

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

SUBURBAN TRUST AND SAVINGS)
BANK,)
)
Petitioner,)
)
v.) PCB 93-53
) (UST Fund)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (J. C. Marlin):

On March 15, 1993, Suburban Trust & Savings Bank filed this appeal of a January 14, 1993 Agency decision concerning its application for reimbursement from the Underground Storage Tank (UST) Fund. This matter is dismissed as untimely filed for two reasons.

First, the appeal seeks only to challenge the Agency's determination of the deductible amount. The Board has routinely held that deductibility amount determinations are not ripe for review until after the Agency makes its determination concerning which corrective actions costs are reimbursable. Reichhold Chemical v. IEPA (July 9, 1992), PCB 92-98; Village of Lincolnwood v. IEPA (June 4, 1992), PCB 91-83, 133 PCB 33; Ideal Heating Co. v. IEPA (January 23, 1992), PCB 91-253. In other words, petitioner has filed this appeal too early. Once it has received a decision on its request for corrective actions costs, it may file an appeal of the deductibility amount as well as of any individual disputed cost items.

Second, this appeal seeks to appeal a January 14 Agency decision. Section 22.18(b) requires that petitions must be filed within 35 days of the Agency's decision. Since the courts have held that the Agency has no authority to reconsider UST decisions (Reichhold, 561 N.E.2d 1343; Waste Management of Illinois v. PCB (1st Dist. 1992), 231 Ill. App. 3d 278, 595 N.E.2d 1171, 1185; see generally, Weingart v. Department of Labor (1988), 122 Ill. 2d 1, 521 N.E.2d 913; A.B. Dick Co. v. IEPA (July 9, 1992), PCB 92-99; Clinton County Oil v. IEPA (March 26, 1992), PCB 91-163.), the filing of a motion for reconsideration with the Agency does not lengthen the time in which an appeal must be filed. Even if the Agency's January 14 decision was otherwise ripe for review then, the petition was filed approximately one month after the expiration of the 35 day appeal period. The Board cannot accept late-filed appeals. Suburban should keep this in mind when

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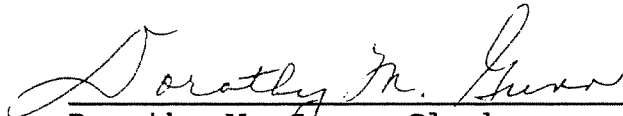
considering any future appeal.

Again, for these reasons this matter is dismissed as untimely filed.

IT IS SO ORDERED.

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. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437 and Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 25th day of March, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board