BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 96-10
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
Attn: Ms. Adaleen Hogan, Assistant Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

Illinois Pollution Control Board
Attn: Bradley Halloran
Hearing Officer
State of Illinois Building
100 West Randolph Street – Suite 11-500
Chicago, Illinois 60601

Illinois Environmental Protection Agency
Division of Legal Counsel
Attn: John J. Kim, Esq., Special Assistant Attorney General
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

PLEASE TAKE NOTICE that on June 23, 2004, we filed with the Clerk of the Illinois Pollution Control Board, Vogue Tyre & Rubber Company's **Post-Hearing Brief**, a copy of which is attached hereto and hereby served upon you. Pursuant to 35 Ill. Admin. Code § 101.103(d), these filings are submitted on recycled paper.

VOGUE TYRE & RUBBER COMPANY

By: _____
One of its Attorneys

David M. Allen
Jeffrey E. Schiller
Schuyler, Roche & Zwirner, P.C.
One Prudential Plaza, Suite 3800
130 East Randolph Street
Chicago, Illinois 60601
(312) 565-2400

CERTIFICATE OF SERVICE

I, the undersigned, one of the attorneys for Vogue Tyre & Rubber Company, certify that I caused copies of the foregoing **Notice of Filing** and **Post-Hearing Brief** to be served to:

Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
Attn: Ms. Adaleen Hogan, Assistant Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

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Illinois Environmental Protection Agency
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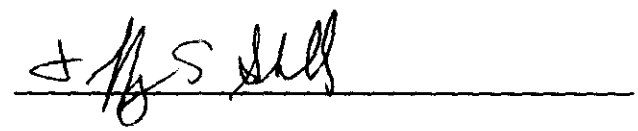
Attn: John J. Kim, Esq., Special Assistant Attorney General
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

by depositing same in the United States Mail, first class postage prepaid, at One Prudential Plaza, 130 East Randolph Street, Chicago, on this 23rd day of June, 2004.



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	)	
	)	
Respondent.	)	

PETITIONER'S POST-HEARING BRIEF

Petitioner, Vogue Tyre & Rubber Company ("Vogue"), by and through its attorneys, hereby submits its Post-Hearing Brief subsequent to the hearing conducted on May 12, 2004 before the Illinois Pollution Control Board (the "Board")[1]:

INTRODUCTION

From 1965 to 1995, Vogue owned a facility located at 4801 Golf Road in Skokie, Illinois (the "Site") (A.R. 73). At various times, two 10,000 gallon underground storage tanks ("USTs") used to store gasoline were located at the site and registered with the Office of the State Fire Marshall (the "OSFM"). Vogue removed these tanks in 1986[2]. (A.R. 76).

Prior to the removal of the USTs, Vogue discovered an unexplained loss of gasoline from the tanks. This discovery occurred as a result of a routine measurement of the levels of gasoline in the tanks. Vogue immediately hired the P.J. Hartmann Company ("Hartmann"), an environmental expert, to determine whether the gasoline had leaked into the ground. Hartmann reached the conclusion that the gasoline had not leaked into the ground, but most likely had

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[1] On May 10, 2004, the IEPA filed an Administrative Record in this matter. References to the Administrative Record will be designated as "(A.R. ____)." Attached to this Post-Hearing Brief is an Appendix which contains pertinent pleadings and portions of the evidentiary record which has been made part of the proceedings herein. References to this Appendix will be designated as "(App. ___)."

[2] Vogue notes incorrectly in a letter dated June 3, 1988 to the OSFM that the USTs were removed in the spring of 1985. (A.R. 4). Vogue later corrected this statement in its Eligibility and Deductibility Application (A.R. 76).

been stolen. (App. 47). Vogue relied on Hartmann's determinations in filing a claim for theft of property with its insurance company. (App. 48). Vogue's insurance company paid this claim.

In 1994, Vogue discovered, for the first time, that there was a release of gasoline at the site. (A.R. 107-108). Vogue promptly reported this incident to the Illinois Emergency Management Agency (the "IEMA"). (App. 2). Vogue then immediately hired Leyden Environmental ("Leyden") to do further investigation—Leyden determined that the gasoline from the USTs had, in fact, been leaked into the ground and had the potential to cause damage to the environment and public health and welfare. On February 23, 1995, Vogue commenced corrective action to remediate the contamination at the Site so as to attain compliance with state and federal environmental laws and regulations. (App. 2).

In January 1995, Vogue submitted an Eligibility and Deductibility Application to the OSFM seeking a determination that Vogue was eligible for reimbursement for its remediation of the Site under the Leaking Underground Storage Tank Program (the "LUST Program") and the Underground Storage Tank Fund (the "UST Fund"). (A.R. 71-81). On February 1, 1995, the OSFM denied Vogue's request for a determination of eligibility stating that the USTs were not properly registered, and thus Vogue was ineligible for reimbursement. (App. 19). The OSFM asserted that the USTs were deregistered by an Administrative Order (the "Order") issued by the OSFM on February 17, 1993. (App. 21). The purported basis for the Order was that although the tanks were properly registered in 1986, they were removed prior to the passage of an amendment to the registration rules which became effective in 1987. (App. 21). Thus, the OSFM determined that Vogue's USTs were not eligible for reimbursement from the UST Fund because they were no longer registered. (App. 21).

On March 6, 1995, after it had commenced remediation efforts to the Site, Vogue appealed the OSFM's Order to the Board. (App. 19). On December 5, 2002, the Board found in favor of the OSFM on the grounds that the Order was not reviewable by the Board. (App. 19-23). The Board held that because the Order stated that it had to be appealed to the Circuit Court of Cook County

within ten days, and because Vogue had not so appealed, no further review was allowed under statute. (App. 19-23). In so doing, the Board rejected Vogue's argument that the statutory predicate to the Order's language pertaining to appeal applied only to situations where a hearing was held prior to the issuance of the Order, a situation not present here. On February 26, 2003, Vogue appealed the Board's decision to the Illinois Appellate Court for the First District (Vogue Tyre & Rubber Company v. Office of the State Fire Marshal, Appellate Court No. 03-0521), asserting that the Board erred in ruling that it was barred from reviewing the OSFM's decision. That case is still pending.

From March to May 1995, Vogue submitted the following reports to the IEPA seeking reimbursement under the LUST Program:

- Vogue's 20-Day Report, 45-Day Report, Site Classification Completion Report and Corrective Action Plan (A.R. 97-224);
- Vogue's Corrective Action Completion Report (App. 13); and
- Vogue's Site Classification Work Plan and Budget (App. 13) (collectively, the "Reports").

On June 15, 1995, the IEPA issued a letter denying Vogue's Reports on the grounds that the USTs at issue were not subject to regulation and remediation by the IEPA because they were removed before the effective date of the LUST Program. (App. 13-15). The IEPA further declared that the decision was the IEPA's "final decision" for the purposes of appeal. (App. 13-15).

On July 18, 1995, Vogue filed a Petition for Review of the IEPA's final June 15, 1995 decision. (App. 1-16). On July 20, 1995, the Board entered an Order accepting this matter for hearing. (App. 17-18).

Since the time that Vogue filed its Petition, Vogue has recovered $520,000 from its insurance carrier for the cost of reimbursement. Vogue thus seeks $264,000 from the IEPA in this action, plus the attorneys' fees incurred in the prosecution of this matter.

In 2003, the IEPA moved for summary judgment in this matter. (App. 24-34). The gravaman of the IEPA's Motion was that Vogue cannot recover from the LUST Program because:

(a) the OSFM has determined that Vogue's USTs were not properly registered; and (b) the USTs were removed before the effective date of the LUST Program. (App. 24-34). After the motion was fully briefed, the Hearing Officer denied the IEPA's motion, and set the matter for hearing. (App. 41-42). On May 12, 2004 a written evidentiary record was entered into evidence, a stipulation was read orally into evidence, and the record was closed. (App. 43-55). The record and stipulation make it clear that Vogue did not know of the release until 1994, and that this fact is disputed. (App. 47-48). The Hearing Officer then ordered post-hearing briefing. (App. 56-80).

The IEPA's argument remains the same at the pleading stage, namely, that, for timing reasons, the USTs were not registered at the relevant time, and the statute does not cover pre-enactment releases. The issue as to whether the USTs were properly registered is before the Illinois Appellate Court, and need not be discussed here. Thus, this Post-Hearing Brief will focus solely on the issue of whether the LUST Program applies to a pre-enactment release where the release was not (and could not reasonably have been) discovered until after the effective date of the statute.

ARGUMENT

I. VOGUE HAS COMPLIED WITH THE ELIGIBILITY REQUIREMENTS FOR THE LUST PROGRAM.

The LUST Program is titled under the Illinois Environmental Protection Act (415 ILCS 5/1, et seq.). Section 57.9 of the Act sets forth the eligibility requirements for access to the UST Fund under the LUST Program and states in pertinent part:

> The Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system of a substance listed in this Section. The owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements of this Title are satisfied and:
>
> (1) Neither the owner nor the operator is the United States Government.

(2) The tank does not contain fuel which is exempt from the Motor Fuel Tax Law.

(3) The costs were incurred as a result of a confirmed release of any of the following substances:

(A) "Fuel", as defined in Section 1.19 of the Motor Fuel Tax Law.
(B) Aviation Fuel.
(C) Heating oil.
(D) Kerosene.
(E) Used oil which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

(4) The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.

(5) The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.

(6) The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.

(7) The costs were associated with "corrective action" of this Act.

(415 ILCS 5/57.9).

The issue of whether the USTs were properly registered is, as noted above, a subject currently being resolved in the Appellate Court. In all other respects, there is no dispute that Vogue complied with the above-referenced language of Section 57.9.

The Act does not state that it applies only to releases occurring after its enactment date (1986). Rather, it speaks of costs incurred after notification of a confirmed release. Although the USTs were removed in 1986, Vogue did not discover the releases until 1994. Upon discovery, Vogue immediately took steps to remediate the Site in compliance with the applicable state and federal statutory and regulatory reporting and response requirements. (App.2). Among other

things, Vogue immediately informed the IEMA of the release and then initiated corrective action in consultation with the IEMA. (App.2). Vogue's corrective action costs were incurred after this notification. (App.2).

II. PRINCIPLES OF STATUTORY CONSTRUCTION SUPPORT THE APPLICATION OF THE LUST PROGRAM TO THIS CASE.

As noted, the LUST Program does not limit its application to releases occurring after its enactment date. The best that can be said for IEPA's position is that Section 57(a) does not explicitly state that it applies to the precise situation present here, i.e., where a release occurred prior to the effective date of the LUST Program, but is discovered (and corrective action is taken) after the LUST Program was enacted. However, established principles of statutory construction make it clear that Section 57.9 applies in this case.

In construing a statute, courts must give effect to the intent of the legislature. (Antunes v. Sookhkitch, 588 N.E.2d 1111, 1114 (Ill. 1992); People v. Steppan, 473 N.E.2d 1300, 1303 (1985)). To ascertain legislative intent, it is proper for the court not only to consider the language of the statute, but also to look to the "reason and necessity for the law, the evils to be remedied, and the objects and purposes to be obtained." Id. In construing statutes, the court presumes that the legislature did not intend absurdity, inconvenience or injustice. (People v. Steppan, 473 N.E.2d at 1303.) Where the meaning of a statute is not clear from the statutory language itself, the court may also properly consider the purpose of the enactment. (Antunes v. Sookhkitch, 588 N.E.2d at 1114.) Statutes should be construed to give them a reasonable meaning and to prevent absurdity and hardship. (Id. at 1115.)

