technical and fiscal review of these claims are the parties in this appeal and agreed to have this matter decided on the papers. Documentary evidence was

admitted to the record by agreement of the parties along with stipulations to certain facts.<sup>1</sup>

Upon review of the relevant facts and applicable law in this matter, I find that the applicant has substantially complied with the applicable statutory requirements for submitting claims to the Board. The Board has been adequately and timely apprised of the substance of the applicant's claim. Reconsideration of the applicant's claim would not cause any surprise or prejudice to the Board. I therefore recommend that the Board reverse its prior determination and consider the applicant's claim to be complete, timely and eligible for further consideration of her remediation expenses.

## ***II***

### ***DECISION***

#### ***A***

### ***FINDINGS OF FACT***

1. The applicant resides at 119 Chestnut Hill Road, Wilton, Connecticut. She is the owner of a residential underground heating oil storage tank system (UST) that was removed from the premises. (Exs. APP-4, 5; ex. HO-1.)

2. On September 21, 2001, the applicant notified the DEP of her intent to retain a registered contractor to remediate contamination that was found during the removal of the UST. The applicant filed DEP Form C, *Residential Underground Storage Tank Program Owner's Eligible for Payment Request Application*. The form outlines the requirements for filing a claim with the Board, the filing period, and other details of the

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<sup>1</sup> I have admitted the stipulations into the record as Ex. HO-1.

application process. The applicant provided the following information required by Form C:

- the applicant's Social Security number, resident status, and address;
- verification of the location of the UST;
- verification of the applicant's range of income;
- verification of the registered contractor to be retained to remediate the site; and
- the applicant's certification that the information provided is true, accurate and complete.

(Exs. APP-4, 5; ex. HO-1.)

3. In a September 29, 2001 letter, the DEP notified the applicant of the availability of funds for reimbursement and of her conditional eligibility to participate in the residential UST program. The letter indicated that funds would not be set aside for reimbursement of the applicant's remediation expenses until the DEP received Form E, *Residential Underground Storage Tank Petroleum Clean-Up Review Board Program, Owner's Reimbursement Application*. The letter also indicated that in order to qualify for reimbursement, the remediation had to be commenced by July 1, 2001 and completed by December 1, 2001. In addition, Form E had to be postmarked by December 31, 2001 and no late filings would be accepted. The DEP acknowledged the applicant's contractor as holding DEP registration number RUSTCONID 140. (Ex. DEP-2; ex. HO-1.)

4. Form E provides instructions for filing a claim for reimbursement including a list of the documents that must be submitted to the DEP and references the December 31, 2001 filing deadline. In addition to all of the information required in Form C, Form E requires an applicant to provide the following information:

- verification of costs (registered contractor's final bill);
- the total tonnage of contaminated soil removed from the site, the name of the disposal facility, and the date of disposal; and
- the owner's certification that the information provided is true, accurate and complete.

(Ex. APP-2, ex. DEP-2.)

5. On November 23, 2001, the applicant submitted an application package to the DEP that contained the following documents:

- a November 9, 2001 invoice in the amount of \$6,933.00 from Andronaco Excavating Co., Inc. for excavating and stockpiling 23.79 tons of contaminated soil taken from the UST grave located on the applicant's premises and a drawing of the site and the contaminated area;
- a copy of a March 14, 2001 short form contract between Andronaco Excavating Co., Inc. and ESMA of New York for transportation, thermal treatment and recycling of contaminated soils, and documentation of transportation of contaminated soils including a RAM Transport bill of lading showing 23.79 tons of soil shipped by Andronaco from the applicant's residence;
- a copy of the DEP September 29, 2001 notice of eligibility and payment requirements sent to the applicant in response to her filing Form C; and
- a copy of a soil analysis report prepared by Brooks Laboratories dated October 24, 2001 pertaining to test results of contaminated soil taken from the applicant's residence.

(Ex. DEP-2; ex. HO-1.)

6. On March 7, 2002, the applicant notified the Board that she had just become aware of the fact that she had inadvertently omitted Form E from her November 23, 2001 application package. The applicant included with this notice a completed Form E along with copies of all the other documents she had previously submitted and asked that the Board consider her claim for reimbursement. (Ex. APP-2; ex. DEP-2; ex. HO-1.)

7. In a March 28, 2002 letter, Board Chairman Henry E. Voegeli notified the applicant that the Board had reviewed her March 7, 2002 submission and, while sympathetic to her situation, it did “not have the latitude to grant [her] eligibility.” (Ex. APP-15.)

