

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1992

RUSSELL L. BACON,)
)
Petitioner,)
)
v.) PCB 92-1
) (Underground Storage
ILLINOIS ENVIRONMENTAL) Tank Reimbursement)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on a May 21, 1992 motion for reconsideration filed by petitioner Russell L. Bacon (Bacon). Bacon seeks reconsideration of this Board's April 16, 1992 order reinstating the Board's March 11, 1992¹ order dismissing Bacon's petition for review of the Illinois Environmental Protection Agency's determination that a \$50,000 deductible to Bacon's application for reimbursement from the Underground Storage Tank Fund.

The Board dismissed Bacon's petition for review pursuant to Ideal Heating Co. v. IEPA (January 23, 1992), PCB 92-1. In Ideal Heating, the Board determined that only those Agency UST determinations which either denied eligibility or imposed a deductible and reached a determination on reimbursement of costs are ripe for Board review. Because the Agency had not completed its determination of what corrective action costs incurred by Bacon were reimbursable, the Board dismissed Bacon's petition for review.

Bacon's corrective action costs total approximately \$38,000. Bacon contends that he will be unable to receive a final Agency determination on reimbursement because he is unable to pay for the corrective action costs. Consequently, he is not able to submit "proof of payment of such costs" as required by the Agency before it will determine reimbursement. (See, Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1022.18b(d)(4)(C).) Bacon also contends that because his deductible is greater than his corrective action costs, the Agency has deemed him ineligible for joint payment procedures. (Id.) Asserting that the Board's ruling in Ideal Heating is not jurisdictional, Bacon asks that the Board reconsider its dismissal and allow this case to proceed to hearing on the issue of the deductible.

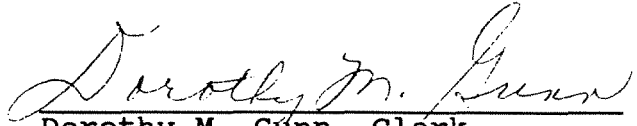
¹ The Board's April 16, 1992 order incorrectly refers to the Board's March 12, 1992 order.

The Board has ruled that UST determinations are not ripe for review until the Agency has completed its reimbursement determination. The relief requested by Bacon would require the Board to make exceptions to Ideal Heating on a case-by-case basis which would defeat the purpose of adopting the rule in Ideal Heating. The Board declines to reverse its dismissal of Bacon's petition for review at this time. However, because the finality, for purposes of Board review, of a UST determination is in the control of the Agency, there is nothing to prevent Bacon from obtaining a "complete determination" by the Agency on the basis of Bacon's failure to comply with Section 22.18b(d)(4)(C) of the Environmental Protection Act. Because the Agency would have reached the issue of reimbursement, the deductible determination would then be ripe for Board review upon the filing of a petition for review.

The Board has reconsidered its dismissal of Bacon's petition for review, but declines to reinstate the petition for review at this time. If Bacon is unable to obtain a final Agency determination as suggested by this order, he may renew his motion for reconsideration.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of June, 1992 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board