

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1992

WALTER J. MAQUET and MARLENE)
J. MAQUET, d/b/a MAQUET'S 66,)
)
Petitioners,)
) PCB 90-136
v.) (Underground Storage
) Tank Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by B. Forcade):

This matter is before the Board on a motion for reconsideration filed January 9, 1992 by the Illinois Environmental Protection Agency ("Agency") and a response filed January 17, 1992 by Petitioners Walter J. Maquet and Marlene J. Maquet, doing business as Maquet's 66 (hereinafter "the Maquets"). The motion for reconsideration is granted.

The Agency's motion relies primarily on the arguments presented prior to the Board decision. Those arguments rely on inference and innuendo premised on circumstantial evidence. Conversely, the Maquet's case relied on positive direct testimony under oath regarding who knew what facts, and when they acquired such knowledge. The Board found such testimony persuasive at the time of the December 6, 1991, Opinion and Order, and finds no reason to change that decision today.

The Maquets assert that the Agency has raised a new issue in the motion for reconsideration. This asserted new issue is stated at page 11 of the Agency memorandum, "Since the Board has accepted that the registered tank system at the site did not leak, then the Petitioner is not eligible to access the UST fund at all." The Board does not construe this as an attempt to raise a new issue regarding rejection of funding, but rather as argument in the form of reductio ad absurdum. The argument fails because the Board has never accepted that the tanks did not leak, only that the Maquets did not have actual or constructive knowledge of any leakage.

For the foregoing reasons the Board's prior decision is affirmed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987, ch. 111½, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

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 23rd day of January, 1992, by a vote of 5-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board