ILLINOIS POLLUTION CONTROL BOARD
October 21, 1993

FIATALLIS NORTH AMERICAN, INC.,	)	
Petitioner,	)	
v.	)	PCB 93-108 (UST Fund)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

BECKY MCKAY OF MOHAN, ALEWELT, PRILLMAN & ADAMI APPEARED ON BEHALF OF PETITIONER; and

GREG RICHARDSON OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on a June 8, 1993, petition for review filed by petitioner Fiatallis North American (Fiatallis or petitioner) pursuant to Section 22.18b(g) of the Environmental Protection Act (Act). (415 ILCS 5/22.18b(g).) Fiatallis filed a supplement to the petition on June 11, 1993. Fiatallis seeks review of the Illinois Environmental Protection Agency's (Agency or respondent) imposition of a $50,000 deductible on Fiatallis' claim for reimbursement from the Underground Storage Tank Fund (Fund)(415 ILCS 5/22.18b(d)(3)(C)(ii)). A hearing was held on August 23, 1993, in Springfield, Illinois. No members of the public attended. Fiatallis' closing brief was filed on August 19, 1993; the Agency's closing brief was filed on August 30, 1993. On September 7, 1993, Fiatallis filed a reply brief.

Petitioner appeals the Agency's decision to impose a $50,000 deductible.

BACKGROUND

This case involves the removal of two Underground Storage Tanks (USTs) at Fiatallis' Engineering Center, located at 701 Stevenson Drive in Springfield, Illinois. (P.B. at 1.)[1] The USTs were registered on February 1, 1989. (Rec.A. at 84.) On April 27, 1989, petitioner removed two underground storage tanks

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[1] "P.B." denotes citation to Petitioner's Brief; "Res.B." denotes citation to Respondent's brief; "Rec.A." denotes citation to Part 1 of the Agency record, and "Rec.B." indicates citation to Part 2 of the Agency record.

and discovered that a release had occurred from the 5,000 gallon underground storage tank which contained diesel fuel.[2] (P.B. at 1.) Fiatallis notified the Illinois Emergency Services and Disaster Agency (ESDA) of the release on that same day, April 27, 1989, and received LUST incident #890662. (Rec.A. at 71.)[3] Fiatallis subsequently performed remedial activities on the site.

Fiatallis applied for reimbursement from the Fund on January 3, 1990. (P.B. at 3.) Members of the Agency's Screening Committee met on January 18, 1990, and determined that petitioner was eligible for reimbursement from the Fund, subject to a $10,000 deductible. (Rec.A. at 68, 80.) On January 26, 1990, the Agency requested additional information from petitioner "on the use of the underground storage tanks for which a determination of eligibility is being requested." (Rec.A. at 80; Rec.B. at 115.) After the requested information was supplied, the Agency's letter of February 26, 1990 stated in pertinent part:

> The Agency is in receipt of your Application for Reimbursement, requesting a determination of eligibility for reimbursement from the State Underground Storage Tank Fund. The Agency has reviewed the application and determined you are eligible to seek reimbursement from the Fund for corrective action costs, accrued on or after July 28, 1989, in excess of $10,000.00. A $10,000.00 deductible will be applied to the requests for reimbursement for any additional years that corrective action activities continue in response to this release. (Rec.A. at 52; Rec.B. at 116.)

Over three years later, in April of 1993, Agency employee Steve Jones determined that the original deductible determination was incorrect. Jones recommended an "adjustment in deductible" to $50,000. (Rec.A. at 7, 10.) On May 17, 1993, the Agency notified petitioner that "[u]pon review of the information provided to the Agency, the Agency has determined that the

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[2] Petitioner's application for reimbursement states that two USTs were removed from the site on April 27, 1989. However, the December 1989 work plan prepared by Andrews Environmental Engineering, Inc., states that three USTs were removed in April 1989, one fuel oil tank, one diesel fuel tank, and one gasoline tank. (R.A. at 263.)

[3] The Board notes that various dates are given for ESDA notification, including April 25, 1989, April 27, 1989, and November 16, 1989. (Rec.A. at 7, 8 and Rec.B. at 14) The Board concludes that this is due to the fact that the Agency's record contains information concerning incidents unrelated to this matter. The Board concludes that the ESDA was properly notified on April 27, 1989.

appropriate deductible for this occurrence is $50,000.00." (Rec.A. at 111.) In the same letter, the Agency notified petitioner of its final determination denying reimbursement for costs associated with soil sampling and equipment.

