

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

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SEP 17 2007

STATE OF ILLINOIS
Pollution Control Board

JOE'S MIDTOWN AUTO REPAIR,)	
Petitioner,)	
v.)	PCB 07-143
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
Respondent.)	

MOTION TO DISMISS

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, hereby respectfully moves the Illinois Pollution Control Board ("Board") to dismiss the above action and in support of said motion, the Illinois EPA states as follows:

1. On May 27, 1997, Joe Warren representing Joe's Midtown Auto Repair called in a release to the Illinois Emergency Management Agency ("IEMA") for a 1000 gallon heating oil tank and a 500 gallon waste oil tank. IEMA gave this reported release Incident Number 970927. The IEMA Report indicates that there were "holes in tank and over spills" as the cause for the release. (Exhibit 1)
2. On August 17, 1998, Joe Warren, representing Joe's Midtown Auto Repair called in a release to the IEMA for a 6000 gallon gasoline tank. IEMA gave this reported release Incident Number 982038. The IEMA Report indicates that there were "overfills and spills" as the cause for the release. (Exhibit 2)
3. On August 5, 2002, the Office of the Illinois State Fire Marshal ("OSFM") issued two Reimbursement Eligibility and Deductible determinations for Joe's Midtown Auto Repair. (Exhibits 3 and 4). The OSFM determinations indicate that the applications for a Reimbursement Eligibility and Deductible determination were received on July 16, 2002.

4. The OSFM determination for Incident number 970927 states that “[i]t has been determined that you are eligible to seek payment of costs in excess of \$10,000. The cost must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 4 500-gallon Used Oil

Tank 5 1,000-gallon Kerosene” (Exhibit 3)

5. The OSFM determination for Incident number 982038 states that “[i]t has been determined that you are eligible to seek payment of costs in excess of \$10,000. The cost must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 1 6,000-gallon Gasoline

Tank 2 6,000-gallon Gasoline

Tank 3 6,000-gallon Gasoline” (Exhibit 4)

6. As the Board held in Maple Quick Mart and Ranjit Singh v. IEPA, PCB 07-21, “[u]nder Section 57.9(c) of the Act, the Office of the State Fire Marshal's office is charged with making determinations concerning eligibility and the amount of any deductible. Any challenge to the deductible amount was due to be filed within 35 days of the date of the OSFM decision. There is no Agency action here which the Board can review.”

7. The Illinois EPA merely applied the deductible amount as determined by OSFM. Under the Act, the Illinois EPA does not make such determinations. 415 ILCS 5/57.9(c). There is no relief that the Board could grant the Petitioner against the Illinois EPA. The Petitioner should have appealed the *decision of OSFM in 2002.*

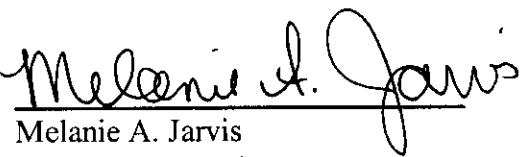
V. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board grant the Illinois EPA's Motion to Dismiss.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Melanie A. Jarvis
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: September 13, 2007

This filing submitted on recycled paper.

0110853048 - Bureau
Joe's Midtown Auto Repair

MAY-27-97 TUE 12:09

EMA

WS

FAX NO. 2177827774

P.01/01



Illinois Emergency Management Agency

Incident Number 9 7 0 9 2 7

Notify: ILLINOIS EMERGENCY MANAGEMENT AGENCY
1-800/782-7860 or 217/782-7860

FIELD REPORT

Date: 05 / 27 / 97

Time: 1147

Received by: JMC

1. Caller: JOE WARREN

2. Call back phone#: 815/875-1515

3. Caller represents: JOE'S MIDTOWN AUTO REPAIR

4. Type of incident: Fire Leak Explosion Water Involvement
 Gas or Vapor cloud Other

5. Incident Location:

Street: 1 SOUTH MAIN STREET

City: PRINCETON In Near

County: BUREAU

Milepost: RR River Highway

Sec. Twp. Range

6. Area Involved: Highway Rail Fixed Facility
 Waterway Air Other: PARKING LOT

7. Material (s) Involved: HEATING OIL & WASTE OIL

Gas Liquid Semi-Solid Solid

Pesticide Radioactive

CAS #:

UN/NA #:

Is this a 302 (a) Extremely Hazardous Substance?

Yes No Unknown

Is this a RCRA Hazardous Waste?

Yes No Unknown

If Yes, is this a RCRA regulated facility?

Yes No

8. Container: Truck RR car Drum

Aboveground tank Pipeline

Underground tank Other:

container size: 1-1000 HEATING OIL, 1-500 WASTE OIL

9. Amount released: UNKNOWN

Rate of release: /min

10. Cause of release: HOLES IN TANK & OVER SPILLS

11. Estimated spill extent: UNKNOWN

square feet square yards

12. Occurred Date: / / Time:

Discovered Date: 05 / 27 / 97 Time: 1100

13. Emergency units contacted

Fire

Sheriff

Police

ESDA

Other:

14. On Scene Contact: #1

On Scene Phone#: #2

15. No. injured: -0- Haz-mat related

Where taken:

16. Public health risks and/or precautions taken,

including # evacuated:

NONE

17. Assistance needed from State Agencies:

NONE

18. Containment/cleanup actions and plans:

WILL HIRE A CONTRACTOR

19. Weather: sunny overcast night

ptly. cldy. rain snow

Temp. F wind dir. speed mph.

