

ILLINOIS POLLUTION CONTROL BOARD  
January 9, 1992

KRONON MOTORS SALES, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 91-138  
 ) (Underground Storage Tank  
 ) Reimbursement Determination)  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

ORDER OF THE BOARD (by R. C. Flemal):

On November 25, 1991, the Illinois Environmental Protection Agency ("Agency") filed a Motion for Summary Judgement. On December 10, 1991, the Board received a Cross-Motion for Summary Judgement filed by Kronon Motor Sales, Inc. ("Kronon"). The Agency filed a response to the cross motion which the Board received on December 20, 1991. On December 31, 1991, Kronon filed a "Reply to Respondent's Objection to Cross-Motion for Summary Judgement". Section 101.241(c) of the Board's procedural rules provides that the moving person shall not have a right to reply except as permitted by the Board or the hearing officer to prevent material prejudice. Kronon has not sought leave of the Board to file its reply, therefore, the reply will not be considered. The sole issue before the Board in this appeal of the Agency's determination for reimbursement is whether or not Kronon is eligible to receive reimbursement for costs for remedial action incurred prior to notification by Kronon of the Emergency Service and Disaster Agency ("ESDA"). Both parties seek summary judgement in their favor on that issue.

The Board has recently held that costs which are incurred prior to ESDA notification are not reimbursable. (North Suburban Development Corporation v. IEPA, PCB 91-109, December 19, 1991). In North Suburban, the Board thoroughly discussed the arguments put forth by the parties regarding the interpretation of Section 22.18b(d)(4)(D) of the Environmental Protection Act ("Act") and of Section 731.150 of the Board's rules. Kronon has not presented any new arguments regarding the interpretation of the Act and the Board's rules. The only new argument presented by Kronon is the applicability of Section 731.150 to the facts surrounding Kronon's removal of the tanks.

Kronon maintains that Section 731.150 applies only to underground storage tank systems which are in operation and since Kronon's tanks were not in operation, Section 731.161 should apply to Kronon. The Board finds this argument unpersuasive. As the Agency points out in its response, the express language of Section 731.150 is applicable to "UST site[s]". The Board is persuaded

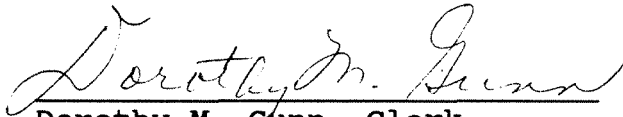
that the presence of underground storage tanks on property does constitute "UST site[s]". Regardless of which notification requirement Kronon is subject to, costs incurred prior to notification of ESDA are not reimbursable. Therefore, the Board grants the Agency's Motion for Summary Judgement and denies Kronon's Cross-Motion for Summary Judgement. The Agency's denial of reimbursement for costs incurred prior to ESDA notification is affirmed. This docket is hereby closed.

IT IS SO ORDERED.

J. Anderson and M. Nardulli dissented.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 1/2 par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 9<sup>th</sup> day of January, 1992, by a vote of 4-2

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board