Section 5/2(a)(iv) of the Act states in pertinent part:

> (a) The General Assembly finds:
>
> *****
>
> (iv) that it is the obligation of the State Government to manage its own activities so as to minimize environmental damage; to encourage and assist local governments to adopt and implement

environmental-protection programs consistent with this Act; to promote the development of technology for environmental protection and conservation of natural resources; and in appropriate cases to afford financial assistance in preventing environmental damage;

(v) that in order to alleviate the burden on enforcement agencies, to assure that all interests are given a full hearing, and to increase public participation in the task of protecting the environment, private as well as governmental remedies must be provided; (Emphasis added).

415 ILCS 5/2 (a)(iv), (v) (Emphasis added).

Section 5/57 of the Act sets forth the intent and purpose of the LUST Program and states:

> Intent and purpose. This Title shall be known and may be cited as the Leaking Underground Storage Tank Program (LUST). The purpose of this Title is, in accordance with the requirements of the Hazardous and Solid Waste Amendments of 1984 of the Resource Conservation and Recovery Act of 1976 and in accordance with the State's interest in the protection of Illinois' land and water resources: (1) to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances regulated under this Title from certain underground storage tanks or related tank systems; (2) to establish and provide procedures for a Leaking Underground Storage Tank Program which will oversee and review any remediation required for leaking underground storage tanks, and administer the Underground Storage Tank Fund; (3) to establish an Underground Storage Tank Fund intended to be a State fund by which persons who qualify for access to the Underground Storage Tank Fund may satisfy the financial responsibility requirements under applicable State law and regulations; (4) to establish requirements for eligible owners and operators of underground storage tanks to seek payment for any costs associated with physical soil classification, groundwater investigation, site classification and corrective action from the Underground Storage Tank Fund; and (5) to audit and approve corrective action efforts performed by Licensed Professional Engineers.

(415 ILCS 5/57).

In this case, Vogue complied with the mandates of the LUST Program by immediately notifying the IEMA of the release and initiating corrective action. (App. 2). Vogue acted promptly in

accordance with the laws in effect at the time of the remediation and the best interests of public health and welfare.

In ChemRex v. Pollution Control Board, 628 N.E. 2d 863 (1st Dist. 1993), the Illinois Appellate Court explained the purpose of the LUST Program in words directly applicable to this case. Then, the Court found the purpose of the Illinois Environmental Protection Act to be "to afford financial assistance in preventing environmental damage ... [and to] increase public participation in the task of protection the environment ..." (628 N.E. 2d at 966). The Court then found that ChemRex had "completed with ... statutory and rules elections by immediately notifying the state of the leaks and initiating corrective action. (Id.) The Court concluded that:

> ChemRex, having performed every task required by the statute and rules to prevent environmental damage in anticipation of financial assistance, should have been granted reimbursement. To deny it such assistance would defeat the very spirit and purpose of this enactment. Therefore, in order to effectuate the purpose of the Environmental Protection Act as well as to avoid an unjust consequence, we find that a reasonable time frame for reimbursement will be read into the statute. Accordingly, we hold that eligibility for Fund reimbursement in this case should have been determined at the time when underground storage tank owners and operators notified the state agencies of underground storage tank leaks.

ChemRex v. Pollution Control Board, 628 N.E. 2nd at 964 (Emphasis added).

It cannot be clearer that Section 57.9 applies to notifications and corrective actions taken after the date of enactment. Vogue's eligibility for Fund reimbursement should be determined as of 1994, the date it notified the state of releases from the USTs. This is not a case which could justify a public policy exception to such a rule, i.e., if a company deliberately held off on notification and corrective action so as to wait until after statutory enactment to gain eligibility. Rather, it is a case where Vogue undeniably acted promptly and in the public interest upon discovery of a release. The evidentiary record is undisputed that Vogue did not know that there was a release until 1994 because it relied on an expert inspection to that effect. The parties stipulated that Vogue's

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	)	
	)	
Respondent.	)	

APPENDIX

TAB No.	EXHIBIT	DATE
1	Petition for Review of IEPA Final Decision	7/18/95
2	Order of the Board	7/20/95
3	Opinion and Order of the Board (Vogue Tyre & Rubber Company v. Office of State Fire Marshall, PCB 95-78)	12/5/02
4	Notice of Filing and Respondent's Motion for Summary Judgment	6/20/03
5	Notice of Filing and Petitioner's Response to Motion for Summary Judgment	7/30/03
6	Order of the Board	9/4/03
7	Transcript of Proceedings	5/12/04
8	Hearing Report	5/20/04

Exhibit 1

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation,	)	
Petitioner,	)	PCB No. 96-10
v.	)	(UST -- Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

PETITION FOR REVIEW OF IEPA FINAL DECISION

Vogue Tyre & Rubber Company ("Vogue Tyre"), by its attorneys, pursuant to 415 ILCS § 5/57.8(i) hereby petitions the Illinois Pollution Control Board (the "Board") for a hearing to contest a final decision by the Illinois Environmental Protection Agency ("IEPA"). IEPA has "denied" various reports submitted to it by Vogue Tyre and has declined to issue a no further remediation letter. Vogue Tyre's reports concern remediation of contamination from underground storage tanks ("USTs") formerly used to store gasoline at a facility which until recently was owned by Vogue Tyre. Vogue Tyre requests the Board to reverse IEPA's final decision and to require IEPA to approve Vogue Tyre's reports.

In support of its Petition, Vogue Tyre states as follows:

1. Until July 7, 1995, Vogue Tyre owned the facility at 4801 Golf Road in Skokie, Illinois. The facility, which is located in Cook County, has been assigned number 2-021982 by the Office of the Illinois State Fire Marshall ("OSFM"). At various times, a total of four USTs have been located at the facility and registered with OSFM. One UST was a

8,300 gallon gasoline UST, another UST was a 560 gallon used oil UST, and two USTs were 10,000 gallon gasoline USTs.

2. In 1993, Vogue Tyre reported releases from the 8,300 and 560 gallon USTs located at the facility. These releases were assigned Incident No. 93-1858 by the Illinois Emergency Management Agency ("IEMA"). On May 6, 1993 the 560 gallon used oil UST was removed from the facility. On August 26, 1993 the 8,300 gallon gasoline UST was also removed. Vogue Tyre sought, and received, reimbursement from the UST Fund for the corrective action in 1993. In approving the eligibility of the 1993 corrective action, OSFM indicated, on January 4, 1994, that Vogue Tyre "may be eligible to seek payment of corrective action costs associated with [the two 10,000 gallon gasoline] tanks if it is determined that there has been a release from one or more of these tanks." A true and correct copy of the January 4, 1994 determination letter is attached hereto as Exhibit A and incorporated herein by reference.

3. On December 7, 1994, Vogue Tyre reported releases of gasoline from the two 10,000 gallon gasoline USTs on the facility to IEMA. IEMA assigned Incident No. 94-2751 to these releases. On February 23, 1995, after this notification to the IEMA and in compliance with 415 ILCS § 5/57.7(e)(1), Vogue Tyre commenced corrective action. This corrective action is substantially completed, although some final corrective action is ongoing at the time of filing of this Petition.

4. During corrective action it became apparent that a certain amount of the gasoline contamination resulted from the 8,300 gallon UST that was removed in 1993. Although much of the contamination was located in the area where the 10,000 gallon

gasoline USTs were located, the 8,300 gallon UST had connected underground product lines which extended into the contaminated area. In addition, some gasoline contamination (which was separate from the other contamination) was located on the opposite side of the facility from the 10,000 gallon USTs. This contamination could not have resulted from the 10,000 gallon USTs and must have resulted from the 8,300 gallon UST. As mentioned above, corrective action in regard to the 8,300 gallon UST has already been determined to be subject to reimbursement by the UST Fund.

5. As a result of the determination that some contamination resulted from the 8,300 gallon UST (and thus related to Incident No. 93-1858), Vogue Tyre submitted various reports to IEPA under both the 94-2751 and 93-1858 incident numbers. On April 3, 1995, IEPA received Vogue Tyre's 20-Day Report, 45-Day Report, Site Classification Completion Report, and Corrective Action Plan. IEPA received Vogue Tyre's Corrective Action Completion Report on May 2, 1995. On May 19, 1995, IEPA received Vogue Tyre's Site Classification Work Plan and Budget.

6. On June 15, 1995, by letter sent via telecopier, IEPA "denied" Vogue Tyre's reports, declaring that Incident No. 94-2751 is "not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731." In the June 15 letter, IEPA further declared that the decision was IEPA's "final decision" for the purposes of appeal. A true and correct copy of the IEPA Final Decision Letter is attached hereto as Exhibit B and incorporated herein by reference. In a telephone conversation on July 19, 1995, Bur Filson of IEPA indicated that Vogue Tyre's reports were "denied" because the contamination at issue was associated with tanks removed in the mid-1980s.

7. IEPA's final decision is wrong. A certain amount of the release of gasoline at the facility resulted from the 8,300 gallon gasoline UST that was removed in 1993. The release was duly reported, and corrective action in regard to that UST has already determined to be reimbursable by the UST Fund. Thus, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 8,300 gallon UST should be reimbursable. Moreover, because the two 10,000 gallon USTs were properly registered on May 6, 1986 (prior to their removal), a February 7, 1993 OSFM administrative order indicating that the two 10,000 gallon USTs "[are] not or [are] no longer registrable" because of their removal date has no application because the two USTs had already been registered prior to that date. Therefore, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 10,000 gallon USTs should also be reimbursable.

8. This is Vogue Tyre's second appeal to the Board relating to the facility. With respect to Incident No. 94-2751, Vogue Tyre submitted to OSFM an Eligibility and Deductibility Application dated December 27 and 28, 1994. In the application, Vogue Tyre indicated that all USTs at the facility had experienced releases. In a February 1, 1995 letter, OSFM responded to the application by citing 415 ILCS § 5/57.9 and 430 ILCS § 15/4 and noting that the two 10,000 gallon USTs were ineligible because they were removed prior to September 24, 1987. On March 6, 1995, Vogue Tyre appealed OSFM's February 1 determination, and that appeal was assigned No. 95-78.

9. Since making its proper notifications to IEMA, Vogue Tyre has undergone substantial corrective action. This corrective action is consistent with the remediation

purposes of both the Illinois Environmental Protection Act and the Illinois Gasoline Storage Act, and Vogue Tyre's corrective action costs should be reimbursed by the UST Fund.

10. Therefore, the main issue before the Board is whether IEPA erred in denying Vogue Tyre's reports. Since it has already been determined that corrective action in regard to the 8,300 gallon UST is reimbursable, one sub-issue is what costs of the recent corrective action related to that UST. A second sub-issue is whether IEPA erred in denying Vogue Tyre's reports because the two 10,000 gallon USTs were removed in the mid-1980s.

