

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 1994

TOLLES REALTY COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 93-124  
 ) (UST Fund)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

DISSENTING OPINION (by J. Theodore Meyer):

I respectfully dissent from the majority's order. The majority found that there is a genuine issue of material fact in dispute in this matter, and thus decided to defer ruling on the two pending motions for summary judgment. I dissent for two reasons.

First, assuming *arguendo* that there is indeed a genuine issue of material fact, the proper ruling would have been to deny both motions for summary judgment. As the majority correctly notes, summary judgment is appropriate where there is no genuine issue of material fact, and where the moving party is entitled to judgment as a matter of law. The majority specifically found that this case presents a genuine issue of material fact. Therefore, the case does not meet the first part of the standard for summary judgment. The courts have held that when there is a genuine issue of material fact, summary judgment must be denied. (Village of Glenview v. Northfield Woods Water & Utility Co., Inc. (1st Dist. 1991), 216 Ill.App.3d 40, 576 N.E.2d 238, 159 Ill.Dec. 569; LaSalle National Insurance Co. v. Executive Auto Leasing Co. (1st Dist. 1970), 121 Ill.App.3d 430, 257 N.E.2d 508.) To thus defer ruling on the motions to some unspecified time misses the point of summary judgment as an aid to expeditious disposition of a matter. (See Lavat v. Fruin Colnon Corp. (1st Dist. 1992), 232 Ill.App.3d 1013, 597 N.E.2d 888, 173 Ill.Dec. 914.) Assuming that there is a genuine issue of material fact, I would have denied both motions for summary judgment.

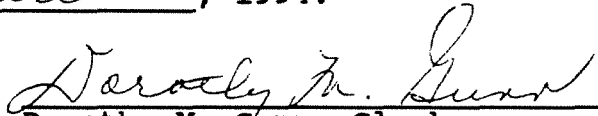
Second, I am not convinced that there is a genuine issue of material fact. The majority focuses on the fact that the Office of the State Fire Marshal (OSFM) is reviewing its determination on the registration of the tanks. However, I believe the crux of the issue is whether the Illinois Environmental Protection Agency (Agency) had the authority to issue a revised eligibility decision after it issued an initial eligibility decision which stated that that initial decision constituted the Agency's final decision concerning eligibility. Whether OSFM may determine that its registration information was incorrect is irrelevant to that

issue, and thus is not a genuine issue of material fact.

For the above reasons, I respectfully dissent.

  
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J. Theodore Meyer  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 23<sup>rd</sup> day of March, 1994.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board