

ILLINOIS POLLUTION CONTROL BOARD
May 17, 2012

EVERGREEN FS, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 12-127
)	(UST Fund)
OFFICE OF THE STATE FIRE)	
MARSHAL,)	
)	
Respondent.)	

ORDER OF THE BOARD (by T.A. Hollbrook):

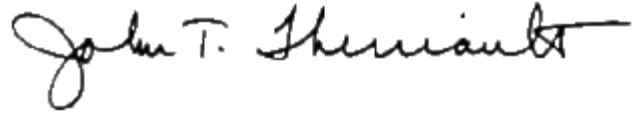
On May 3, 2012, Evergreen FS, Inc. (Evergreen) timely filed a petition (Pet.) asking the Board to review a March 29, 2012 determination of the Office of the State Fire Marshal (OSFM). *See* 415 ILCS 5/57.9(c)(2) (2000); 35 Ill. Adm. Code 105.504(b). The OSFM determined on January 10, 2012, that a tank was ineligible for reimbursement from the Underground Storage Tank Fund and determined on March 29, 2012, that Evergreen’s submission of additional information was a request for reconsideration that OSFM lacked authority to review. Evergreen’s request concerned an underground storage tank site at a service station located in Dwight, Livingston County, Illinois.

Evergreen appeals on the grounds that the determination should be reversed because the submission of new information does not constitute a request for reconsideration. Pet. at 2. Evergreen further states that, because “OSFM’s initial determination involved review of materials beyond the application submitted, fundamental fairness requires OSFM to give the applicant an opportunity to present additional evidence to explain or refute the extrinsic evidence relied upon by OSFM”. *Id.* at 2-3. Finally, Evergreen argues that “OSFM should be estopped from refusing to review additional information when it verbally invited it, and when OSFM claims authority to change its decision in all of its form eligibility and deductibility determinations. . . .” *Id.* at 3. Evergreen’s petition meets the content requirements of 35 Ill. Adm. Code 105.506. The Board accepts the petition for hearing.

Evergreen has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be scheduled and completed in a timely manner. Unless the Board or the hearing officer orders otherwise, the OSFM must file the entire record of its determination within 30 days after Evergreen filed the petition. 35 Ill. Adm. Code 105.508(b). If the OSFM wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.508(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 17, 2012, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board