

January 21, 1993

PCB 92-171
(Underground Storage
Tank Reimbursement)

0138-0465

satisfies the requirements of Section 22.18b(a)(4) of the Act. That Section requires that the person seeking access to the UST Fund is to satisfy the requirement to register "in accordance with" Section 4 of the Gasoline Storage Act and to pay all fees required "in accordance with" Sections 4 and 5 of that Act (and OSFM regulations). If such persons have been duly deemed exempt by the OSFM "in accordance with" the registration and fee requirements of Sections 4 and 5, then should not the Board hold that Section 22.18b(a)(4) is satisfied? I suggest that the majority's contrary holding is arguably "second guessing" a decision of the Fire Marshal made "in accordance with" Sections 4 and 5 of the Gasoline Storage Act.

I believe that Section 22.18b and other provisions in the Act buttress the above interpretation!

First, there is no affirmative declaration anywhere in Section 22.18b of legislative intent to totally prevent access to the UST Fund of all exempt tanks as a class. Indeed, exempt tanks are not mentioned at all. I would argue that totally eliminating a class of tanks in the absence of an affirmative declaration is inconsistent with the elaborately detailed language of Section 22.18b. That language reflects a legislative intent throughout (albeit often difficult to construe) to affirmatively detail its Fund-related classifications.

Next, allowing the exempt tank class access to the UST Fund is consistent with the environmental perspective embodied in the Environmental Protection Act as a whole, including its purpose as expressed in Section 2. I believe that the above construction is consistent - as the majority's is not - with the environmental goal in the overall UST removal program, that goal being to clean up the pollution caused by these leaking underground storage tanks. The UST Fund exists to make it easier, and in many cases to make it even possible, to finance these corrective actions.

Finally, a most important point. The UST Fund exists to enhance compliance with the federal Resource Conservation and Recovery Act (RCRA) requirements for corrective action related to leaking USTs, or LUSTs. The RCRA/UST regulations encompass the class of tanks at issue here. The State Fund is a federally allowed alternative to the RCRA/UST requirements for financial assurance, the latter being generally viewed as unavailable or financially unduly burdensome. In essence, then, the purpose of the Agency-administered UST Fund is to enhance compliance with the environmentally-related mandates flowing from the RCRA/UST program. That is why its corrective action provisions are in the Environmental Protection Act in the first place. It seems, therefore, most appropriate for the Board to have this environmental perspective also in mind when reviewing questions of access to the Fund.

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It is for these reasons that I respectfully dissent.

Joan G. Anderson
Joan G. Anderson
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 27th day of January, 1993.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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