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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JEAN A. MATHISON AND)
ROCKFORD STOP-N-GO, INC.,)

Petitioners,)

vs.)

ILLINOIS OFFICE OF STATE)
FIRE MARSHAL AND)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)

Respondents.)

PCB 04-146
(UST Fund Appeal)

CERTIFICATE OF SERVICE

I, Raymond M. Roder, the undersigned, certify that I have served the attached
PETITION FOR REVIEW and ENTRY OF APPEARANCE OF RAYMOND M.

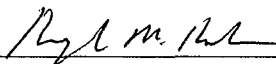
RODER upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Office of the Illinois State Fire Marshal
Attn: Deanne Lock
Division of Petroleum and Chemical Safety
1035 Stevenson Drive
Springfield, IL 62703-4259

by depositing said documents in the United States Mail in Springfield, Illinois, postage
prepaid, on February 27, 2004.



Raymond M. Roder

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PROTECTION AGENCY)

Respondents.)

PCB 04-146
(UST Fund Appeal)

PETITION FOR HEARING AND REVIEW

NOW COME the Petitioners, Jean A. Mathison and Rockford Stop-N-Go, Inc., a subsidiary of Stop-N-Go of Madison, Inc. (2934 Fish Hatchery Road, Madison, Wisconsin, "SNG"), by their attorneys Reinhart Boerner Van Deuren s.c. and Raymond M. Roder, and file the instant Petition for Review pursuant to 35 Illinois Administrative Code 105.102(a)(2) and Section 57.9(c)(2) of the Illinois Environmental Protection Act.

1. Jean A. Mathison was the owner of the property at which a petroleum product leaking underground storage tank ("LUST") was located at the time the leak was first discovered, February 22, 1990. The LUST was removed and the incident reported on that date.

2. Mrs. Mathison resides at 16902 Poplar Grove Road, Poplar Grove, Illinois 61065.

3. The property at which the LUST was located is the northeast corner of the intersection of Routes 173 and 76 (Poplar Grove, Boone County, Illinois) - the "Property." The Property has the street address of 4550 Route 173.

4. SNG purchased the Property from Mrs. Mathison in 1999 and is its current owner.

5. SNG operates and owns an underground petroleum product storage tank ("UST") system at 4400 Route 173, Caledonia, Boone County, Illinois for the commercial dispensing of gasoline and diesel fuel at Petitioner's SNG's Store # 517. SNG's UST system is across Route 173 from the Property.

6. Petitioner Mathison (and her now deceased husband, Leroy), acquired the Property in 1977, some eight years after the LUST was installed by the previous owner, Frances Lyddon.

7. The Mathisons installed five (5) USTs on the Property in 1981. The USTs were intended to and did only contain and dispense only gasoline (including gasoline blends with alcohol).

8. In February, 1987 the Mathisons sold the Property by land contract to Mehdi and Noor Sabzali who continued to operate the Property as a motor fuel dispensing facility. The Sabzalis were, as Petitioner Mathison is informed and believes, operators of another motor fuel dispensing facility that was located in Stone Park, Illinois.

9. When the Sabzalis were unable to make payments on their own contract with the Mathisons, Jean Mathison reacquired the Property (her husband Leroy having died in the meantime).

10. During the Sabzali's ownership of the Property they discontinued the use of the USTs in February 1988 but failed to register or remove them despite their apparent knowledge of the requirements to do so and their assurance to Mrs. Mathison at the time of the requisition that they had complied with the requirements of the law during their ownership. Evidence of their purported compliance was offered by the Sabzalis in the form of Exhibit B hereto, a letter from the OSFM's Edmund R. Brezinski dated July 22, 1988 ordering the removal of all unused ("abandoned") USTs. Exhibit B also purports to show that on August 22, 1998 Tank Inspector James Drager noted that the Brezinski Order was "cancel[ed]." Mrs. Mathison understood this to mean that all existing USTs had been removed and nothing further was required.

11. When Mrs. Mathison reacquired the Property she intended to resell it as soon as possible. She then became aware that the USTs had in fact not been removed. She therefore arranged to have the USTs about which she had knowledge registered, which was done on January 29, 1989. Because she was aware of only the five (5) USTs installed in 1981 only five USTs were registered.