11. Vogue Tyre requests a hearing before the Board in Chicago, and requests that the Board:

(i) determine that IEPA's final decision of June 15, 1995 was erroneous and order IEPA to approve the various reports submitted by Vogue Tyre to IEPA; and

(ii) order IEPA to (a) acknowledge that all of Vogue Tyre's corrective action is eligible for reimbursement from the UST Fund, and (b) begin processing Vogue Tyre's reports so that Vogue Tyre can be reimbursed for the costs of its corrective action.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

Dated: July 18, 1995

By: _____
One of its Attorneys

Office of the Illinois
State Fire Marshal

General Office
217-785-0969

Divisions
ARSON INVESTIGATION
217-782-5855
BOILER and PRESSURE VESSEL SAFETY
217-782-2696
FIRE PREVENTION
217-785-4714
MANAGEMENT SERVICES
217-782-9889
INFIRS
217-785-1016
PERSONNEL
217-785-1009
PERSONNEL STANDARDS and EDUCATION
217-782-4542
PETROLEUM and CHEMICAL SAFETY
217-785-5878
PUBLIC INFORMATION
217-785-1021

CERTIFIED MAIL - RECEIPT REQUESTED # P 435 173 603

January 4, 1994

Jerry Vestweber
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, IL 60077

In re: Facility No. 2--021982
IEMA Incident No. 93-1858
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, COOK CO., IL

Dear Mr. Vestweber:

The Reimbursement Eligibility and Deductibility Application, received on 12-21-93 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek corrective action costs in excess of $10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank #3 - 8,300 gallon gasoline
Tank #4 - 560 gallon used oil

The Illinois Environmental Protection Agency will send you a packet of Agency billing forms for submitting your request for payment.

1035 Stevenson Drive • Springfield, Illinois 62703-4259

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government;

2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law;

3. The costs were incurred as a result of a confirmed release of any of the following substances:

   "Fuel", as defined in Section 1.10 of the Motor Fuel Tax Law

   Aviation fuel

   Heating oil

   Kerosene

   Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.

5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.

6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.

7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision (35 Illinois Administrative Code 105.102(a) (2)).

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(312)814-3620

The following tanks are also listed for this site:

Tank #1 - 10,000 gallon gasoline
Tank #2 - 10,000 gallon empty

Your application indicates that there has not been a release from these tanks. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact Kim Harms at (217)785-1020 or (217)785-5878 between 3:00 - 4:00 p.m.

Sincerely,

James I. McCaslin
Director
Division of Petroleum and Chemical Safety

JIM:KH:bc

cc: IEPA
Facility File

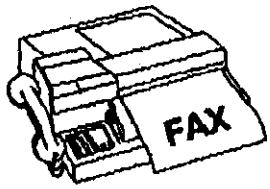
#5664

Exhibit B

ILLINOIS
ENVIRONMENTAL
PROTECTION AGENCY

P.O.Box 19276
2200 Churchill Road
Springfield, IL 62794-9276

LEAKING UNDERGROUND STORAGE TANK SECTION



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State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director 2200 Churchill Road, Springfield, IL 62794-9276

217/782-6761

Vogue Tyre & Rubber Company
Attn: Garry Goyak
4801 West Golf Road
Skokie, IL 60077

Re: LPC# 0312885218 -- Cook
Skokie/Vogue Tyre & Rubber Co.
4801 W. Golf Road
LUST Incident #942751
LUST Tech File

Dear Mr. Goyak:

The Illinois Environmental Protection Agency is in receipt of the following reports: 20-Day Report, 45-Day Report, Site Classification Completion Report, and the Corrective Action Plan dated March 27, 1995 and received April 3, 1995; the Corrective Action Completion Report dated April 26, 1995 and received May 2, 1995; and the Site Classification Work Plan and Budget dated May 16, 1995 and received May 19, 1995.

Based on the information currently in the Agency's possession, the Agency deems this incident not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731. No technical review of the above documents has been performed in accordance with 35 IAC, Section(s) 732.202, 732.307, 732.309, 732.400, 732.402, 732.403, 732.404 and the Illinois Environmental Protection Act, Section(s) 57.6 and 57.7. Therefore, the Agency is notifying the owner or operator that the following reports are being denied: 20-Day Report, 45-Day Report, Site Classification Completion Report, Corrective Action Plan, Corrective Action Completion Report, and Site Classification Work Plan and Budget.

However, the Agency did conduct a review of the information submitted to determine site remediation adequacy. The Agency has concluded that further remedial activities should be performed, and recommends the following to ensure that the Groundwater Standards/Objectives are not exceeded and the remaining soil contamination is addressed:

1. Reinstallation of a groundwater monitoring well in the area of MW-2 which was destroyed during excavation activities;
2. Installation of a groundwater monitoring well in the alley in close proximity to borings B-13-16;
3. Quarterly monitoring of all monitoring wells for one year; and
4. Installation of a passive vent system in the area of the southeast corner of the building in the vicinity of the impacted soils remaining along the southern property boundary.

For purposes of appeal, this constitutes the Agency's final decision regarding the above matters. Please see Appendix 1 for an owner or operator's appeal rights.

If you have any questions please contact Tara Lambert of my staff at 217/782-6761.

Sincerely,

Bur Filson, Manager
Northern Unit
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

BF:TL:psk

Appendices: 1

Appendix 1

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision may, within 35 days after the notification of the final Agency decision, petition for a hearing before the Board; however, the 35-day period may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the 35-day initial appeal period.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

I, Peter C. Warman, one of the attorneys for Vogue Tyre & Rubber Company, certify that I caused a copy of the foregoing **Petition for Review of IEPA Final Decision** to be served by messenger delivery before the hour of 4:30 p.m. to

Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

and by United States Mail, first class postage prepaid, to

Illinois Environmental Protection Agency
Attn: Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

on this 18th day of July, 1995.

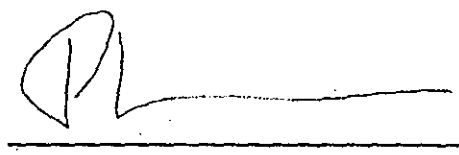


Exhibit 2

ILLINOIS POLLUTION CONTROL BOARD
July 20, 1995

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-10
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD:

On July 18, 1995, Vogue Tyre & Rubber Company (Vogue Tyre) filed a petition for review of an Illinois Environmental Protection Agency (Agency) disapproval of Vogue Tyre's Leaking Underground Storage Tank Site Classification Completion Report, 20-day Report, 45-day Report, Corrective Action Plan, Corrective Action Completion Plan, and Site Classification Work Plan and Budget. The Agency disapproved Vogue Tyre's Reports and Plans on June 15, 1995. The final determination concerns Vogue Tyre's site located at 4801 W. Golf Road, Skokie, Cook County, Illinois. This matter is accepted for hearing.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices and the applicable statutory decision deadline, or the decision deadline as extended by a waiver (petitioner may file a waiver of the statutory decision deadline pursuant to 35 Ill. Adm. Code 101.105). The Board will assign a hearing officer to conduct hearings consistent with this order, and the Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and, in time-limited cases, no later than 30 days prior to the decision due date, which is the final regularly scheduled Board meeting date on or before the statutory or deferred decision deadline. Absent any future waivers of the decision deadline, the statutory decision deadline is now November 15, 1995 (120 days from July 18, 1995); the Board meeting immediately preceding the due date is scheduled for November 2, 1995.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible. The Board notes that Board rules (35 Ill. Adm. Code 105.102) require the Agency to file the entire Agency record inthis matter within 14 days of notice of the petition.

This order will not appear in the Board's opinion volumes.

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 25th day of July, 1995, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Exhibit 3

ILLINOIS POLLUTION CONTROL BOARD
December 5, 2002

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 95-78
	)	(UST Fund)
OFFICE OF STATE FIRE MARSHAL,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

Vogue Tyre & Rubber Company (Vogue Tyre) is seeking review of a determination by the Office of State Fire Marshal (OSFM) that two tanks removed by Vogue Tyre from 1401 Golf Road, Skokie, Cook County are ineligible for reimbursement from the leaking underground storage tank fund (UST fund). On September 13, 2002, the OSFM filed a motion for summary judgment (Mot.). On November 6, 2002, Vogue Tyre filed a response to the motion (Resp.). On November 22, 2002, OSFM filed a motion for leave to file a reply and a reply (Reply), which the Board hereby grants. For the reasons discussed below the Board finds that there are no issues of material fact and the motion for summary judgment is granted. The Board affirms the OSFM's February 1, 1995 denial of eligibility.

FACTS

On March 6, 1995, Vogue Tyre filed a petition for review (Pet.) of an OSFM determination that Vogue Tyre was ineligible to seek payment for corrective action for the clean up of a leaking underground storage tank. The Board accepted this matter for hearing on March 9, 1995. *See* Vogue Tyre & Rubber Company v. OSFM, PCB 95-78 (Mar. 9, 1995). This proceeding was previously stayed pending the resolution of the insurance claims related to this proceeding. *See* Vogue Tyre & Rubber Company v. OSFM, PCB 95-78 (Jan. 18, 1996). Vogue Tyre is no longer asking that the proceeding be stayed. On March 16 1995, OSFM filed the record on appeal (R.).

The Vogue Tyre site contained four underground storage tanks that were registered with OSFM on May 6, 1986. R. at 1. Tanks 3 and 4 were removed in 1993 and a release was reported to Illinois Emergency Management Agency (IEMA). R. at 13-25, 38. Those two tanks are not at issue in this appeal.

Tanks 1 and 2 were deregistered by an administrative order issued by OSFM on February 17, 1993. R. at 6. The administrative order indicates that the tanks could no longer be registered because the tanks were removed prior to September 27, 1987. *Id.* The administrative order also contained direction on what steps should be taken to appeal the order. *Id.* Vogue Tyre did not appeal that order.

Tanks 1 and 2 were removed[1] prior to the release reported on December 7, 1994. R. at 56. On December 27, 1994, Vogue Tyre filed an application for reimbursement with the OSFM. R. at 88-90. On February 1, 1995, OSFM denied access to the UST fund because Tanks 1 and 2 were not registered and were therefore ineligible for access to the UST Fund. R. at 82-84.

REGULATORY FRAMEWORK

Illinois reimburses owners and operators of leaking underground storage tanks for cleanup costs through the Underground Storage Tank Program and the UST Fund. *See* 415 ILCS 5/57 (2000). Those seeking reimbursement from the UST fund must establish that they are eligible to access the UST fund under the criteria set forth in Section 57.9 of the Act (415 ILCS 5/57.9 (2000)). One of those criteria is that the owner of the tank registered the tank and paid the fees in accordance with the Gasoline Storage Act 430 ILCS 15/1 *et seq.* (2000). *See* 415 ILCS 5/57.9 (2000).

The Gasoline Storage Act (430 ILCS 15/1 *et seq.* (2000)) provides for registration of underground storage tanks meeting various criteria. Section 4(b)(1)(A) of the Gasoline Storage Act 430 ILCS 15/4(b)(1)(A) (2000). Section 4(b) of the Gasoline Storage Act 430 ILCS 15/4(b) (2000) requires that the owner "shall register the tank with the" OSFM. Section 7(b) of the Gasoline Storage Act 430 ILCS 15/7(b) (2000) provides that:

> The State Fire Marshal may suspend or revoke the registration of any person who has violated the rules of the State Fire Marshal after notice and opportunity for an Administrative hearing which shall be governed by the Administrative Procedure Act [5 ILCS 100/1-1 *et seq.* (2000)]. Any appeal from such suspension or revocation shall be to the circuit court of the county in which the hearing was held and be governed by the Administrative Review Law [735 ILCS 5/3-101 *et seq.* (2000)]. 430 ILCS 15/7(b) (2000).

STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In 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." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief "is clear and free from doubt." *Id*, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present

[1] The record contains conflicting dates regarding the actual removal of the Tanks 1 and 2. The record indicates that removal occurred either in the spring of 1985 (*see* R. at 4.) or May of 1986 (*see* Pet. Exh. C.). The actual date of removal is not a material fact for the resolution of this matter.

a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

DISCUSSION

The following discussion will briefly summarize the arguments of the parties and then state the Board's findings on this case.

