

**[J-81-2011] [OAJC: Todd, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

YOUNG'S SALES AND SERVICE,	: No. 6 MAP 2011
	:
Appellee	: Appeal from the order of Commonwealth
	: Court at No. 58 CD 2009 dated
	: 07-20-2009, reconsideration denied
v.	: 09-23-2009, vacating and remanding the
	: decision of Underground Storage Tank
	: Indemnification Board dated 12-15-08 at
UNDERGROUND STORAGE TANK	: No. UT06-12-014
INDEMNIFICATION BOARD AND	:
UNDERGROUND STORAGE TANK	:
INDEMNIFICATION FUND,	:
	:
Appellants	: ARGUED: November 29, 2011

CONCURRING OPINION

MR. JUSTICE EAKIN

DECIDED: June 17, 2013

I agree with the lead Justices' view the requirement in § 706(2) does not apply on a per tank basis and instead applies to all underground storage tanks on the premises.¹ Unlike the lead Justices, I find § 706(2) is not made ambiguous by the use of the word "tank" in other subsections of § 706. See Opinion Announcing the Judgment of the Court Slip Op., at 13. Subsection (2) does not use the word "tank"; it refers to "the current fee" required under section 705. 35 P.S. § 6021.706(2). Section 705 in turn uses the term "underground storage tank," id., § 6021.705, which is defined as "[a]ny one or

¹ "Underground storage tank" is defined as "[a]ny one or combination of tanks (including underground pipes connected thereto) which are used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10% or more beneath the surface of the ground." 35 P.S. § 6021.103.

combination of tanks.” Id., § 6021.103. Thus, the plain meaning of the statute indicates the fee referred to in § 706(2) is the payment of fees on “any one or combination of tanks,” being therefore not simply a single tank, but all tanks located on the premises. As the plain meaning establishes which fees must be paid, there is no need to discern legislative intent or afford administrative deference. While my analysis differs, I agree with the lead Justices’ outcome concerning fee payment eligibility, and hence concur.