



ground. Reliable appealed to the Board, which granted its motion for summary judgment and denied the Fire Marshal's cross-motion for summary judgment, finding that gasoline was released into the soil through an underground containment system. Therefore, Reliable was eligible to receive reimbursement from the UST Fund under section 57.9 of the Environmental Protection Act (Act) (415 ILCS 5/57.9 (West 2020)). The Fire Marshal appeals the decision of the Board on direct administrative review. We affirm the Board's decision.

¶ 2 BACKGROUND

¶ 3 This case presents a question of first impression: whether the Board correctly determined that the releases of gasoline under these circumstances qualified Reliable to receive reimbursement from the UST Fund. A brief overview of the relevant statutory and regulatory framework is helpful to our determination.

¶ 4 In 1986, the Illinois General Assembly enacted the Leaking Underground Storage Tank (LUST) Program as part of a joint federal-state program to regulate underground storage tanks and protect the State's land and water resources. See Pub. Act 84-1072 (eff. July 1, 1986); 415 ILCS 5/57 (West 2020). The LUST Program is administered by the Fire Marshal and the Illinois Environmental Protection Agency (IEPA). 415 ILCS 5/57.3, 57.4 (West 2020). The legislature also created the UST Fund using monies collected from underground storage tank owners, motor fuel taxes, and other tax funds. *Id.* § 57.11. Eligible owners and operators of underground storage tanks may access the funds to pay for the investigation and cleanup of leaking underground storage tank systems. *Id.* § 57.9.

¶ 5 Three agencies each play different roles in the regulation and administration of the UST Fund. The Fire Marshal oversees underground storage tank system registration, installation, testing, repair, removal, and abandonment of underground storage tanks. *Id.* § 57.5(c); 430 ILCS

15/2(2), (3), (4) (West 2020). It also determines eligibility for UST Fund reimbursement and, when applicable, the corresponding deductible. 415 ILCS 5/57.9 (West 2020). IEPA coordinates with the Fire Marshal in administering the LUST Program and acts as “the lead agency in the formulation of regulations and policies.” *Id.* § 22.12(a). IEPA proposes and the Board adopts amendments to the rules governing the administration of Title XVI. *Id.* § 57.14A. The Board regulations under Title XVI include relevant portions of the Illinois Administrative Code (Code) governing underground storage tanks. See, e.g., 35 Ill. Adm. Code 734.115 (2012); 41 Ill. Adm. Code 174.100 (2018). Title XVI also charges the Board with hearing appeals of the Fire Marshal’s final determinations on UST Fund eligibility and deductibles. 415 ILCS 5/57.9(c)(2) (West 2020).

¶ 6 An owner or operator of an underground storage tank has a duty under the Act and Board regulations to perform a site investigation and corrective action upon a confirmed release from an underground storage tank system, regardless of whether the release is eligible for UST Fund reimbursement. *Id.* §§ 57.5(d), (e), 57.6(a), 57.7; 35 Ill. Adm. Code 734.Subparts B-C (2012). A release is defined as “any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing from a UST into groundwater, surface water or subsurface soils.” 41 Ill. Adm. Code 174.100 (2018); see 40 C.F.R. § 280.12 (2015) (same). After an owner or operator submits an eligibility and deductible application for UST Fund reimbursement, the Fire Marshal must issue a final determination within 60 days. 415 ILCS 5/57.9(c) (West 2020). If the Fire Marshal determines that the owner or operator is ineligible for the fund or eligible, but with a deductible amount with which the owner or operator disagrees, the owner may appeal the Fire Marshal’s final determination to the Board. *Id.*

¶ 7 In 1993, the General Assembly amended the Act regarding underground storage tank remediation and fund reimbursement by adding Title XVI. See Pub. Act 88-496, § 15 (eff. Sept.

13, 1993). Before this amendment, reimbursement from the UST Fund was allowed for corrective action resulting from the release of petroleum from an underground storage tank. See 415 ILCS 5/22.18, 22.18b (West 1992). Title XVI reformed and broadened the statute to provide that the UST Fund “shall be accessible by owners and operators who have a confirmed release from an underground storage tank *or related tank system* of a substance listed in this Section.” (Emphasis added.) 415 ILCS 5/57.9 (West 2020). Section 57.2 of the Act states that “[w]hen used in connection with, or when otherwise relating to, underground storage tanks,” the term “‘underground storage tank’ \*\*\* shall have the meaning[ ] ascribed to [it] in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 \*\*\* of the Resource Conservation and Recovery Act of 1976.” *Id.* § 57.2; 42 U.S.C. § 6901 *et seq.* (1984). The United States Environmental Protection Agency defines “underground storage tanks” as “any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground.” 42 U.S.C. § 6991(10) (2006). The Code defines “UST system” as “an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.” 35 Ill. Adm. Code 734.115 (2012).

