

ILLINOIS POLLUTION CONTROL BOARD
October 16, 1992

HARLEM TOWNSHIP,)
)
 Petitioner,)
)
 v) PCB 92-83
) (Underground Storage Tank Fund
 ILLINOIS ENVIRONMENTAL) Reimbursement Determination)
 PROTECTION AGENCY,)
)
 Respondent.)

DISSENTING OPINION (by M. Nardulli and J. Theodore Meyer):

We dissent from the majority's action in this case. This case involves a question of statutory construction: Whether a release of gasoline from a pump nozzle is a "release from a UST". If the answer is yes, petitioner is entitled to reimbursement from the UST Fund for corrective action costs.

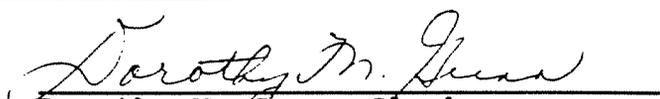
Although the majority recognizes that a spill or overflow occurring during the transfer of product into the UST is a "release from a UST", the majority concludes that a spill out from the pump nozzle, which is connected to the UST, is not a "release from a UST". In so holding, we believe that the majority is elevating form over substance. We do not believe the legislature intended such an inconsistent result particularly where the threat to the environment and human health is the same irrespective of whether the petroleum is released from the nozzle coming from the UST or from the nozzle going into the UST. (See, Sparkling Spring Mineral Water Co. v. IEPA (May 9, 1991), PCB 91-9.) Because we believe that a release from the pump nozzle is the type of release intended to be included in the definition of UST, we would allow reimbursement from the Fund.

Therefore, we dissent.


M. Nardulli
Board Member


J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 26th day of October, 1992.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0136-0397