

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1993

PHILLIPS 66 COMPANY,)	
a DIVISION OF PHILLIPS)	
PETROLEUM COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 92-171
)	(Underground Storage
ILLINOIS ENVIRONMENTAL)	Tank Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On December 30, 1992, respondent Illinois Environmental Protection Agency (Agency) filed a motion for summary judgment. On January 6, 1993, petitioner Phillips 66 Company (Phillips) filed its response.

Under Section 22.18b(a)(4) of the Environmental Protection Act, an owner or operator of a underground storage tank (UST) is eligible for reimbursement from the UST Fund only if the UST is registered with the Office of State Fire Marshal. (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.18b(a)(4).) The Agency moves for summary judgment on the basis that there is no genuine issue of material fact concerning whether the USTs in question were registered with the Fire Marshal and that, as a matter of law, Phillips is not eligible to access the UST Fund because the tanks are not registered.

The record contains correspondence from the Fire Marshal to the Agency dated August 19, 1992 (R. 142) and September 15, 1992 (R. 143). The August 19, 1992 form indicates that the tanks were registered on February 6, 1986 and the comment that the Fire Marshal needed to know the date the tanks were last in use. (C. 142.) The September 15, 1992 form, which appears to be the same form as the August 19 form with some additions and deletions, indicates that the tanks are exempt from registration. (C. 143.) However, attached to the Agency's motion for summary judgment is the affidavit of Patrick Ketchum, an employee of the Fire Marshal who verifies registration of USTs, which attests to the fact that as of December 29, 1992, Phillips' USTs were not registered with the Fire Marshal.

While the interagency correspondence indicates some confusion as to tank registration, the Board finds that the affidavit of Ketchum establishes that the tanks in question are not properly registered with the Fire Marshal. The Board has previously noted that the Fire Marshal, not the Board, has jurisdiction over tank registration and that the question of whether the tanks could,

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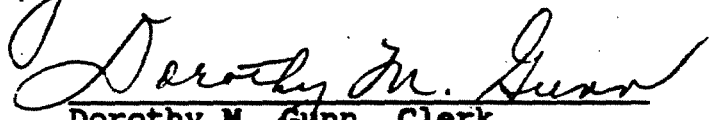
should, or might be registered is not material to the Board's review of an Agency motion for summary judgment. (Village of Lincolnwood v. IEPA (June 4, 1992), PCB 91-83 at 2-3.) Because the Act requires registration in order to qualify for reimbursement and because there is no genuine issue of material fact concerning the registration of Phillips' USTs, the Board finds that the Agency's denial of eligibility is correct as a matter of law. Therefore, the Agency's motion for summary judgment is granted.

IT IS SO ORDERED.

J. Anderson dissents.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Casteneda v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of January, 1993 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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