ILLINOIS POLLUTION CONTROL BOARD
February 4, 1993

JAMES LYNCH, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	PCB 92-81 (Underground Storage Tank Reimbursement Determination)

ORDER OF BOARD (by J. Theodore Meyer):

This matter is before the Board on respondent Illinois Environmental Protection Agency's (Agency) December 24, 1992 motion for reconsideration. Petitioner James Lynch has not responded to the motion.

The Agency seeks reconsideration of the Board's November 19, 1992 decision in this case. In that decision, the Board found that $7,338.74 in tank removal costs were corrective action costs, and were reimbursable from the Underground Storage Tank (UST) Fund. The Agency now asks the Board to reconsider that finding, and reverse its decision that the costs are reimbursable from the fund.

The Board grants the motion for reconsideration so that it can address the arguments raised by the Agency. The Agency contends that the Board's opinion and order does not indicate that relevant facts (i.e. that the release of petroleum was discovered after petitioner initiated the tank removal) were considered within the context of an alleged "dual purpose" of the tank removal. The Board points out, however, that the testimony cited by the Agency was discussed in the November 19 opinion, where the Board stated "[c]ontamination was discovered during the course of the removal of the tanks, and a strong petroleum odor and discoloration of the soil was noted. (R.B at 13, 43, 52; Tr. at 5-8.)." (Opinion at 2.) The Board therefore rejects the Agency's contention that we did not consider relevant facts.

The Agency maintains that the facts in this case indicate that the main intent of petitioner's tank removal was to close his service station, not corrective action activity. Citing the Board's decision in Southern Food Park v. Illinois Environmental Protection Agency (December 17, 1992), PCB 92-88, the Agency contends that since petitioner's tank removal was not for the primary purpose of cleaning up a release of petroleum, that tank removal should not be considered corrective action activity. Thus, the Agency argues that petitioner's tank removal costs are

not reimbursable from the Fund.

The Board has reviewed its decision in Southern Food Park, and finds that the language referred to by the Agency is not applicable to this case. In Southern Food Park, the Board determined that the replacement of concrete by the petitioner was not corrective action. That decision followed a line of cases which have determined that although concrete replacement could possibly be shown to be corrective action, the circumstances of those cases have not supported such a finding. However, this case involves the reimbursability of tank removal costs. The Board affirms its November 19 finding that the tank removal costs in this case did constitute corrective action, and are thus reimbursable.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 4th day of February, 1993, by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board