

ILLINOIS POLLUTION CONTROL BOARD  
April 8, 1993

KEWANEE COMMUNITY UNIT SCHOOL )  
DISTRICT NO. 229, )  
 )  
Petitioner, )  
 )  
v. ) PCB 93-39  
 ) (UST Fund)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a March 30, 1993 motion for summary judgment, filed by respondent Illinois Environmental Protection Agency (Agency). Petitioner Kewanee Community Unit School District No. 229 (Kewanee) filed its response in opposition to the motion on April 2, 1993.

The Agency contends that all costs which are the subject of this appeal were incurred before Kewanee notified the Illinois Emergency Services and Disaster Agency (ESDA). The Agency points to prior Board decisions holding that costs incurred before ESDA was notified of a release should not be reimbursed. (North Suburban Development Corp. v. Illinois Environmental Protection Agency (December 19, 1991), PCB 91-109; Kronon Motor Sales, Inc. v. Illinois Environmental Protection Agency (January 9, 1992), PCB 91-138, aff'd. Kronon Motor Sales, Inc. v. Pollution Control Board (1st Dist. October 30, 1992), No. 1-92-1032.) Thus, the Agency maintains that because the costs in dispute were clearly incurred before notification of ESDA, and because the disputed costs in combination with the \$10,000 deductible total more than the amount sought by Kewanee, there are no reimbursable costs for the Agency to pay. The Agency asserts that there is no genuine issue of material fact, and that it is entitled to summary judgment.

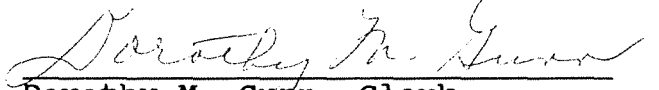
In response, Kewanee disputes the Agency's contention that there is no genuine issue of material fact. Kewanee states that it does not dispute that a \$10,000 deductible is applicable, nor does it dispute that costs incurred before ESDA notification do not qualify for reimbursement. However, Kewanee does contend that there is a genuine issue of material fact as to how much of the disputed costs were billed prior to ESDA notification. Kewanee argues that the Agency has erroneously doubled the expenditures for two months before ESDA notification, by listing the backup for the invoices as separate bills. Kewanee has included an affidavit from its consultant, stating that two pages

of costs referred to by the Agency (R. at 69, 82) are not separate bills but are documentation of two invoices. (R. at 62, 65.) In sum, Kewanee maintains that because of this factual dispute, summary judgment must be denied.

After reviewing the record, the Board finds that there is a genuine issue of material fact as to what costs were incurred prior to ESDA notification. It is not possible to tell, from the face of the record, whether the pages in dispute comprise separate bills or backup documentation. Because there is a genuine issue of material fact, summary judgment is not appropriate. Therefore, the Agency's motion 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 8<sup>th</sup> day of April, 1993, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board