## ***B***

### ***CONCLUSIONS OF LAW***

General Statutes §§22a-449a through 22a-449m and Public Acts 2001, No. 01-9, §§36 through 40 set forth the requirements for filing a claim for reimbursement for remediation of a spill attributable to a residential UST. The applicant must also provide notice of the removal of a residential UST in a form satisfactory to the Commissioner. §22a-449j; P.A. 01-9, §36(c).<sup>2</sup>

The residential UST reimbursement program requires a two-part application process. A homeowner must first apply for an initial determination of eligibility by providing information to the Commissioner prior to entering into a contract with a registered contractor. Specifically, an applicant must submit Form C to the Commissioner, which includes: the name, address and Social Security number of the property owner; verification that the UST serves the primary residence of the owner; verification of the owner’s qualifying income; and the name of the registered contractor the owner intends to retain to perform the remediation. P.A. 01-9, §36(c). Compliance with the requirement to complete and submit Form C is a precondition to receiving any reimbursement from the Board. P.A. 01-9, §36(e)(3).

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<sup>2</sup> The notice requirement is an essential part of the amnesty provisions of the residential UST program and has been included as a requirement of the residential UST reimbursement program provisions.

The Commissioner must provide written notice to the applicant within thirty days of receipt of Form C. The notice must specify whether the owner is eligible for reimbursement from the fund, whether funds are available for reimbursement, and the amount of the remediation costs that the owner must pay based on the owner's range of qualifying income specified in Form C. P.A. 01-9, §36(c).

The applicant has fully complied with the first step of the two-part application process. The evidence in the record demonstrates that the applicant completed Form C and received the DEP notice of conditional eligibility based upon the information she provided.

The second step occurs after the remediation is completed. The applicant must demonstrate that any remediation work was performed on or before December 1, 2001, and that the appropriate notice of the removal of the UST was given to the Commissioner. General Statutes §§22a-449j and 22a-449l as amended by Public Act 01-9, §36(c). The owner must submit documentation, satisfactory to the Board, of any costs associated with the remediation. The application must be postmarked no later than December 31, 2001. The Board can deny any application that fails to comply with the notice requirements of Public Acts 2001, No. 01-9, §36(c) or presents costs that the Board determines are unreasonable. P.A. 01-9, §36(e)(1).

The record indicates that the applicant submitted documentation of the costs associated with the remediation work performed on her property on November 23, 2001. This was five weeks before the application deadline of December 31, 2001. There is no evidence that the Board took any action on the applicant's November 23, 2001 filing

prior to her March 2002 notice to the Board that she had failed to include Form E with the documents filed in November and her submission of Form E at that time.

The information contained in Form C and in the various documents submitted by the applicant in November 2001 provides all of the information required by Form E. Form C included the applicant's Social Security number and resident status and the applicant's address, which was also referenced on several of the contractor and shipper's invoices and other documents. The applicant's range of income was provided on Form C and confirmed by the DEP letter of conditional eligibility. The registered contractor was identified in Form C, confirmed by the DEP letter and verified, along with the costs of the work performed, by its own invoices in the applicant's November 2001 filing. The total tonnage of contaminated soil removed, the disposal facility and the date of disposal were also referenced in the documents submitted by the applicant. The only information required on Form E that was not presented as part of the applicant's claim was her certification that the information she was providing was true, accurate and complete.

The applicable statutes do not require such certification. Nevertheless, it is not unreasonable for the Board to require an owner's certification of a claim for reimbursement. The amount of money available to the Board for reimbursement of residential claims consists of a statutory allocation of the proceeds of bond funds and is finite. P.A. 01-9, §37(b). In order to reimburse all eligible claims, the Board must therefore be aware of the claimant and of the total amounts claimed within the prescribed deadlines. However, completion of Form E is not the only way to assure that the Board is adequately apprised of the credibility, magnitude and eligibility of a particular claim. The information provided by an owner in Form C, the DEP letter to the owner of

conditional eligibility, and the documentation of the remediation and disposal of contaminated soil are also required elements of a claim for reimbursement. In combination, these documents identify the applicant and evidence the scope and the costs of the remediation.

In the present case, the applicant provided such information to the Board well before the expiration of the statutory time for filing claims. The applicant commenced the application process by filing Form C. She had previously submitted many of the details of her claim as evidenced by the DEP's September 29, 2001 notice of conditional eligibility. The total costs associated with the remediation of the spill were submitted to the Board before December 31, 2001. Given the circumstances surrounding this application, the Board could have considered the applicant's claim eligible for review in November 2001, or when it subsequently received Form E. To have done so would not circumvent the goals and purposes of the residential UST program. The only information that was not available to the Board prior to the December 31, 2001 filing deadline was the certification required by Form E, which is neither specifically required by statute nor part of the notice requirements for a request for a grant of amnesty.

The applicant has fully complied with the first part of the application process and has substantially and sufficiently complied with the balance of the requirements for submitting claims for reimbursement to the Board. Her application was timely filed on November 23, 2001, and it is eligible for further consideration by the Board on the issue of reimbursement of remediation expenses.



*III*

***RECOMMENDATION***

I recommend that the Board reverse its prior decision to deny the applicant's claim. I further recommend that the Board consider the applicant's claim to be timely filed and in compliance with all statutory application requirements and, as such, issue a determination of any amounts to be awarded to the applicant as reimbursement of her costs of remediation.

December 19, 2002  
Date

/s/ Jean F. Dellamarggio  
Jean F. Dellamarggio, Hearing Officer