ILLINOIS POLLUTION CONTROL BOARD
July 7, 2011

WHEELING/GWA AUTO SHOP,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 10-70
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

INTERIM OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

Wheeling/GWA Auto Shop (Wheeling) appeals a February 2, 2010 determination of the Illinois Environmental Protection Agency (Agency) concerning a leaking underground storage tank (UST) site known as "GWA Auto Shop," located at 434 S. Milwaukee Avenue in Wheeling, Cook County. In the determination, the Agency modified Wheeling's proposed corrective action plan (CAP) budget for purposes of reimbursement from the UST Fund. Specifically, the Agency deducted $78,915.82 from the budget on the grounds that Wheeling's costs were incurred before Wheeling submitted an "election to proceed as owner" form to the Agency. In this appeal, the parties have filed cross-motions for summary judgment on which the Board rules today.

For the reasons below, the Board finds that there are are no genuine issues of material fact and that Wheeling is entitled to judgment as a matter of law. Accordingly, the Board grants Wheeling's summary judgment motion and denies the Agency's summary judgment motion. In so doing, the Board reverses the Agency's reduction of Wheeling's CAP budget and remands the matter to the Agency to consider the merits of that portion of the budget.

In this interim opinion, the Board first describes the procedural history of the case, after which the Board provides the relevant legal framework. Next, the Board sets forth its findings of fact. Then, after summarizing the arguments made in the cross-motions for summary judgment and related responses, the Board discusses the issue presented and renders its ruling. Today's decision comes as an interim opinion and order because further information is required regarding Wheeling's request for legal fees.

PROCEDURAL HISTORY

On March 10, 2010, Wheeling and the Agency filed a joint request for a 90-day extension of the period in which Wheeling could file a petition for review of the Agency's February 2, 2010 determination. On March 18, 2010, the Board extended the appeal period until June 10, 2010. On June 10, 2010, Wheeling timely filed a petition for review (Pet.). On June 17, 2010, the Board accepted the petition for hearing and ordered that the Agency file the administrative record of the February 2, 2010 determination by July 12, 2010.

On August 13, 2010, Wheeling moved for a default judgment based on the Agency's failure to timely file the administrative record. During an August 25, 2010 telephonic status conference with the hearing officer, counsel for the Agency stated that she had only recently been appointed to serve as Special Assistant Attorney General in this matter and that she anticipated filing the administrative record by September 3, 2010. *See* PCB 10-70 Hearing Officer Order at 1 (Aug. 27, 2010).

On September 3, 2010, the Agency filed the 1,270-page administrative record (AR), along with a motion for summary judgment (Ag. Mot.). On September 22, 2010, Wheeling filed two motions: (1) a motion for a one-week extension (to September 30, 2010) of the deadline for filing a response to the Agency's motion for summary judgment; and (2) a motion to withdraw Wheeling's motion for a default judgment. The Board grants both Wheeling's motion for extension and motion for withdrawal. On September 30, 2010, Wheeling timely filed a response (Wh. Resp.) to the Agency's motion for summary judgment. On October 7, 2010, the Agency filed a motion for leave to file a reply to Wheeling's response, attaching the reply. The Board grants the Agency's motion for leave and accepts the reply (Ag. Reply).

On October 29, 2010, Wheeling filed a cross-motion for summary judgment (Wh. Mot.). On November 10, 2010, the Agency filed a response (Ag. Resp.). Based upon Wheeling's most recent waiver, the statutory deadline by which the Board must decide this appeal is November 2, 2011.

LEGAL BACKGROUND

In this section of the interim opinion, the Board provides legal background on UST appeals, the definition of "owner" under Title XVI of the Environmental Protection Act (Act) (415 ILCS 5/57 *et seq*. (2010)), and the standards for considering motions for summary judgment.

