

ILLINOIS POLLUTION CONTROL BOARD
November 4, 1993

DIVANE BROS. ELECTRIC CO.,)
)
Petitioner,)
)
v.) PCB 93-105
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

DISSENTING OPINION (by J. Anderson):

I again dissent for the reasons expressed in my earlier dissents in J.J.R.S. Investments v. IEPA (July 14, 1993), PCB 93-107; Phillips 66 Company v. IEPA (January 21, 1993), PCB 92-171; City of Lake Forest v. IEPA (June 23, 1992), PCB 92-36; and my dissents of July 30, 1992 on motions for reconsideration in Lake Forest and Village of Lincolnwood v. IEPA, PCB 91-83.

Perhaps it is best to simply repeat my reasons expressed in my most recent dissent, J.J.R.S. Investments.

The majority has granted summary judgment based on the Board's lack of authority to review a determination of the OSFM not to register the tank. In this case, the OSFM disallowed registration of the tank because it is exempt from registration under the Gasoline Storage Act.

I have no disagreement with the holding that the OSFM's registration determinations are not reviewable by the Board. However, I don't believe that the Fire Marshal's determination ends the issue as a matter of law. What is properly before the Board for its determination are the statutory provisions in the Environmental Protection Act addressing eligibility requirements for accessing the Fund. The eligibility requirements are listed in Section 22.18b(a) of the Environmental Protection Act. In pertinent part, Section 22.18b(4) states:

The owner or operator has registered the tank in accordance with Section 4 of the Gasoline Storage Act and paid into the Underground Storage Tank Fund all fees required for the tank in accordance with Sections 4 and 5 of that Act and regulations adopted by the Office of State Fire Marshal.
(Emphasis added.)


If the Gasoline Storage Act by its terms allows exemptions from registration, I suggest that the requirements of Section 22.18b(4) of the Environmental Protection Act have been satisfied.

At the very least, I don't believe that the above-quoted provision is plain on its face. I would argue, therefore, that we should construe the section from the environmental perspective embodied in the Environmental Protection Act as a whole. As I stated in an earlier dissent on this same subject in City of Lake Forest v. IEPA, (June 23, 1992), PCB 92-36, 134 PCB 337:

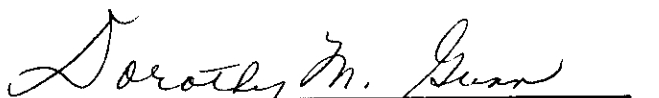
Our fundamental perspective, after all, is not limited to questions of monetary claims, or implicitly to husband the UST Fund for particular classes of tank owners. . .After all, the UST Fund exists to make it easier to comply with RCRA requirements for corrective action for UST's; indeed, the environmental-related concerns flowing from the RCRA program are why the Agency-administered UST Fund for corrective action is in the Environmental Protection Act in the first place.

In so saying, I fully share the ongoing difficulty the Board has had construing the statutory language of the UST Fund.

It is for these reasons that I respectfully dissent.


Joan G. Anderson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 5th day of November, 1993.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board