OSFM Arguments

OSFM asserts that Tanks 1 and 2 are not eligible for reimbursement because the tanks are no longer registered. Mot. at 5. OSFM points out that the Illinois Environmental Protection Agency and the OSFM jointly administer the Underground Storage Tank Program but the responsibilities are not identical. Mot. at 4, citing 430 ILCS 15/4(a) (2000) and Farrales v. OSFM, PCB 97-186 (May 7, 1998). OSFM argues that eligibility determinations are appealable to the Board but not the registration decision. Mot. at 4. OSFM maintains that the Board has consistently refused to review OSFM registration decisions. Mot. at 4. OSFM also argues that the Board has recognized the OSFM's authority to deregister tanks on a number of occasions and cites to several Board cases and OK Trucking Com. v. Armstead, 274 Ill. App. 3d 376, 653 N.E.2d 863 (1st Dist. 1995). Mot. at 6.

In this case OSFM asserts that the record is clear that Vogue Tyre received an administrative order in 1993 stating that Tanks 1 and 2 were no longer registerable. Mot. at 5. Vogue Tyre did not appeal that order. *Id.* OSFM argues that because registration is a prerequisite to eligibility to access the UST Fund, petitioner is not eligible to access the UST Fund as a matter of law. Mot. at 6.

Vogue Tyre Arguments

Vogue Tyre asserts that the sole basis for the OSFM's denial of eligibility "lies in its deregistration" of Tanks 1 and 2. Resp. at 6. Vogue Tyre asserts that OSFM cannot deregister tanks "without impinging upon a vested right" because OSFM cannot deregister tanks without retroactively applying a statute. *Id.*

Vogue Tyre further argues that OK Trucking Com. v. Armstead is distinguishable because in that case the tanks did not meet the definition of underground storage tank when registration was sought. Resp. at 4. Vogue Tyre asserts that in this case the tanks were in the ground at the time of registrations. *Id.* Vogue Tyre maintains that the facts of this case are more analogous to ChemRex, Inc. v. IPCB, 257 Ill.App.3d 274, 628 N.E.2d 963 (1st Dist 1993) wherein the tank owner was denied eligibility because of subsequent amendments to the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2000) *amended by* P.A. 92-0574, eff. June 26, 2002). Resp. at 5-6. The court found that ChemRex had a vested right to access the UST Fund and the amendment to the Act could not be applied retroactively. Vogue Tyre argues that the tanks were registered and fees paid in accordance with the statute at the time and thus pursuant to ChemRex the tanks cannot be deregistered. Resp. at 5.

Finding

The Board finds that there are no issues of material fact and judgment may be granted as a matter of law. Therefore, the Board finds that summary judgment is appropriate. The sole issue is whether the OSFM appropriately denied eligibility to access the UST Fund by Vogue Tyre because Tanks 1 and 2 were deregistered.

Section 4 of the Gasoline Storage Act provides that underground storage tanks may be registered with the OSFM. 430 ILCS 15/4 (2000). The OSFM is also charged with the responsibility of determining eligibility for access to the UST fund. *See* 415 ILCS 5/57.9(c) (2000). Pursuant to the Act, decisions by the OSFM regarding eligibility are appealed to the Board. *Id.* However, decisions regarding registration are appealable to the circuit court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (2000)). *See* 430 ILCS 15/7 (2000). Thus, as the Board has consistently held, the Board is not authorized to review OSFM's decision regarding registration of underground storage tanks. *See* Farrales v. OSFM, PCB 97-186 (May 7, 1998); Divane Brothers Electric Co. v. IEPA, PCB 93-105 (November 4, 1993); Village of Lincolnwood v. IEPA, PCB 91-83 (June 2, 1992).

OSFM has denied Vogue Tyre eligibility to access the UST fund because the tanks at issue were deregistered. In the response to the motion for summary judgment, Vogue Tyre argues at length that the tanks could not be deregistered. The Board does not review registration decisions by the OSFM.

Thus, the facts clearly establish that the tanks were not registered at the time that Vogue Tyre sought access to the UST Fund. Registration of tanks is a prerequisite to accessing the UST Fund. *See* 415 ILCS 5/57.9(a)(4) (2000). Authority to register tanks is vested in the OSFM by the legislature. Section 4 of the Gasoline Storage Act (430 ILCS 15/4 (2000)). Therefore, the denial of eligibility was appropriate and the Board affirms the decision by the OSFM.

CONCLUSION

The Board finds that there are no issues of material fact and summary judgment is appropriate. Based on the record, the Board finds that OSFM is entitled to judgment as a matter of law and the Board grants OSFM's motion for summary judgment. The Board affirms OSFM's February 1, 1995, decision denying access to the UST fund by Vogue Tyre.

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

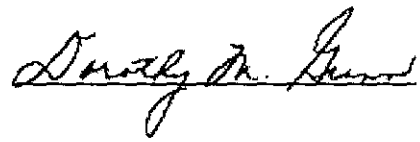
ORDER

The Board affirms the Office of State Fire Marshal's denial of eligibility to access the Underground Storage Tank Fund by Vogue Trye & Rubber Company for the facility located at 1401 Golf Road, Skokie.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 5, 2002, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Exhibit 4

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VOGUE TYRE & RUBBER COMPANY, Petitioner,	)	
v.	)	PCB No. 96-10
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	(UST Appeal)
Respondent.	)	

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Dolores Ayala
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 East Randolph Street
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a MOTION FOR SUMMARY JUDGMENT, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: June 10, 2003

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation, Petitioner,	)	
v.	)	PCB No. 96-10
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	(UST Appeal)

MOTION FOR SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.508 and 101.516, hereby respectfully moves the Illinois Pollution Control Board ("Board") to enter summary judgment in favor of the Illinois EPA and against the Petitioner, Vogue Tyre and Rubber Company ("Vogue Tyre"), in that there exist herein no genuine issues of material fact, and that the Illinois EPA is entitled to judgment as a matter of law with respect to the following grounds. In support of said motion, the Illinois EPA states as follows:

I. STANDARD FOR ISSUANCE AND REVIEW

A motion for summary judgment should be granted where the pleadings, depositions, admissions on file, and affidavits disclose no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); Ozinga Transportation Services v. Illinois Environmental Protection Agency, PCB 00-188 (December 20, 2001), p. 2.

The Board's authority to review a determination by the Illinois EPA that plans submitted to it are not subject to regulation pursuant to the Leaking Underground Storage Tank ("LUST") Program arises from Section 57.7(c)(4)(D) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.7(c)(4)(D)). Section 57.7(c)(4)(D) provides that such an action is subject to appeal to the Board in accordance with the procedures of Section 40 of the Act (415 ILCS 5/40).

II. THE ILLINOIS EPA IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE FACTS AND LAW

A. Relevant Facts

Vogue Tyre owned a facility at 4801 Golf Road in Skokie, Cook County, Illinois until July 7, 1995. Vogue Tyre kept two 10,000-gallon gasoline underground storage tanks ("USTs") on this facility. The Office of the State Fire Marshal assigned number 2-021982 to the facility. These USTs were removed in 1986. Vogue Tyre's Petition for Review of IEPA Final Decision, pp. 1-4.

On December 7, 1994, Vogue Tyre reported releases of gasoline from the 10,000 gallon USTs to the Illinois Emergency Management Agency ("IEMA"). IEMA assigned the releases Incident Number 94-2751. Vogue Tyre began corrective action and, in December 1994, submitted to the OSFM an Eligibility and Deductibility Application. On February 1, 1995, the OSFM declared that since the two 10,000 gallon USTs were removed prior to September 24, 1987, they were ineligible for reimbursement pursuant to 415 ILCS 5/57.9 and 430 ILCS 15/4. Vogue Tyre appealed the OSFM's decision to the Board on March 6, 1995. On December 5, 2002, the Board found in favor of the OSFM. On February 26, 2003, Vogue Tyre appealed that decision to the Illinois Appellate Court

for the First District (Vogue Tyre & Rubber Company v. Office of the State Fire Marshal, Appellate Court No. 03-0521). That case is still pending. Vogue Tyre's Petition, pp. 2-4.

Vogue Tyre also submitted numerous reports to the Leaking Underground Storage Tank section of the Illinois EPA for review. The Illinois EPA received Vogue Tyre's 20-Day Report, 45-Day Report, Site Classification Completion Report, and Corrective Action Plan on April 3, 1995, Vogue Tyre's Corrective Action Completion Report on May 2, 1995, and Vogue Tyre's Site Classification Work Plan and Budget on May 19, 1995. Vogue Tyre's Petition, p. 3.

On June 15, 1995, the Illinois EPA issued a letter denying Vogue Tyre's reports, stating that because the tanks at issue were removed in the mid-1980s, they were not subject to regulation and remediation by the Illinois EPA. The Illinois EPA declared this decision final, and Vogue Tyre has appealed to the Board. Vogue Tyre's Petition, p. 3.

B. No Genuine Issues Of Material Fact Exist

The reports denied by the Illinois EPA were related to the two 10,000 gallon USTs assigned Incident No. 94-2751. This is the only incident number, and therefore the only tanks, the Illinois EPA addresses in its denial letter. Consequently, no issue of material fact exists regarding which tanks are the subject of this case. Furthermore, neither party contests that these two tanks were removed in 1986, the sole fact upon which the Illinois EPA based its denial of Vogue Tyre's reports. No genuine issues of material fact thus exist.

C. The Illinois EPA Is Entitled To Judgment As A Matter Of Law

There are several bases the Board could and should rely on in recognizing that the Illinois EPA's decision to deny the reports in question was appropriate given the circumstances and underlying law.

1. The Illinois EPA's denial of Vogue Tyre's reports should be upheld because the tanks at issue were removed prior to the date the LUST program became effective

The Illinois EPA lacks regulatory authority over Vogue Tyre's 10,000-gallon tanks because the tanks were removed prior to the effective date of the LUST program. When a statute involves "prior activity or a certain course of conduct...the applicable law is the statute in place at the time of tank removal." Chuck and Dan's Auto Service v. Illinois Environmental Protection Agency, PCB 92-203 (August 26, 1993). The only relevant law is the one in place at the time the conduct actually occurred, regardless of whether or not the course of conduct was discovered or reported after the statute or amendment became effective. Id.

In Chuck and Dan's, the Illinois EPA denied the Petitioner's reimbursement application for certain costs associated with tank removal. Chuck and Dan's at 2. The basis of this denial was that the tanks were not removed in response to a release, as was required through the adoption of P.A. 87-323, an amendment to Section 22.18(e)(1)(C) of the LUST program. Id. at 7. On appeal to the Board by Petitioner, the Illinois EPA's denial was overturned. Id. The Board stated that since the amendment did not become effective until September 6, 1991, and Petitioner's tanks were removed on May 14, 1990, the amendment did not apply to or govern reimbursement for the previous tank removal; the applicable law was instead the one in place in 1990. Id. Also, since Petitioner was

seeking reimbursement for a prior course of conduct, the Board deemed it irrelevant that Petitioner submitted the reimbursement application to the Illinois EPA on February 4, 1994, after the amendment became effective; this amendment was still inapplicable to Petitioner's activity. Id.

This same concept applies to the Illinois EPA's denial of Vogue Tyre's reports. Here, Vogue Tyre removed the 10,000-gallon tanks in 1986. Following the Board's decision in Chuck and Dan's, the law governing this removal is the statute that was in place at the time of removal in that same year. The earliest version of Illinois's LUST program, though, did not become effective until approximately three years later, on July 28, 1989 through the adoption of P.A. 86-125 § 1. As a result, the LUST law did not apply at the time of removal and accordingly did not apply at the time of the Illinois EPA's decision to reject Vogue Tyre's reports.