¶ 8 The structure of a standard gas station pump and its surrounding mechanisms is also relevant to the issues presented in this case. The above-ground portion of the gas pump, known as the “dispenser,” includes the nozzle used to fill a vehicle’s gasoline tank and the cabinet that houses the piping through which gasoline is pumped from multi-thousand-gallon storage tanks located underground. See 41 Ill. Adm. Code 174.100 (2018) (defining “dispenser”); see also 40 C.F.R. § 280.12 (2015) (same). Both federal and state regulations define the “dispenser system” as “the

dispenser and the equipment necessary to connect the dispenser to the underground storage tank system.” *Id.* A gas dispenser includes a safety feature known as a “shear valve,” which automatically shuts off the flow of gasoline to the dispenser in the event of an accident, such as a vehicle crashing into a gas pump. 41 Ill. Adm. Code 175.410(e) (2018); see 40 C.F.R. § 280.20(f)(1) (2015).

¶ 9 After May 1, 2003, state regulations required the installation of an “under-dispenser containment” (UDC), located directly underneath the dispenser system. See 41 Ill. Adm. Code 174.100 (2018); 41 Ill. Adm. Code 175.410(d) (2018); see also 40 C.F.R. § 280.20(f) (2015) (requiring a UDC for any new dispenser system installed after April 11, 2016). The Code describes the UDC as “factory manufactured containment underneath a dispenser that will prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.” 41 Ill. Adm. Code 174.100 (2018). Federal and state regulations require the UDC to “be liquid-tight on its sides, bottom and at any penetrations.” *Id.*; see 40 C.F.R. § 280.20(f)(2) (2015). In July 2015, the United States Environmental Protection Agency adopted revisions to federal underground storage tank regulations, stating that owners and operators of underground storage tanks were required to install a UDC underneath dispenser systems because dispensers “are one of the leading release sources.” Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 80 Fed. Reg. 41566, 41575 (July 15, 2015). Under this regulation, the UDC “is located underground and prevents some releases by containing small leaks that occur inside and underneath the dispenser.” *Id.*

¶ 10 The relevant facts were adduced at the Board hearing and are undisputed. Reliable owned and operated a gas station in Maywood, Illinois, with four dispensers and two underground tanks

storing 12,000 and 8000 gallons of gas. Both underground storage tanks were registered and put into service in 2004.

¶ 11 On February 14, 2008, the Village of Maywood fire department responded to a call from a restaurant neighboring the gas station complaining of gasoline odors. In response to the complaint, a Fire Marshal storage tank safety specialist, Randal Carben, visited the gas station the same day and observed gasoline floating on the water in the restaurant's sump pit. Carben inspected the dispensers and "found a leak under dispenser 1/2 and under dispenser 7/8." Carben stated in his investigative report that "[i]t appears both dispenser containments are leaking because the gasoline is flowing out the bottom of the dispenser pans." Carben concluded the leak occurred inside the dispensers, which were located above the shear valve. On his inspection form, he noted that "piping is involved" in the leak.

¶ 12 Carben directed Reliable to retain the necessary environmental contractors to repair the leaks and recover the gasoline from the site. One of the environmental contractors who inspected the site the same day, Brian Morin, also determined that the leak was located above the shear valve. The contractors repaired the dispenser leaks and cleaned and removed the gasoline from under all dispensers, sumps, observation wells, sewers, and the sump pit from the restaurant.

¶ 13 As required by law, Reliable contacted the Illinois Emergency Management Agency to report the release. In its report, Reliable stated that the incident involved an "[u]nder ground storage tank (Dispenser[])" and that the cause of release was a "[l]oose nut in the dispenser," resulting in a gasoline drip. Reliable reported that the duration of the release was "[a]t least 2 weeks."

¶ 14 Carben returned to the gas station the next day and reported that the repairs "seem to be holding" and that he did not observe any additional leaks. He observed a rainbow sheen and an

odor of gasoline in the sewers. He also saw gasoline floating in the sump next door but stated “it is much better than yesterday.”