12. In December 1989 Mrs. Mathison sold the Property to Philip and Carol Falcone and others. As Mrs. Mathison is informed and believes the Falcones and the others, as prospective buyers, undertook a due diligence inquiry and determined that the abandoned tanks had not been removed as Exhibit B indicated. As a condition of purchase the Falcones and the other buyers required that Mrs. Mathison have the USTs removed. She then arranged to have the USTs removed. When the removal occurred, on February 22, 1990, two additional tanks, including the LUST, were discovered.

13. Mrs. Mathison thereupon caused the additional, previously unknown, USTs to be registered. This registration was in 1990. For reasons unknown the additional USTs were numbered 7 (heating oil) and 8 (diesel, the LUST), respectively, instead of 6 and 7, which would correspond to the numbers of tanks to be registered.

14. SNG has commenced a remedial investigation at the Property concerning the leak.

15. In conjunction with this investigation Petitioner Mathison sought and obtained a determination of eligibility for reimbursement under the State of Illinois' LUST Fund Program. (See Exhibit A hereto – Letter from the Office of State Fire Marshall (“OSFM”) dated January 26, 2004.)

16. The OSFM established a deductible of \$100,000 based on the date of registration for the LUST. The deductible is the only subject of this appeal.

17. Under the circumstances enforcing the deductible of \$100,000 for USTs not registered prior to July 28, 1989 is inappropriate and inequitable. It is inappropriate because the July 28, 1989 deadline should only be enforced if all of the USTs were registered after that date. (See 415 Ill. Comp. Stat. 5/57.9(b)(1)-2002.) And, as averred above, the five (5) USTs known to Mrs. Mathison were registered before the deadline. It is inequitable because the provision was intended to penalize tardy registration. But under the circumstances the post-July 28, 1989 registration was not the result of tardiness.

WHEREFORE, Petitioners seek the following remedy and relief:

1. The remedy of granting a hearing in accord with 35 Ill. Admin. Code 101, Subpart F through which the Petitioners may present evidence and subsequent legal argument for the reasonableness of applying the standard

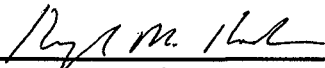
deductible of \$10,000 to this otherwise eligible LUST.

2. An order reversing the OFSM's determination that the deductible is \$100,000 and granting Petitioners' claim that the appropriate deductible is \$10,000 in these circumstances.
3. Such other and further relief as the IPCB is authorized to provide consistent with the evidence in the case.

Dated at Madison, Wisconsin, this 27th day of February, 2004.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, Wisconsin 53703
608-229-2200

Mailing Address:
P.O. Box 2018
Madison, WI 53701-2018



Raymond M. Roder
WI State Bar ID No. 1010463
Attorney for Petitioners,
Jean A. Mathison and
Rockford Stop-N-Go, Inc.



Office of the Illinois
State Fire Marshal

General Office

217-785-0969

FAX

217-782-1062

Divisions

ARSON INVESTIGATION

217-782-9116

BOILER and PRESSURE

VESSEL SAFETY

217-782-2696

FIRE PREVENTION

217-785-4714

MANAGEMENT SERVICES

217-782-9889

INFIRS

217-785-5826

HUMAN RESOURCES

217-785-1026

PERSONNEL STANDARDS

and EDUCATION

217-782-4542

PETROLEUM and

CHEMICAL SAFETY

217-785-5878

PUBLIC INFORMATION

217-785-1021

WEB SITE

www.state.il.us/osfm

CERTIFIED MAIL - RECEIPT REQUESTED #7002 2030 0005 4474 0211

January 26, 2004

Jean A. Mathison
16902 Poplar Grove Rd.
Poplar Grove, IL 61065

In Re:

Facility No. 1-025008
IEMA Incident No. 90-0491
Mathison Mobil & Coffee Shop
4550 Illinois Route 173
NE Corner IL Routes 76 and 173
Poplar Grove, Boone Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on January 6, 2004 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek payment of costs in excess of \$100,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 8 550 gallon Diesel

You must contact the Illinois Environmental Protection Agency to receive a packet of Agency billing forms for submitting your request for payment.