UST Appeals

Under Title XVI of the Act, entitled "Petroleum Underground Storage Tanks," the Agency determines whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the UST Fund. *See* 415 ILCS 5/57.7, 57.8 (2010). A UST owner or operator may appeal Agency determinations to the Board under Section 40 of the Act (415 ILCS 5/40 (2010)), which governs Board review of Agency permit determinations. *See* 415 ILCS 5/40(a)(1), 57.7(c)(4), 57.8(i) (2010); 35 Ill. Adm. Code 105.Subpart D.

The Board must decide whether the submittals to the Agency demonstrated compliance with the Act. *See*, *e.g.*, Illinois Ayers Oil Co. v. IEPA, PCB 03-214, slip op. at 8 (April 1, 2004); Kathe's Auto Service Center v. IEPA, PCB 96-102, slip op. at 13 (Aug. 1, 1996). The Board's review is generally limited to the record before the Agency at the time of the Agency's determination. *See*, *e.g.*, Freedom Oil v. IEPA, PCB 03-54, slip op. at 11 (Feb. 2, 2006); *see also* Illinois Ayers, PCB 03-214, slip op. at 15 ("the Board does not review the Agency's decision

using a deferential manifest-weight of the evidence standard"). Further, the Agency's denial letter frames the issue on appeal (*see, e.g.*, Karlock v. IEPA, PCB 05-127, slip op. at 7 (July 21, 2005)) and the UST owner or operator has the burden of proof (*see, e.g.*, Ted Harrison Oil v. IEPA, PCB 99-127, slip op. at 5-6 (July 24, 2003); *see also* 35 Ill. Adm. Code 105.112).

UST "Owner"

Section 57.2 of the Act provides in pertinent part as follows:

> [w]hen used in connection with, or when otherwise relating to, underground storage tanks, the terms "facility", "owner", "operator", "underground storage tank", "(UST)", "petroleum" and "regulated substance" shall have the meanings ascribed to them in Subtitle I of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580)[1]; . . . *provided further however that the term "owner" shall also mean* any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation letter" by the Agency pursuant to this Title. 415 ILCS 5/57.2 (2010) (emphasis added); *see also* 35 Ill. Adm. Code 732.103, 734.115 (definition of "owner").

The "election to proceed" as "owner" provision was added to Section 57.2 by Public Act 94-274, effective January 1, 2006.

Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *See* Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358 (1998); *see also* 35 Ill. Adm. Code 101.516(b). When ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd & Dowd, 181 Ill. 2d at 483. Summary judgment "is a drastic means of disposing of litigation," and therefore the Board should grant it only when the movant's right to the relief "is clear and free from doubt." *Id*.

[1] The federal definition of "owner" is codified in the Board's UST regulations: "Owner" means "In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use; (Derived from 42 USC 6991)." 35 Ill. Adm. Code 732.103, 734.115.

Where the parties file cross-motions for summary judgment, "they agree that no issues of material fact exist and invite the court to decide the issues presented as questions of law." Village of Oak Lawn v. Faber, 378 Ill. App. 3d 458, 462, 885 N.E.2d 386 (1st Dist. 2007). "However, the mere filing of cross-motions for summary judgment does not preclude a determination that triable issues of fact remain." *Id*.

FACTS

The site, which is located at 434 S. Milwaukee Avenue in Wheeling, Cook County, was first developed as a gasoline station in the 1960s and later used as an auto shop. AR at 9, 10, 724, 726, 1169. Four petroleum USTs, including USTs registered with the Office of the State Fire Marshal (OSFM), were removed from the site on August 9, 1995. AR at 727, 907-08, 910-11, 914-18, 921-28. Also on August 9, 1995, a UST release of gasoline and diesel fuel was reported by the auto shop owner to the Illinois Emergency Management Agency (IEMA). AR at 1, 1052, 1245, 1252. IEMA assigned Incident Number 951688 to the release. AR at 1, 9.

In 2002, Wheeling conducted environmental assessments of the site for purposes of potential redevelopment. AR at 9, 10, 724, 727-28, 1169, 1246. In early 2003, after purchasing the site, Wheeling excavated contaminated soil in connection with Incident Number 951688. AR at 9, 10, 63, 221, 1246, 1252. On July 30, 2003, Wheeling submitted to the Agency a corrective action completion report (CACR), documenting soil removal and sampling activities. AR at 5, 215, 1245. The CACR requested that "a No Further Remediation [NFR] letter be issued for this incident." AR at 9.