¶ 15 On February 16, 2018, Carben returned to the site and met with IEPA investigators, Reliable’s owner, Reliable’s environmental contractors, and investigators from the Maywood Fire Department and the Metropolitan Water Reclamation District. An inspection of the restaurant’s sump pit revealed additional gasoline was entering the sump well. The parties discussed the importance of installing extraction wells or an extraction trench between the two properties. Carben reported that “[t]he dispensing containment on pump 1/2 was found to have 3 empty pipe chase portholes that were open to the soils below. These portholes are 3” in diameter and allowed the leaking gasoline on pump 1/2 to escape before any sensor could alarm.”

¶ 16 Carben returned to the site on February 20, 2018, checked the dispensers for leaks, and found none. He checked the sump at the restaurant next door and found gas in the sump. Carben stated in his report that “[t]he sample I took today appeared nearly as bad as the first day I was here on the response. The top 2” of the sump appears to be petroleum.”

¶ 17 Also on February 20, the Fire Marshal issued a notice of violation, requiring Reliable to comply with federal and state regulations. The Fire Marshal allowed a 60-day period for Reliable to “[r]emove water and repair containments to prevent water ingress.”

¶ 18 On May 9, 2018, Carben confirmed that Reliable had completed all repairs and tests required by the notice of violation. On the same day, Reliable submitted its UST Fund eligibility and deductible application and described the release as follows: “Product was observed leaking from the product pump. Gasoline was observed going into the soil through a pipe penetration in the dispenser sump.”

¶ 19 On June 12, 2018, Deanne Lock, a Fire Marshal administrative assistant, determined that Reliable was ineligible to receive UST Fund reimbursement because each of the leaks were “Non UST related release[s].” Reliable appealed the Fire Marshal’s determination to the Board.

¶ 20 Reliable and the Fire Marshal filed cross-motions for summary judgment with the Board. Reliable argued that it was entitled to reimbursement from the UST Fund because there was a release from the UDC, even if the leak originated from the above-ground dispenser. The Fire Marshal contended that the source of the release occurred above ground and, therefore, the release was ineligible for reimbursement from the UST Fund. The Fire Marshal attached an affidavit from Lock to its motion. In the affidavit, Lock attested that as part of her duties, she reviews applications for eligibility and deductible determinations for the UST Fund. Lock stated that the Fire Marshal requires a permit for any repair work performed on an underground storage tank or underground storage tank system, but Reliable’s application did not include any work permit required under the Gasoline Storage Act (430 ILCS 15/2 (West 2020)) and Fire Marshal regulations (41 Ill. Adm. Code 175.300(a), (g) (2018)). Lock stated that, based on her review of the record and telephone conversations with Carben and Morin, she determined that the release at issue came from the piping located above the shear valve in the above-ground dispensers.

¶ 21 On April 1, 2021, the Board issued its final administrative decision granting summary judgment in favor of Reliable and denying the Fire Marshal’s motion. The Board did not conduct an evidentiary hearing because the parties agreed there were no genuine issues of material fact.

¶ 22 The Board noted the differences between the parties’ arguments in that the Fire Marshal relied upon the origin of the leak, while Reliable contended that the location of the release concerning where it came into contact with the soil should be the determining factor for UST Fund eligibility. The Board concluded that “the gasoline leaks to the underlying soils from the bottoms



of the under-dispenser containment systems were releases from UST systems.” The Board found that the UDC was a containment system and that, as part of the underground storage tank system, it fit within the plain meaning of “related tank system” as provided in section 57.9(a) of the Act. The Board also determined that gasoline leaking out of each UDC into the underlying soil was a release from the related tank system. The Board found this conclusion unaltered by the fact that the leak originated in the above-ground dispenser and fell into the UDC, which containment was the UDC’s function. The Board reversed the Fire Marshal’s eligibility determination and remanded the matter to the Fire Marshal to determine Reliable’s applicable deductible from the UST Fund. The Fire Marshal seeks direct review of the Board’s decision in this court. 415 ILCS 5/41(a) (West 2020); 735 ILCS 5/3-113 (West 2020); Ill. S. Ct. R. 335(a) (eff. July 1, 2017).

