

ILLINOIS POLLUTION CONTROL BOARD
February 1, 2001

BOB and SHARON LAMMA,)
)
 Petitioners,)
)
 v.) PCB 99-182
) (UST – Appeal)
 OFFICE OF THE STATE)
 FIRE MARSHAL,)
)
 Respondent.)

SHARON LAMMA APPEARED *PRO SE*; and

SALLY A. CARTER, ASSISTANT ATTORNEY GENERAL, ATTORNEY GENERAL'S OFFICE, and KEITH H. IMMKE, LEGAL COUNSEL, OFFICE OF THE STATE FIRE MARSHAL, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a petition for review filed by Bob and Sharon Lamma (petitioners) seeking review of a final deductibility determination issued by the Office of the State Fire Marshal (OSFM). The OSFM determined that a \$100,000 deductible applied to petitioners regarding their leaking underground storage tanks (UST). For the reasons explained below, the Board affirms the OSFM's deductibility determination.

BACKGROUND

On August 28, 1982, petitioners purchased a gas station, under a contract for deed, located at 402 West Jackson, Auburn, Sangamon County, Illinois. Tr. at 10, 33; Rec. at 9, 83.¹ On January 3, 1998, petitioners completed payment on the contract for deed. Rec. at 9. Until 1986, petitioners operated the site as a gas station. Tr. at 29. After that date, petitioners used the site as a restaurant. Tr. at 29. On September 11, 1991, petitioners registered the two gasoline tanks at the site with the OSFM and paid the associated fees. Tr. at 44; Rec. at 70-71. The tanks were removed on January 12, 1999, and a release was discovered. Rec. at 9-12; 19. The Illinois Emergency Management Agency was notified. Rec. at 19. On January 25, 1999, petitioners completed a UST Fund eligibility and deductibility application. Rec. at 9-12. Petitioners identified themselves as the owners of the tanks. Rec. at 9. On April 19, 1999, the OSFM notified petitioners that they were eligible to seek payment of costs in excess of \$100,000. Pet. Exh. A. This appeal followed.

¹ Citations to the hearing transcript will be referenced as "Tr. at ___." Citations to the record filed by the OSFM will be referenced as "Rec. at ___."

A hearing on the petition was held on December 5, 2000. Petitioners did not file a posthearing brief. The OSFM filed a posthearing brief on January 18, 2001.

APPLICABLE STATUTES

The Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1998)) contains the requirements for the UST Fund, which states, in pertinent part:

- a. The Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system of a substance listed in this Section. The owner or operator is eligible to access the Underground Storage Tank Fund if the eligibility requirements of this Title are satisfied and:
 1. Neither the owner nor the operator is the United States Government.
 2. The tank does not contain fuel which is exempt from the Motor Fuel Tax Law.

- b. An owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action after the application of a \$10,000 deductible, except in the following situations:
 1. A deductible of \$100,000 shall apply when none of the underground storage tanks were registered prior to July 28, 1989, except in the case of underground storage tanks used exclusively to store heating oil for consumptive use on the premises where stored and which serve other than farms or residential units, a deductible of \$100,000 shall apply when none of these tanks were registered prior to July 1, 1992.

415 ILCS 5/57.9 (1998).

The OSFM found that 57.9(b)(1) applied to the petitioners, and therefore they were not eligible for the \$10,000 deductible. Rec. at 4. Pursuant to Section 57.9(c)(2) of the Act, this appeal followed.

ARGUMENTS

Petitioners allege that they were unaware that it was their responsibility to register the tanks until 1991. Pet. at 2. At that time, Tom Spradlin, of the OSFM, came to the site and advised petitioners that they needed to register the tanks. Tr. at 34. Petitioners registered the tanks shortly after Spradlin's visit. Tr. at 34.

Petitioners also allege that the OSFM's determination was ambiguous because it contained the statement "We reserve the right to change the deductible determination should additional information that would change the determination become available." Pet. at 1-2.

In its posthearing brief, the OSFM alleges that the tank registration date necessitated that Section 57.9(b)(1) apply to petitioners. Hrg. Br. at 6. Since petitioners admittedly did not register the tanks until September 11, 1991, the OSFM alleges that Section 57.9(b)(1), applying a \$100,000 deductible rather than a \$10,000 deductible to petitioners, is proper. Hrg. Br. at 7.

ANALYSIS

The only dispute in this case is whether the OSFM correctly found that petitioners were eligible for the \$100,000 deductible, rather than the \$10,000 deductible. The OSFM's basis for its decision was the late date on which petitioners registered the tanks. Under the statute, petitioners, as the undisputed owners of the tanks, had to register the tanks by July 28, 1989. The record is clear that petitioners did not register the tanks until September 11, 1991. The Board has previously affirmed OSFM decisions imposing the \$100,000 deductible when owner or operators failed to register tanks by the statutory July 28, 1989 deadline. See R.P. Lumber Company, Inc. v. OSFM (October 17, 1996), PCB 94-184; Barbara L. Heiser (Heiser's Garage) v. OSFM (September 21, 1995), PCB 94-377. Although petitioners allege they were unaware of the registration requirement, the statute does not allow the Board to consider petitioners' intent, or lack thereof. The Board therefore affirms the OSFM's determination imposing the \$100,000 deductible to petitioners.

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

ORDER

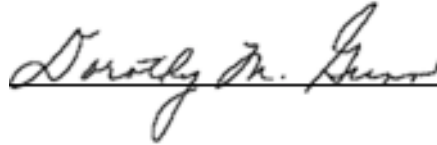
The Board affirms the April 19, 1999 decision of the Office of the State Fire Marshal, finding Bob and Sharon Lamma eligible to access the Underground Storage Tank Fun with a \$100,000 deductible, for remediation associated with the release that occurred at 402 West Jackson, Auburn, Sangamon County, Illinois.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this

order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of February 2001 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board