In a November 18, 2003 letter to Wheeling, the Agency declined to consider the CACR under the leaking UST program. AR at 215, 1246. In the determination, the Agency quoted the UST regulatory definitions of "owner" and "operator" and stated:

> Based on the information available, it appears the Village of Wheeling is not the owner or operator of the underground storage tank system removed at the property in 1995, resulting in the assignment of incident no. 951688. Therefore, the Village of Wheeling has no reporting requirements for the incident. *Id*.

In a letter dated December 5, 2005, an environmental consultant for Wheeling informed the Agency that the site is owned by Wheeling and that "[i]n 2003, subsequent to the purchase, the Village under took [*sic*] the investigation and cleanup of the site as required, in order to resolve the open LUST incident." AR at 221. On January 23, 2006, the Agency received from Wheeling an "Election to Proceed as 'Owner'" form regarding Incident Number 951688. AR at 225, 1246. The election, which was executed on January 17, 2006, stated:

> Pursuant to Section 57.2 of the Environmental Protection Act, I hereby elect to proceed as an "owner" under Title XVI of the Environmental Protection Act. I certify that I have acquired an ownership interest in the above-named site, that one or more underground storage tanks registered with the Office of the State Fire Marshal have been removed from the site, and that corrective action on the site

> has not yet resulted in the issuance of a "no further remediation letter" by the Illinois EPA pursuant to Title XVI of the Environmental Protection Act.
>
> I understand that by making this election I become subject to all of the responsibilities and liabilities of an "owner" under Title XVI of the Environmental Protection Act. I further understand that, once made, this election cannot be withdrawn. AR at 225.

On March 2, 2006, the Agency issued a letter to Wheeling acknowledging receipt of Wheeling's election. AR at 229, 1246. In the letter, the Agency "accepted" the election, noted that Wheeling "may be eligible to access the Underground Storage Tank Fund for reimbursement," and referred Wheeling to the OSFM for "information regarding eligibility and the deductible amount to be paid." AR at 229.

In a letter of June 28, 2006, directed to Wheeling, the OSFM noted that an election to proceed as owner had been submitted by Wheeling and accepted by the Agency. AR at 929. The OSFM "determined, therefore, that [Wheeling is] eligible to seek payment of costs in excess of $10,000." *Id*. The OSFM added that the costs must be in response to Incident Number 951688 and associated with specified USTs. *Id*.

On October 14, 2009, Wheeling submitted to the Agency a corrective action plan (CAP) and budget for Incident Number 951688 concerning, among other things, cleanup work performed in 2003. AR at 1149; *see also* AR at 1051-52, 1066-67, 1149, 1150, 1251-53, 1256. On February 2, 2010, the Agency issued the determination at issue in this appeal. AR at 1263. The Agency approved the CAP, stating that the activities in the CAP are "appropriate to demonstrate compliance with Title XVI of the Act." AR at 1263. The Agency also required the submission of a CACR. AR at 1264.

In addition, the Agency reduced Wheeling's CAP budget by $78,915.82 on the grounds that those costs were incurred by Wheeling before January 23, 2006, the date on which the Agency received Wheeling's election to proceed as owner. AR at 1263, 1265-66. The Agency determination letter stated that before January 23, 2006, Wheeling did not meet the definition of "owner" or "operator" in Section 57.2 of the Act. AR at 1265. The $78,915.82 figure consists of $4,141 in "analytical costs" and $74,774.82 in "remediation and disposal costs." AR at 1066-70, 1266. The Agency has not issued an NFR letter pursuant to Title XVI of the Act for Incident Number 951688. AR at 225, 229, 1264.