20. Responsible Party: JOE'S MIDTOWN AUTO REPAIR

Contact person: #1

Phone #: #2

Mailing address: 1 SOUTH MAIN STREET

PRINCETON, IL 61356

Notifications: FAXED TO EPA, SFM, IDPH, REG. 2

On scene

Fire

Sheriff

Police

ESDA

Other: SFM/KEN OLDMAN

Exhibit 1

SCREENED

0110855048 Bureau
Joe's Midtown Auto Repair

AUG-17-98 MON 14:35

EMR

WST

FAX NO. 2177027774



P. 01/01



Illinois Emergency Management Agency

Incident Number

9 8 2 0 3 8

Notify: ILLINOIS EMERGENCY MANAGEMENT AGENCY

1 - 800 / 782 - 7860 or 217 / 782 - 7860

FIELD REPORT

Date: 08 / 17 / 98

Time: 1429

Received by: JAG

- 1. Caller: JOE WARREN
- 2. Call back phone#: 815/875-1515
- 3. Caller represents: JOE'S MIDDTOWN AUTO REPAIR
- 4. Type of incident: Fire Leak ~~OVERFLOW~~
 Explosion Water Involvement
 Gas or Vapor cloud Other
- 5. Incident Location:
Street 1 S. MAIN ST
City PRINCETON 085 In Near
County BUREAU 011
Milepost RR River Highway
Sec. Twp. Range
- 6. Area Involved: Highway Rail Fixed Facility
 Waterway Air Other
- 7. Material (s) Involved: GASOLINE

Gas Liquid Semi-Solid Solid

Pesticide Radioactive

CAS # 008006619

UN/NA #:

Is this a 302 (a) Extremely Hazardous Substance?

Yes No Unknown

Is this a RCRA Hazardous Waste?

Yes No Unknown

If Yes, is this a RCRA regulated facility?

Yes No

- 8. Container: Truck RR car Drum
 Aboveground tank Pipeline
 Underground tank Other
container size: 6000 GAL -3
- 9. Amount released: unknown
Rate of release: _____ /min.
- 10. Cause of release: OVERFILL & SPILLS

11. Estimated spill extent: UNKNOWN

square feet square yards

12. Occurred Date: ____/____/____ Time: _____

Discovered Date: 08 / 17 / 98 Time: 1400

15. Emergency units contacted

- Fire
- Sheriff
- Police
- ESDA
- Other

- 14. On Scene Contact: #1
On Scene Phone#: #2
- 15. No. injured: NONE Haz-mat related
Where taken: _____
- 16. Public health risks and/or precautions taken,
including # evacuated: NONE

17. Assistance needed from State Agencies:

NONE

18. Containment/cleanup actions and plans:

PENDING

19. Weather: sunny overcast night

ply. cldy. rain snow

Temp. _____ F wind dir. _____ speed _____ mph.

20. Responsible Party: #3

Contact person: #1

Phone # #2

Mailing address: 25 61756

Notifications: FAX TO EPA, IDPH, SWM REG 2

On scene

- Fire
- Sheriff
- Police
- ESDA
- Other OSFM/TEN OLTMAN

SCREENED

Exhibit 2



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 1000 0004 8741 6459

August 5, 2002

Joe's Midtown Auto Repair
1 South Main Street
Princeton, IL 61356

In Re:

Facility No. 1-012463
IEMA Incident No. 97-0927
Joe's Midtown Auto Repair
1 South Main Street
Princeton, Bureau Co., IL

RECEIVED
Division of Legal Counsel

SEP 12 2007

Environmental Protection
Agency

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on July 16, 2002 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 \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank 4 500-gallon Used Oil
Tank 5 1,000-gallon Kerosene

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 that 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

Exhibit 3

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

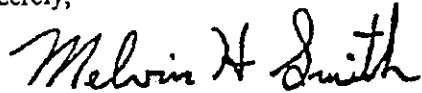
The following tanks are also listed for this site:

Tank 1 6,000-gallon Gasoline
Tank 2 6,000-gallon Gasoline
Tank 3 6,000-gallon Gasoline

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 regarding the eligibility or deductibility determinations, please contact our Office at (217) 785-1020 or (217) 785-5878 and ask for Deanne Lock.

Sincerely,

A handwritten signature in cursive script that reads "Melvin H. Smith".

Melvin H. Smith
Division Director
Division of Petroleum and Chemical Safety

MHS/dl

cc: IEPA
Facility File



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 1000 0004 8741 6466

August 5, 2002

Joe's Midtown Auto Repair
1 South Main Street
Princeton, IL 61356

In Re:

Facility No. 1-012463
IEMA Incident No. 98-2038
Joe's Midtown Auto Repair
1 South Main Street
Princeton, Bureau Co., IL

Dear Applicant:

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It has been determined that you are eligible to seek payment of costs in excess of \$10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

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1. Neither the owner nor the operator is the United States Government,
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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)).

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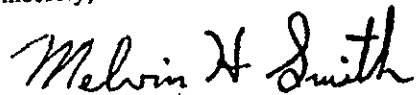
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Melvin H. Smith
Division Director
Division of Petroleum and Chemical Safety

MHS/dl

cc: IEPA
Facility File

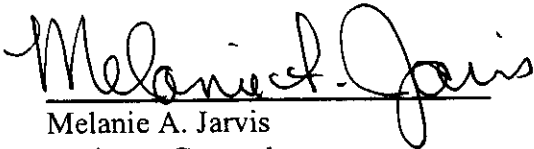
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 13, 2007 I served true and correct copies of an APPEARANCE and a MOTION TO DISMISS 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
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

Patrick D. Shaw, Esq.
Mohan, Alewelt, Prillaman & Adami
First of America Center
1 North Old State Capitol Plaza, Suite 325
Springfield, IL 62701-1323

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)