

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

EVERGREEN FS, INC.,)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 16th day of November, 2011.

Respectfully submitted,
EVERGREEN FS, INC., Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517
Facsimile: 217/528-2553

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVERGREEN FS, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, Evergreen FS, Inc. ("Evergreen"), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued on October 12, 2011, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency refused to pay the approved amount, and in support thereof states as follows:

1. Evergreen is the owner or operator of a service station located in Dwight, Livingston County, Illinois, and assigned LPC#1050255113.
2. In 2007, a release was reported to the Illinois Emergency Management Agency from one or more underground storage tanks at the site and assigned Incident Number 20070479.
3. The Office of the State Fire Marshall determined that all of the tanks had been registered and a \$10,000 deductible would apply.
4. There has been substantial remediation activities conducted on the property pursuant to approved plans and budgets with over \$150,000 in payments from the LUST Fund.
5. On October 12, 2011, Evergreen submitted its application for payment for site investigation activities performed on the site, in the amount of \$12,303.26.

6. On October 12, 2011, the Agency refused to pay the requested amount and instead determined that the payment should be reduced by fifty-percent because "Lust incident number 910580 is not eligible for reimbursement." A true and correct copy of the Agency decision letter is attached hereto as Exhibit A.

7. This appeal is filed thirty-five days from the date on which the Agency sent out the letter and is therefore timely.

8. The Agency's decision is wrong. There has been no determination that the release for Lust Incident number 910580 was deemed ineligible, nor is there any basis in fact or law to deem that prior incident ineligible. The OSFM determines eligibility. The decision also purports to apportion "payment of costs for plans submitted under Section 57.7," whereas the application for payment is not a plan submitted under Section 57.7, (415 ILCS 5/57.7(c)(4)(E)(defining "plan"), and thus is an improper apportionment after completion of the approved work. Finally, the Agency should be denied by res judicata and collateral estoppel from raising this issue for the first time in 2011 after numerous contrary determinations in this clean-up.

WHEREFORE, Petitioner, Evergreen, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the application for payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Evergreen such other and further relief as it deems meet and just.

**EVERGREEN FS, INC.,
Petitioner**

**By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI**

By: /s/ Patrick D. Shaw

**Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 N. Old Capitol Plaza, Ste. 325
Springfield, IL 62701
Telephone: 217/528-2517
Facsimile: 217/528-2553**

THIS FILING IS SUBMITTED ON RECYCLED PAPER

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62784-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, ILLINOIS 60601 - (312) 814-6026

PAT QUINN, GOVERNOR

LISA BONNETT, INTERIM DIRECTOR

217/782-6762

CERTIFIED MAIL #

7009 3410 0002 3751 7191

OCT 19 2011

Evergreen FS, Inc.
Attn: Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, IL 62711

Re: LPC #1050255113 -- Livingston County
Dwight / Dwight Fuel FS
808 North Union Street
Incident-Claim No.: 20070479 -- 60412
Queue Date: July 21, 2011
Leaking UST Fiscal File

Dear Mr. Eichclberger:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated July 21, 2011 and was received by the Illinois EPA on July 21, 2011. The application for payment covers the period from February 20, 2011 to July 14, 2011. The amount requested is \$12,303.26.

On July 21, 2011, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$6,151.63 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$10,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in

ROCKFORD - 4302 N. MAIN ST., ROCKFORD, IL 61105 - (815) 967-7760

ELGIN - 398 SOUTH STATE, ELGIN, IL 60123 - (847) 608-3131

CHAMPAIGN - 2125 S. FIRST ST., CHAMPAIGN, IL 61820 - (217) 278-6800

COLLINSVILLE - 2009 MALL STREET, COLLINSVILLE, IL 62234 - (618) 346-5120

DES PLAINES - 9811 HARRISON ST., DES PLAINES, IL 60016 - (847) 294-4000

PEORIA - 5407 N. UNIVERSITY, ANSOR HALL #113, PEORIA, IL 61614 - (309) 693-5463

MARION - 2909 W. MAIN ST., SUITE 118, MARION, IL 62959 - (618) 992-7200

PRINTED ON RECYCLED PAPER

EXHIBIT

A

Pg. 1 of 4

Page 2


accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.


An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:CSE 

ATTACHMENT

c: Leaking UST Claims Unit
Cathy Elston



Appeal Rights

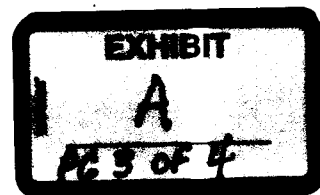
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

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, IL 60601
312/814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544



Attachment A
Accounting Deductions

Re: LPC #1050255113 -- Livingston County
Dwight / Dwight Fuel 24
808 North Union Street
Incident-Claim No.: 20070479 -- 60412
Queue Date: July 21, 2011
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$6,151.63, deduction for costs that require a 50% apportionment of costs pursuant to 35 Ill. Adm. Code 734.640. Pursuant to Section 57.8(m) of the Act, the Illinois EPA may apportion payment of costs for plans submitted under Section 57.7 of the Act if:
 - a. The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for some, but not all, of the underground storage tanks at the site; and
 - b. The owner or operator failed to justify all costs attributable to each underground storage tank at the site.

Last incident number 910580 is not eligible for reimbursement.

csc

