

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2007

VILLAGE OF WILMETTE,)	
)	
Petitioner,)	
)	
v.)	PCB 07-27
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent from the majority opinion, in which the Board grants the motion for summary judgment filed by the Illinois Environmental Protection Agency (Agency) and denies the cross-motion for summary judgment filed by the Village of Wilmette (Village). The majority opinion finds that the Agency properly rejected the Village's request for a budget amendment concerning corrective action performed at the Village's leaking underground storage tank (UST) site. The sole reason for the rejection is that the Village submitted its proposed budget amendment to the Agency after the Agency issued a No Further Remediation (NFR) letter for the site.

The crux of both motions for summary judgment is the meaning of 35 Ill. Adm. Code 732.405(d). The last sentence of Section 732.405(d) provides that a corrective action plan and budget must be submitted to the Agency prior to issuance of an NFR letter. This sentence, however, must be read in light of the overall purpose of the regulation. I believe that this regulation is intended to address only those situations when a UST owner or owner has proceeded with corrective action before submitting or receiving approval of any corrective action plan or budget. That is not the case here. The record is clear that the Village submitted and received approval of a corrective action plan and budget before beginning corrective action, making Section 732.405(d) inapplicable. Moreover, though the Village's amended budget was submitted after the work was completed and the NFR letter was issued, the proposed budget amendment seeks reimbursement only for work previously approved by the Agency.

Accordingly, I feel the proper course of action in this case is to grant the Village's motion for summary judgment and deny the motion filed by the Agency. This matter should be remanded to the Agency with instructions to consider the merits of the Village's proposed budget amendment.

For these reasons, I respectfully dissent.

A handwritten signature in black ink, consisting of a large, stylized initial 'T' followed by a long, horizontal stroke.

Thomas E. Johnson

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on July 17, 2007.

A handwritten signature in black ink, written in a cursive style, reading 'John T. Therriault'.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board