PARTIES' ARGUMENTS REGARDING SUMMARY JUDGMENT

In filing cross-motions for summary judgment, the parties agree that there are no genuine issues of material fact and that judgment may be entered as a matter of law. Ag. Mot. at 3, 4; Wh. Mot. at 1, 9. The Agency argues that Wheeling was not the "owner" under Section 57.2 when the work was performed in 2003 because Wheeling did not fulfill the statutory election requirement until January 23, 2006. Ag. Mot. at 6-7; Ag. Reply at 4-6; Ag. Resp. at 4. The Agency maintains that in not submitting the election until after the work was completed, Wheeling "ignored" the election requirement. Ag. Reply at 4-5; *see also* Ag. Resp. at 4.

According to the Agency, "[i]f a person could become an owner without the election to proceed, there would be no need for such an election in the Act." Ag. Mot. at 6; *see also* Ag. Resp. at 5.

Wheeling asserts that it undeniably falls within the plain and unambiguous election language in the Section 57.2 definition of "owner." Wh. Mot. at 9-10, 12. According to Wheeling, Public Act 94-274 expanded the "owner" definition precisely to allow those taking title to leaking UST-contaminated property to become eligible for UST Fund reimbursement and thereby encourage cleanups. *Id*. at 4-5, 9. The Agency's interpretation of the statutory language would, in Wheeling's view, discourage the remediation of abandoned historical contamination. *Id*. at 11-12. Wheeling also emphasizes that with the election, Wheeling became the "owner" under Title XVI not only for purposes of UST Fund reimbursement, but also for purposes of responsibility and liability. *Id*.

Wheeling further asserts that the OSFM, not the Agency, has the authority to determine a person's eligibility for access to the UST Fund. According to Wheeling, IEPA's authority is limited here to determining whether the activities constitute necessary corrective action and whether the costs are reasonable. Wh. Resp. at 3-9; Wh. Mot. at 9-10, 12-13. The Agency responds that the OSFM determines the eligibility of tanks, not owners. Ag. Reply at 2; Ag. Resp. at 1-2.

The Agency also maintains that without the election at the time the work is completed, the Agency faces the "additional administrative burden" of determining the "correct owner to reimburse." Ag. Mot. at 6; *see also* Ag. Reply at 5, Ag. Resp. at 5. Wheeling argues, however, that the Agency received the election before receiving any request for payment from the UST Fund, so the Agency's claim of administrative burden is unpersuasive. Wh. Resp. at 9-10.

Finally, Wheeling asserts that the Agency's determination improperly shifts the financial burden of environmental remediation from the UST Fund to the Village taxpayers. Wh. Resp. at 12. The Agency counters that Wheeling is "trying to have the State of Illinois act as its insurance policy for its own failure to follow the law." Ag. Reply at 2; *see also* Ag. Resp. at 2.

DISCUSSION

Cross-Motions for Summary Judgment

After reviewing the administrative record before the Agency, as well as the other filings on appeal, the Board finds that there are no genuine issues of material fact and that one of the movants is entitled to judgment as a matter of law. *See* Dowd & Dowd, 181 Ill. 2d at 483. The issue on appeal is framed by the Agency's determination letter. *See* Kathe's Auto Service, PCB 96-102, slip op. at 13. The Agency's determination letter here reduced Wheeling's proposed CAP budget by approximately $79,000, citing as support only Section 57.2 of the Act (415 ILCS 5/57.2 (2010)). The Agency letter to Wheeling stated:

> On January 23, 2006 the Illinois EPA received the Election to Proceed as "Owner" form from the present owner pursuant to Section 57.2 of the Act. Prior to this date the present "Owner" did not meet the definition of Owner or Operator

> in Section 57.2 of the Act therefore, all costs incurred prior to this date are not eligible for reimbursement from the Fund to the present "Owner."
>
> The [f]ollowing costs are deducted from the Budget: $4,141.00 from Analytical Costs and $74,774.82 from Remediation and Disposal Costs. AR at 1265-66.

