

ILLINOIS POLLUTION CONTROL BOARD  
March 26, 1992

CLINTON COUNTY OIL CO., INC.,	)	
HOFFMAN/MEIER'S SHELL and	)	
CLARENCE MEIER,	)	
	)	
Petitioners,	)	
	)	
v.	)	PCB 91-163
	)	(Underground Storage
ILLINOIS ENVIRONMENTAL	)	Tank Reimbursement)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

DISSENTING OPINION (by R.C. Flemal and B. Forcade):

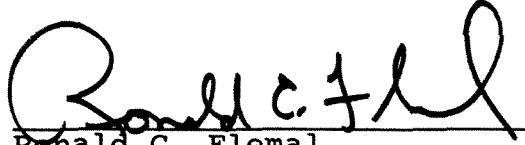
We respectfully dissent from the March 26, 1992 opinion and order in which the majority fails to address the issue of eligibility to access the Underground Storage Tank Fund (UST Fund), and proceeds to render its determination on the issue of the amount of the deductible.

We believe that the majority, in the interest of procedural "correctness" and an intense desire to recognize procedural limitations upon the Illinois Environmental Protection Agency, ignores a most key element in this case; that the facts in the record alone support a finding that the petitioner is ineligible to access the UST Fund, irrespective of the issue of whether the Agency can change its own eligibility determination.

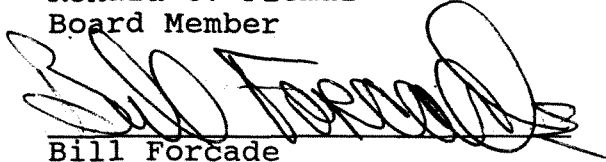
We recognize that the issue before the Agency, and initially before the Board, was whether the petitioner met its burden of establishing that it did not have constructive knowledge of a release prior to the July 28, 1989 cut off date for the \$50,000 deductible. However, the petitioner presented testimony at hearing that, though intended to indicate lack of knowledge of a release at the time, actually indicated that no release from the tanks occurred at all. Representatives of Clinton Oil Company, Office of State Fire Marshall, and the station operator all testified that the tanks were not leaking when removed, and no contamination was found at the time of removal in 1988. The only evidence of contamination was found later on March 25, 1991, approximately 30 to 40 feet from the location of the 1988 tank removal. (See opinion pp. 1-2 and citations contained therein.) These facts show that there can be no connection between the 1988 tank removal and the contamination found in March 25, 1991.

We do not believe that the majority can responsibly proceed to decide the deductibility issue, and ignore these facts. We

would have found that no eligibility to access the fund has been shown based on these facts in the record, and would have remanded the matter to the Agency for such determination. For these reasons, we dissent.

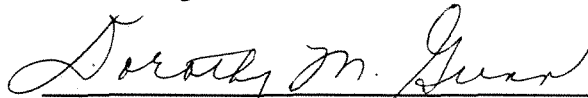


Ronald C. Flemal  
Board Member



Bill Forcade  
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 9<sup>th</sup> day of April, 1992.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board