¶ 23

## ANALYSIS

¶ 24 On appeal, the Fire Marshal argues that the Board should not have granted summary judgment in favor of Reliable, because the plain language of section 57.9 of the Act does not provide reimbursement from the UST Fund for releases occurring solely from above-ground gasoline leaks. The Fire Marshal contends that section 57.9 allows owners and operators of underground storage tanks to seek reimbursement for leaks caused in underground storage tanks or related tank systems, but not for releases originating from defects in above-ground dispenser equipment. The Fire Marshal also argues that, to the extent section 57.9 is ambiguous, this court should defer to its reasonable construction of the provisions of the LUST Program because it is charged to administer those provisions and its construction is consistent with the legislative purpose and history of the eligibility provisions. The Fire Marshal contends that its construction of section 57.9 is proper because it is consistent with the purpose of the UST Fund—to help finance underground storage tank owners’ efforts to clean up environmental damage arising from leaks in

underground storage tank systems that are difficult to discover and prevent, and not to finance remediation of releases from above-ground equipment.

¶ 25 Standard of Review

¶ 26 The parties disagree regarding the appropriate standard of review. The Fire Marshal argues that the standard of review should be *de novo*, but that its interpretations of section 57.9 of the Act and related regulations are entitled to deference because it is the agency charged to administer the UST Fund. The Board contends this court should review the Board’s interpretation of section 57.9 *de novo* (*Branson v. Department of Revenue*, 168 Ill. 2d 247, 254 (1995)), however, the Board argues that its interpretation of the statute is entitled to substantial weight and deference as the agency that administers and enforces the UST Fund. Finally, Reliable argues that, because a mixed question of law and fact is involved, we should follow a clearly erroneous standard of review. *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Under either standard of review, our result is the same.

¶ 27 The Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2020)) governs our review of the Board’s decision. “The scope of our review extends to all questions of law and fact presented by the record.” *Village of Broadview v. Illinois Labor Relations Board*, 402 Ill. App. 3d 503, 505 (2010) (citing 735 ILCS 5/3-110 (West 2008)).

¶ 28 The Board’s conclusions of law are reviewed *de novo*. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 211 (2008). An agency’s decision on a question of law is not binding on the reviewing court and, thus, the court’s review is independent and not deferential. *Id.* at 210.

¶ 29 The parties also dispute which administrative agency is entitled to deference in this case. Our supreme court has held that “[t]he Administrative Review Law is equally clear that only the

Board’s decision is subject to direct judicial review.” *Town & Country Utilities, Inc. v. Illinois Pollution Control Board*, 225 Ill. 2d 103, 122 (2007). Section 3-101 of the Administrative Review Law defines a reviewable decision as one “ ‘which terminates the proceedings before the administrative agency.’ ” *Id.* (quoting 735 ILCS 5/3-101 (West 2002)). Moreover, section 3-102 of the Administrative Review Law “shall apply to and govern every action to review judicially a final decision of any administrative agency.” 735 ILCS 5/3-102 (West 2020). Here, the administrative proceedings were terminated in this case with the Board’s decision, not the Fire Marshal’s letter rejecting Reliable for reimbursement from the UST Fund. *Id.* §§ 3-101, 3-102. Accordingly, we review the Board’s decision, but its judgment on a question of law is not binding on this court. *Cinkus*, 228 Ill. 2d at 210.

¶ 30 Whether Reliable Was Eligible for Reimbursement From the UST Fund

¶ 31 The central issue presented here is one of statutory interpretation, namely whether Reliable is eligible for UST Fund reimbursement under section 57.9 of the Act and its related regulations. The Fire Marshal argues that it correctly denied Reliable’s application for eligibility for reimbursement from the UST Fund because the gasoline leaks originated in its above-ground gas dispensers. The Board counters that the plain language of section 57.9 warranted a finding that the leaks from Reliable’s UDC were releases eligible for UST Fund reimbursement. Reliable argues that the evidence demonstrated that there was a confirmed release from an underground containment system and, therefore, it was eligible for UST Fund reimbursement.

¶ 32 This appeal presents a classic chicken-and-egg problem in that the gas leaks in question originated from above-ground gas dispensers, but then flowed into an underground containment system designed to prevent the release of gasoline into the soil. However, the underground

containment system failed, which resulted in a release of gasoline into the soil. The parties do not dispute these facts.

