



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RELIABLE STORES, INC.,	)	
Petitioner,	)	
	)	
v.	)	PCB 2019-002
	)	(OSFM Appeal)
OFFICE OF THE STATE FIRE MARSHAL,	)	
Respondent.	)	

**AMENDED PETITION FOR REVIEW OF OSFM DETERMINATION**

NOW COMES Petitioner, RELIABLE STORES, INC. (hereinafter "RELIABLE"), pursuant to Section 57.9(c)(2) of the Illinois Environmental Protection Act, 415 ILCS 5/57.9(c)(2), and hereby appeals the UST determination dated July 2, 2018 by Respondent Office of the State Fire Marshal ( hereinafter "OSFM"), stating as follows:

1. RELIABLE owns or operates an active service station containing two gasoline underground storage tanks, which is located in Maywood, Cook County, Illinois, and assigned LPC#0311835047. Both of these tanks were first put into service and registered in 2004.

2. On February 14, 2018, the underground storage tanks experienced a release, which was assigned IEMA Incident No. 20180158.

3. The release was determined to be from an underground dispenser sump, which was cracked or improperly sealed, allowing gasoline to enter the environment.

4. On May 9, 2018, an application for an eligibility and deductibility determination was submitted to OSFM.

5. On June 12, 2018, OSFM issued its eligibility and deductibility determination letter, finding that the tanks were ineligible. A true and correct copy of which is attached hereto



as Exhibit A.

6. On July 3, 2018, consultants petitioned the Board for review of the OSFM determination on behalf of RELIABLE, which was timely filed as acknowledged in the Board's July 26, 2018, order. The Board further gave RELIABLE until August 27, 2018 to file an amended petition for review, correcting the errors noted in said Board order, and therefore this amended petition is also timely filed.

7. By reason and belief, OSFM views the incident as resulting from one or more leaks in the above-ground dispenser. However, as explained herein, any such leaks would have been contained by the underground dispenser sump, but for the fact that it was leaking gasoline into the environment. And more importantly, as a matter of law, such containment discharges are releases from an underground storage tank system.

8. Pursuant to the Board's regulations, a "UST system" means "an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any." (35 Ill. Adm. Code § 734.115 (emphasis added))

9. Pursuant to OSFM's regulations, "Under-dispenser Containment" means "factory manufactured containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. The containment must be liquid-tight on its sides, bottom and at any penetrations . . ." (41 Ill. Adm. Code § 174.100 (emphasis added); see also 40 CFR § 280.12 ("Under-dispenser containment or UDC means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater." (emphasis added))

10. Pursuant to the description in OSFM regulations, the underground dispenser sump

is a containment system. See also Harlem Township v. IEPA, PCB 92-83, slip op. at 5 (Oct. 16, 1992) (“A containment system holds or retains a substance.”) Therefore, the release from the underground dispenser sump is a release eligible for reimbursement from the Leaking Underground Storage Tank Fund.

WHEREFORE, Petitioner, RELIABLE, 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 issue a new eligibility and deductibility determination, and (e) grant such other and further relief as it deems meet and just.

Respectfully submitted,

RELIABLE STORES, INC., Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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**Office of the Illinois  
State Fire Marshal**

6/12/2018

Reliable Stores, Inc  
C/O Varghese Vallikalam  
905 West Roosevelt Road  
Maywood, IL 60153

In Re: Facility No. 2025658  
IEMA Incident No. 20180158  
Roosevelt 66  
905 W. Roosevelt  
Maywood, Cook, IL 60153

Dear Applicant:

The Reimbursement Eligibility and Deductible Application received on May 09, 2018 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

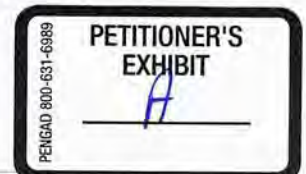
It has been determined that you are ineligible to seek payment of costs of corrective action or indemnification associated with the following tanks:

Tank 6 12000 gallon Gasoline  
Tank 7 8000 gallon Gasoline

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.
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):



**Electronic Filing: Received, Clerk's Office 8/27/2018**

Tank 6 12000 gallon Gasoline - Non UST related release - (415 ILCS 5/57.9) .

Tank 7 8000 gallon Gasoline - Non UST related release - (415 ILCS 5/57.9) .

This constitutes the final decision as it relates to your eligibility and the set deductible. 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 issuance 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 4000 gallon Gasoline  
Tank 2 8000 gallon Gasoline  
Tank 3 10000 gallon Gasoline  
Tank 4 550 gallon Used Oil  
Tank 5 500 gallon Heating Oil

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.

Sincerely,



Deanne Lock

Division of Petroleum and Chemical Safety