

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 1998

ELOUISA FARRALES, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 97-186  
 ) (UST - Reimbursement)  
 OFFICE OF THE STATE FIRE MARSHAL )  
 )  
 Respondent. )  
 )

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

Petitioner Elouisa Farrales (Farrales) wishes to be reimbursed from the Illinois Underground Storage Tank Fund for the costs she spent to clean up a gallon leaking underground storage tank containing heating oil (tank) at a facility in Oak Park, Illinois. Farrales applied to the Office of State Fire Marshal (Fire Marshal) for a determination that she was eligible for reimbursement of her cleanup costs under Section 57.9 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/57.9 (1996). The Fire Marshal denied Farrales' request for reimbursement on the grounds that her tank was not registered with the Fire Marshal. Farrales appealed the Fire Marshal's eligibility determination to the Board under Section 57.9(c) of the Act, 415 ILCS 5/57.9(c) (1996).

Farrales also attempted to register the tank with the Fire Marshal under Section 4 of the Gasoline Storage Act, 430 ILCS 15/4 (1996). The Fire Marshal refused to register Farrales' tank on the grounds that it had been taken out of service before 1974 and the Gasoline Storage Act therefore precluded its registration. Under the Gasoline Storage Act, decisions on the registration of tanks are appealable to the Fire Marshal rather than the Board.

On October 16, 1997, the Board denied the Fire Marshal's motion for summary judgment, finding that the Board had jurisdiction to review the eligibility denial, but that summary judgment would be premature in light of the possibility that Farrales had a pending appeal of the Fire Marshal's registration decision. The Board also stayed all proceedings in this case pending the outcome of that appeal before the Fire Marshal.

On April 9, 1998, the Fire Marshal filed a new motion for summary judgment (motion, cited as "Mot. at \_\_\_\_"). The Fire Marshal alleges that the parties agreed to dismiss Farrales' appeal to the Fire Marshal on March 23, 1998. Mot. at 4; see also Exhibit A to Mot. (Exh. A). The Board now grants summary judgment to the Fire Marshal and dismisses this case.

## REGULATORY FRAMEWORK

Illinois reimburses owners and operators of leaking underground storage tanks for cleanup costs through the Underground Storage Tank Program (UST Program) and the Underground Storage Tank Fund (UST Fund) established thereunder. 415 ILCS 5/57 (1996). Those seeking reimbursement from the UST Fund must establish that they are eligible to access the UST Fund under criteria set forth in Section 57.9 of the Act. 415 ILCS 5/57.9 (1996). One of those criteria is that “[t]he owner or operator [of the tank] registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act.” 415 ILCS 5/57.9(a)(4) (1996).

The Gasoline Storage Act provides for the registration of underground storage tanks meeting various criteria. 430 ILCS 15/4 (1996). One of the criteria for heating oil tanks is that the tank must not have been taken out of operation before January 2, 1974. 430 ILCS 15/4(b) (1996).

The Fire Marshal is charged with the responsibility both for registering tanks under Section 4 of the Gasoline Storage Act, as well as for determining whether an owner or operator of a tank is eligible for reimbursement from the UST Fund. Both decisions may be appealed, but through different routes. The Fire Marshal’s decisions regarding tank registration are appealable to the Fire Marshal, and from there to the circuit courts under the Administrative Review Act. 430 ILCS 15/4 (1996). The Fire Marshal’s decisions regarding eligibility for reimbursement from the UST Fund, on the other hand, are appealable to the Board, and from there to the appellate court. 415 ILCS 5/57.9(c) (1996).

## STATEMENT OF FACTS

On November 14, 1996, the contractor R.W. Collins Co. (Collins) applied to the Fire Marshal for a permit to remove the tank from 6555 West North Avenue in Oak Park, Illinois (the facility). Record (R.) at 49-51. The permit application stated that the tank was last used “prior to 1974.” R. at 49. It also stated that the tank was owned by “Beneficiaries of Tr. #4241 with Corus Bank” and listed Farrales as the contact person.<sup>1</sup> R. at 49.

The Fire Marshal approved the permit application on November 21, 1996. R. at 49. Collins removed the tank on December 27, 1996, and observed “multiple holes” in the tank, along with soil staining and odors. R. at 45.

