

ILLINOIS POLLUTION CONTROL BOARD  
March 3, 1994

RON'S INTERSTATE SUNOCO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 92-200
	)	(UST Fund)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

THOMAS E. JOHNSON APPEARED ON BEHALF OF PETITIONER;

GREG RICHARDSON APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

On December 2, 1992 Ron's Interstate Sunoco (Ron's) filed this petition for review of denial of UST fund reimbursement pursuant to Sections 22.18b(g) and 40(a)(1) of the Environmental Protection Act<sup>1</sup>. The amount of \$18,631.48 in costs was requested for reimbursement. On November 2, 1992 the Illinois Environmental Protection Agency denied the entirety of the amount requested for reimbursement for reason that the costs were associated with replacement of concrete and were not corrective action costs. Ron's filed this appeal.

Hearing was held on November 29, 1993 before hearing officer Arnold Blockman in Champaign, Illinois.

The uncontested facts are that Ron's is located in Urbana (Champaign County), Illinois. Ron's discovered releases from two petroleum underground storage tanks (USTs) and the Emergency Services and Disaster Agency was notified of the release on August 23, 1991. (R. 3, 14-15.) The sole issue is whether certain costs submitted for concrete removal and replacement are related to corrective action taken at the site.

By order on November 18, 1993 the Board granted in part the Illinois Environmental Protection Agency's (Agency) motion for summary judgment solely as it pertained to the issue of the reimbursability of costs for replacement of concrete. The Board found based on case precedent, that the replacement of concrete is not related to corrective action and is not a reimbursable

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<sup>1</sup> The Board notes that P.A. 88-496 repealed Section 22.18b of the Act. The provision is now located at Section 57.8(i) of the Act.

cost. The Board found that the record was unclear as to whether costs related to the removal of concrete were incurred at the site. The Board accordingly denied the Agency's motion for summary judgment as it pertained to any removal of concrete at this site, as material facts remained at issue. The Board then ordered that the matter proceed in accordance with that order and the hearing schedule established by the hearing officer.

At hearing, Ron's stipulated that its testimony would indicate that "all the costs went into replacement of concrete, and that none of the costs went into removal of concrete." (Tr. at 3.) The parties then agreed that no further proceedings are necessary. (*Id.*) The parties then clarified on the record that \$18,631.48, which is the entire amount sought here for reimbursement, is for the replacement of concrete and not the removal of concrete. (Tr. at 4.)

The Board finds that consistent with its November 18, 1993 order on summary judgment and the precedent cited therein, that the replacement of concrete is not related to corrective action and is not reimbursable. Since the facts offered at hearing now show that the only costs incurred were for the replacement of concrete, the Board upholds the Agency's denial of reimbursement of \$18,631.48 for those costs. As there are no further matters pending, the Board closes this docket.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

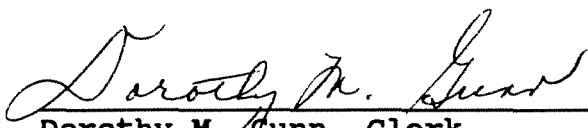
#### ORDER

The Illinois Environmental Protection Agency's November 2, 1992 denial of reimbursement of costs in the amount of \$18,631.48 for replacement of concrete at Ron's Interstate Sunoco's facility because the costs are not related to corrective action is hereby affirmed and this docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motions for Reconsideration)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 3<sup>rd</sup> day of March, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board