

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

ROCKFORD DROP FORGE)
COMPANY,)
)
Petitioner,)
)
v.) PCB 90-46
) (Underground Storage Tank)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

DISSENTING OPINION (by J. Anderson and J. Dumelle)

We would have placed the Rockford Drop Forge (Rockford) tanks under the umbrella of the regulations. We would have held that, since 10%-15% of the oil, not an insignificant amount, was used to fuel mobile vehicles, i.e. the fork lift trucks, the tanks fell outside what USEPA was addressing in its exemption language. The examples used by USEPA all refer to stationary uses (see p. 4 and 5 of majority opinion). We believe that the use of the tanks to fuel mobile vehicles is compatible with petroleum tanks used to fuel mobile vehicles, the latter tanks being clearly covered by the regulations. We would have held that whether the forklifts did or did not stay on the premises at all times was not controlling; rather, it was the fact that they are mobile vehicles.

We emphasize that the USEPA regulations are getting after an important pollution problem. We believe that the USEPA's intent, in its preamble to the regulations, quoted on p. 3 of the majority opinion, should be given more weight than it was. We re-quote it as follows:


Throughout the development of the UST regulations, where there has been ambiguity in the terms defining the jurisdiction of the Subtitle I program, it has been the Agency's policy to define the scope of the UST regulations broadly and interpret the exclusions relatively narrowly. By taking this approach, the Agency hoped to avoid prematurely eliminating from its jurisdiction tanks that may pose an environmental threat. (citation omitted).

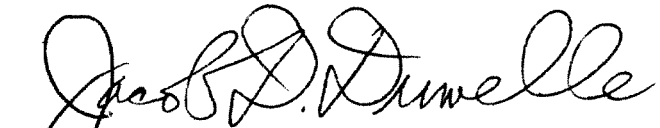
That the Illinois Legislature subsequently added, as a class of UST's eligible for state fund reimbursement, all heating oil tanks greater than 1,100 gallons is not, we believe, a persuasive

argument buttressing Rockford's exclusion from the then-controlling federal definition applied in this case. It is clear that the federal definition does not exclude all heating oil tanks as a class, just some of them.

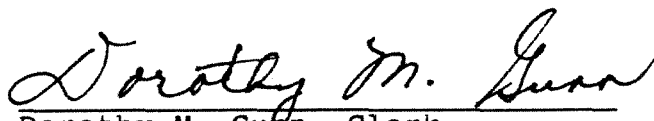
We also believe that we should "reach out" here, because we believe that the governmental system within which Rockford was interacting in good faith ended with an unfair result. After consultation, Rockford registered and "paid its dues" as a UST with the Office of the State Fire Marshall, then did the environmentally correct thing in removing the tanks, only to find out at the back-end that the rules had changed, literally. We in government need to make every effort to avoid a situation such as this, where persons place reliance on a system that borders on the irrational. It does not serve the purposes of achieving a clean environment that persons who voluntarily comply are "led down the garden path" in this manner.

It is for these reasons that we respectfully dissent.


Joan G. Anderson
Board Member


Jacob D. Dumelle, P.E.
LCDR-CED-USNR (RET)
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 21st day of December, 1990.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board