According to both parties' final briefs, all issues concerning corrective action costs have been resolved between the parties resulting in the Agency agreeing to approve reimbursement for the contested costs. Therefore, the Board will direct the Agency to approve reimbursement for those costs. The only remaining issue on appeal is whether the Agency may reconsider its initial deductibility determination.

STATUTORY BACKGROUND

Section 22.b(a) of the Act sets forth certain requirements that must be met in order to be eligible to access the Fund. (415 ILCS 5/22.18b(a)(1992).) The law to be applied to a UST Fund application is the law in effect on the date the application was filed with the Agency. Pulitzer Community Newspaper v. Illinois Environmental Protection Agency (December 20, 1990) PCB 90-142; Marjorie B. Campbell v. Illinois Environmental Protection Agency (June 6, 1991) PCB 91-5; Galesburg Cottage Hospital v. Illinois Environmental Protection Agency (August 13, 1992) PCB 92-162. Section 22.18b (Underground Storage Tank Fund; eligibility) took effect on July 28, 1989 and was amended on December 5, 1989. Section 22.18b(d)(3)(C)(ii), which became effective on December 5, 1989, states,

> If the costs incurred were in response to a release of petroleum for which the State received notification prior to July 28, 1989, the deductible amount under subparagraph (a) of paragraph (3) of this subsection (d) shall be $50,000 rather than $10,000, unless subparagraph (B)(i) applies,[4] in which case the deductible shall be $100,000. (emphasis added)

Section 22.18b(g) of the Act allows affected owners or operators to petition the Board for a hearing where the Agency has refused reimbursement or has authorized only partial reimbursement. Such hearings are pursuant to the permit review provisions found in Section 40 of the Act.

DISCUSSION

Pursuant to Section 22.18b(d)(3)(C)(ii), there can be little doubt that $50,000 is the correct deductible to be applied to Fiatallis. Indeed, even petitioner does not contest that that is

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[4] Section 22.18(d)(3)(B)(i) relates to unregistered tanks and is inapplicable here.

the proper amount. However, the issue before us is whether the Agency's February 26, 1990 deductibility determination was final. As discussed below, the Board finds that the February 26, 1990, decision by the Agency was final and that the Agency has no authority to reconsider that decision.

Fiatallis contends that, as a matter of law, the Agency cannot reconsider or amend its deductible determination. In support of its argument, Fiatallis cites Reichhold Chemicals, Inc. v. PCB (3d Dist. 1990), 204 Ill. App. 3d 674, 561 N.E.2d 1343, which holds that the Agency has no statutory authority to reconsider a permit decision. Indeed, several Board opinions establish that the Agency may not reconsider its finding of eligibility (see e.g., A.B. Dick Co. v. IEPA (July 9, 1992), PCB 92-99; Hillsboro Glass (March 11, 1993), PCB 93-912; Clinton County Oil v. IEPA (March 26, 1992), PCB 91-163). In Clinton the Board stated:

> [I]t is well established that an administrative agency has no inherent authority to amend or change its decision and may undertake reconsideration only where authorized by statute. (Pearce Hospital v. Public Aid Commission (1958), 15 Ill.2d 301,154 N.E.2d 691; Reichhold Chemicals Inc. v. PCB (3d Dist. 1991), 204 Ill. App. 3d 674, 561 N.E.2d 1343.) Although the Board possesses such power, the appellate court has held that the Agency has no such reconsideration powers. (Reichhold, 561 N.E.2d 1343.)

The Agency contends that the February 26, 1990, notification was not a final decision. The Agency argues that the deductible remains "in-house" until the Agency issues a letter concerning its determination of reimbursable costs. (R.B. at 4.) Moreover, the Agency admits that it was mistaken in applying the $10,000 deductible. The Agency attributed this error to the frequent changes that were occurring to the UST scheme at the time Fiatallis applied for reimbursement.[5] The Agency argues that the principle that the law to be applied to a UST Fund application is the law in effect on the date the application was filed with the Agency was not declared until after the Agency made the determination in this matter.[6] The Agency provides no elaboration on this argument. The Agency also argues that the

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[5] Under P.A. 86-125, effective July 28, 1989, the deductible limit to owners and operators similarly situated to Fiatallis would have been $10,000. Under P.A. 86-958, effective December 5, 1989, the deductible limit applicable to owners and operators similarly situated to Fiatallis would have been $50,000.

