

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

PACE SUBURBAN BUS,)	
DIVISION OF RTA,)	
)	
Petitioner,)	
)	
v.)	PCB 94-145
)	(UST Fund)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

GABRIELLE L. SIGEL and STEPHEN I. PECK, of JENNER & BLOCK,
APPEARED ON BEHALF OF PETITIONER; and

JOHN BURDS APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Theodore Meyer):

This matter is before the Board on a May 4, 1994 petition for review, filed by PACE-Suburban Bus Division of the RTA (PACE). PACE seeks review of the Illinois Environmental Protection Agency's (Agency) April 1, 1994 decision imposing a \$100,000 deductible on PACE's request for reimbursement from the Underground Storage Tank (UST) Fund (Fund). Board hearing officer Medard M. Narko conducted a public hearing on July 27, 1994, in Chicago, Illinois. No members of the public attended the hearing.

BACKGROUND

This case involves PACE's request for reimbursement from the Fund for corrective action activities at PACE's Harvey, Illinois facility. There were seven tanks located at this facility. (Rec. II at 16-20.)¹ On November 16, 1992, PACE submitted an application for reimbursement from the Fund. (Rec. II at 43-57.) On March 29, 1993, the Agency denied eligibility for three of the tanks, known as the 1986 tanks, stating that the Office of the State Fire Marshal (OSFM) had deemed those three tanks exempt from registration. (Rec. II at 1-3.) The Agency also found that the remaining four tanks were eligible. In that same March 1993 letter, the Agency established a "preliminary" deductible amount of \$100,000, based on a finding that none of the tanks at the

¹ Book I of the Agency record will be cited as "Rec. I at ___", and Book II of the Agency Record will be cited as "Rec. II at ___".

facility were registered before July 28, 1989. (Rec. II at 1.) PACE appealed that March 1993 decision, as it related to the eligibility of the three 1986 tanks, but not the "preliminary" imposition of the \$100,000 deductible, to the Board on April 30, 1993. That appeal was docketed as PCB 93-79.

On April 1, 1994, the Agency issued its reimbursement for the remaining four tanks at the site. In that reimbursement, the Agency applied the \$100,000 deductible. The voucher accompanying the check stated that this action was the Agency's final determination. PACE then filed the instant petition for review, seeking review of the application of the \$100,000 deductible.

On September 15, 1994, in the related proceeding PCB 93-79, the Board granted PACE's motion for summary judgment. The issue in PCB 93-79 was whether the three 1986 tanks are eligible for reimbursement pursuant to Section 22.18b(a) of the Environmental Protection Act (Act). (415 ILCS 5/22.18b(a) (1992).) That question hinged on whether the 1986 tanks were properly registered. After reviewing the record, the Board found that the three 1986 tanks "are now and have been registered with the OSFM." (PACE-Suburban Bus Division of RTA v. Illinois Environmental Protection Agency (September 15, 1994), PCB 93-79, slip op. at 4.) Thus, the Board granted summary judgment in favor of PACE.

DISCUSSION

The sole issue in this proceeding is whether the Agency properly applied the \$100,000 deductible to PACE's application for reimbursement. Section 22.18b(d)(3)(B)(i) of the Act provides that "if prior to July 28, 1989, the owner or operator had registered none of the underground storage tanks at the site on that date, the deductible amount...shall be \$100,000 rather than \$10,000." (415 ILCS 5/22.18b(d)(3)(B)(i) (1992).) The Agency found that the three 1986 tanks were exempt from registration, and it is undisputed that the other four tanks were registered between September 15, 1992 and February 17, 1993. Therefore, the Agency applied the \$100,000 deductible to the site.

Because it is undisputed that the other four tanks were registered after July 28, 1989, this case hinges on whether the three 1986 tanks were registered prior to that date. As noted above, in our decision in docket PCB 93-79, we specifically found that the three 1986 tanks are now and have been registered with OSFM. Although we made no determination in PCB 93-79 as to the date of registration, the record in this case reflects that those tanks were registered on April 24, 1986. (Exh. 1.) Therefore, we find that the three 1986 tanks were registered prior to July 28, 1989, and that the Agency's application of the \$100,000 deductible was erroneous.

There is one remaining matter in this case. On August 11, 1994, PACE filed a motion to clarify the record by adding an affidavit from Keith Immke of OSFM. That affidavit states that it is OSFM's position that PACE registered and paid registration fees for three underground storage tanks (USTs) in 1986, and that those three tanks are and remain registered with OSFM. The Agency filed an objection to that motion on September 1, 1994. In our September 15, 1994 order in PCB 93-79, the Board specifically relied in part on that affidavit in finding that the 1986 tanks are registered. The Board has already considered that affidavit in the related case, and thus we will grant the motion to add the affidavit to the record of this proceeding.

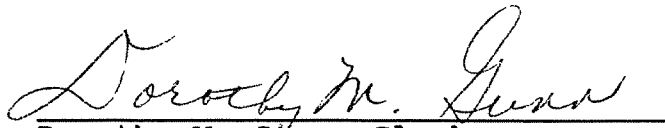
ORDER

The portion of the Illinois Environmental Protection Agency's (Agency) April 1, 1994 decision applying a \$100,000 deductible is hereby reversed. Consistent with the Board's September 15, 1994 order in PCB 93-79, this case is remanded to the Agency for determination of the proper deductible and cost determinations.

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 order was adopted on the 6th day of October, 1994, by a vote of 6-0.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board