

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2001

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

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On April 9, 2001, Nelson Westerberg, Inc. (Westerberg) filed a petition for review, alleging that the Office of the State Fire Marshal (OSFM), in its March 6, 2001 letter, wrongfully denied it eligibility for reimbursement of corrective action costs under the Underground Storage Tank (UST) Fund. Westerberg alleged that it should be reimbursed for remediating petroleum contamination that was caused in part by leaking underground storage tanks on its property in Elk Grove Village, Cook County, Illinois.

Westerberg filed a motion for summary judgement on July 16, 2001. OSFM filed a response and cross-motion for summary judgement on August 3, 2001. Westerberg filed a response to the cross-motion and a reply on August 17, 2001. The OSFM filed a reply to the response by Westerberg on August 27, 2001.

The OSFM, in a March 6, 2001 denial letter, found that Westerberg was ineligible for reimbursement of corrective action costs under the UST Fund for the following reasons:

Tank 3 4,000 gallon Gasoline – Not in operation at any time since 1/1/74 – (430 ILCS 5/57.9); Removed prior to September 24, 1987 – (430 ILCS 15/4)
Tank 4, 4,000 gallon Diesel - Not in operation at any time since 1/1/74 – (430 ILCS 5/57.9); Removed prior to September 24, 1987 – (430 ILCS 15/4). R. at 74.

The Board recognizes that it cannot review the OSFM's UST registration decisions. Divane Bros. Electric Co. v. IEPA, PCB 93-105, slip op. at 5-6 (Nov. 4, 1993); Farrales v. OSFM, PCB 97-186, slip op. at 4 (Oct. 16, 1997). "Registration decisions constitute separate, appealable determinations made by the OSFM which can be challenged in circuit court." Kean Oil Co. v. IEPA, PCB 92-60, slip. op. at 6 (Sept. 5, 1996). The OSFM alleges as an undisputed fact that Westerberg registered tanks 3 and 4 with the OSFM on March 25, 1986. Cross Mot. at 3.

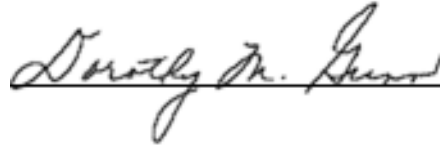
The Board directs the OSFM to explain, within 14 days after the date of this order, why the two reasons articulated in its March 6, 2001 denial letter are proper bases for denying

eligibility. Westerberg may file a response within 14 days after service of the OSFM's filing. The Board presently reserves ruling on the pending motions for summary judgment.

IT IS SO ORDERED.

Board Members G.T. Girard and T.E. Johnson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 6, 2001, by a vote of 5-2.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board