

ILLINOIS POLLUTION CONTROL BOARD
July 14, 1993

J.J.R.S. INVESTMENTS,)	
An Illinois General Partnership,)	
)	
Petitioner,)	
)	
v.)	PCB 93-107
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on a May 28 appeal, filed by J.J.R.S. Investments (Investments), of an Illinois Environmental Protection Agency (Agency) determination that a 275 gallon underground storage tank was ineligible for reimbursement from the underground storage tank fund. Because of the necessity for immediate Board action in these cases, the case was accepted by the Board upon filing, and a hearing date was immediately set.

While the Board's rules (35 Ill. Adm. Code 105.102(a)(4) require that the Agency file its record with us within 14 days of the date of notice of the petition (on June 11, 1993), the record in this case was not submitted by the Agency until June 23. On that date, along with its motion to file the record instanter, the Agency also filed a motion for summary judgement. The basis of this summary judgement motion was that the Office of the State Fire Marshal (OSFM) had refused to register the tank. Citing various Board cases which held that the OSFM has the exclusive statutory authority to register tanks pursuant to the Act, see e.g., Village of Lincolnwood, (June 4, 1992), PCB 91-83, 134 PCB 33; City of Lake Forest v. IEPA, (June 23, 1992), PCB 92-36, 134 PCB 337; Martin Oil Marketing, # 64 v. IEPA, (August 13, 1992), PCB 92-53, 135 PCB 293., the Agency argues that the Board lacks authority to review a determination of the OSFM regarding registration and consequent eligibility for reimbursement from the fund. Thus, the Agency argues that the case must be dismissed.

On July 2, 1993, Investments filed a motion for denial of summary judgement and a memorandum in support thereof. In these pleadings, Investments argues that the OSFM improperly denied registration of the 275 gallon tank since the tank was used for heating oil storage; it looks to the Board to review the determination of OSFM. Under the current statutory structure, however, no such review by the Board is available. (See cases cited above.) Rather, petitioners in other cases before the Board who have been denied reimbursement based upon adverse eligibility

determination of the OSFM have sought review of that OSFM decision, and have requested a stay of the proceedings before the Board. (See, Community Consolidated School District No. 14 v. IEPA, PCB 91-75; The OK Trucking Company v. IEPA, PCB 92-108; and RTC Industries v. IEPA, PCB 93-28.) Since no such stay has been requested here, we must rule on the motion as presented by the facts of this case. Unless and until Petitioner presents us with a determination from the OSFM (or the courts) that the tank has been registered and an Agency action pursuant thereto, there is nothing for us to review. The Board finds that summary judgement is appropriate in this case and grants summary judgement as requested by the Agency.

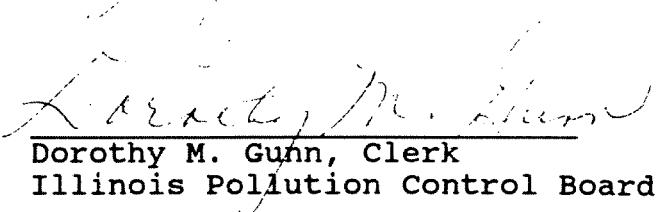
Regarding the Agency's motion to file the record instanter, the Board grants the motion and accepts the record since (1) the petitioner suffers no prejudice as a result of the late filing and (2) the record is virtually inconsequential considering the Respondent's admission of the OSFM denial. The Board cautions the Agency for future cases, however, that late filed records in UST cases may result in determinations adverse to the Agency's interests.

IT IS SO ORDERED.

J. Anderson dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 14th day of July, 1993, by a vote of 4-1.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board