

ILLINOIS POLLUTION CONTROL BOARD
November 21, 1991

WILLIAMSON ADHESIVES, INC.,)
)
 Petitioner,)
)
 v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

PCB 90-168
(UST Fund Reimbursement)

ORDER OF THE BOARD (by B. Forcade):

Williamson initiated this proceeding by its petition for review filed September 4, 1990. The petition sought review pursuant to Ill. Rev. Stat. 1989 ch. 111 1/2, par. 1022.18b(g) and 1040 of the Agency's August 2, 1990 denial of reimbursement for costs of corrective action under Ill. Rev. Stat. 1989 ch. 111 1/2 par. 1022.18b(a).

Section 22.18b(a) subparagraph (3) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat., 1989, reads as follows:

"a. An owner or operator is eligible to receive money from the Underground Storage Tank Fund for costs of corrective action or indemnification only if all of the following requirements are satisfied:...

3. The costs of corrective action or indemnification were incurred by an owner or operator as a result of a release of petroleum, but not including any hazardous substance, from an underground storage tank;

Williamson sent an Application for Reimbursement from the Underground Storage Tank (UST) Fund to the Agency on July 20, 1990. Williamson sought reimbursement for four tanks containing hexane and one tank containing toluene. The Agency determined that Williamson's application was not eligible for reimbursement since the tanks did not contain a petroleum product and there was no evidence of a release of a petroleum product at the facility.

The petitioner sought review of the Agency's denial for reimbursement on the following issues: a) the nature of the discharge from petitioner's tanks, b) whether hexane is a

petroleum product, and c) whether petitioner is eligible for reimbursement.

On March 25, 1991 the Agency received Petitioner's re-application for reimbursement. On May 24, 1991 the Agency informed Petitioner that the supplemental information in the re-application did not cause the Agency to alter its decision of August 2, 1990. Petitioner filed a petition for review (PCB 91-112) dated June 28, 1991 of the Agency's May 24, 1991 decision.

The Board issued an order in Williamson Adhesives, Inc. v. IEPA PCB 91-112 (August 22, 1991) granting summary judgement in favor of the Agency. The order concluded that:

.....both hexane and toluene are "hazardous substances" under Section 3.14 of the Act. Congress listed hexane as a "hazardous air pollutant" in Section 112(a) of the Clean Air Act. Congress similarly listed toluene in that provision. Further, USEPA has designated toluene as a "hazardous substance" at 40 CFR 116.4, pursuant to Section 311(b)(2)(A) of the Clean Air Act, and at 40 CFR 302.4, pursuant to Section 102 of CERCLA, and as a "toxic water pollutant" at 40 CFR 401.15, pursuant to Section 307(a) of the Clean Water Act.

* * * * *

Therefore, pursuant to Section 22.18b(a)(3), Ill. Rev. Stat. 1989 ch. 111 1/2, par. 1022.18b(a)(3), Williamson Adhesives is not eligible for reimbursement for costs of corrective action. A release of toluene is not a "release of petroleum" that would entitle Williamson Adhesives to such reimbursement. A release of hexane is a release of "hazardous substance" for which reimbursement is not allowed.

Summary judgement is appropriate where there is no genuine issue of material fact based on the affidavits, admissions, pleadings and other items in the record. Caruthers v. B.C. Christopher & Co., 57 Ill. 2d 376, 380, 314 N.E. 2d 457, 459 (1974); Ill. Rev. Stat. 1989 ch. 110 par. 1005(d).

On June 3, 1991 the Agency filed a Motion for Summary Judgement. The Board on June 6, 1991, denied the Agency's motion because the motion was not filed 21 days prior to a hearing scheduled for June 13, 1991 as required by 35 Ill. Adm. Code 101.245. At the June 13th hearing, the parties agreed to change the hearing to a pre-hearing conference. On June 27, 1991, Petitioner filed a Response to Motion for Summary Judgement. The Board, on its own motion reconsiders the Agency's Motion for Summary Judgement.

Conclusion

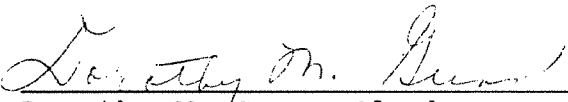
Hexane and toluene are "hazardous substances". Therefore, pursuant to Section 22.18b(a)(3), Ill. Rev. Stat. 1989 ch. 111 1/2 par. 1022.18b(a)(3), Williamson is not eligible for reimbursement for costs of corrective action.

Therefore, the Board hereby grants summary judgement in favor of the Agency. The Board hereby affirms the Agency's decision of August 2, 1990 that disallowed reimbursement from the Underground Storage Tank Fund. This docket is closed.

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.

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 2nd day of November, 1991 by a vote of 6-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board