

ILLINOIS POLLUTION CONTROL BOARD

August 6, 1998

ROHRMAN MIDWEST MOTORS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 98-21
	)	(UST - FRD)
OFFICE OF THE STATE FIRE MARSHAL,	)	
	)	
Respondent.	)	

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

This matter comes before the Board on a motion for summary judgment filed by respondent, Office of the State Fire Marshal (OSFM). Petitioner, Rohrman Midwest Motors, Inc. (Rohrman), has not responded to the motion.

For the reasons set forth below, the Board finds that there are no genuine issues of material fact remaining and that OSFM is entitled to judgment under the law. Therefore, OSFM's motion for summary judgment is granted and this matter is dismissed.

BACKGROUND

Rohrman filed the instant appeal on July 25, 1997. Rohrman seeks reversal of the OSFM's June 24, 1997 determination that a 4,000 gallon gasoline underground storage tank (UST) located at 1275 East Dundee Road, Palatine, Illinois, is subject to a \$100,000 deductible under the State's leaking underground storage tank (LUST) cleanup reimbursement program.

OSFM filed its motion for summary judgment on June 29, 1998. Pursuant to Section 103.140(c) of the Board's procedural rules, Rohrman was allowed a response time of seven days after service of the motion. Rohrman failed to file a response, and therefore is deemed to have waived objection to the granting of the motion. 35 Ill. Adm. Code 103.140(c). However, such waiver of objection does not bind the Board in the decision of the motion. 35 Ill. Adm. Code 103.140(c).

Deductibles applicable in LUST reimbursement actions are established at Section 57.9 of the Environmental Protection Act (Act) (415 ILCS 5/57.9(1996)). That section states in pertinent part:

- b. An owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action after the application of a \$10,000 deductible, except in the following situations:
  - 1. A deductible of \$100,000 shall apply when none of the underground storage tanks were registered prior to July 28, 1989...
- c. Eligibility and deductibility determinations shall be made by the Office of the State File Marshal.

Rohrman claims the UST at issue was “adequately registered” prior to July 28, 1989. Pet. at 6.<sup>1</sup> The OSFM disputes this contention, noting that its files contain no record of any such registration. See affidavit of Keith H. Immke, Legal Counsel for the OSFM, Exhibit D to motion for summary judgment. The OSFM therefore contends that the deductible is properly \$100,000 and that this matter should be dismissed.

### CONCLUSION

There is no question that under the Act a LUST cleanup is subject to a \$100,000 deductible if the owner or operator failed to register the tank before June 28, 1989. In the instant case there is no evidence that the UST at issue was registered before the June 28, 1989 date. Rohrman fails to provide any documentation that would allow the conclusion that the UST was registered before June 28, 1989. The OSFM, conversely, attests through the affidavit of its legal counsel, that it has used a standard UST registration form at all time relevant to this proceeding, and that its files do not contain a copy of this form completed by petitioner and filed with the OSFM on or before July 28, 1989. Exh. D. of Motion.

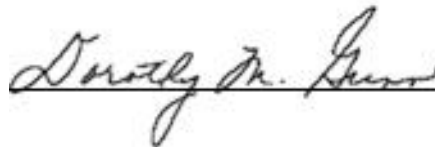
Summary judgment is appropriate when there are no genuine issues of fact for the trier of fact to consider and the movant is entitled to judgment as a matter of law. Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; Williams Adhesives, Inc. v. IEPA (August 22, 1991), PCB 91-112. The Board finds that no genuine issues of fact exists regarding whether Rohrman properly registered the UST prior to June 28, 1989. As Rohrman’s lone contention is that the site was properly registered (Pet. at 2) , a point that is clearly refuted both by Exhibit D and Rohrman’s failure to prove otherwise, the motion for summary judgment is granted.

This matter is hereby dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 6th day of August 1998 by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

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<sup>1</sup> Citations to Rohrman’s Petition for Appeal will appear as “Pet. at \_\_\_”.