Accordingly, the dispute before the Board centers upon correctly construing the "election to proceed as 'owner'" provision within the Section 57.2 definition of "owner" (415 ILCS 5/57.2 (2010)). Although the Agency and Wheeling argue about other matters, the parties ultimately agree that the appeal turns on the proper interpretation of this statutory language. Ag. Mot. at 4; Wh. Mot. at 4. The election provision of Section 57.2 of the Act reads as follows:

> the term "owner" shall also mean any person who has submitted to the Agency a written election to proceed under this Title and has acquired an ownership interest in a site on which one or more registered tanks have been removed, but on which corrective action has not yet resulted in the issuance of a "no further remediation [NFR] letter" by the Agency pursuant to this Title. 415 ILCS 5/57.2 (2010).

"In construing the meaning of a statute, the primary objective . . . is to ascertain and give effect to the intention of the legislature." People v. Cyrns, 203 Ill. 2d 264, 279, 786 N.E.2d 139 (2003). The legislature's intent is ascertained "by examining the language of the statute, which is 'the most reliable indicator of the legislature's objectives in enacting a particular law.'" *Id*., quoting Michigan Ave. Nat'l Bank v. County of Cook, 191 Ill. 2d 493, 504, 732 N.E.2d 528 (2000). The statutory language "must be afforded its plain, ordinary and popularly understood meaning" and one should not "depart from the plain language of a statute by reading into it exceptions, limitations or conditions that conflict with the express legislative intent." Cyrns, 203 Ill. 2d at 279.

The Board recently applied these familiar principles in Zervos Three, Inc. v. IEPA, PCB 10-54 (Jan. 20, 2011) to construe the Section 57.2 election provision. Zervos Three and the instant appeal share many facts. First, each petitioner acquired an ownership interest in a site from which one or more registered USTs had been removed, but on which corrective action had not yet resulted in the issuance of an NFR letter pursuant to Title XVI. Second, after acquiring the ownership interest, each petitioner performed remediation, incurring costs. Third, after performing remediation, each petitioner submitted to the Agency an election to proceed under Title XVI as owner. Next, the OSFM determined that each petitioner is eligible for UST Fund reimbursement. Lastly, the Agency reduced Wheeling's budget by $78,915.82 because the costs were incurred before the submittal of the election to proceed as owner. Likewise, in Zervos Three, the Agency denied the petitioner's application for $97,049.28 in reimbursement because the costs were incurred before the submission of the election to proceed as owner.

The Board in Zervos Three, presented with arguments similar to those made here, granted the petitioner's motion for summary judgment and denied the Agency's motion for summary judgment. In construing the election language added to Section 57.2 by Public Act 94-274, the Board held as follows:

> Generally, this amendment established this election as a mechanism for entities who have acquired property at which a release has occurred and from which a tank or tanks have been removed to participate in the UST Program and seek reimbursement from the UST Fund. Without this revision, the definition generally limited participation in the UST Program and reimbursement to the owner or operator of the removed leaking USTs, even if that owner or operator had abandoned the property or transferred it to another entity. Without this access to the Fund, a new owner or operator of a contaminated property would presumably be required to bear the costs of remediating contamination originating with the previous owner.
>
> * * *
>
> The Agency effectively determined that, because ZT [*i.e.*, the petitioner] performed corrective action before it elected to proceed as owner of the Site, ZT was not an owner when it performed that corrective action and cannot be reimbursed from the UST Fund for it. *** This position finds no support in the Act or in the Board's UST regulations.
>
> The definition [of "owner"] above does not refer to the extent to which a prospective owner has performed corrective action. Presuming that the prospective owner satisfies the other elements, the definition does not plainly exclude an election filed by an entity that has performed no corrective action at all, an entity that has begun but not completed corrective action, or an entity that has completed corrective action but has not received an NFR letter.
>
> * * *
>
> [T]he statutory definition of "owner" does not prevent ZT from seeking reimbursement from the UST Fund for corrective action performed before it elected to proceed as owner of the Site.[2] Zervos Three, PCB 10-54, slip op. at 31-33.