Also similar to Chuck and Dan's, it is irrelevant that Vogue Tyre reported the release to the Illinois EPA in 1994, after the LUST program became effective, for Vogue Tyre's reports were in regard to a prior course of conduct, i.e. tank removal and releases that occurred before July 28, 1989. The LUST program therefore cannot be applied to Vogue Tyre's tank removal, meaning the Illinois EPA has no regulatory authority to require remediation of releases from such tanks or review related reports. Lacking such authority, the Illinois EPA's denial of Vogue Tyre's reports was valid.

2. The Illinois EPA's denial of Vogue Tyre's reports should be upheld because tanks removed prior to the effective date of the LUST program should not be subject to its regulations as a matter of public policy

The LUST program should not be applied to the tanks removed in 1986 as a matter of public policy. The tanks were not subject to regulation under the LUST

program when they leaked or when they were removed. They should not be subject to regulation now. In other words, if Vogue Tyre had discovered the releases when they occurred, or even up to three years after they occurred, the LUST program would not have applied. It should not apply now simply because Vogue Tyre happened to find the releases after the LUST program took effect. Public policy thus favors the Illinois EPA's denial of Vogue Tyre's reports.

Further, to allow for the submission of these reports by Vogue Tyre would effectively reward them for belated conduct and activity in that they would potentially be able to seek reimbursement from the Underground Storage Tank Fund.[1] To allow an owner or operator that would not have qualified for eligibility under the LUST program due to removal of tanks prior to the effective date of the LUST program itself to nonetheless "backdoor" themselves into eligibility by reporting a suspected release after the effective date of the program simply allows the owner or operator a benefit (i.e., reimbursement of costs) to which they were never entitled. The Illinois EPA has recognized that its authority has limitations that must be respected, and similarly the Board should make clear to the Petitioner that an owner or operator of an UST also has certain limitations that cannot be circumvented.

3. The Illinois EPA's denial of Vogue Tyre's reports should be upheld since applying the LUST program would constitute retroactive statutory application

The Illinois EPA cannot regulate Vogue Tyre's 10,000-gallon tanks because doing so would constitute retroactive statutory application. Unless the legislature

[1] As noted earlier, the Board's decision to uphold OSFM's determination that the two 10,000 gallon tanks were ineligible for reimbursement is currently under review by the Appellate Court. If the Appellate Court affirms the Board's decision, and if the Board in this case reverses the Illinois EPA and determines that the reports should have been accepted and that the Illinois EPA does have authority over the releases, then Vogue Tyre would be obligated to perform remediation without the possibility of reimbursement.

indicates what the temporal reach of a statute should be, it is up to the court to determine whether application of the statute would have a "retroactive impact, i.e., whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." Commonwealth Edison Co. v. Will County Collector, 196 Ill.2d 27, 38, 749 N.E.2d 964, 971 (2001). The mere fact that a statute is applied to conduct predating the statute's enactment does not necessarily mean it has retroactive impact. Id. at 39, 971. "Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment." Id. at 39, 972. If the court finds there would in fact be retroactive impact, the presumption is that the legislature did not intend the statute to be applied retroactively. Id. at 38, 971.

Here, application of the LUST law to Vogue Tyre's tank removal would have retroactive impact. If the LUST program were applied, it would increase Vogue Tyre's liability for past conduct, for Vogue Tyre would be required to comply with LUST standards regarding cleanup of the previously removed tanks and would be subject to penalty for failure to do so. Applying LUST requirements would also impose new duties on Vogue Tyre with respect to transactions already completed. The 10,000-gallon tanks were removed before the LUST program went into effect. The releases occurred prior to the LUST program as well, for they had to have happened prior to tank removal. The tank removal/release "transaction" had therefore been completed. Yet, as just mentioned, Vogue Tyre would now acquire new duties, namely the duty to remedy releases from those tanks in compliance with LUST standards. Finally, the LUST program attaches new legal consequences to events completed before its enactment. As just outlined, the

events at issue in the case (removal and release) had already been completed when the LUST program became effective. The LUST program would attach new legal consequences to these events in that Vogue Tyre would now be potentially subject to enforcement action if it failed to comply with all LUST program provisions regarding release remediation.

Application of the LUST program to Vogue Tyre's two 10,000-gallon tanks would therefore have a retroactive impact. As a result, the Board must presume the General Assembly did not intend the LUST law to be applied retroactively. Vogue Tyre's 10,000-gallon tanks are thereby not subject to regulation under the LUST program, and the Illinois EPA's denial of reports related to these tanks was legitimate.

III. CONCLUSION

Vogue Tyre's reports are not subject to review by the Illinois EPA under the LUST program. The removal of Vogue Tyre's 10,000-gallon tanks is subject to the law existing at the time the tanks were removed in 1986. The LUST program did not exist in 1986, but rather became effective three years afterwards. Consequently, the 10,000-gallon tanks, as well as any substances released from such tanks, are not subject to the LUST program or to Illinois EPA regulation in pursuance of the LUST program. Along with the legal guideline set forth by the Board in Chuck and Dan's, public policy favors such a conclusion as well. Furthermore, application of the LUST law would have a retroactive impact and would therefore constitute unenforceable retroactive application of the statute. The LUST program, then, cannot be applied to the tanks at issue, meaning the Illinois EPA's denial of Vogue Tyre's reports was appropriate.

For the reasons stated herein, the Illinois EPA respectfully requests that the Board affirm the Illinois EPA's decision to deny Vogue Tyre's reports.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

John J. Kim
Assistant Counsel
Special Assistant Attorney General

Dana Vetterhoffer
Legal Intern
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: June 10, 2003

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on June 10, 2003, I served true and correct copies of a MOTION FOR SUMMARY JUDGMENT, by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Bradley P. Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Dolores Ayala
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 East Randolph Street
Chicago, IL 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

John J. Kim
Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

Exhibit 5

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	PCB No. 96-10
v.	)	(UST Appeal)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGNECY,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Ms. Dorothy Gunn, Clerk of the Board
Illinois Pollution Control Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
State of Illinois Building
100 W. Randolph Street – Suite 11-500
Chicago, Illinois 60601

John J. Kim
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on July 30, 2003, we filed with the Office of the Clerk of the Pollution Control Board Vogue Tyre & Rubber Company's Response to Motion for Summary Judgment, a copy of which is attached hereto and hereby served upon you.

VOGUE TYRE & RUBBER COMPANY

By: _____
One of its Attorneys

David M. Allen
Jeffrey E. Schiller
Schuyler, Roche & Zwirner
130 East Randolph, Suite 3800
Chicago, IL 60601
David M. Allen
(312) 565-2400

CERTIFICATE OF SERVICE

I, Jeffrey E. Schiller, one of the attorneys for Vogue Tyre & Rubber Company, certify that I caused copies of the foregoing Response to Motion for Summary Judgment to be served by hand-delivery before the hour of 4:30 p.m., to:

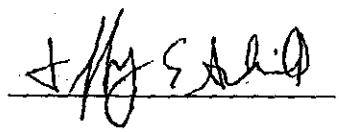
Ms. Dorothy Gunn, Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street – Suite 11-500
Chicago, Illinois 60601

and by depositing same in the United States Mail, first class postage prepaid, at One Prudential Plaza, 130 East Randolph Street, Chicago, Illinois, to:

John J. Kim
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

on this 30th day of July 2003.



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	PCB No. 96-10
v.	)	(UST Appeal)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGNECY,	)	
	)	
Respondent.	)	

PETITIONER'S RESPONSE TO MOTION FOR SUMMARY JUDGEMENT

Petitioner, Vogue Tyre & Rubber Company ("Vogue"), hereby responds to the Motion for Summary for Summary Judgment (the "Motion") filed by the Illinois Environmental Protection Agency ("IEPA") as follows.

Introduction

By and large, the essential facts pertinent to this case are not in dispute. Vogue previously owned two properly registered 10,000 gallon underground storage tanks ("USTs") at its facility located at 4801 Golf Road in Skokie, Illinois (the "Site"). Vogue removed these USTs in 1986. In 1994, Vogue discovered, for the first time, releases of gasoline from the USTs, which had the potential to cause significant damage to property and human health. Vogue promptly reported this discovery to the Illinois Emergency Management Agency ("IEMA"), and remediated the Site. Vogue petitioned the Office of the State Fire Marshall ("OSFM") and the IEPA for reimbursement for the costs expended for remediation. Both have denied Vogue's request.

What is truly ironic is that Vogue's requests for reimbursement have been turned down for reasons completely contradictory with one another. The OSFM deregistered Vogue's USTs, and thus claimed that Vogue was not entitled to reimbursement, based on regulations adopted after the

release and registrations had occurred. This Board upheld the OSFM's decision. Now, the IEPA argues that Vogue is not entitled to reimbursement from the Leaking Underground Storage Tank ("LUST") Program because the registrations and release occurred before the effective date of the LUST Program. (IEPA Br. p.5).

It is plain to see that Vogue is being unfairly treated. Vogue acted promptly in the public interest, and has been told by state agencies that its efforts are not eligible for reimbursement on completely opposite grounds. There is no principled basis for these dual positions. The IEPA's Motion should be denied.

Argument

Although the IEPA purports to make three separate arguments in support of the Motion, in reality, these arguments boil down to one – although Vogue's claim and remediation efforts occurred well after enactment of the LUST Program, the fact that Vogue's USTs were removed prior to the enactment date precludes application of the statute. This argument fails.

First, the IEPA argues that this Board's decision in Chuck and Dan's Auto Service v. Illinois Environment Protection Agency (PCP 92-203) ("Chuck and Dan's") establishes that the law to be considered was the law in place at the time that Vogue removed its USTs and not the law in effect when remediation occurred. However, the Chuck and Dan's case simply does not stand for that proposition. Chuck and Dan's involved an attempt by the IEPA to utilize an amendment to a regulation enacted after remediation to preclude recovery of remediation costs. The Board rejected this attempt. Here, there was no new law enacted after remediation - - rather, remediation occurred after the law had been changed. Thus, Chuck and Dan's provides no support for the IEPA's position.

The IEPA quotes the Chuck and Dan's case to the effect that "when a statute involves 'prior activity or a certain course of conduct...the applicable law is the statue in place at the time of tank removal'". This quote, however, leaves out a critical previous sentence in the Opinion which states that "the applicable law is the statute in effect on the day of the filing of the application for reimbursement." (Chuck and Dan's, p.6, fn. 2 (emphasis added)) The key to reconciling these two quotes is to determine what constitutes "prior activity or a certain course of conduct" as defined by the Board. Here, removal of the USTs by Vogue does not fit this definition. What Chuck and Dan's holds is that the agency cannot prevent a responsible party from recovery by changing the rules after remediation. It does not hold that remediation performed after the change (where discovery and submission of claim were also after the change) is not eligible for reimbursement.

Second, the IEPA asserts that public policy precludes the application of the LUST Program to this case. Specifically, the IEPA argues that "to allow for the submission of these reports by Vogue Tyre would effectively reward them for conduct and activity" (IEPA Br. p.6), (emphasis added)). This assertion is completely and totally off the mark. There is nothing in the record to suggest that Vogue acted belatedly – indeed, the evidence is that Vogue acted promptly and in the public interest. Vogue does not seek a reward; rather, it seeks statutory reimbursement for actions taken in the public interest and as required by law.

Nor would application of the LUST Program to this case allow owners or operators of USTs to "backdoor" themselves into eligibility for compensation in the future as suggested by the IEPA. If a release was, or should have been discovered, and was not reported or remediated, an owner or operator of USTs is subject to substantial penalties under state law, and significant exposure from private suits. There is no basis for assuming, or believing, that business will seek

to piggyback on Vogue's eligibility for LUST Program reimbursement, nor would the IEPA be required to approve such applications if they were forthcoming. This is a unique case, which will not seek a precedent antithetical to public policy.

