

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

EVERGREEN FS, INC.,                    )  
    Petitioner,                         )  
    v.                                     )     PCB \_\_\_\_\_  
  )     (UST Appeal)  
OFFICE OF THE STATE FIRE            )  
MARSHAL                                )  
    Respondent.                        )

**NOTICE OF FILING AND PROOF OF SERVICE**

To:     John T. Therriault, Acting Clerk                    Division of Petroleum and Chemical Safety  
          Illinois Pollution Control Board                 Office of the State Fire Marshal  
          100 West Randolph Street                         1035 Stevenson Drive  
          State of Illinois Building, Suite 11-500         Springfield, IL 62703  
          Chicago, IL 60601

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 OSFM DETERMINATION, a copy of which is herewith served upon the above parties 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 3<sup>rd</sup> day of May, 2012.

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 _____
	)	(UST Appeal)
OFFICE OF THE STATE FIRE MARSHAL,	)	
Respondent.	)	

**PETITION FOR REVIEW OF OSFM DETERMINATION**

NOW COMES Petitioner, Evergreen FS, Inc. ("Evergreen"), pursuant to Section 57.9(c)(2) of the Illinois Environmental Protection Act, 415 ILCS 5/57.9(c)(2), and Part 105.500 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.500 through 105.510, and hereby appeals the UST determination dated March 29, 2012 by Respondent Office of the State Fire Marshal ("OSFM"), in which OSFM refused to review an application for eligibility and deductibility determination, stating as follows:

1. Evergreen is the most recent owner or operator of a service station located in Dwight, Livingston County, Illinois, and assigned LPC#1050255113. Prior to 2001, tanks on the property were owned and operated by Livingston Service Company, including a 10,000 gallon registered diesel tank from which a release was reported in 1991. All tanks at the site reported a release in 2007.
  
2. The site is currently the subject of two consolidated Leaking Underground Storage Tank Fund appeals before the Board, involving whether payments should be apportioned as a result of a 1991 incident at the site. Evergreen v. IEPA, PCB 11-51 & 12-6. In November of 2011, Petitioner submitted an application for a determination that the tank involved in the 1991 incident was eligible for reimbursement from the Leaking Underground Storage Tank Fund. A

true and correct copy of the application is attached hereto as Exhibit A.

3. On January 10, 2012, OSFM found Petitioner ineligible for reimbursement from the fund for the reason that “Tank 3 10,000 gallon Diesel Fuel – NON UST related release – (415 ILCS 5/57.9).” The letter further indicated that OSFM “reserve[s] the right to change the deductible determination should additional information that would change the determination become available.” A true and correct copy of the letter is attached hereto as Exhibit B.

4. Upon receipt of the letter, Petitioner’s consultant contacted OSFM to determine what information had been relied upon to make this determination and was told that if Petitioner had any additional information in support of the application, it should submit it.

5. In reliance thereupon, Petitioner submitted new information pertaining to the nature of the 1991 incident, which had not been submitted with the previous application.

6. On March 29, 2012, OSFM issued a final determination, characterizing Petitioner’s new submittal as a request for reconsideration and refusing to review the new information for purported want of legal authority to reconsider the January 10, 2012, determination. A true and correct copy of the determination is attached hereto as Exhibit C.

7. This appeal is filed exactly thirty-five days from the March 29, 2012, determination. The actual date Petitioner received the determination is uncertain, but could be no earlier than the date it was mailed and is therefore timely filed. 35 Ill. Adm. Code 105.504(b).

8. The OSFM’s determination should be reversed since the submittal of new information does not constitute a request for reconsideration. Furthermore, where as here, 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. Alternatively, 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, including the one herein.

9. Even if the new submittal is deemed a reconsideration request, legal precedent before the Illinois Appellate Court and the Illinois Pollution Control Board has found that OSFM, unlike the Illinois Environmental Protection Agency, has some authority to reconsider its determinations under the proper circumstances.

10. The 1991 incident occurred from a leak in the leaking underground piping system and therefore was eligible.

WHEREFORE, Petitioner, Evergreen, prays that: (a) OSFM produce the Record; (b) a hearing be held; (c) the Board find OSFM erred in its decision, (d) the Board direct OSFM to either review the new information and make a determination or find that the 1991 incident was eligible for reimbursement, and (e) 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

4-013031

11-23-11

Leaking Underground Storage Tank Fund Eligibility and Deductible Application

All underground storage tank owners or operators planning to seek reimbursement of corrective action costs from the Leaking Underground Storage Tank (LUST) Fund must submit this application. Instructions and definitions to aid in completing the application are attached.

The application must be completed in its entirety. Answers of unknown are not accepted and may be grounds for returning your application. All signatures and seals must be originals signed in ink. Incomplete applications will be returned to the Applicant. Any revisions to the original application must be dated and initialed by the person entering the new information. This must be the same person who signs the application. If a facility is not in compliance with registration requirements, the application will be returned.

