

ILLINOIS POLLUTION CONTROL BOARD  
May 19, 1994

IKE BUICK-NISSAN, LTD.,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	PCB 94-118
ILLINOIS ENVIRONMENTAL	)	(UST Fund)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

DOUGLAS E. HINES, THOMAS J. WOLF, JR., P.C., APPEARED ON BEHALF OF PETITIONER;

ROBERT J. SCHERSCHLIGT, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board pursuant to a motion for summary judgment filed by Ike Buick-Nissan on April 22, 1994. This case was originally filed on April 7, 1994 and set for hearing on April 21, 1994; however, due to the subsequent filing of the summary judgment motion, no hearing has been held. The Illinois Environmental Protection Agency ("Agency") filed a response to the motion for summary judgment on May 7, 1994 in agreement that petitioner is entitled, as a matter of law, to reversal of the Agency's application of an excess deductible in the amount of \$10,000. For the reasons set forth below, we hereby grant the motion for summary judgment.

The underground storage tank ("UST") site at issue is the Ike Buick-Nissan dealership located at Route 13 East and Lake Road, Jackson County, Carbondale, Illinois 62902. At least two confirmed releases were discovered on site in 1992, and were separately reported resulting in multiple incident numbers being assigned to the site: one incident number corresponding to a release from either a 1,000-gallon gasoline tank or a 560-gallon gasoline tank (Lust Incident No. 921432) and another number for a release from a 1,000-gallon waste oil tank (LUST Incident No. 921557). In June of 1993, the Agency required the dealership to apply separately for reimbursement from Illinois' UST Fund. In doing so, the Agency separately processed the costs for reimbursement applying two separate deductibles, each in the amount of \$10,000. Ike appealed on the basis that only one \$10,000 deductible should apply to the entire "site."

As a matter of law, petitioner is entitled to having the Agency apply only one \$10,000 deductible for the UST site at issue. This case appears to have been processed by the Agency under the UST law in effect at the time the incident numbers were assigned (415 ILCS 4/22.18b et seq.), rather than under the new

Leaking Underground Storage Tank Program which was signed into law by the Governor on September 13, 1993 as P.A. 88-496. However, whether proceeding under the former UST law or under P.A. 88-496, there is no question that this matter involves only one site. And that under either law, a site, in this case the property known as the Ike Buick-Nissan dealership is "any single location, place, tract of land or parcel of property including contiguous property not separated by a public right-of-way." (415 ILCS 5/57.2 (1993); see also 415 ILCS 5/3.43.) More importantly, under either law, only one annual deductible applies per site regardless of the number of incident numbers assigned. (415 ILCS 5/22.18b(d)(3)(A); 415 ILCS 5/57.8(a)(4) and 415 ILCS 5/57.9(b).)

Accordingly, petitioner's motion for summary judgment is granted. The Agency's application of two \$10,000 deductibles to the Ike Buick-Nissan UST site is reversed.

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

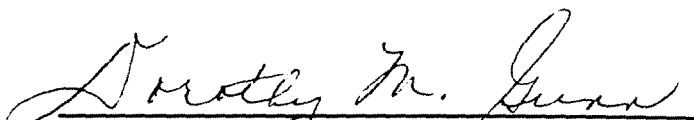
#### ORDER

Respondent, the Illinois Environmental Protection Agency is hereby directed to cause reimbursement of \$10,000 from the Illinois Underground Storage Tank Fund to be paid to Ike Buick-Nissan.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 4/40.1) provides for the appeal of final Board orders within 35 days of service of this order. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.) The Rules of the Supreme Court of Illinois establish the filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 17<sup>th</sup> day of May, 1994, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board