Farrales submitted an eligibility and deductibility application form (eligibility application) regarding the UST Fund to the Fire Marshal on or about December 27, 1996. R. at 41-44. This application stated that the tank had been taken out of service before 1974. R. at 44. Farrales also submitted a “notification form” to register the tank with the Fire Marshal. R. at 31-40.

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<sup>1</sup> It is not clear whether Farrales is the beneficiary of this trust, but that question is not material given the Board’s disposition of this case.

On January 29, 1997, the Fire Marshal returned the eligibility application because it was not accompanied by a complete notification form. R. at 29-30. Farrales apparently resubmitted the eligibility application, along with the notification form, on February 18, 1997. R. at 41. The Fire Marshal again returned the eligibility application on March 4, 1997, because, among other things, the notification form failed to state when the tank was out of service. R. at 27-28. Farrales apparently resubmitted the eligibility application and notification form on March 15, 1997. R. at 41.

On April 2, 1997, the Fire Marshal sent Farrales an administrative order stating that the Fire Marshal would not register the tank because the tank was not in operation any time since January 1, 1974. R. at 24. The letter informed Farrales that she had ten days to appeal the administrative order. R. at 24. Farrales appealed the April 2, 1997, administrative order to the Fire Marshal. R. at 15.

On April 3, 1997, the Fire Marshal sent Farrales a letter denying her eligibility application on the grounds that the tank had not been in operation at any time since January 1, 1974. R. at 17-19. This letter notified Farrales that she could appeal the denial to the Board. R. at 18. Farrales filed a petition (Pet.) appealing the Fire Marshal's April 3, 1997, letter to the Board on April 25, 1997. Pet. at 1.

As noted earlier, the Board denied the Fire Marshal's motion for summary judgment on October 16, 1997, finding that the Board had jurisdiction to review the eligibility denial, but that summary judgment would be premature in light of Farrales' pending appeal of the Fire Marshal's registration decision. The Board also stayed all proceedings in this case pending the outcome of that appeal before the Fire Marshal.

On March 23, 1998, Farrales and the Fire Marshal signed an agreement to dismiss Farrales' appeal to the Fire Marshal. Exh. A. at 1. As part of that agreement, the parties agreed that the tank is not registerable, as stated in the Fire Marshal's April 2, 1997, administrative order. Exh. A at 1. The hearing officer dismissed Farrales' appeal to the Fire Marshal with prejudice. Exh. A at 1.

### DISCUSSION

Summary judgment should be granted when the pleadings, depositions, and affidavits reveal "no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Balla v. Gambro, Inc., 145 Ill. 2d 492, 508, 584 N.E.2d 104, 112 (1991). Here, the Fire Marshal argues that summary judgment should be granted to it as a matter of law because the tank is not registered. Respondent's Memorandum of Law in Support of its Motion for Summary Judgment (Mem.) at 11-12.

As noted earlier, an owner or operator of an underground storage tank is eligible for reimbursement of cleanup costs from the UST Fund if, among other things, "[t]he owner or operator [of the tank] registered the tank and paid all fees in accordance with the statutory and regulatory requirements of the Gasoline Storage Act." 415 ILCS 5/57.9(a)(4) (1996). The record shows that the Fire Marshal determined on April 2, 1997, that it would not register the

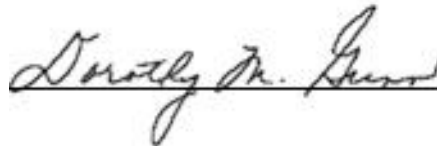
tank because the tank was not in operation any time since January 1, 1974. R. at 24. As the Board previously found, Farrales appealed that decision to the Fire Marshal under 41 Ill. Adm. Code 170, Subpart D. The record now shows that Farrales' dismissed her appeal to the Fire Marshal appeal on March 23, 1998. Accordingly, the Fire Marshal's decision not to register Farrales' tank is final. The Board may not review or reverse that decision. Divane Bros. Electric Co. v. IEPA (November 9, 1993), PCB 93-105, slip op. at 5; Village of Lincolnwood v. IEPA (June 4, 1992), PCB 91-83, slip op. at 3.

Given that Fire Marshal's decision is now final, it is clear that Farrales' tank is not registered, and therefore she is not eligible to obtain reimbursement for her cleanup costs from the UST Fund. 415 ILCS 5/57.9(a)(4) (1996). Accordingly, the Board grants summary judgment to the Fire Marshal. This case is dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) 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 101.246, 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 7th day of May 1998 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board