Do not submit IEPA reports or bills with the application. A duplicate copy of the application is not required. Following the review of the application, the Applicant will receive a certified letter of eligibility stating the deductible amount.

OSFM Facility ID #: 4-013031  
U0027569

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DIV. OF PETROLEUM  
CHEMICAL SAFETY

1. Name of Applicant: Evergreen FS, Inc.

Current Tank Owner: X Current Tank Operator: Former Tank Owner: Former Tank Operator:

Mailing Address of Applicant: PO Box 1367

City: Bloomington State: IL Zip: 61702

Contact Person: Bob Eichelberger

2. Current Owner: Evergreen FS, Inc.

Tank X Property: Lessee: (check all that currently apply)

Mailing Address: PO Box 1367

City: Bloomington State: IL Zip: 61702

Phone: (309) 662-9321

a) Date Facility Property Purchased: Leased: 9-1-00

b) Were tanks in the ground on date of purchase/lease? Yes X No

c) If answer to 2b is no, were tanks installed after your purchase/lease? Yes No

d) Have you ever operated these tanks; pumped product in or out during the ordinary course of operation? Yes X No

The OSFM is requesting disclosure of information to process your Eligibility and Deductible Application in order to accomplish the statutory purpose as stated in 415 ILCS, Act 5, Environmental Protection Act. This is REQUIRED because failure to provide the requested information will result in this form not being processed, and there will be no eligibility or deductible determination for purposes of the LUST Fund. This form has been approved by the Forms Management Center.

EXHIBIT  
A  
PART OF 4

3. Previous owner/operator: Livingston Service Co.

Tank:  Property:  Lessee:  (check all that apply)

Previous owner/operator current mailing address: 320 N. Plum

City: Pontiac State: IL Zip: 61764

Phone: (815) 844-7185

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4. Facility Name: Dwight Fuel 24

Facility Address: Rt. 47 & Old Route 66 DIV. OF PETROLEUM  
CHEMICAL SAFETY

City: Dwight County: Livingston

5. Occurrence for which you intend to seek reimbursement: Incident # 91-0580

6. Name and official title of the person who notified IEMA of the occurrence: Tom Sarlin

Date Reported: 3/5/91

7. Other incident numbers reported at the site: (A separate application must be filed for each occurrence. Please indicate if any of the additional incident numbers are erroneously reported incidents, or a second reporting of the same occurrence for which you intend to seek reimbursement.)

Other Incident Numbers	Date Reported
1) <u>2007 0479</u>	<u>4/18/07</u>
2) <u>2007 0804 (2nd reporting)</u>	<u>6/13/07</u>
3) _____	_____

8. Total number of USTs at the site: 5 (include USTs presently at the site and USTs that have been removed or abandoned in place)

9. Total number of USTs at the site that have had a release: 1 (An UST release includes a leak from an underground tank, a release from underground piping associated with the tank, plus overfills of the UST during filling.)

10. Type of release: (check all that apply) Answers of unknown will not be accepted.

- UST leak  Overfill of an UST during filling  
 Underground piping leak  Other (detailed description required)

a) How was the release discovered? (check all that apply)

- Inventory Loss  Subsurface Investigation  
 Product in Observation Well  Significant Event (i.e., overfill, vandalism, etc.)  
 Subsurface Work/Repair  Other (detailed description required)

b) Date release discovered: 3/5/91

- 11. Is the UST owner or operator the U.S. government? Yes \_\_\_\_\_ No ✓
- 12. Is the UST owner or operator a rail carrier registered pursuant to Section 18c-7201 of the Illinois Vehicle Code? Yes \_\_\_\_\_ No X
- 13. Is the UST located at an airport with over 300,000 operations per year, for years prior to 1991, and over 170,000 operations per year beginning in 1991. Located in a city of more than 1,000,000 inhabitants? Yes \_\_\_\_\_ No X
- 14. Date corrective action work began or scheduled to begin: ~~03-05-91~~ 3-5-91
- 15. Date corrective action work completed: in progress

The following certification must be completed by the UST owner/operator:

I, Michael Keubler (circle the following that apply) the Owner, Operator or designated agent of EVERGREEN P.S. INC. leaking underground storage tank site, do hereby certify under penalty of law, that this application and the supporting documentation attached hereto were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted therein. I affirm that the information is, to the best of my knowledge and belief, true, accurate and complete. Such affirmation is made under penalty of perjury as defined in Section 32-2 of the Criminal Code, 720 ILCS 5/32-2. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowingly committing violations. The "Eligibility and Deductible Determination" decided pursuant to this document is subject to the costs defined in Title 35: Environmental Protection Illinois Administrative Code (IAC) 731, 732, 742 and Public Act 92-0554.

