

ILLINOIS POLLUTION CONTROL BOARD
August 13, 1992

GALESBURG COTTAGE HOSPITAL,)	
)	
Petitioner,)	
)	
v.)	PCB 92-62
)	(Underground Storage
ILLINOIS ENVIRONMENTAL)	Tank Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

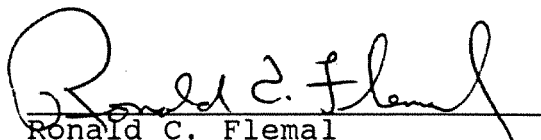
CONCURRING OPINION (by R.C. Flemal and B. Forcade):

We concur with the outcome in this matter. However, we dissent from that portion of the majority's opinion, found in the paragraph immediately preceding the Conclusion, that restricts the Board's ability to find an applicant ineligible for reimbursement. Our position on the latter matter has been expressed in our dissenting opinions filed in Clinton County Oil Co., Inc. et al. v. IEPA (March 24, 1992), PCB 91-163, and Burwell Oil Service, Inc. v. IEPA (July 9, 1992), PCB 92-42.


If successful, the Agency's argument regarding petitioner's alleged failure to timely notify ESDA would have warranted a dissent on the outcome on the basis that petitioner was ineligible for any reimbursement. However, the stipulation, which both parties signed, asserts that a timely notification was made:

... on September 20, 1990, it was discovered that ... a release ... had occurred. That release led to notification of the Emergency Services and Disaster Agency on that same date ... (Stip. at 5; emphasis added)

Only now in its brief does the Agency contend that the notification may not have been timely. This is insufficient basis for us to be persuaded of the correctness of the Agency's new position.

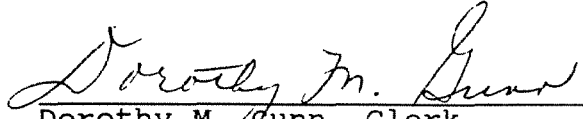


Ronald C. Flemal
Board Member



Bill Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 13th day of August, 1992.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board