[6] Pulitzer Community Newspaper (December 20, 1990) PCB 90-142 and Marjorie B. Campbell (June 6, 1991) PCB 91-5.

Board has previously held that Agency errors are best addressed by correction, not perpetuation.

Ideal Heating

Prior to the Board's decision in Ideal Heating,(January 23, 1992), PCB 91-253, an appeal of the deductibility determination had to be filed within thirty-five days after notification of the determination. Typically this notification was made before the Agency reached a final determination on reimbursement of corrective action costs. (See, Maquet v. Illinois Environmental Protection Agency, (December 6, 1991) PCB 90-136, 128 PCB 27; Sparkling Springs Mineral Water v. Illinois Environmental Protection Agency, (May 9, 1991) PCB 91-9, 122 PCB 115; Alton Community Unit School (February 7, 1991) PCB 91-1, 118 PCB 275; and Campbell v. Illinois Environmental Protection Agency, (June 6, 1991) PCB 91-5, 123 PCB 25).

In Ideal Heating the Board held that only those Agency UST decisions which: (1) deny eligibility or; (2) reach a complete determination on both the applicable deductible and the reimbursement of costs is ripe for appeal to the Board. Consequently, an Agency determination that approved eligibility and set the deductible, but did not determine corrective action costs, was not yet ripe for appeal before the Board. In Ideal Heating the Board interpreted the Act as allowing the Board review of Agency UST determinations only after the Agency has completed the final determination of the reimbursibility of costs. In support of this, the Board reasoned "Board review of Agency deductibility determinations prior to a complete determination on the reimbursibility of costs is both inconsistent with Section 22.18b(g) of the Act quoted above and principles of administrative economy, such as the desire to avoid piecemeal appeals." (PCB 91-253 at 256) The Board did not elaborate on the "inconsistency" with the Act and devoted the remainder of the opinion to a discussion of judicial economy. From this, the Board concludes that the basis of Ideal Heating was primarily one of judicial economy.

Clearly, Ideal Heating holds that the deductibility determination is "not ripe." However, under Ideal Heating it remains an open question whether the deductibility decision was final, so as to preclude reconsideration under Reichhold. Conspicuous by its absence is any language in Ideal Heating striking down past Board holdings that the deductible decision is final.

In the wake of Ideal Heating, several Board cases dismissed appeals of deductibility determinations as "not ripe." Often these cases merely repeated the holding in Ideal Heating, but did not elaborate on that holding. (See, Bacon v. Illinois Environmental Protection Agency, (April 16, 1992) PCB 92-1, 133

PCB 113; Parkview Plaza Associates v. Illinois Environmental Protection Agency, (May 21, 1992) PCB 92-73, 133 PCB 551; Slampak v. Illinois Environmental Protection Agency, (October 1, 1992) PCB 92-139, 136 PCB 253; Superamerica v. Illinois Environmental Protection Agency, (October 16, 1992) PCB 92-151, 136 PCB 423; Sto-Jo Joint Venture v. Illinois Environmental Protection Agency, (August 26, 1993) PCB 93-146).

However, one Board decision, Leewards Creative Crafts v. Illinois Environmental Protection Agency, (April 22, 1993) PCB 93-69, contains language that very nearly states that the deductibility decision is no longer deemed final in light of Ideal Heating. Leewards states:

> The Board is baffled as to why Leewards believes that it is necessary to file a "protective" petition for hearing of an Agency decision that *Leewards agrees is not final*. Leewards has not cited any decision that might cast doubt on the Board's determination in Ideal Heating that "the Agency's determination on eligibility and deductibility alone, without a determination on the reimbursibility of costs, is not an appealable order.[7] (emphasis added)

It is not stated who Leeward is agreeing with. However, the implication of Leeward is that the Board believed the deductible decision was not final.

