

ILLINOIS POLLUTION CONTROL BOARD  
April 8, 1993

RTC INDUSTRIES, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 93-28
	)	(UST Fund)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on a March 19, 1993 motion for summary judgment filed by the Illinois Environmental Protection Agency (Agency). RTC Industries (RTC) has not filed a reply to the motion for summary judgment. Therefore, RTC has waived objection to the granting of the motion. (35 Ill. Adm. Code 101.241(b).) Also before the Board is a cross-motion for summary judgment filed on April 7, 1993 by RTC.

RTC filed its petition for review with the Board on February 10, 1993. The petition seeks review of the Agency's January 19, 1993 denial of eligibility for a 10,000 gallon heating oil tank. The Agency found the tank to be ineligible "because the tank is not registered and the fees are not paid." RTC claims that the tank was registered on December 18, 1989 and applicable fees paid. (Pet. at 3.) Attached to RTC's petition is a registration form which includes the 10,000 gallon heating oil tank.

The Agency contends that the only issue raised for review is the ineligibility determination for the 10,000 gallon heating oil tank. The Office of the State Fire Marshal (OSFM) informed the Agency that the oil tank was exempt from registration and therefore no fee was required. (Ag. Fiscal File at 91.) The Agency argues that based on notification from OSFM that the tank was not registered, the Agency determined the tank was ineligible. The Agency notes that the Board has previously held that OSFM registration determinations are not reviewable by the Board.

The Board finds that the only issue on review is the Agency denial of eligibility of the 10,000 gallon oil tank because the tank was not registered. To be eligible to receive money from the Underground Storage Tank Fund, the owner or operator must have registered the tank and paid all applicable fees. (415 ILCS

0141-0117

5/22.18b(4) (1992).)<sup>1</sup> Under the statutory division of authority, the OSFM is the agency with the authority to register tanks. (430 ILCS 15/4 (1992).)<sup>2</sup> In Village of Lincolnwood v. IEPA (June 4, 1992), PCB 91-83, PCB, the Board held that it "has no authority over registration of USTs and, therefore, the issue of whether the ... USTs, could, should, or might be registered is not material to the Board's review.." Any determination of registration is made by the OSFM and is not reviewable by the Board. (Martin Oil Marketing v. IEPA (August 13, 1992), PCB 92-53.)

As the time for the Agency to file a response to RTC's cross-motion for summary judgment has not elapsed, the Board will delay reaching a decision on the Agency's motion for summary judgment until the cross-motion is ripe for Board determination. The Board intends to decide these motions at its next scheduled Board meeting on April 22, 1993.

However, the Board notes that a hearing in this matter is presently scheduled for April 23, 1993. The decision deadline in this matter is June 6, 1993. Absent an appropriate waiver of the decision deadline, this hearing may not be cancelled and must go forward as scheduled, to allow adequate time for the parties to brief the issues and for the Board's deliberation. The parties are required to fully address the merits of the case at the scheduled hearing. It is the burden of the petitioner to proceed with this matter in accordance with the decision deadline. Failure by the petitioner to meet deadlines may result in dismissal of this matter. The Board also notes that RTC, as an alternative to its cross-motion for summary judgment, requests the Board to grant a stay of the proceedings in this matter. The Board notes that given the present decision deadline of June 6, 1993, the Board cannot grant a stay of the proceedings.

If RTC desires to postpone the scheduled hearing until after resolution of the motions for summary judgment or to stay the proceedings pending the determination of its appeal before the OSFM, it must file an open waiver of the decision deadline or a waiver until a date certain that will allow for sufficient time to reschedule the hearing and allow the Board to deliberate. (See 35 Ill. Adm Code 101.105.)

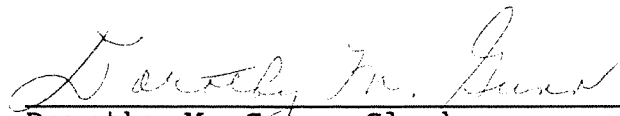
IT IS SO ORDERED.

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<sup>1</sup> Previously codified at Ill. Rev. Stat. 1991, ch. 111½, par. 1022.18b(4).

<sup>2</sup> Previously codified at Ill. Rev. Stat. 1991, ch. 127½, par. 156.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17 day of April, 1993, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board