

ILLINOIS POLLUTION CONTROL BOARD
June 20, 1991

CHARLES AND SENORIA BROWN)	
d/b/a C & S AUTO PLAZA, NORTH)	
END PLAZA SALES & SERVICE,)	
INC., AND CWI, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 91-64
)	(Underground Storage Tank
)	Fund Reimbursement Determination)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.C. Marlin):

This action was initiated by the filing with the Board on April 11, 1991 of a petition for review of an Illinois Environmental Protection Agency (Agency) underground storage tank (UST) fund determination pursuant to Section 22.18(b)(g) of the Illinois Environmental Protection Act (Act), Ill. Rev. Stat. 1989, ch. 111½, par. 1001 et seq. The petition was not accompanied by an appearance. However, the petition was signed by an attorney who stated that he represented all named petitioners: Charles and Senoria Brown d/b/a C&S Auto Plaza (the Browns), North End Plaza Sales and Service, Inc. (North End) and CWI, Inc. (CWI).

On May 3, 1991 the Agency filed a motion, accompanied by affidavits, to dismiss this action; the Agency filed a supplement to the motion on May 6, 1991. On May 13, 1991, a motion "retraxit" (dated May 9, 1991) was filed on behalf of the Browns and North End by Black and Associates, Ltd.

As the Agency states in its motion, which as earlier stated is supported by affidavits and other documents, the Browns are the owners and operators of the USTs at issue here, North End is a contractor who performed services for the Browns, and CWI is a subcontractor to North End.

The essence of the May 3-6 and May 13 motions is that the Browns and North End had never retained the attorney who filed this action and had in no way authorized the filing of this action. All motions contained proper proofs of service on other parties.

On June 7, 1991, the attorney who filed the petition filed a "Withdrawal of Petition for Hearing", supported by affidavit, stating that the petition had in fact been filed "with the full authority of all the listed Petitioners". The filing goes on to detail the discussion held at a May 10, 1991 meeting between the listed petitioners and their various attorneys to resolve the "seemingly contradictory position which had been created by the filing of the [May 3 & 13] pleadings". The document relates that statements made by Agency personnel had convinced the Browns and North End not to proceed with the petition.

On June 13, 1991, the Agency filed a response to the June 7 withdrawal statement. This response, which was also supported by affidavit, notes that Agency personnel were not present at the May 10, 1991 meeting and takes strong exception to actions attributed to the Agency, asserting that the events did not occur.

The Board is in no position to determine which of the two attorneys who purport to act on behalf of petitioners in fact have authority to do so. However, as the "motion retraxit" and withdrawal statement each seek the same resolution to this action, the Browns and North End are accordingly dismissed from this action at their request. Their motion "retraxit" further seeks entry of "an order de deceptione for costs, attorneys fees and any other damages and claims it deems equitable". The motion is denied as beyond the Board's jurisdiction.

This would leaves CWI as the sole petitioner. Section 22.18(b)(g) of the Act provides in part that:

If the Agency refuses to reimburse or authorized only a partial reimbursement, the affected owner or operator may petition the Board for a hearing...

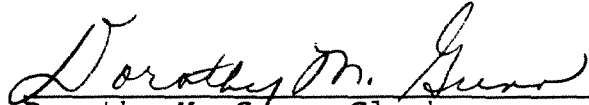
By the statute's terms, CWI has no standing to bring this action, and is accordingly dismissed.

As there are no petitioners remaining in this action who have desire and standing to pursue this action, this matter is dismissed and the docket is closed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111 $\frac{1}{2}$, 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 20th day of June, 1991, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board