

ILLINOIS POLLUTION CONTROL BOARD
May 4, 1995

KATHE'S AUTO SERVICE CENTER,)
)
 Petitioner,)
)
 v.) PCB 95-48
) (UST-Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board on a motion for summary judgment filed by the Illinois Environmental Protection Agency (Agency) on March 23, 1995. Kathe's Auto Service Center (Kathe) is challenging the Agency's determination denying Kathe's Auto Service Center's requested reimbursement for "early action" activities conducted at Kathe's UST site.¹ The Agency's motion is similar to the one it filed in Kalo Gasoline Company v. Illinois Environmental Protection Agency, (March 16, 1995), PCB 95-41, PCB 95-74, (consolidated matters) where the Board denied the Agency's motion for summary judgement. In doing so the Board stated:

The Agency argues that Section 57.6(b) is a bar to reimbursement if early action is performed after a site classification plan is submitted. We disagree. Section 57.6(b) allows an owner or operator the latitude to perform early action activities, including tank removal, without having to go through a plan-submittal process before the Agency. On its face, Section 57.6(b) is not necessarily a bar to reimbursement as the Agency contends. Instead, seeking reimbursement from the UST Fund is limited by Section 57.5(a), which provides that costs will not be reimbursed if they exceed the minimum requirements necessary to comply with this Environmental Protection Act and by the Board's regulations governing early

¹Kathe's has also filed a petition with the Board appealing the Agency's denial of its site classification plan which is docketed as PCB 95-43. The Board consolidated these matters for the purposes of hearing only and made no finding as to whether these cases will be consolidated for the purposes of final decision. A hearing was had on March 13 and 14, 1995 at which the parties decided to not present evidence concerning PCB 95-48 and continued the matter. The statutory decision deadline in PCB 95-48 has been waived to October 30, 1995.

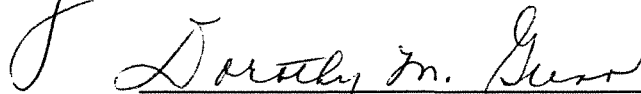
action at 35 Ill. Adm. Code 732.200 et seq. Thus, factual issues remain for hearing such as whether the early action performed by Kalo exceeded the minimum requirements necessary to comply with the Environmental Protection Act or whether the activities performed at the site constitute "early action."

In this case the Agency, citing Section 57.6(b) of the Act, states that "[p]etitioner is not entitled to reimbursement for early action costs incurred subsequent to the submission of the its Site Classification Plan...." ~~(415 ILCS 5/57.6(b) (1992).)~~ The Agency argues, as it did in Kalo, that Section 57.6(b) limits early action to activities performed prior to the submission of the site classification plan.

Section 57.6(b) of the Act states "[n]otwithstanding any other corrective action taken, an owner and operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system,...." (415 ILCS 5/57.6(b) (1993).) Section 57.6 of the Act allows individuals to take action prior to the submission of any plans to the Agency and is not a bar to taking actions which meet the requirements of 35 Ill. Adm. Code 732.200 et. seq. if plans are submitted to the Agency. We find no reason in this case to find differently than we had in Kalo. There are factual issues remaining for hearing to determine whether the early action performed by Kathe's goes beyond the necessary early action activities set forth at 35 Ill. Adm. Code 732.200 et seq. Therefore, the Agency's motion for summary judgement is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4th day of May, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board