

ILLINOIS POLLUTION CONTROL BOARD
March 16, 1995

STICKNEY-FOREST VIEW PUBLIC LIBRARY DISTRICT,)	
)	
Petitioner,)	
)	
v.)	PCB 94-224
)	(UST Fund)
OFFICE OF THE STATE FIRE MARSHAL,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Illinois Pollution Control Board (Board) on an amended petition for review filed by the Stickney-Forest View Public Library District (Library or Stickney Library) on August 23, 1994.¹ Stickney is appealing the Office of State Fire Marshal's (OSFM) final eligibility determination denying the Library eligibility to access the underground storage tank fund (UST Fund) issued on July 12, 1994.

On February 2, 1995, the OSFM, by and through its counsel, the Office of the Illinois Attorney General, filed a motion for summary judgment and a supporting memorandum of law. The Library filed its response on February 17, 1995. For the reasons stated below, we hereby grant the motion for summary judgment.

FACTUAL BACKGROUND

The Stickney Library is the owner and operator of one 2,000-gallon UST containing heating oil which, prior to its removal in 1992, was located at the Stickney-Forest View Public Library on 6800 W. 43rd Street, Stickney, Illinois in Cook County. (R. at 11 and 45-48.) On April 3, 1992, the Stickney Library registered the UST by submitting the federally and state-required "Notification for Underground Storage Tanks" (UST Form) to the OSFM. On that UST Form, the Library indicated the estimated date of the tank's last use was "unknown", that its contents were "unknown", and that the tank was "permanently out of use." (R. at 2.)

After Stickney removed the tank and reported a release to the Illinois Emergency Management Agency (IEMA) on October 29th

¹The original petition was filed August 16, 1995 and the amended petition was filed on August 23, 1995.

of 1992² (R. at 4), the OSFM notified the Library on February 23, 1993, that it was necessary to submit an amended UST Form to the OSFM, which the Library did on February 23, 1993. (R. at 16-20.) Again, the Library described the estimated date of the tank's last use as "unknown." (R. at 17.)

Thereafter, on March 15, 1994, Stickney completed an Eligibility and Deductibility Application and submitted it to the OSFM in order to begin the process of seeking reimbursement for corrective action costs from the UST Fund.³ For the first time, Stickney indicated that the heating oil UST was "out of service" in 1960. (R. at 24). Instead of accepting the application, the OSFM returned it in order for the Library to complete yet another UST Form. (R. at 25.) The OSFM requested the Library to provide specific information regarding the date of the UST's last use. (R. at 25-26.) On June 16, 1994, the Library resubmitted the eligibility application and the UST Form indicating that the estimated last date of use was "approx. 1958" and that the age of the tank was "approximately 1958."⁴ (R. at 28.)

Based on the June 16, 1994 UST Form, on July 11, 1994, the OSFM issued an administrative order essentially "deregistering" the Library's heating oil UST. The order provided:

A review of our records indicates that the following underground storage tank(s) is not registered because:
 Tank No.1(1) 2000 gallon heating oil not in operation
 at any time since 1-1-74 (430 ILCS 15/4). (R. at 42.)

On its face, the OSFM administrative order also provided that it was appealable within 10 days and that a failure to appeal would result in forfeiture of the right to appeal. The OSFM also returned the Stickney Library's \$100 UST registration fee. (R.

²The record on appeal as transmitted by the OSFM to the Board indicates that the Stickney Library notified IEMA of a release in May of 1992. (R. at 4.)

³In the past, the Illinois Environmental Protection Agency made the eligibility and deductibility determination; however, on September 13, 1993, Illinois' new Underground Storage Tank law, P.A. 88-496, became effective amending the Illinois Environmental Protection Act and the Gasoline Storage Act. (415 ILCS 5/57 et seq. and 430 ILCS 5/4 et seq.) Under the new law, the OSFM became the governmental entity responsible for eligibility and deductibility determinations.