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

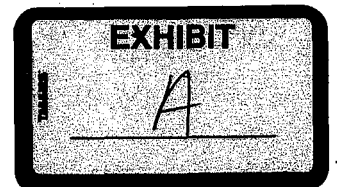
1. Neither the owner nor the operator is the United States Government,
2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law,
3. The costs were incurred as a result of a confirmed release of any of the following substances:

“Fuel”, as defined in Section 1.19 of the Motor Fuel Tax Law

Aviation fuel

Heating oil

Kerosene



Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.
5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.
6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.
7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision, (35 Illinois Administrative Code 105.102(a) (2)).

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-3620

The following tanks are also listed for this site:

Tank 1 6,000 gallon Gasoline
Tank 2 6,000 gallon Gasoline
Tank 3 1,000 gallon Gasoline
Tank 4 1,000 gallon Gasoline
Tank 5 500 gallon Gasoline
Tank 7 550 gallon Heating Oil

Your application indicates that there has not been a release from these tanks under this incident number. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions, please contact our Office at (217) 785-1020 or (217) 785-5878.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deanne Lock".

Deanne Lock
Administrative Assistant
Division of Petroleum and Chemical Safety

cc: IEPA
Facility File



Office of the Illinois
State Fire Marshal

Divisions
ARSON INVESTIGATION
312/917-3427
FIRE PREVENTION
312/917-2693

RECEIVED

AUG 30 1988

DIVISION OF FIRE PREVENTION
CHICAGO

CERTIFIED MAIL - RECEIPT REQUESTED P-241-587-420

July 22, 1988

Mehdi & Noov Sabzali
Mobil Station
1545 N. 43rd Street
Stone Park, Illinois 60165

*Cancel
8/22/88
James Drager
Letter attached*

In re: File #88-1-009064-U53-BB-29-0
Mobil Station
Routes 173 & 76
Poplar Grove, Illinois
BOONE COUNTY

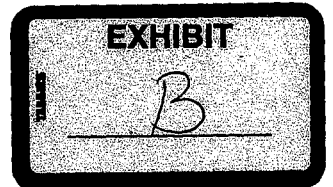
Dear Mehdi & Noov Sabzali:

Pursuant to law an inspection was made of the above-captioned premises on June 27th, 1988 by Fire Inspector James Drager. This inspection disclosed the following dangerous condition and/or fire hazard as indicated in violation of law:

1. Remove all existing abandoned underground flammable liquid storage tanks found no longer in service at this location. (Section 170.75-B-1,2,3,4,5 & C-1)

You are hereby ordered to remove, or remedy and correct, said dangerous condition and/or fire hazard forthwith, and this office will make investigations as to completion within a reasonable period.

Failure to comply with this order will result in a request to the State's Attorney of Boone County to prosecute such refusal as a misdemeanor.



page two

Mobil Station
Routes 173 & 76
Poplar Grove, Illinois

Please notify the Chicago Office when the work has been completed
and a reinspection will then be scheduled.

Sincerely,

Edmund R. Brezinski
Area Administrator

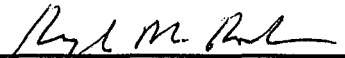
ERB:gs

XC: Insp. Drager
Supvr. Michehl
Fire Chief Morelock

Dated at Madison, Wisconsin, this 27th day of February, 2004.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, Wisconsin 53703
608-229-2200

Mailing Address:
P.O. Box 2018
Madison, WI 53701-2018



Raymond M. Roder
WI State Bar ID No. 1010463
Attorney for Petitioners,
Rockford Stop-N-Go, Inc. and
Jean A. Mathison

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ENTRY OF APPEARANCE

NOW COMES Raymond M. Roder, of the law firm of Reinhart Boerner
Van Deuren s.c. and hereby enters his appearance on behalf of Petitioners, Rockford
Stop-N-Go, Inc. and Jean A. Mathison.

Dated at Madison, Wisconsin, this 27th day of February, 2004.

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22 East Mifflin Street, Suite 600
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