In another decision, the Board employed a different approach to the finality of the deductibility decision. In Bacon v. Illinois Environmental Protection Agency, (June 23, 1992) PCB 92-1, 134 PCB 333, the Board declined to make an exception to Ideal Heating on a case-by-case basis because to do so would defeat the principle of judicial economy. Thus, Bacon treated the purpose of Ideal Heating as primarily a decision of judicial economy rather than a decision arising from the "finality", or lack there of, of the determination. Implicit in the Board's decision in Bacon is the belief that the Board has authority under the Act to consider the appeal on deductibility alone but chose to await a complete Agency decision on costs.

In another Board decision, the Board allowed the Agency to reduce the deductible after petitioner appealed but prior to a Board decision. In State Bank of Whittington v. Illinois Environmental Protection Agency, (June 3, 1993) PCB 92-152, petitioner appealed the deductibility amount before the Agency had reached a final decision on all corrective action costs.

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[7]The Board notes that it is incorrect to characterize the determination as not "appealable." The appealability of these determinations has never been in doubt. These decisions are more accurately characterized as "not ripe for appeal."

Prior to a Board decision, the Agency reduced the deductible to $10,000 from $100,000. The Board allowed this redetermination without comment.[8] Although Leewards, Bacon, and State Bank of Whittington are not directly at odds, there appears to be at least some underlying discrepancy in approach.

In summary, while Ideal Heating clearly held that the Agency's deductibility determination is not ripe for appeal until there is a complete determination of costs, Ideal Heating left unsettled whether the deductibility decision was final. Moreover, no post-Ideal Heating case has decided the question.

Finality

The Agency argues "it is clear that a deductible determination is not appealable until the juncture (determination of corrective action costs) is reached, general principles of appellate practice support a conclusion that it is not final until this juncture is reached." (Res.B. at 4.) However, the Agency offers no support for this "general principle."

An examination of Illinois caselaw offers no support for the Agency's contention. In general, finality, as it pertains to administrative agency decisions, is a decision which "fully terminates proceedings before an administrative body." Taylor v. State Universities Retirement, 111 Ill. Dec.283; 512 N.E.2d 399 (Ill. App. 4 Dist. 1987).[9] Under this construction, the Agency's

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[8] Other Board decisions have addressed appealability issues in the aftermath of Ideal Heating, but these decisions do not directly address whether the deductibility decision was final. (See, e.g. Clinton County Oil v. Illinois Environmental Protection Agency, (March 26, 1992) PCB 91-163, 131 PCB 491 (concerning the reconsideration of an eligibility decision); Village of Lincolnwood v. Illinois Environmental Protection Agency, (June 4, 1992) PCB 91-83, 134 PCB 33, (finding that the eligibility determination was appealable but the deductible was not ripe); Chemrex v. Illinois Environmental Protection Agency, (February 4, 1993) PCB 92-123, (characterizing the eligibility decision as "final" upon notification and finding the deductibility decision "not ripe" upon notification). See also, Ideal Heating v. Illinois Environmental Protection Agency, (February 4, 1993) PCB 92-118; Suburban Trust v. Illinois Environmental Protection Agency, (March 25, 1993) PCB 93-53; Chuck and Dan's Auto Service v. Illinois Environmental Protection Agency, (August 26, 1993) PCB 92-203.

[9] See also, Bi-State Development v. Dept. of Rev. 205 Ill.App.3d 668; 563 N.E.2d 1154; 151 Ill. Dec. 48(defining "finality" pursuant to the Administrative Review Law); County of Cook v. Labor Relations Board, 162 Ill.Dec. 52, 579 N.E.2d 866

deductible determinations are not final because the corrective action costs are yet to be determined. However, Taylor and its progeny were decided pursuant to the Administrative Review Law. 735 ILCS 5/3 et. seq.

The Administrative Review Law, defines an "Administrative decision" or "decision" as "any decision, order, or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency." 735 ILCS 5/3-101. However, by its plain language the scope of the Administrative Review Law is limited to "apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference adopts the provisions of Article III of this Act or its predecessor, the Administrative Review Act."(emphasis added) 735 ILCS 5/3-102. Therefore, in order for the definition of finality under Taylor and under the Administrative Review Law to apply to the instant matter, the Environmental Protection Act must expressly reference the Administrative Review Law.

