

ILLINOIS POLLUTION CONTROL BOARD
April 22, 1993

LEEWARDS CREATIVE)
CRAFTS, INC.,)
)
Petitioner,)
)
v.) PCB 93-69
) (UST Fund)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

This matter is before the Board on an April 9, 1993 petition for hearing filed by Leewards Creative Crafts, Inc. (Leewards). Leewards seeks review of a March 5, 1993 decision by the Illinois Environmental Protection Agency (Agency). In that decision, the Agency determined that all five of Leewards' underground storage tanks (USTs) are eligible for reimbursement from the UST Fund, and that the deductible is \$100,000.

In its petition for hearing, Leewards states that it is aware of the Board's decisions in Ideal Heating Co. v. Illinois Environmental Protection Agency (January 23, 1992), PCB 91-253, and its progeny, and "agrees with such cases that the Agency's March 5, 1993 determination is not yet ripe for review." (Pet. at 1.) However, Leewards then goes on to state "[p]etitioner files this "protective" petition to forestall any argument that it failed to timely seek review of the Agency's determination." (Pet. at 1.)

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 reimbursability of costs, is not an appealable order." (Ideal Heating, slip op. at 1.) Therefore, this case is dismissed, and the docket is closed.

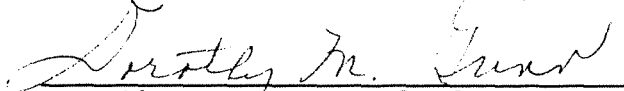
IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights

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Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437; Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22nd day of April, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board