

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GARY SZCZEBLEWSKI,)
)
Complainant,) PCB 12-15
)
v.) IEMA Incident No. 91-2529
)
STATE FIRE MARSHAL,)
DIVISION OF PETROLEUM AND)
CHEMICAL SAFETY,)
)
Respondent.) OSFM Facility No. 7-025002
) NOV: E00000020083238

RECEIVED
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JUL 29 2011
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Mr. John Therriault, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601

Please take notice that Thomas Andryk, Esquire, on behalf of the Office of the State Fire Marshal, Division of Petroleum and Chemical Safety, has filed the Respondent's Appearance, Motion to Dismiss and Certificate of Service in this matter.

Dated: 7-26-2011

Respectfully submitted,

OFFICE OF THE STATE FIRE MARSHAL

By: Thomas Andryk
Thomas Andryk, Esquire

Office of the State Fire Marshal
1035 Stevenson Drive
Springfield, Illinois 62703-4259
(217) 785-0969 (phone)
(217) 524-9284 (facsimile)
thomas.andryk@illinois.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GARY SZCZEBLEWSKI,)	
)	PCB 12-15
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)	IEMA Incident No. 91-2529
v.)	
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CHEMICAL SAFETY,)	
)	OSFM Facility No. 7-025002
Respondent.)	NOV: E00000020083238

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APPEARANCE

Thomas Andryk, Esquire, on behalf of the Office of the State Fire Marshal, Division of Petroleum and Chemical Safety, hereby enters his appearance as counsel of record in this matter.

Dated: 7-26-2011

Respectfully submitted,

OFFICE OF THE STATE FIRE MARSHAL

By: 
Thomas Andryk, Esquire

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1035 Stevenson Drive
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MOTION TO DISMISS

Now comes the Office of the State Fire Marshal (hereinafter "OSFM"), by Thomas Andryk, Esquire, and in support of its Motion to Dismiss the Petition for Review filed by Gary Szczeblewski, as untimely, states as follows:

1. On June 7, 2011, OSFM issued its determination letter regarding Gary Szczeblewski's Reimbursement Eligibility and Deductible Application. A copy of said determination letter is attached hereto as Exhibit "A."
2. Said determination letter advised Gary Szczeblewski that he had 35 days from the date of mailing of the letter to file a petition before the Illinois Pollution Control Board should he wish to appeal the determination.
3. 35 Illinois Administrative Code 105.504(b) provides that a Petition for review "must be filed with the Board within 35 days after the date of the OSFM's 'Eligibility and Deductibility Determination' letter....."
4. 35 Illinois Administrative Code 101.300(a) provides that computation of a time period pursuant to the Act will begin with the first calendar day following the day on which the act, event or development occurs.

5. The day "on which the act, event or development" occurred was June 7, 2011, the date of the OSFM Deductibility Determination Letter. See Dewey's Service v. IEPA (February 4, 1999 and May 6, 1999), PCB 99-107, wherein the Board determined that the trigger date for commencing the 35 day deadline was the date of mailing of the agency's (IEPA's) decision.

6. Gary Szczeblewski dated and mailed his Petition for Review on July 15, 2011. A copy of the envelope received by OSFM is attached hereto as Exhibit "C."

7. The filing of Gary Szczeblewski's Petition for Review was not timely pursuant to Sections 105.504(b) and 101.300(a), as 38 days elapsed from June 8, 2011 (the day following the issuance of the determination letter) and July 15, 2011 (the date the Respondent mailed his Petition for filing). Accordingly, the Pollution Control Board does not have jurisdiction to consider Gary Szczeblewski's Petition for Review.

Wherefore, the Office of State Fire Marshal respectfully requests that the Pollution Control Board dismiss the Petition for Review filed herein by Gary Szczeblewski.

Dated: 7-26-2011

Respectfully submitted,

OFFICE OF THE STATE FIRE MARSHAL

By: Thomas M. Andryk
Thomas Andryk, Esquire

Office of the State Fire Marshal
1035 Stevenson Drive
Springfield, Illinois 62703-4259
(217) 785-0969 (phone)
(217) 524-9284 (facsimile)
thomas.andryk@illinois.gov



Office of the Illinois
State Fire Marshal
"Partnering With the Fire Service to Protect Illinois"

CERTIFIED MAIL - RECEIPT REQUESTED #7010 0780 0002 1298 3707

June 7, 2011

Gary Szczeblewski
203 West Franklin
Sesser, IL 62884

In Re: Facility No. 7-025002
IEMA Incident No. 91-2529
Sesser Sun Mart
203 West Franklin
Sesser, Franklin Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on April 12, 2011 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 1 6,000 gallon Gasoline
Tank 2 6,000 gallon Gasoline
Tank 3 8,000 gallon Gasoline

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

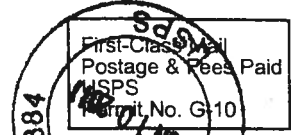
Aviation fuel

Heating oil

Kerosene

Exhibit "A"

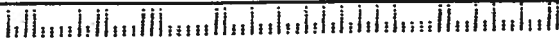
UNITED STATES POSTAL SERVICE



• Sender: Please print your name, address, and ZIP+4 in this box

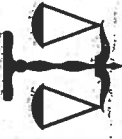
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Office of the Illinois State Fire Marshal DIV. OF PETROLEUM
Division of Petroleum & Chemical Safety CHEMICAL SAFETY
1035 Stevenson Drive
Springfield, IL 62703-4250



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <i>Anton Kirk</i> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery <i>Anton Kirk</i> <i>6/10/11</i></p>
<p>1. Article Addressed to: <i>7025002</i> <i>Gary Szyblowski</i> <i>203 W. Franklin Ave</i> <i>Sussex, IL 62884</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p><i>7010 0780 0002 1298 3707</i></p>

Exhibit "B"



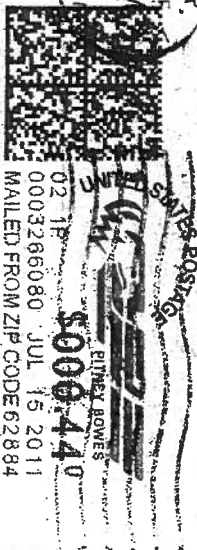
Gary Q. Szegeblewski

Attorney at Law

P.O. BOX 564 • SESSER, ILLINOIS 62884

Ms. Deanne Lock
Division of Petroleum
and Chemical Safety
1035 Stevenson Drive
Springfield, IL 67203-4259

6270344259 C039



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JUL 18 2011

**DIV. OF PETROLEUM
CHEMICAL SAFETY**

Exhibit "C"

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the attached Appearance, Motion to Dismiss and Notice of Filing were sent, by U.S. mail, on July 26, 2011 to the person(s) on the attached service list.

Dated: 7-26-2011

Respectfully submitted,

OFFICE OF THE STATE FIRE MARSHAL

By: 
Thomas Andryk, Esquire

Office of the State Fire Marshal
1035 Stevenson Drive
Springfield, Illinois 62703-4259
(217) 785-0969 (phone)
(217) 524-9284 (facsimile)
thomas.andryk@illinois.gov

SERVICE LIST

by placing same in a sealed envelope, with postage fully prepaid, and depositing same in the United States mail in Springfield, Illinois, addressed to:

Mr. Gary J. Szczebleski
Attorney at Law
111 E. Franklin Ave.
P.O. Box 564
Sesser, IL 62884

Mr. John Therriault, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601