

ILLINOIS POLLUTION CONTROL BOARD
February 7, 1991

ALTON COMMUNITY UNIT SCHOOL)	
DISTRICT #11,)	
)	
Petitioner,)	
)	
v.)	PCB 91-1
)	(Underground Storage Tank
ILLINOIS ENVIRONMENTAL)	Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a motion for summary judgment filed pursuant to 35 Ill. Adm. Code 101.244 on January 15, 1991 by the Illinois Environmental Protection Agency (Agency). Petitioner Alton Community Unit School District #11 (Alton) has failed to file a response to the Agency's motion.

On November 6, 1990, Alton submitted to the Agency an application for reimbursement from the Underground Storage Tank Fund for corrective action costs incurred in the removal of a 10,000 gallon underground storage tank containing heating oil located at the Mark Twain School, 907 Milton Road, Alton, Illinois. (R. 1) This application states that the tank was registered with the Office of the State Fire Marshall (OSFM) on August 4, 1989. (R. 3) A copy of the OSFM registration form was attached to the application and provides that the tank was registered on August 4, 1989. (R. 9) On November 26, 1990, the Agency notified Alton that it was eligible to seek reimbursement of corrective action costs subject to a \$100,000 deductible. (R. 18) On January 2, 1991, the Board received Alton's petition for review challenging the Agency's imposition of a \$100,000 deductible.

The Agency argues that summary judgment should be entered in its favor because there are no genuine issues of material fact as to the date Alton registered its tank with the OSFM and that, pursuant to Section 22.18b(d)(3)(B)(i) of the Act, it is clear that the deductible imposed is proper. Section 22.18b(d)(3)(B)(i) of the Act provides as follows:

If prior to July 28, 1989, the owner or operator had registered none of the underground storage tanks in use on that date at the site, the deductible amount under subparagraph (A) of paragraph (3) of this subsection (d) shall be \$100,000 rather than \$10,000 ... (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(d)(3)(B)(i).)

The record establishes that the tank in question was registered on August 4, 1989. (R. 3, 9) Alton admits in its petition for review that the tank was registered "only one week past the deadline." Therefore, no genuine issue of material fact is presented as to the date of registration. Given that Alton registered the tank after July 28, 1989, it is clear that the Act provides for the imposition of a \$100,000 deductible rather than a \$10,000 deductible.

The Board finds that there are no genuine issues of material fact presented and that the Act supports the Agency's imposition of a \$100,000 deductible upon Alton. Therefore, the Agency's motion for summary judgment is granted.

This constitutes the Board's findings of fact and conclusions of law in this matter.

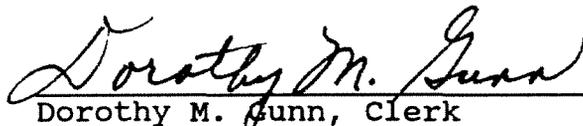
ORDER

The Agency's determination that Alton's application for reimbursement for corrective action costs is subject to a \$100,000 deductible is hereby affirmed. The Board hereby grants the Agency's motion for summary judgment.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for appeal of final Board Orders within 35 days. 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 Opinion and Order was adopted on the 7th day of February, 1991 by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board