

ILLINOIS POLLUTION CONTROL BOARD
June 2, 1994

MYRTLE LANDWEHRMEIER,)
)
 Petitioner,)
)
 v.) PCB 94-55
) (UST Fund)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

MAURICE DAILY, DAILY & WALKER, APPEARED ON BEHALF OF PETITIONER;

GREG RICHARDSON APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

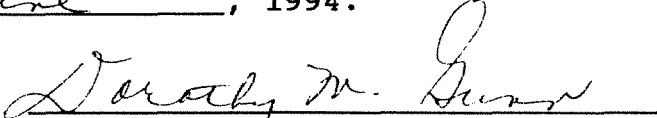
CONCURRING OPINION (by C.A. Manning):

I agree with the majority's outcome in that, based on the record, the 53% handling charges requested by Myrtle Landwehrmeier are not reasonable. I disagree with the majority's analysis of the handling charges in light of the recent decision of the Third Appellate Court of Illinois in Chuck and Dan's Auto Service v. Illinois Environmental Protection Agency and Illinois Pollution Control Board, (May 19, 1994), No. 3-93-0751. Clearly Chuck and Dan's Auto Service established that as to the question of handling charges the analysis should focus as to what is reasonable based on the record before the Board. The majority's reference to the new Section 22.18b(i)(2) of the Environmental Protection Act which is not applicable here and the Illinois Environmental Protection Agency's unpromulgated rule establishing 15% as a reasonable handling charge is misplaced. This case should have been solely analyzed as to the reasonableness of the requested handling charges.

For these reasons, I concur.


Claire A. Manning
Chairman

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 3rd day of June, 1994.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board