¶ 33 The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). "The statute should be evaluated as a whole, with each provision construed in connection with every other section." *Id.* If the statutory language at issue is clear and unambiguous, a reviewing court must interpret the statute according to its terms without resorting to aids of statutory construction. *Branson*, 168 Ill. 2d at 254. "A statute is ambiguous if its meaning cannot be interpreted from its plain language or if it is capable of being understood by reasonably well-informed persons in more than one manner." *Commonwealth Edison Co. v. Illinois Commerce Comm'n*, 2014 IL App (1st) 132011, ¶ 21. A statute is not ambiguous simply because the parties disagree as to its meaning. *Id.* If, however, a statute is vague or ambiguous, a court may resort to tools of interpretation to determine the meaning of a provision. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006).

¶ 34 When interpreting an ambiguously worded statute, "[i]t is appropriate statutory construction to consider similar and related enactments, though not strictly *in pari materia*." *Id.* at 59-60. Courts presume that several statutes relating to the same subject matter, or in this case, related regulations, "are governed by one spirit and a single policy, and that the legislature intended the several statutes to be consistent and harmonious." *Id.* at 60. "Where the intent of the legislature is otherwise clear, the judiciary possesses the authority to read language into a statute which has been omitted through legislative oversight." *Id.* "A fundamental principle of statutory construction

is to view all provisions of a statutory enactment as a whole,” and thus, “words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.” *Id.* (citing *Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415 (2006)). When construing a statute, “we presume that the legislature, in its enactment of legislation, did not intend absurdity, inconvenience or injustice.” *Id.* With these principles in mind, we consider whether the gasoline leaks in this case qualified as releases eligible for UST Fund reimbursement.

¶ 35 The Fire Marshal found that Reliable was ineligible for UST Fund reimbursement because it determined that the gasoline leaks were “non-UST related.” Section 57.9 states that “[t]he Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system.” 415 ILCS 5/57.9(a) (West 2020). The Act defines “underground storage tank,” but not “related tank system.” When a statutory term—in this case, “related tank system”—is not defined in the statute, courts “assume the legislature intended for it to have its popularly understood meaning.” *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 29. “Likewise, if a term has a settled legal meaning, the courts will normally infer that the legislature intended to incorporate that established meaning into the law.” *Id.*

¶ 36 Title 41 of the Code, entitled “Fire Protection,” includes Fire Marshal regulations. Section 174.100 of Title 41 of the Code defines “Underground Storage Tank System” or “UST” as “any one or combination of tanks (including connected underground pipes, connected ancillary equipment, connected cathodic protection, and *containment system*, if any) used to contain an accumulation of regulated substances.” (Emphasis added.) 41 Ill. Adm. Code 174.100 (2018). Similarly, Title 35 of the Code, entitled “Environmental Protection,” includes Board regulations,

and defines “UST system” or “tank system” as “an underground storage tank, connected underground piping, underground ancillary equipment, and *containment system*, if any.” (Emphasis added.) 35 Ill. Adm. Code 734.115 (2012). Relevant here, both Illinois agencies that oversee the safety and administration of underground storage tanks each include containment systems within the definition of “underground storage tank” systems. Furthermore, federal regulations also include “containment system” as part of the definition of “UST system.” See 40 C.F.R. § 280.12 (2015). Indeed, the UDC is designed to add an extra layer of protection between leaks and the environment to provide “secondary containment.” See Revising Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training, 80 Fed. Reg. 41566, 41573-74 (July 15, 2015). The United States Environmental Protection Agency specifically stated that it added “containment sumps” to the definition of underground storage tanks because it mandated the inclusion of UDCs as a secondary containment measure. *Id.* at 41574-75.

¶ 37 In this case, the parties do not dispute that the UDCs at Reliable’s gas station were located underground. Section 57.9 of the Act does not define “related tank system.” Therefore, we must incorporate the relevant definitions for an underground storage tank under the Fire Marshal and Board regulations with section 57.9 to find that a UDC is part of the “related tank system” under the Act. *Rosenbach*, 2019 IL 123186, ¶ 29; 35 Ill. Adm. Code 734.115 (2012); 41 Ill. Adm. Code 174.100 (2018). We infer that the legislature intended to incorporate a UDC as part of a “related tank system.” *Rosenbach*, 2019 IL 123186, ¶ 29. Section 57.2 of the Act provides that underground storage tanks “shall have the meanings ascribed to them” by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.* (2018)), which includes in its regulations “containment system” as part of the definition of “UST system.” See 415 ILCS 5/57.2 (West

2020); 40 C.F.R. § 280.12 (2015). Accordingly, we conclude that a UDC is part of the “related tank system” as provided in section 57.9 of the Act.