The Environmental Protection Act references the Administrative Review Law at Section 41 (concerning appeals to the Appellate court of Board decisions); Section 52(b) (procedure of review of employee review dismissal governed by Administrative Review Law) and Section 55.12 (review of Department of Revenue actions under the Used Tires provisions shall reviewed under the Administrative Review Law). Section 1(c) the Act contains a general reference to the "Criminal Code of 1961", but no such general reference to the Administrative Review Law appears.

Therefore, because there is no direct reference to the Administrative Review Law, the Board concludes that the Administrative Review Law's definition of finality does not apply to the instant matter. This conclusion is supported by Illinois caselaw. In National Marine Service Incorporated v. IEPA, 76 Ill. Dec. 151; 458 N.E.2d 551 (Ill. App. 4 Dist. 1983) plaintiff brought suit challenging the Agency's denial of federal Clean Water Act certification of plaintiff's proposed barge fleeting facility. The court stated "The legislature has expressly limited the application of the Administrative Review Law to specific enumerated actions taken by the Pollution Control Board.

(Ill. 1991)(a statutory provision that generally directs an appellant to seek review of an order in accordance with the Administrative Review Law, does not reflect clear legislative intent that all of the provisions of the Administrative Review Law apply directly to appellate court review of the Agency decision).

This effectively excludes actions taken by IEPA."(emphasis added)[8]

We conclude that the definition of "finality" under the Administrative Review Law and cases decided pursuant to it, including Taylor, do not apply to the instant matter. Thus, while some "general principles" of appellate practice support the Agency's argument, those principles do not apply here.

Ripeness

In addition, the Board finds no support for the Agency's contention in Illinois caselaw concerning ripeness. Illinois courts have frequently addressed the notion of ripeness as it concerns administrative decisions. In A.E. Staley Manufacturing Company v. Illinois Commerce Commission, 166 Ill. App.3d 202; 116 Ill. Dec. 915 at 918; 519 N.E.2d 1130, the appellate court stated:

> The basic rationale of the ripeness doctrine as it relates to challenges against unlawful administrative action 'is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.' (Bio-Medical Laboratories, Inc., v. Trainor (1977), 68 Ill.2d 540, 546; 370 N.E.2d 223,226; 12 Ill. Dec. 600; quoting Abbot Laboratories v. Gardner (1967), 387 U.S. 136, 148-49, 18 L.Ed 2d 681, 691; 87 S.Ct. 1507 1515). Ripeness involves a two-step test: (1) an evaluation of the fitness of the issues for judicial decision; and (2) the hardship to the parties of withholding court consideration.

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[8] See also, Horace File v. D & L Landfill, Inc.,, 162 Ill. Dec. 414, 579 N.E.2d 1228 (Ill. App. 5 Dist. 1991) (Board decision appealed to the appellate court pursuant to the Administrative Review Law where pertinent section referenced the Administrative Review Law); States Land Improvement v. Illinois Environmental Protection Agency, 173 Ill. Dec. 285; 596 N.E.1164 (Ill. App. 4 Dist. 1992), (common law writ of *certiorari* was appropriate means of judicial review of final Agency decision exercising quasi-judicial functions, because the Agency's enabling statute does not expressly adopt the Administrative Review Law); Archer Daniels Midland v. Illinois Environmental Protection Agency, 102 Ill. dec.687; 500 N.E.2d 580 (Ill.App. 4 Dist. 1986), (Board decision appealed pursuant to the Administrative Review Law where section expressly referenced the Administrative Review Law)

(citation omitted) This test has been followed by the courts in Illinois. (citation omitted)

In A.E. Staley, the court found that the agency in question had issued a "final agency determination" but that it was "not ripe for adjudication." Abbott Laboratories v. Gardner, cited in A.E. Staley, concerned an administrative regulation which was deemed final although the Court characterized it as a "statement of intent." The Court went on to describe other recent cases that have taken a similar flexible view of "finality." In Toilet Goods Association v. Gardner, 87 S. Ct. 1520, decided the same day as Abbott Laboratories, the U.S. Supreme Court found that there "can be no question that this regulation *** is a 'final agency action'" but that it was not "ripe" in part because the effect was not immediately felt by petitioners. In light of the above discussion, the Board concludes that general principles of appellate practice do not preclude the conclusion that the deductibility decision is both "final" and "not ripe."

