

ILLINOIS POLLUTION CONTROL BOARD  
July 10, 1997

|                                |   |                       |
|--------------------------------|---|-----------------------|
| INGLESIDE CITGO SERVICE, INC., | ) |                       |
|                                | ) |                       |
| Petitioner,                    | ) |                       |
|                                | ) | PCB 97-120            |
| v.                             | ) | (UST - Reimbursement) |
|                                | ) |                       |
| ILLINOIS ENVIRONMENTAL         | ) |                       |
| PROTECTION AGENCY,             | ) |                       |
|                                | ) |                       |
| Respondent.                    | ) |                       |

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

On June 2, 1997, the Illinois Environmental Protection Agency (Agency) filed a motion (Mot.) to join a necessary party in this proceeding. On June 9, 1997, Ingleside Citgo Service Inc. (Ingleside) filed a motion for extension of time to file its response until June 13, 1997. On June 18, 1997, the Board received Ingleside's response (Res.) which had been mailed on June 13, 1997. The Board grants the extension of time to file the response and accepts the response received on June 18, 1997.

The Agency asks that the Board find that CW3M Company (CW3M) is a necessary party to this action and should be joined as a co-petitioner in this proceeding. The basis for the Agency's motion is that on March 24, 1995, Ingleside and Jerry W. Pitts, Jr. entered into an agreement which provided that CW3M would perform services in connection with a project to conclude remediation of the site at issue in this proceeding. Mot. at 1-2. Mr. Pitts, individually, and as assignor on behalf of Ingleside, entered into an "Assignment of Claims To Reimbursement, And Designation of Agency For Receipt of Reimbursement, From Underground Storage Tank Fund" (Assignment).<sup>1</sup> Mot. at 2. According to the Agency, the Assignment provides that Ingleside assigns to CW3M "all right, title, interest and claims for reimbursement from the UST Fund for costs of corrective action or indemnification as may be available at the time of signing the Assignment or anytime thereafter to the Assignors relative to the clean-up" of the site. Mot. at 2. The Agency argues that the interest assigned to CW3M is the right to recover reimbursement from the underground storage tank fund for cleanup activities at the Ingleside site.

The Agency maintains that because Ingleside has assigned the reimbursement to CW3M, CW3M is a necessary party. To support this proposition, the Agency cites to Stavros v. Karkomi, 39 Ill.App.3d 113, 349 N.E.2d 599 (1st Dist. 1976) (Stavros). In that case the court held that to be a necessary party the entity must have a present substantial interest, as

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<sup>1</sup> The Agency provided a copy of the Assignment to the Board; however, the copies provided are not legible.

opposed to a mere expectancy or future contingency in the controverted matter, such that the legal issue cannot be resolved without affecting that interest or leaving the interest of those before the reviewing body in an embarrassing or inequitable position. Stavros, at 123, 607; Mot. at 2-3. The Agency argues that the Board's decision will affect the reimbursement, therefore CW3M must be joined. The Agency also argues that since CW3M was the entity conducting the activities and then prepared the request for reimbursement, CW3M should be held "directly responsible for responding to inquiries during discovery and at hearing concerning how the costs were incurred." Mot. at 3-4.

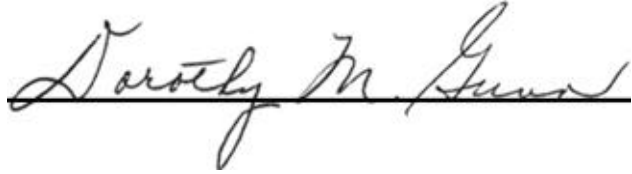
Ingleside does not agree that CW3M is a necessary party and maintains that the Act does not confer standing on parties other than the owner or operator of the leaking underground storage tank. Res. at 4. Ingleside points to Section 57.9 of the Environmental Protection Act (415 ILCS 5/57.9 (1996)) (Act) which provides that the underground storage tank fund is accessible by "owners and operators who have a confirmed release" and who meet several eligibility requirements. In addition Section 57.8 of the Act provides that if the Agency refuses to pay or authorizes only a partial payment from the underground storage tank fund, the "owner or operator may petition the Board for a hearing." 415 ILCS 5/57.8(i) (1996); Res. at 4.

Ingleside maintains that the Assignment is not an attempt to amend the statutory language but rather the Assignment is a private contract which establishes a mechanism for deferral of payment of costs incurred by CW3M in performing corrective action in response to the release reported at the site. Res. at 4. Ingleside argues that while it appears that the Agency is attempting to establish the rights of third parties to reimbursement from the underground storage tank fund, the Act does not support such an interpretation. Res. at 4. Ingleside also argues that "from a policy standpoint" allowing any party who made decisions affecting the fund to be included as a party in the appeal "could dramatically alter the scope of such proceedings." Res. at 5.

The Board agrees that joining CW3M in this UST reimbursement is inappropriate. The plain language of Title XVI of the Act (415 ILCS 5/57 *et seq.* (1996)) allows only an owner or operator to access the underground storage tank fund. Further, Title XVI also places responsibilities for clean-up, registration, and reporting on the owner or operator. The Act does not allow a party other than the owner or operator to access the fund. Therefore, only Ingleside may seek reimbursement and review of a reimbursement decision by Agency. Therefore, the Board denies Agency's motion to join CW3M in this proceeding.

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 10th day of July 1997, by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board