

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

CHRIST EPISCOPAL CHURCH,)
)
 Petitioner,)
)
 v.) PCB 94-192
) (UST Fund)
 OFFICE OF THE ILLINOIS STATE)
 FIRE MARSHAL,)
)
 Respondent.)

ORDER OF THE BOARD (by G. T. Girard):

This matter is before the Board on a motion for summary judgement filed by the respondent, the Office of State Fire Marshal (OSFM), on October 25, 1994. On November 17, 1994, the petitioner, Christ Episcopal Church (CEC), filed a response. For the reasons set forth below the Board grants the motion for summary judgement.

The petitioner filed this appeal seeking review of the determination of the OSFM that petitioner was ineligible for reimbursement from the underground storage tank fund. Specifically, the denial of eligibility related to a 1,000 gallon tank which had contained heating oil. OSFM stated that the tank was ineligible for reimbursement because it was not registerable as the tank was "not in operation at any time since 1-1-74 (430 ILCS 15.4)" and that there had been "no confirmed release reported". (R. at 35-38.)

The OSFM argues that this appeal should be dismissed as the petitioner is in effect seeking a review of the OSFM determination that the tank is not registerable and such a review is inappropriate to this proceeding. (Mot. at 3.)¹ The OSFM states that on March 4, 1994, the OSFM issued an administrative order to CEC which stated that the tank was "not or no longer registrable" because the tank was taken out of service before January 1, 1974. (Mot. at 2; R. at 17-18.) Within that administrative order CEC was provided 10 days to appeal the OSFM's decision. (*Id.*) CEC did not appeal that decision; however, CEC did file a request for reimbursement on May 16, 1994

¹ The petition will be cited as "Pet. at ___"; the record will be cited as "R. at ___"; motion for summary judgement will be cited as "Mot. at ___"; the memorandum of law in support of that motion will be cited as "OSFM mem. at ___"; the petitioner's response will be cited as "Res. at ___"; and the petitioner's memorandum of law in support of the response will be cited as "CEC mem. at ___".

which was denied on June 6, 1994. (Mot. at 2; R. at 27-30; 35-38.)

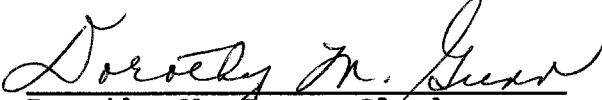
CEC does not deny that it received the notification that the tank was not registerable and in fact includes a copy with its response. (See Exhibit E.) Further, CEC states in its memorandum in support of its response that "Petitioner argues that the tank was appropriately registered in June of 1992." (CEC. mem. at 4-5.)

The Board has held that the decision to register a tank is that of the OSFM and that the Board will not review such a decision when eligibility is denied on that basis. (Lindsey-Klein Chevrolet-Olds, Inc. v. Office of State Fire Marshal, PCB 93-255 __ PCB __, (August 11, 1994).) In this case, the OSFM notified the petitioner that the tank was not registerable and stated on the notification that an appeal must be filed within ten days. CEC choose not to appeal the OSFM determination. Therefore, the OSFM decision that the tank is not registerable is a final decision which the Board will not review.

The Board finds that the OSFM properly denied petitioner's eligibility to seek reimbursement from the underground storage tank fund based on the fact that the tank was not registerable. The Board further finds that there are no material issues of fact remaining in this matter and summary judgement in favor of the Office of State Fire Marshal is granted. The OSFM decision is hereby affirmed and this docket is closed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 1st day of December, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board