As the Board found in Zervos Three, PCB 10-54, slip op. at 31-32, the election provision in the Section 57.2 "owner" definition (415 ILCS 5/57.2 (2010)) contains several elements: (1) the acquisition of an ownership interest in a site (2) on which one or more registered tanks have been removed, (3) but on which corrective action has not yet resulted in the issuance of an NFR letter by the Agency pursuant to Title XVI, and (4) the submission to the Agency of a written election to proceed under Title XVI. The Board finds that on the record before the Agency, Wheeling met each of these elements, qualifying as an "owner" by definition.

According to the Agency determination, however, the Section 57.2 election provision imposes an additional condition: to be eligible for reimbursement, the person's corrective action costs must have been incurred *after* the election. The Agency reduced Wheeling's budget by roughly $79,000 because those costs were incurred by Wheeling prior to the date on which the Agency received Wheeling's election form. The Board finds that the Agency has improperly

[2] The Board first found that the reimbursement application in Zervos Three had been approved by operation of law because the Agency failed to issue its final determination within the applicable decision deadline. *See* Zervos Three, PCB 10-54, slip op. at 29-30.

read a limitation into Section 57.2, departing from the plain statutory language. As the Board held in Zervos Three, PCB 10-54, slip op. at 32, there is no requirement that corrective action costs must be incurred *after* submission of the election in order to be eligible for UST Fund reimbursement. *Cf.* 415 ILCS 5/57.9(a)(5) (2010) (costs incurred before providing notification to IEMA of a confirmed release are ineligible for payment). Accordingly, the Agency erred in reducing Wheeling's budget solely on this ground.

It is uncontested that the "Underground Storage Tank Fund shall be accessible by owners . . ." (415 ILCS 5/57.9(a) (2010)). The Board finds that Wheeling's right to the relief "is clear and free from doubt." Dowd & Dowd, 181 Ill. 2d at 483. As there are no genuine issues of material fact and Wheeling is entitled to judgment as a matter of law, the Board grants Wheeling's motion for summary judgment. The Board denies the Agency's motion for summary judgment. The Board therefore reverses the Agency's February 2, 2010 reduction of $78,915.82 in Wheeling's CAP budget and remands the matter to the Agency to consider the merits of that portion of Wheeling's budget.

Legal Fees

Section 57.8(l) of the Act provides that corrective action excludes "legal defense costs," which include "legal costs for seeking payment . . . unless the owner operator prevails before the Board in which case the Board may authorize payment of legal fees." 415 ILCS 5/57.8(l) (2010). The Board has required the reimbursement of legal fees from the UST Fund where the petitioner has prevailed in appealing the Agency's rejection of a budget. *See* Illinois Ayers Oil Co. v. IEPA, PCB 03-214 (Aug. 5, 2004).

Wheeling seeks legal fees for prosecuting this appeal. Pet. at 4-5; Wh. Mot. at 15. The amount of legal fees incurred by Wheeling, however, is not presently in the record. The Board therefore reserves ruling on the issue of legal fees. Wheeling is directed to file a statement of its legal fees that may be eligible for reimbursement and its arguments why the Board should exercise its discretion to direct the Agency to reimburse those fees from the UST Fund. Wheeling must file its statement by August 8, 2011, which is the first business day following the 30th day after the date of this order. The Agency may file a response within 14 days after being served with Wheeling's statement.

CONCLUSION

For the reasons stated above, the Board grants Wheeling's motion for summary judgment and denies the Agency's motion for summary judgment. In doing so, the Board reverses the Agency's $78,915.82 reduction of Wheeling's CAP budget and remands the matter to the Agency for consideration of the merits of that part of the budget. Wheeling's legal fees are to be addressed as discussed above.

This interim opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board grants Wheeling's motion for summary judgment and denies the Agency's motion for summary judgment. Accordingly, the Board reverses the Agency's February 2, 2010 reduction of $78,915.82 in Wheeling's CAP budget and remands the matter to the Agency to consider the merits of that portion of Wheeling's budget.

2. Wheeling is directed to file by August 8, 2011, a statement of its legal fees in accordance with this interim opinion. The Agency may file a response within 14 days after being served with Wheeling's statement.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on July 7, 2011, by a vote of 5-0.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board