Finally, the IEPA asserts that application of the LUST Program to Vogue "would increase Vogue Tyre's liability for past conduct...[and] would impose new duties on Vogue Tyre..." (IEPA Br. p.7). This vague and unspecific claim provides no basis for the IEPA's Motion. There is no enumeration of the duties and liabilities which would now be present. There is no discussion as to whether Vogue has already fulfilled the new duties supposedly imposed by and through the remediation and its submissions to IEPA. It is not enough for the IEPA to label the LUST Program statutes as "not intend[ed] ... to be applied retroactively" without providing these specifics.

Conclusion

For the foregoing reasons, Vogue asked that the Board enter an order denying the IEPA's Motion for Summary Judgment and set the matter for hearing.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

By: _____
One of its Attorneys

David M. Allen
Jeffrey E. Schiller
Schuyler, Roche & Zwirner, P.C.
One Prudential Plaza
130 E. Randolph Street, Suite 3800
Chicago, Illinois 60601
(312) 565-2400

Exhibit 6

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-10
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by G.T. Girard):

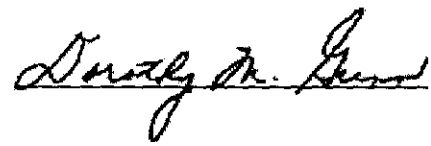
Vogue Tyre & Rubber Company (Vogue Tyre) is seeking review of a June 15, 1995 determination by the Illinois Environmental Protection Agency (Agency) that the remediation at the site located at 1401 Golf Road, Skokie, Cook County was not subject to 35 Ill. Adm. Code 731 and 732. On June 20, 2003, the Agency filed a motion for summary judgment. On July 30, 2003, Vogue Tyre filed a response to the motion. For the reasons discussed below the Board finds that there are issues of material fact and the motion for summary judgment is denied.

Summary judgment is appropriate when the pleadings, depositions, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In 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." *Id.* Summary judgment "is a drastic means of disposing of litigation," and therefore it should be granted only when the movant's right to the relief "is clear and free from doubt." *Id*, citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

The record before the Board at this time includes the original petition filed by Vogue Tyre, the motion for summary judgment, and the response from Vogue Tyre. None of these pleadings are accompanied by affidavits supporting the facts included (*see* 35 Ill. Adm. Code 101.504) in the pleadings. Therefore, the Board denies the motion for summary judgment because, the record does not include sufficient facts for the Board to determine that the Agency is entitled to judgment as a matter of law. The Board notes that the Agency may renew this motion after the Agency's record is filed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above order on September 4, 2003, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

Exhibit 7

ILLINOIS POLLUTION CONTROL BOARD

May 12, 2004

VOGUE TYRE & RUBBER COMPANY,)

Petitioner,)

vs.) PCB 96-10

ILLINOIS ENVIRONMENTAL) (UST Appeal)

PROTECTION AGENCY,)

Respondent.)

TRANSCRIPT OF PROCEEDINGS had in the above-entitled cause on the 12th day of May, A.D. 2004, at 9:00 a.m.

BEFORE: HEARING OFFICER BRADLEY P. HALLORAN.

APPEARANCES:

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
(1021 North Grand Avenue East,
P.O. Box 19276,
Springfield, Illinois 62794-9276,
217-782-5544), by:
MR. JOHN J. KIM,
appeared on behalf of the IEPA;

SCHUYLER, ROCHE & ZWIRNER,
(One Prudential Plaza, Suite 3800,
130 East Randolph Street,
Chicago, Illinois 60601,
312-565-8485), by:
MR. JEFFREY E. SCHILLER,
appeared on behalf of Vogue Tyre &
Rubber Company.

REPORTED BY: SHARON BERKERY, C.S.R.
CERTIFICATE NO. 84-4327.

THE HEARING OFFICER: Good morning everyone. My name is Bradley Halloran, I'm with the Illinois Pollution Control Board. I'm also assigned to this matter PCB 96-10 Vogue Tyre and Rubber Company versus the Illinois Environmental Protection Agency. This is an appeal regarding -- well, in a nutshell, it's an underground storage tank appeal.

It's, approximately, 9:10 on May 12th of the year 2004. I want to note, for the record, there are no members of the public here, however, if there were, they'd be allowed to make a public statement or comment.

We are going to run this hearing pursuant to Section 104, Subpart D, and Section 101, Subpart F of the Board's general provisions. And I also want to add this hearing has been noticed up pursuant to 101.602.

And this hearing is intended to develop a record for the Pollution Control Board. I will not be making the ultimate decision in the case. Of course, that's up to the Pollution Control Board to look at the transcript, the record, and post-hearing briefs and render a decision therefore.

My job is to ensure an orderly

hearing, a clear record, and to rule on any evidentiary matters that may arise. And, again, as stated before, we worked out a post-hearing brief, but I will visit that later.

And with that said, Mr. Schiller, would you like to introduce yourself, please.

MR. SCHILLER: Yes. My name is Jeffrey Schiller from the law firm Schuyler, Roche & Zwirner, and I'm appearing on behalf of the petitioner, Vogue Tyre and Rubber Company.

MR. KIM: John Kim, with the Illinois EPA.

THE HEARING OFFICER: I think -- I don't know if you're going to do opening, you're going to waive those, or you're just going to read a stipulation into the record, Mr. Schiller? Am I correct on that, Mr. Kim?

MR. SCHILLER: Yeah, I think, basically, what we have agreed to do is we have got a record that we both agreed is the record from which we will work in the case, the documents and the submissions. We can put a copy of that in as the complete record.

That left one issue, and we have a

stipulation of the fact with respect to that particular issue. And once that stipulation is read and made part of the record, that will be the complete record between the parties.

There will be no witnesses, right, John?

MR. KIM: That's correct.

THE HEARING OFFICER: Okay.

MR. SCHILLER: I'll read in the stipulation after the fact and we can do the rest.

"Now come the petitioner, Vogue Tyre and Rubber Company, by its attorney and the respondent the Illinois Environmental Protection Agency by one of its attorneys, and hereby submit to the Illinois Pollution Control Board this stipulation of fact. The parties hereby stipulate as follows:

"One, if Vogue were to present live testimony at this hearing on May 12th, 2004, that testimony would include a statement that it was Vogue's belief as of, at least, February 1985 that a large quantity of gasoline disappeared from the Vogue site due to other than a leak in the piping associated with underground storage tanks at the

site. This belief was formed because of a report issued by a company hired by Vogue to investigate the disappearance.

"Two, Vogue later discovered in 1994 and acknowledged prior to submission of technical reports that were the subject of the final decision under appeal that the reason for disappearance of gasoline from the Vogue site was due to a release of gasoline from underground storage tanks and that will be identified as 'Vogue's mistaken belief.' .

"Three, because Vogue thought that Vogue's mistaken belief was not a part of the consideration which the Illinois EPA would make in this case, Vogue's mistaken belief was not conveyed at any time to the Illinois EPA in any documents submitted as of the time of the final decision under appeal.

"Four, both Vogue and Illinois EPA are allowed to make any and all arguments in the post-hearing briefing as to the lack of merit -- as to merit or lack of same for the relevance of Vogue's mistaken belief." And were that in writing, that would be signed by both parties.

THE HEARING OFFICER: Okay. Thank you.

So, pretty much, you've rested your case in chief?

MR. SCHILLER: We've rested our case in chief.

THE HEARING OFFICER: Mr. Kim, do you have to say anything or submit anything as an exhibit?

MR. KIM: I do. I have one exhibit. And in compiling the record, through a copying error, one page, actually of the final decision, was not copied because it was a double-sided page. In the record between Pages 95 and 96, there should have been one additional page, which I will -- I provided to petitioner's counsel, I've provided to the hearing officer.

It's just marked as Respondent's No. 1. And I believe, actually, a full copy of the final decision was included with the petition and filed by the petitioner anyway. So -- but this is just to complete the record.

THE HEARING OFFICER: Thank you.

Mr. Schiller, are there any

objections?

MR. SCHILLER: No.

THE HEARING OFFICER: Okay. Respondent's Exhibit No. 1 is admitted into evidence.

THE HEARING OFFICER: We can go off the record if you want.

MR. SCHILLER: Yeah.

(WHEREUPON, discussion was had off the record.)

THE HEARING OFFICER: Back on the record. Mr. Kim has something to say.

MR. KIM: Yes. A point came up, when the Agency compiles the administrative record, we consider that document to contain all documents that were relied upon by the Agency in reaching its final decision under appeal. Therefore, usually, the last document of the document that's latest in time is the final decision itself.

The petition that was filed in this case, obviously, post-dates the final decision, and, therefore, the petition is not included as part of the administrative record. However, the parties have discussed this and agree that the petition

should be considered by the Board in its deliberations and specifically that the facts contained within the petition, in whatever fashion, in a alleged form, what have you, any facts that are contained in the petition should be considered as true and admitted, and may be relied by both parties in making an argument.

MR. SCHILLER: In that sense, should we include the petition as part of the record as an exhibit?

MR. KIM: I think -- I mean, I don't know if the Board can just take notice of that. They've got it in their records already.

THE HEARING OFFICER: You mean take an official notice?

MR. KIM: I'm just thinking to save copies. But whatever -- however you would like it, Mr. Hearing Officer, is fine with me.

THE HEARING OFFICER: You know what I think I'll do to make it cleaner, what I'll do is I'll mark the petition itself as Hearing Officer Exhibit 1.

MR. KIM: Sure.

MR. SCHILLER: Okay.

THE HEARING OFFICER: And I will -- what I will do -- if Mr. Schiller and Mr. Kim, you can get together after the hearing and get me a copy, I guess, I just need one copy, and I'll take it as an exhibit.

MR. SCHILLER: Okay.

MR. KIM: Okay.

THE HEARING OFFICER: We can do it that way. It might, again, make it cleaner and a little clearer.

MR. KIM: That's fine.

THE HEARING OFFICER: Anything else, Mr. Kim?

MR. KIM: Nothing further.

THE HEARING OFFICER: Any closing argument?

MR. SCHILLER: Nothing.

THE HEARING OFFICER: We have discussed a post-hearing briefing schedule off the record, and due to various trials and scheduled vacations, it's somewhat of a protracted briefing schedule, but what we have come up with is on June 18th, 2004, the petitioner's brief is due, on July 23rd, 2004, respondents brief is due, and on August

17th petitioner's reply, if any, is due. And that's based on the facts that, I think, the transcript will be ready on or before May 24th.

Mr. Kim, did you have anything to say?

MR. KIM: No. Mr. Schiller and I were discussing the copy of the petition that we should provide to you.

MR. SCHILLER: We both have a copy.

THE HEARING OFFICER: Okay.

MR. SCHILLER: But, unfortunately, both of them have writing on them.

THE HEARING OFFICER: Okay.

MR. SCHILLER: So we can give you a copy and substitute a clean copy, whatever you'd like us to do.

THE HEARING OFFICER: Yeah.

MR. KIM: Yeah, whatever you'd like. I mean, I assume the Board's file copy is probably clean, but I don't know how easy it is to get to that.

THE HEARING OFFICER: Yeah. See, the problem is I'll want both parties to take a look at it before I go physically and take it out of the

file and copy it. I mean this may be all just, you know, moot, or a crazy exercising, but what I would prefer is one of the parties, you can take it out of the master file, make a copy of it, and then give it to me, and it will be marked Hearing Officer Exhibit No. 21.