¶ 38 The Fire Marshal argues that regardless of whether we incorporate these definitions and apply them to section 57.9 of the Act, a release “must originate from a leak or discharge in the underground storage tank” and “not from the aboveground dispenser equipment—to be eligible for reimbursement from the UST Fund.” Even if a UDC is part of a “related tank system,” the Fire Marshal argues for the inclusion of a temporal element, contending instead that the location of the release itself is irrelevant and what really matters is that the leak *originated* above-ground. In support of its argument, the Fire Marshal relies upon three cases, *Township of Harlem v. Environmental Protection Agency*, 265 Ill. App. 3d 41 (1994), *Greenville Airport Authority*, Ill. Pollution Control Bd. Op. 92-157 (Feb. 4, 1993), and *Ramada Hotel, O’Hare*, Ill. Pollution Control Bd. Op. 92-87 (Oct. 29, 1992), to contend that releases from dispensers and related above-ground equipment are ineligible for reimbursement from the UST Fund. The Fire Marshal argues that “the fact that the leak had migrated into the under-dispenser containment system before discharging into the environment is irrelevant to eligibility under section 57.9(a).” The Fire Marshal contends that a release *from* the above-ground dispenser that passes through the UDC on its way to the soil has not come *from* the UDC.

¶ 39 Thus, we return to the chicken-and-egg conundrum: is eligibility for the UST Fund determined by the starting point of the leak or the location of where the leak released gasoline into the soil? The language of the Act resolves this problem.

¶ 40 Section 57.2 of the Act defines a release as “any spilling, leaking, emitting, discharging, escaping, leaching or disposing of petroleum *from* an underground storage tank into groundwater, surface water or subsurface soils.” (Emphasis added.) 415 ILCS 5/57.2 (West 2020). The Fire

Marshal argues that “from” should be interpreted “ ‘to indicate a starting point of a physical movement or a starting point in measuring or reckoning or in a statement of limits.’ ” *Ramirez v. Chicago Board of Election Commissioners*, 2020 IL App (1st) 200240, ¶ 28 (quoting Merriam-Webster Online Dictionary, <http://merriam-webster.com/dictionary/from> (last visited Feb. 19, 2020) [<https://perma.cc/9SNT-33CZ>]); see *Doyle v. Executive Ethics Comm’n*, 2021 IL App (2d) 200157, ¶ 27 (“From’ is defined as a function word used to indicate a starting point or source.”). The *Doyle* court, however, also stated that “[t]here obviously can be many steps between a starting point and the end result.” *Id.*

¶ 41 “When determining whether a listing in a statute is exclusive, courts use the rule of statutory construction known as *expressio unius est exclusio alterius*.” *O’Connell v. County of Cook*, 2021 IL App (1st) 201031, ¶ 26. This rule “is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written.” *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (citing 2A Norman J. Singer, *Statutes and Statutory Construction* §§ 47.24, 47.25, at 228, 234 (5th ed.1992)). Simply put, “[w]here a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation.” *Burke v. 12 Rothschild’s Liquor Mart, Inc.*, 148 Ill. 2d 429, 442 (1992) (citing *Department of Corrections v. Illinois Civil Service Comm’n*, 187 Ill. App. 3d 304, 310 (1989)). Applying this rule supports the Board’s analysis because it is also axiomatic that courts must construe statutes to avoid absurd results. *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 70.

¶ 42 This case involves the failure of the UDC, a secondary, underground containment system. A plain reading of the definition of “release” in section 57.2 of the Act simply requires that leaking



gasoline must come from an underground storage tank. In short, did the leak come from an underground storage tank or, as in this case, a related tank system? If the answer is “yes,” then the leak qualifies as a release “from an underground storage tank into \*\*\* subsurface soils.” 415 ILCS 5/57.2 (West 2020). The definition does not provide any temporal requirements, and we will not read any into the statute. Where the leak started is not part of the consideration, because otherwise, it would be contrary to the legislative intent of the Act designed to protect human health and the environment by helping eligible owners and operators of underground storage tanks to pay for the cleanup of leaks from underground storage tanks or related tank systems. *Id.* § 57 (describing the intent of the Act).