We conclude that Ideal Heating did not overturn past Board decisions that held that the Agency deductibility decision is final upon notification. In the instant matter, the Board finds that the Agency deductibility decision was final upon notification to petitioner on February 26, 1990. Moreover, the Board finds pursuant to Reichhold, the Agency may not reconsider a final deductibility determination.

CONCLUSION

The Board finds that the Agency's decision making authority over the deductibility determination was concluded on February 26, 1990. Moreover, the Board holds, pursuant to Reichhold, that the Agency may not reconsider the decision.

In Hillsboro Glass v. Illinois Environmental Protection Agency, (March 11, 1993) PCB 93-9,, petitioner moved for summary judgement on the issue of whether the Agency could reconsider petitioner's eligibility for reimbursement from the Fund. In Hillsboro, the Agency originally found that petitioner was eligible for reimbursement from the Fund and had authorized the Comptroller to pay petitioner reimbursement of $16,656.21. After petitioner had received the money, the Agency informed petitioner that the Agency had reconsidered the matter and concluded that petitioner was ineligible to access the Fund. The Agency then requested petitioner to return the money from the Fund. The Agency based this reconsideration on information the Agency had in its possession prior to making the eligibility determination. Citing Business & Professional People v. Commerce Commission, (1989), 136 Ill. 2d 192, 555 N.E.2d 693, 716-17), the Board stated

> Because an administrative agency has no power beyond that conferred by statute, a decision by an agency which lacks the statutory power to enter the decision is void.*** Because there was no decision entered by the Agency pursuant to its statutory authority, there is no final decision from which a petitioner could file a petition for review so as to confer jurisdiction on the Board pursuant to Section 22.18b of the Act. (citation omitted) Therefore the Board concludes that the instant matter should be dismissed for want of jurisdiction.

In addition, the Board notes that there is no allegation that Fiatallis withheld information or attempted to deceive the Agency. Instead, based on the information it had all along, the Agency has attempted to reconsider its decision, *thirty-nine months later*. Whatever concerns the Agency had as to the deductibility limit should have been addressed prior to making the determination. The Agency was under no time pressures to rush into its decision. Moreover, the individual petitioner is entitled to a certain degree of certainty in the Agency's decisions.

The Agency implies that it applied the $10,000 deductible because it believed at the time it was correct. The Agency also argues that the Board has previously held that Agency errors are best addressed by correction, not perpetuation. Therefore, the Agency argues, whether the error was due to misapplication of the law or simply an honest mistake, the Agency ought to be allowed to correct this error. It is true that the Board has made such statements,[9] however the Agency quotes the statements out of context. The Board made this statement in allowing the Agency to deny reimbursement for costs in a subsequent case where the Agency had allowed reimbursement for those costs in previous cases. In other words, the Board affirms the Agency's ability to correct an error from one case to the next. The Board can not authorize the Agency to reconsider the Agency's decisions, even where the Agency has made an honest mistake; only the legislature has that authority.

In conclusion, the Board finds that under Ideal Heating, the deductibility decision is final upon notification to petitioner but is not ripe for appeal until a complete determination of corrective action costs has been made. In addition, the Board finds that the Agency's reconsideration of the deductibility determination is void, with the result that a $10,000 deductible applies in this case. Lastly, the Board directs the Agency to authorize reimbursement to petitioner for the corrective action costs for soil sampling and stand-by equipment which were denied reimbursement in the Agency's May 17, 1993 letter.

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[9] See, State Bank of Whittington.

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

ORDER

For the foregoing reasons, the Board hereby declares the Agency's May 17, 1993 imposition of the $50,000 to be void. This case is remanded to the Agency in accordance with this order, including the imposition of a $10,000 deductible. In accordance with the parties' agreement, the Board hereby reverses the Agency's May 17, 1993 final determination to deny reimbursement to petitioner for:

A. $1,440.00 in costs associated with analysis of constituents.

B. $600.00 for stand-by charges.

IT IS SO ORDERED.

B. Forcade, R.C. Flemal and C.A. Manning dissented.

Section 41 of the Environmental Protection Act,(415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. 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 21st day of October, 1993, by a vote of 4-3.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board