⁴The Library first resubmitted the eligibility application and the UST Form on May 4, 1994; however, the OSFM returned the documents for notarization. The Library resubmitted the eligibility application and the UST Form a second time on June 16, 1994. (R. at 28, 30-34.)

at 44.)⁵ The record of appeal contains no information regarding any appeal of the OSFM's July 11, 1994 administrative order.

The next day, on July 12, 1994, the OSFM issued a final determination on the eligibility application finding the 2,000-gallon heating oil UST ineligible to access the UST Fund for the following reason:

Tank #1 - (1) 2,000 heating oil not in operation at any time since 1-1-74 (430 ILCS 5/4.) (R. at 46.)

This eligibility determination also notified the Stickney Library that the OSFM's decision was final and appealable to the Board. (R. at 46-47.)

MOTION FOR SUMMARY JUDGMENT

The OSFM contends it is entitled to summary judgment in this matter because the petitioner is, in effect, seeking review of the OSFM's determination that the heating oil UST is not registerable, and such a review is inappropriate before the Illinois Pollution Control Board. The OSFM argues that its July 11, 1994 registration administrative order should have been appealed within the 10 days as set forth in the administrative order. Stickney Library did not seek to appeal that registration decision and it is therefore final and binding.

Because registration is a condition precedent to eligibility, and the registration decision in this case finds that the Library's UST was "not registered," the OSFM argues that the Stickney Library cannot, as a matter of law, be eligible to access the UST Fund. The OSFM further points out that even though the Environmental Protection Act and the Gasoline Storage Act were amended giving the Pollution Control Board authority over the eligibility determinations when P.A. 88-496 became effective on September 13, 1993, there was no additional authority given the Board to review the OSFM's final registration decisions; this specific authority lies with the circuit court.

In its response, the Stickney Library restates from its amended petition for review, that the UST registration fee was paid in this case and the tank has been registered since 1992. The Library was not aware until the July 11, 1994 administrative order deregistering the tank that it was exempt from registration. The Library also argues that the information provided to the OSFM on the June 16, 1994 UST Form was related to the "actual usage" of the tank and that date was approximately

⁵The record is unclear regarding the date that the Stickney-Library paid the registration fee to the OSFM; however, the record does show that it was deposited by the OSFM in June of 1992.

1958, rather than whether the tank was "in operation" after that time. The Library contends that the need to use the heating oil tank never arose and the tank was "in operation" until its removal in 1992.

DECISION

The OSFM issued its administrative order regarding registration on July 11, 1994. In critical part, the OSFM found in its administrative order that the UST was not registered because: "Tank No.1(1) 2000 gallon heating oil not in operation at any time since 1-1-74 (430 ILCS 15/4)." The OSFM informed the Stickney Library at that time that the administrative order must be appealed within ten days to the OSFM. The Library has not appealed that order. In our opinion, it therefore constitutes a final and binding administrative decision. We must, therefore, accept the final, unappealed decision of the OSFM that the heating oil tank is not registered pursuant to the Gasoline Storage Act. Since registration is a condition precedent to determining eligibility, the OSFM's decision finding the Library ineligible to access the UST Fund is proper. Since the Library did not appeal the OSFM registration determination, it has waived any right it may have had otherwise. We therefore reach no other issue. (See Lindsay-Klein v. OSFM, (August 11, 1994) PCB 93-255; City of Wheaton v. OSFM (December 1, 1994) PCB 94-18; and Christ Episcopal Church v. OSFM (December 1, 1994) PCB 94-192).

Accordingly, as no material issues of fact remain in this matter, we therefore grant the OSFM's motion for summary judgment and affirm the July 12, 1994 final determination of the OSFM that the Stickney Library is ineligible to access the UST Fund. The OSFM decision is affirmed and this docket is closed.

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

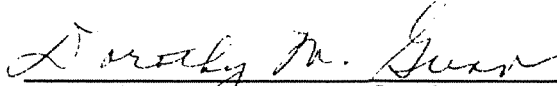
ORDER

The Board hereby grants the OSFM's motion for summary judgment and affirms the OSFM's July 12, 1994 determination that the Stickney Library is not eligible to access the UST Fund.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order were adopted on the 16th day of March, 1995, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board