

ILLINOIS POLLUTION CONTROL BOARD  
September 6, 2001

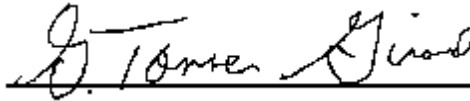
NELSON WESTERBERG, INC. )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 01-140  
 ) (UST - Appeal)  
 OFFICE OF THE STATE FIRE MARSHAL, )  
 )  
 Respondent. )

DISSENTING OPINION (by G.T. Girard and Thomas E. Johnson):

We respectfully dissent from the majority order issued today. This case is before the Board on cross-motions for summary judgement. We do not believe that additional explanation by the Office of State Fire Marshal is necessary or warranted. In deciding a motion for summary judgement the Board first determines if there is a genuine issue of material fact. Based on the record and pleadings before the Board, there is no genuine issue of material fact and this case is ripe for decision.

The record clearly demonstrates that the two tanks at issue were properly registered in March 1986 and the two tanks were in use at the time of registration. R. at 1-2. The denial letter from Office of State Marshal states that the petitioner is ineligible for reimbursement because the two tanks were "not in operation at any time since January 1, 1974." There is no support in the record for this assertion. Therefore, this case is ready to be decided. Based on facts in the record and the application of Section 57.9 of the Environmental Protection Act (415 ILCS 5/57.9), we would grant summary judgement in favor of the petitioner and find that petitioner is eligible for reimbursement.

For these reasons, we respectfully dissent.

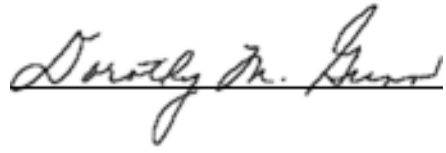


G. Tanner Girard

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Thomas E. Johnson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that I received the above dissenting opinion on September 6, 2001.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board