MR. SCHILLER: Okay.

MR. KIM: That's fine.

THE HEARING OFFICER: I do want you to take a look at it instead of me just going in and pulling it out of the file.

MR. SCHILLER: Okay.

MR. KIM: That's fine.

THE HEARING OFFICER: With that said, and hopefully we can get the petition in the next couple of days, if not today, I want to thank both parties for their civility and professionalism, and have a great time on vacation Mr. Schiller, and you, too, Mr. Kim.

MR. SCHILLER: Thank you.

MR. KIM: Thank you.

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, SHARON BERKERY, a Certified Shorthand Reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed under my personal direction.

IN WITNESS WHEREOF, I do hereunto set my hand at Chicago, Illinois, this 17th day of May, 2004.

Certified Shorthand Reporter

C.S.R. Certificate No. 84-4327.

Exhibit 8

ILLINOIS POLLUTION CONTROL BOARD
May 20, 2004

VOGUE TYRE & RUBBER COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 96-10
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

HEARING REPORT

On May 12, 2004, a hearing was held in the above-captioned matter at the James R. Thompson Center, 100 West Randolph Street, Room 11-512, Chicago, Illinois. Attorney Jeffrey Schiller appeared and participated on behalf of the petitioner. Attorney John Kim appeared and participated on behalf of the respondent.

Witness Credibility

No witnesses testified on behalf of either party.

Exhibits

The parties offered a stipulation at the hearing. That stipulation was read into the record. Respondent offered page 2 from a letter to Garry Goyak that was accepted into evidence as the respondent's exhibit number 1. The parties also offered petitioner's petition for review of IEPA final decision, filed July 18, 1995. The petition for review was accepted into evidence as hearing officer exhibit number 1.

Briefing Schedule

A briefing schedule was discussed and agreed to at the hearing. Petitioner's post-hearing brief is due to be filed on or before June 18, 2004. Respondent's post-hearing brief is due to be filed on or before July 23, 2004. Petitioner's reply, if any, is due to be filed on or before August 17, 2004. Public comment is due to be filed on or before June 1, 2004.

IT IS SO ORDERED.

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center, Suite 11-500
100 W. Randolph Street
Chicago, Illinois 60601
312.814.8917

1. Reinstallation of a groundwater monitoring well in the area of MW-2 which was destroyed during excavation activities;
2. Installation of a groundwater monitoring well in the alley in close proximity to borings B-13-16;
3. Quarterly monitoring of all monitoring wells for one year; and
4. Installation of a passive vent system in the area of the southeast corner of the building in the vicinity of the impacted soils remaining along the southern property boundary.

For purposes of appeal, this constitutes the Agency's final decision regarding the above matters. Please see Appendix 1 for an owner or operator's appeal rights.

If you have any questions please contact Tara Lambert of my staff at 217/782-6761.

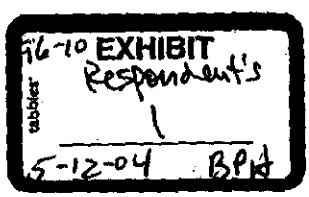
Sincerely,

Bur Filson, Manager
Northern Unit
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

BF:TL:psk

Appendices: 1

bcc: Bur Filson
Division
Tara Lambert



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation, Petitioner, v. **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**, Respondent.	PCB No. 96-10 (UST -- Appeal)

NOTICE OF FILING

TO: Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

Illinois Environmental Protection Agency
Attn: Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

PLEASE TAKE NOTICE that on July 18, 1995, we filed with the Clerk of the Illinois Pollution Control Board, the appropriate filing fee ($ 75) and Vogue Tyre and Rubber Company's Petition for Review of IEPA Final Decision, a copy of which is hereby served upon you. Pursuant to 35 Ill. Admin. Code § 101.103(d), this filing is submitted on recycled paper.

Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

Dated: July 18, 1995

By: _____
One of its Attorneys

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation,	)	
Petitioner,	)	PCB No. 96-10
v.	)	(UST -- Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

APPEARANCE

I hereby file my appearance in this proceeding on behalf of Vogue Tyre & Rubber Company.

Dated: July 18, 1995

Edward J. Copeland

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation,	)	
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Paul E. Lehner

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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APPEARANCE

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Dated: July 18, 1995

Peter C. Warman

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VOGUE TYRE & RUBBER COMPANY, an Illinois corporation,	)	
Petitioner,	)	PCB No. 96-10
v.	)	(UST -- Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

PETITION FOR REVIEW OF IEPA FINAL DECISION

Vogue Tyre & Rubber Company ("Vogue Tyre"), by its attorneys, pursuant to 415 ILCS § 5/57.8(i) hereby petitions the Illinois Pollution Control Board (the "Board") for a hearing to contest a final decision by the Illinois Environmental Protection Agency ("IEPA"). IEPA has "denied" various reports submitted to it by Vogue Tyre and has declined to issue a no further remediation letter. Vogue Tyre's reports concern remediation of contamination from underground storage tanks ("USTs") formerly used to store gasoline at a facility which until recently was owned by Vogue Tyre. Vogue Tyre requests the Board to reverse IEPA's final decision and to require IEPA to approve Vogue Tyre's reports.

In support of its Petition, Vogue Tyre states as follows:

1. Until July 7, 1995, Vogue Tyre owned the facility at 4801 Golf Road in Skokie, Illinois. The facility, which is located in Cook County, has been assigned number 2-021982 by the Office of the Illinois State Fire Marshall ("OSFM"). At various times, a total of four USTs have been located at the facility and registered with OSFM. One UST was a

8,300 gallon gasoline UST, another UST was a 560 gallon used oil UST, and two USTs were 10,000 gallon gasoline USTs.

2. In 1993, Vogue Tyre reported releases from the 8,300 and 560 gallon USTs located at the facility. These releases were assigned Incident No. 93-1858 by the Illinois Emergency Management Agency ("IEMA"). On May 6, 1993 the 560 gallon used oil UST was removed from the facility. On August 26, 1993 the 8,300 gallon gasoline UST was also removed. Vogue Tyre sought, and received, reimbursement from the UST Fund for the corrective action in 1993. In approving the eligibility of the 1993 corrective action, OSFM indicated, on January 4, 1994, that Vogue Tyre "may be eligible to seek payment of corrective action costs associated with [the two 10,000 gallon gasoline] tanks if it is determined that there has been a release from one or more of these tanks." A true and correct copy of the January 4, 1994 determination letter is attached hereto as Exhibit A and incorporated herein by reference.

3. On December 7, 1994, Vogue Tyre reported releases of gasoline from the two 10,000 gallon gasoline USTs on the facility to IEMA. IEMA assigned Incident No. 94-2751 to these releases. On February 23, 1995, after this notification to the IEMA and in compliance with 415 ILCS § 5/57.7(e)(1), Vogue Tyre commenced corrective action. This corrective action is substantially completed, although some final corrective action is ongoing at the time of filing of this Petition.

4. During corrective action it became apparent that a certain amount of the gasoline contamination resulted from the 8,300 gallon UST that was removed in 1993. Although much of the contamination was located in the area where the 10,000 gallon

gasoline USTs were located, the 8,300 gallon UST had connected underground product lines which extended into the contaminated area. In addition, some gasoline contamination (which was separate from the other contamination) was located on the opposite side of the facility from the 10,000 gallon USTs. This contamination could not have resulted from the 10,000 gallon USTs and must have resulted from the 8,300 gallon UST. As mentioned above, corrective action in regard to the 8,300 gallon UST has already been determined to be subject to reimbursement by the UST Fund.

5. As a result of the determination that some contamination resulted from the 8,300 gallon UST (and thus related to Incident No. 93-1858), Vogue Tyre submitted various reports to IEPA under both the 94-2751 and 93-1858 incident numbers. On April 3, 1995, IEPA received Vogue Tyre's 20-Day Report, 45-Day Report, Site Classification Completion Report, and Corrective Action Plan. IEPA received Vogue Tyre's Corrective Action Completion Report on May 2, 1995. On May 19, 1995, IEPA received Vogue Tyre's Site Classification Work Plan and Budget.

6. On June 15, 1995, by letter sent via telecopier, IEPA "denied" Vogue Tyre's reports, declaring that Incident No. 94-2751 is "not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731." In the June 15 letter, IEPA further declared that the decision was IEPA's "final decision" for the purposes of appeal. A true and correct copy of the IEPA Final Decision Letter is attached hereto as Exhibit B and incorporated herein by reference. In a telephone conversation on July 19, 1995, Bur Filson of IEPA indicated that Vogue Tyre's reports were "denied" because the contamination at issue was associated with tanks removed in the mid-1980s.

7. IEPA's final decision is wrong. A certain amount of the release of gasoline at the facility resulted from the 8,300 gallon gasoline UST that was removed in 1993. The release was duly reported, and corrective action in regard to that UST has already determined to be reimbursable by the UST Fund. Thus, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 8,300 gallon UST should be reimbursable. Moreover, because the two 10,000 gallon USTs were properly registered on May 6, 1986 (prior to their removal), a February 7, 1993 OSFM administrative order indicating that the two 10,000 gallon USTs "[are] not or [are] no longer registrable" because of their removal date has no application because the two USTs had already been registered prior to that date. Therefore, the costs of Vogue Tyre's recent corrective action to remediate contamination resulting from the 10,000 gallon USTs should also be reimbursable.

8. This is Vogue Tyre's second appeal to the Board relating to the facility. With respect to Incident No. 94-2751, Vogue Tyre submitted to OSFM an Eligibility and Deductibility Application dated December 27 and 28, 1994. In the application, Vogue Tyre indicated that all USTs at the facility had experienced releases. In a February 1, 1995 letter, OSFM responded to the application by citing 415 ILCS § 5/57.9 and 430 ILCS § 15/4 and noting that the two 10,000 gallon USTs were ineligible because they were removed prior to September 24, 1987. On March 6, 1995, Vogue Tyre appealed OSFM's February 1 determination, and that appeal was assigned No. 95-78.

9. Since making its proper notifications to IEMA, Vogue Tyre has undergone substantial corrective action. This corrective action is consistent with the remediation

purposes of both the Illinois Environmental Protection Act and the Illinois Gasoline Storage Act, and Vogue Tyre's corrective action costs should be reimbursed by the UST Fund.

10. Therefore, the main issue before the Board is whether IEPA erred in denying Vogue Tyre's reports. Since it has already been determined that corrective action in regard to the 8,300 gallon UST is reimbursable, one sub-issue is what costs of the recent corrective action related to that UST. A second sub-issue is whether IEPA erred in denying Vogue Tyre's reports because the two 10,000 gallon USTs were removed in the mid-1980s.

11. Vogue Tyre requests a hearing before the Board in Chicago, and requests that the Board:

(i) determine that IEPA's final decision of June 15, 1995 was erroneous and order IEPA to approve the various reports submitted by Vogue Tyre to IEPA; and

(ii) order IEPA to (a) acknowledge that all of Vogue Tyre's corrective action is eligible for reimbursement from the UST Fund, and (b) begin processing Vogue Tyre's reports so that Vogue Tyre can be reimbursed for the costs of its corrective action.

