

ILLINOIS POLLUTION CONTROL BOARD

October 10, 1991

SALVATION ARMY,)	
)	
Petitioner,)	
)	
v.)	PCB 91-131
)	(Underground Storage Tank
ILLINOIS ENVIRONMENTAL)	Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the Illinois Environmental Protection Agency's (Agency) motion for summary judgment filed September 26, 1991. By its motion, the Agency asks that the Board grant summary judgment in favor of the Agency regarding its determination that the Salvation Army's request for reimbursement from the Underground Storage Tank Fund (Fund) is subject to a \$100,000 deductible. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(d)(3)(B)(i).) Section 22.18b(d)(3)(B)(i) of the Environmental Protection Act (Act) provides:

If prior to July 28, 1989, the owner or operator has registered none of the underground storage tanks [UST] in use on that date at the site, the deductible amount under subparagraph (A) of paragraph (3) of this subsection (d) shall be \$100,000 rather than \$10,000

The Salvation Army alleges in its petition for review that its USTs "were registered and approved by the State Fire Marshal in November of 1975." In support of this assertion, the Salvation Army attached its 1975 "Application for Service Station Approval" filed with the Office of State Fire Marshall (OSFM) and a 1975 letter from the OSFM stating that approval was granted. (Pet. E. B, C.) The Agency contends that, prior to the enactment of the hazardous and Solid Waste Amendments of 1984 (42 U.S.C. Sec. 6991 et seq.), registration for purposes of the UST program was not possible. Therefore, Agency contends that the activity taken by the Salvation Army in 1975 does not constitute "registration" for purposes of the Fund and that the record establishes that the Salvation Army did not "register" its USTs within the meaning of the Act until November 14, 1990. The record establishes that the Salvation Army's "Notification for Underground Storage Tanks" was

received by the OSFM on November 9, 1990¹. (Ag. Motion Ex. A; R. 41.)

There are no genuine issues of material fact presented here. The sole question is whether, as a matter of law, the Salvation Army's "Application for Service Station Approval" constitutes "registration" for purposes of the Fund. Section 22.18b(d)(3)(B)(iii) of the Act provides that "[f]or purposes of this subparagraph, registration of tanks means registration in accordance with Section 4 of 'An Act to regulate the storage, transportation, sale and use of gasoline, volatile oils and other regulated substances' approved June 28, 1919." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(d)(3)(B)(iii).) The Board's review of the statutory provisions governing registration of USTs yields no provision establishing that an application for approval of a service station constitutes "registration" of a UST as required by the Act. (See, Ill. Rev. Stat. 1987, ch. 127 1/2, par. 156; P.A. 85-861; 1987 Ill. Leg. Service No. 9 at 1008; Ill. Rev. Stat. 1985, ch. 127 1/2, par. 4(b); see also, In the Matter of: UST Update, USEPA Regulations (September 23, 1988), R88-27 (April 27, 1989).) The Board concludes that, as a matter of law, the Salvation Army did not "register" its USTs until after July 28, 1989.

Having concluded that the Salvation Army registered its USTs pursuant to the Act until after July 28, 1989, the Board finds that the Agency correctly applied the deductible of \$100,000 pursuant to Section 22.18b(d)(3)(B)(i). The Agency's motion for summary judgment is hereby granted.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rule of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 10th day of October, 1991 by a vote of 6-0.

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

¹ The Salvation Army's "Application for Reimbursement" submitted to the Agency states that it registered its USTs on November 14, 1990; however, the form submitted to the OSFM is stamped received on November 9, 1990. This inconsistency does not affect the Board's determination in this case because both dates are after July 28, 1989.