¶ 43 In its response brief, the Board described an appropriate illustration for this case. The Board compared the facts of this case to a teacup and a saucer underneath that both had cracks, allowing tea to leak onto the table. The Board states that “one would ordinarily say that the tea leaked ‘from’ the crack in the cup into the saucer and then ‘from’ the crack in the saucer onto the table.” The Board argues “[t]hat the leak ‘originated’ in the cup’s crack does not change the fact that without the saucer’s crack, there would have been no ‘release’ of tea to the table.” We agree with the Board that to limit the meaning of “from” in the statute to the point of origin eludes logic and would lead to an absurd result in conflict with the legislature’s intent for the Act. *Id.*

¶ 44 In some cases, reliance on dictionary definitions may be appropriate for the interpretation of a statute or contract. Here, however, Judge Learned Hand’s analysis is instructive:

“ ‘Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary;

but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.’ ” *Corbett v. County of Lake*, 2017 IL 121536, ¶ 28 (quoting *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945)).

We find that a plain reading of the Act includes no temporal requirement limiting eligibility for UST Fund reimbursement solely to the point of origin of the release. The eligibility question concerns whether the release occurred from an underground storage tank or related tank system. 415 ILCS 5/57.9 (West 2020).

¶ 45 Further, the cases the Fire Marshal cited in support of their argument are unconvincing. In *Township of Harlem*, the release of gasoline occurred from an above-ground dispenser pump nozzle. The reason for the release was unknown but was most likely a result of vandalism. An employee of Harlem Township arrived at work to find a gate open and the shop unlocked. The employee also found a puddle of fuel near the gas dispensers. In addition, the employee observed a nozzle from the fuel pump lying on the ground in an unlocked position. The pump motor had burned out, and fuel was no longer discharging from the nozzle. The Board determined that the pump and the pump nozzle were not part of an underground storage tank as defined by the Act. *Township of Harlem*, 265 Ill. App. 3d at 42. The Board also stated that if the statute is read as limiting reimbursement to leaks from underground tanks and underground interconnecting piping only, the release from the pump nozzle would not be eligible for reimbursement from the fund because the pump is not part of the underground storage tank or underground piping. This court agreed with the Board’s interpretation, finding that “[b]y nature, such leaks are difficult to spot and often difficult to prevent. Once a tank is placed in the ground, the owner has little practical

control over it.” *Id.* at 44. The court held that the release occurred above-ground and, therefore, the petitioner township was not eligible for reimbursement from the UST Fund. *Id.* at 44-45.

¶ 46 *Township of Harlem* is distinguishable from this case. There, the release of gasoline was from the above-ground dispenser only and did not involve an underground storage tank or related tank system. The release in *Township of Harlem* occurred in 1991, before the enactment of Title XVI and the amendment to the Act to include “related tank system” to the section of the statute allowing for reimbursement from the UST Fund for releases of gasoline, and before the Illinois and federal requirements mandating the use of UDCs as a secondary containment measure to prevent leaks into the soil. The leaks in this case are exactly the kind of releases the court in *Township of Harlem* warned “are difficult to spot, and often difficult to prevent,” because the UDC is located underground. We agree with the Board’s interpretation of the statute because it is consistent with the purpose of the Act “to alleviate environmental damage caused by leaking underground storage tanks.” *Id.* at 44.

¶ 47 Similarly, *Ramada Hotel* and *Greenville Airport* also involved gasoline leaks solely from gas pump nozzles located above ground. None of these cases involved releases from either an underground storage tank or a “related tank system,” and, therefore, are inapplicable here.

¶ 48 In this case, the leaks of gasoline from the UDC, located underground and part of the “related tank system” under section 57.9 of the Act, constituted a release within the meaning of the statute. We find that, based on the factual circumstances of this case, Reliable is entitled to reimbursement from the UST Fund. Accordingly, the Board properly granted summary judgment in favor of Reliance and denied the Fire Marshal’s cross-motion for summary judgment.

¶ 49

CONCLUSION

¶ 50 We affirm the Board's decision granting Reliable's motion for summary judgment, denying the Fire Marshal's cross-motion for summary judgment, and reversing the Fire Marshal's June 12, 2018, determination denying Reliable's application for UST Fund eligibility. Upon receipt of the mandate from this court, the Board may proceed to determine the deductible under sections 57.8 and 57.9 of the Act and grant all necessary and proper relief under the Act.

¶ 51 Board decision affirmed.

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*Office of the State Fire Marshal v. Illinois Pollution Control Board,*  
**2022 IL App (1st) 210507**

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**Decision Under Review:** Petition for review of order of Illinois Pollution Control Board, No. 19-02.

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