

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

VILLAGE OF LINCOLNWOOD, a Municipal Corporation,)	
)	
Petitioner,)	
)	
v.)	PCB 91-83
)	(Underground Storage Tank
)	Fund Reimbursement)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on petitioner Village of Lincolnwood's motion for reconsideration or clarification of the Board's June 4, 1992 opinion and order filed July 9, 1992. Respondent did not file a response.

Petitioner seeks reconsideration of the Board's opinion and order granting summary judgment in favor of respondent as to its determination that costs of corrective action associated with four unregistered underground storage tanks (USTs) are not reimbursable because these tanks were not properly registered. The Board found that there was no genuine issue of material fact as to whether the tanks had been registered with the Office of State Fire Marshal (OSFM) and, therefore, as a matter of law, petitioner was not eligible for reimbursement. (See, Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.18b(a)(4).) In so concluding, the Board noted that "the issue of whether the four USTs could, should or might be registered is not material to the Board's review of the Agency's motion for summary judgment." (PCB 91-83 at 2-3.)

Petitioner states that the OSFM has agreed to take under advisement the registration of two of the four unregistered tanks.¹ Petitioner contends that this raises a genuine issue of material fact. We disagree. The tanks for which reimbursement is sought were not registered at the time respondent issued its determination denying eligibility and remain unregistered. Again, the mere possibility that the tanks may be registered with OSFM is insufficient to raise a genuine issue of material fact.

It is the petitioner that controls when an application for reimbursement from the Fund is filed. Here, petitioner filed its

Petitioner does not include any affidavit in support of this agreement with OSFM.

application with the Agency before it registered its USTs. As noted in the Board's June 4, 1992 opinion, OSFM, not the Board or the Agency, have authority over registration of USTs. Although petitioner argues that the result in this case is harsh, the Board cannot avoid ruling on a motion for summary judgment merely because petitioner may, sometime in the future, register the USTs.

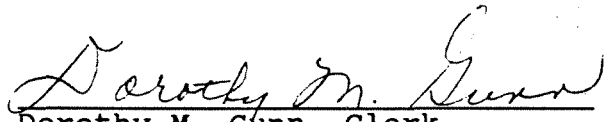
The Board has reconsidered its June 4, 1992 opinion and order and declines grant the relief requested.

IT IS SO ORDERED.

J. Anderson dissents.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders within 35 days. 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 order was adopted on the 30th day of July, 1992 by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board