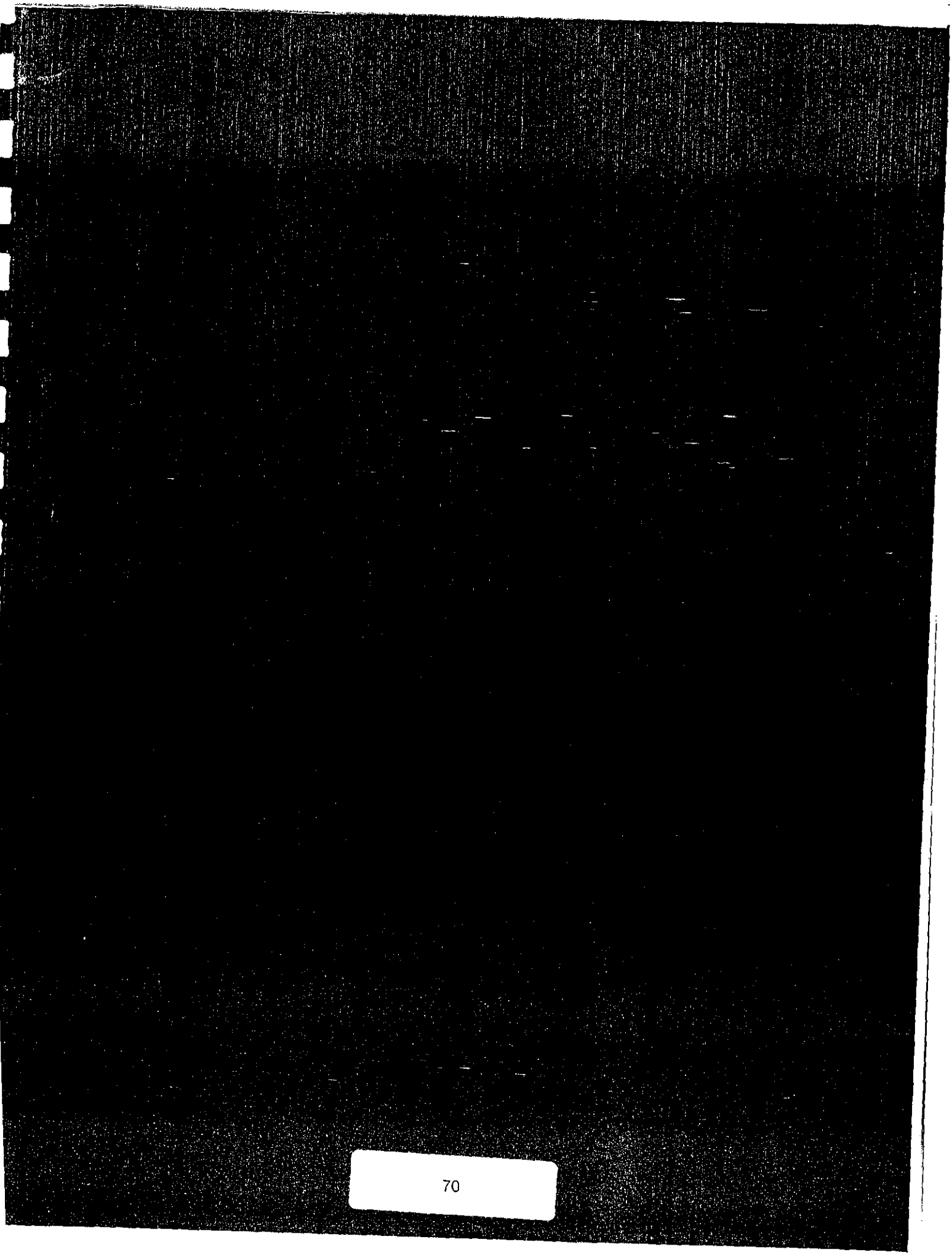
Respectfully submitted,

VOGUE TYRE & RUBBER COMPANY

Dated: July 18, 1995

By: _____
One of its Attorneys

Edward J. Copeland
Paul E. Lehner
Peter C. Warman
Schuyler, Roche & Zwirner
One Prudential Plaza
Suite 3800
130 E. Randolph Street
Chicago, Illinois 60601
(312) 565-2400



Office of the Illinois
State Fire Marshal

General Office
217-785-0969

Divisions
ARSON INVESTIGATION
217-782-6855
BOILER and PRESSURE VESSEL SAFETY
217-782-2696
FIRE PREVENTION
217-785-4714
MANAGEMENT SERVICES
217-782-9889
INFIRS
217-785-1016
PERSONNEL
217-785-1009
PERSONNEL STANDARDS and EDUCATION
217-782-4542
PETROLEUM and CHEMICAL SAFETY
217-785-5878
PUBLIC INFORMATION
217-785-1021

CERTIFIED MAIL - RECEIPT REQUESTED # P 435 173 603

January 4, 1994

Jerry Vestweber
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, IL 60077

In re: Facility No. 2--021982
IEMA Incident No. 93-1858
Vogue Tyre Center
4801 W. Golf Rd.
Skokie, COOK CO., IL

Dear Mr. Vestweber:

The Reimbursement Eligibility and Deductibility Application, received on 12-21-93 for the above referenced occurrence has been reviewed. The following determinations have been made based upon this review.

It has been determined that you are eligible to seek corrective action costs in excess of $10,000. The costs must be in response to the occurrence referenced above and associated with the following tanks:

Eligible Tanks

Tank #3 - 8,300 gallon gasoline
Tank #4 - 560 gallon used oil

The Illinois Environmental Protection Agency will send you a packet of Agency billing forms for submitting your request for payment.

1035 Stevenson Drive • Springfield, Illinois 62703-4259

An owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements are satisfied:

1. Neither the owner nor the operator is the United States Government;

2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law;

3. The costs were incurred as a result of a confirmed release of any of the following substances:

   "Fuel", as defined in Section 1.10 of the Motor Fuel Tax Law

   Aviation fuel

   Heating oil

   Kerosene

   Used oil, which has been refined from crude oil used in a motor vehicle, as defined in Section 1.3 of the Motor Fuel Tax Law.

4. The owner or operator registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.

5. The owner or operator notified the Illinois Emergency Management Agency of a confirmed release, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.

6. The costs have not already been paid to the owner or operator under a private insurance policy, other written agreement, or court order.

7. The costs were associated with "corrective action".

This constitutes the final decision as it relates to your eligibility and deductibility. We reserve the right to change the deductible determination should additional information that would change the determination become available. An underground storage tank owner or operator may appeal the decision to the Illinois Pollution Control Board (Board), pursuant to Section 57.9 (c) (2). An owner or operator who seeks to appeal the decision shall file a petition for a hearing before the Board within 35 days of the date of mailing of the final decision (35 Illinois Administrative Code 105.102(a) (2)).

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(312)814-3620

The following tanks are also listed for this site:

Tank #1 - 10,000 gallon gasoline
Tank #2 - 10,000 gallon empty

Your application indicates that there has not been a release from these tanks. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.

If you have any questions regarding the eligibility or deductibility determinations, please contact Kim Harms at (217)785-1020 or (217)785-5878 between 3:00 - 4:00 p.m.

Sincerely,

James I. McCaslin
Director
Division of Petroleum and Chemical Safety

JIM:KH:bc

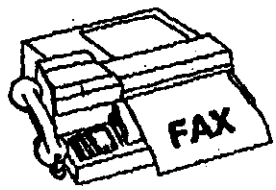
cc: IEPA
Facility File

#5664

ILLINOIS
ENVIRONMENTAL
PROTECTION AGENCY

P.O.Box 19276
2200 Churchill Road
Springfield, IL. 62794-9276

LEAKING UNDERGROUND STORAGE TANK SECTION



DATE: 6-15-95 TIME: _____

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FAX NUMBER: 312-565-8300

FROM: BILL FILSON

MEMO: _____

OFFICE PHONE NUMBER: 217-782-6761

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State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director 2200 Churchill Road, Springfield, IL 62794-9276

217/782-6761

Vogue Tyre & Rubber Company
Attn: Garry Goyak
4801 West Golf Road
Skokie, IL 60077

Re: LPC# 0312885218 -- Cook
Skokie/Vogue Tyre & Rubber Co.
4801 W. Golf Road
LUST Incident #942751
LUST Tech File

Dear Mr. Goyak:

The Illinois Environmental Protection Agency is in receipt of the following reports: 20-Day Report, 45-Day Report, Site Classification Completion Report, and the Corrective Action Plan dated March 27, 1995 and received April 3, 1995; the Corrective Action Completion Report dated April 26, 1995 and received May 2, 1995; and the Site Classification Work Plan and Budget dated May 16, 1995 and received May 19, 1995.

Based on the information currently in the Agency's possession, the Agency deems this incident not subject to 35 Illinois Administrative Code (IAC), Part 732 or 35 IAC, Part 731. No technical review of the above documents has been performed in accordance with 35 IAC, Section(s) 732.202, 732.307, 732.309, 732.400, 732.402, 732.403, 732.404 and the Illinois Environmental Protection Act, Section(s) 57.6 and 57.7. Therefore, the Agency is notifying the owner or operator that the following reports are being denied: 20-Day Report, 45-Day Report, Site Classification Completion Report, Corrective Action Plan, Corrective Action Completion Report, and Site Classification Work Plan and Budget.

However, the Agency did conduct a review of the information submitted to determine site remediation adequacy. The Agency has concluded that further remedial activities should be performed, and recommends the following to ensure that the Groundwater Standards/Objectives are not exceeded and the remaining soil contamination is addressed:

1. Reinstallation of a groundwater monitoring well in the area of MW-2 which was destroyed during excavation activities;
2. Installation of a groundwater monitoring well in the alley in close proximity to borings B-13-16;
3. Quarterly monitoring of all monitoring wells for one year; and
4. Installation of a passive vent system in the area of the southeast corner of the building in the vicinity of the impacted soils remaining along the southern property boundary.

For purposes of appeal, this constitutes the Agency's final decision regarding the above matters. Please see Appendix 1 for an owner or operator's appeal rights.

If you have any questions please contact Tara Lambert of my staff at 217/782-6761.

Sincerely,

Bur Filson, Manager
Northern Unit
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

BF:TL:psk

Appendices: 1

Appendix 1

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(1) and Section 40 of the Illinois Environmental Protection Act. An owner or operator who seeks to appeal the Agency's decision may, within 35 days after the notification of the final Agency decision, petition for a hearing before the Board; however, the 35-day period may be extended for a period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the 35-day initial appeal period.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794-9276
217/782-5544

CERTIFICATE OF SERVICE

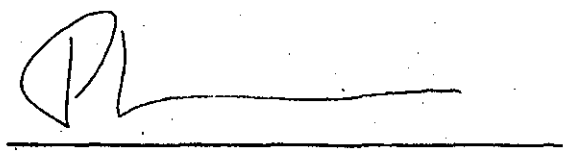
I, Peter C. Warman, one of the attorneys for Vogue Tyre & Rubber Company, certify that I caused a copy of the foregoing **Petition for Review of IEPA Final Decision** to be served by messenger delivery before the hour of 4:30 p.m. to

Illinois Pollution Control Board
Attn: Ms. Dorothy Gunn, Clerk of the Board
State of Illinois Building
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601

and by United States Mail, first class postage prepaid, to

Illinois Environmental Protection Agency
Attn: Division of Legal Counsel
2200 Churchill Road
Post Office Box 19276
Springfield, Illinois 62794

on this 18th day of July, 1995.



ILLINOIS POLLUTION CONTROL BOARD

James R. Thompson Center ◆ Suite 11-500 ◆ 100 West Randolph Street ◆ Chicago, Illinois 60601
312-814-3620 ◆ Fax 312-814-3669

#9

Date: 7-18-95

Type of Case: UST - Appeal

Case Number: PCB 96-10

Caption: Vogue Tyre & Rubber Company v. EPA

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Velma Scott
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CHICAGO, IL 60601

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