Signature (owner, operator or designated agent)

Michael Keubler

Title: Agent

Date: 11-22 20 11

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 CHEMICAL SAFETY

Subscribed and sworn to before me this 22 day of November, 20 11  
(application must be notarized when the certificate is signed)

Dawn M. Phillips  
Notary Public



Note: Original signatures in ink and seals are required for the certification and notarization. Attach the UST information sheet behind this page. This form may be copied on a photocopier but may not be altered in any way. DO NOT reproduce on a computer; this will be grounds for rejection.

UST Information Sheet

The information below must be provided for each UST at the site. (USTs presently at the site and USTs that have been removed or abandoned)

All spaces must be completed for each tank. Answers of unknown will not be accepted.

You may photocopy this page if more space is needed.

OSFM Facility ID #: 4-013031

Circle one under each column.

Tank ID #	Product Code	Size (Gallons)	Date Installed	Date Registered	Date Out of Service	Date Removed	IEMA Number	Date IEMA Notified	Registration Fees Paid	Has UST Had a Release	Is UST Legally Abandoned In-Place?
1	G	6,000	9/1/81	9/1/87	10/87	10/27/87	NA	NA	(Y) N	Y (N)	Y (N)
2	G	10,000	9/1/81	9/1/87	4/1/07	6/13/07	20070479	4/18/07	(Y) N	(Y) N	Y (N)
3	D	10,000	9/1/81	9/1/87	4/1/07	6/13/07	910580 20070479	3/5/91 4/18/07	(Y) N	(Y) N	Y (N)
4	G	10,000	11/2/87	11/2/87	4/1/07	6/13/07	20070479	4/18/07	(Y) N	(Y) N	Y (N)
5	N(E85)	10,000	L995	12/4/95	10/10/02	6/13/07	20070479	4/18/07	(Y) N	(Y) N	Y (N)
									Y N	Y N	Y N
									Y N	Y N	Y N
									Y N	Y N	Y N
									Y N	Y N	Y N
									Y N	Y N	Y N

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Product Codes - (refer to instructions for definitions): G - Gas, D - Diesel, A - Aviation fuels, K - Kerosene, M - New Motor Oil or U - Used oil; H - Heating oil; HAZ - Hazardous Substance (description required); N - Any product not included under another code. (description required)

Comments: \_\_\_\_\_

EXHA. R PG 484





Office of the Illinois  
State Fire Marshal

"Partnering With the Fire Service to Protect Illinois"

CERTIFIED MAIL - RECEIPT REQUESTED #7011 0110 0001 4649 2883

January 10, 2012

Evergreen FS, Inc.  
P.O. Box 1367  
Bloomington, IL 61702

In Re: Facility No. 4-013031  
IEMA Incident No. 91-0580  
Dwight Fuel 24  
Rt 47 & Old 166  
Dwight, Livingston Co., IL

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on November 23, 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 ineligible to seek payment of costs of corrective action or indemnification associated with the following tanks:

Ineligible Tanks

Tank 3 10,000 gallon Diesel Fuel

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.

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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".

You are ineligible for reimbursement from the fund for the following reason(s):

Tank 3 10,000 gallon Diesel Fuel - Non UST related release - (415 ILCS 5/57.9)

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 105.504(b)).

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

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 10,000 gallon Gasoline  
Tank 4 10,000 gallon Gasoline  
Tank 5 10,000 gallon E-85

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,



Deanne Lock  
Administrative Assistant  
Division of Petroleum and Chemical Safety

cc: IEPA  
Facility File

EXH B, AA 2 of 3



Office of the Illinois

## State Fire Marshal

"Partnering With the Fire Service to Protect Illinois"

March 29, 2012

Evergreen FS, Inc.  
P.O. Box 1367  
Bloomington, IL 61702

Re: Facility No. 4-013031  
IEMA Incident No. 91-0580  
Dwight Fuel 24  
Rt. 47 & Old 166  
Dwight, Livingston Co., IL

Dear Applicant,

Your request for reevaluation of a Reimbursement Eligibility and Deductible Application, as received by the Office of the State Fire Marshal ("OSFM") on or about February 2, 2012, for the above-referenced occurrence has been reviewed. As you will recall, the request sought the OSFM's reevaluation of its Reimbursement Eligibility and Deductible Application decision dated January 10, 2012.

In response to your request, the OSFM has determined that it lacks any authority to reevaluate or reconsider a prior eligibility decision. Nothing in the applicable statute authorizes or empowers the OSFM to reevaluate such a decision once it has become final. See 415 ILCS 5/57.9. Rather, parties aggrieved by any eligibility determination have the option to appeal. As no timely appeal of the OSFM's January 10, 2012 decision related to Incident No. 91-0580 was received, the initial determination of ineligibility must stand.

An underground storage tank owner or operator may appeal this decision to the Illinois Pollution Control Board (Board), pursuant to 415 ILCS 5/57.9(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 105.504(b). For information regarding the filing of an appeal, please contact:

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

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: Facility File  
Environmental Management, Inc.

Enclosure

1035 Stevenson Drive • Springfield, IL 62703-4259

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Division of Legal Counsel  
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Environmental Protection  
Agency

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