

ILLINOIS POLLUTION CONTROL BOARD
September 3, 1992

CHEMREX, INC.,)
)
Petitioner,)
)
v.) PCB 92-123
) (Underground Storage Tank
ILLINOIS ENVIRONMENTAL) Fund Reimbursement)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

On August 31, 1992, petitioner filed a petition for review of the Agency's determination that corrective action costs are not reimbursable from the UST Fund. The Agency denied reimbursement for seven of eight USTs. The Board notes that the Agency's July 27, 1992 denial letter provides:

This decision does not constitute the Agency's final determination of eligibility. The Agency reserves the right to change this determination should additional information become available which would modify this decision. The final decision regarding eligibility and appropriate deductible amounts will be made as requests for reimbursement are reviewed by the Agency.

The Agency's letter is an attempt to reserve a right to "reconsider". However, in a permit appeal case, Reichhold Chemicals, Inc v. IPCB (1990), 204 Ill. App. 3d 674, 561 N.E.2d 1343, the appellate court held that the permit provisions of the Act do not grant the Agency the power to reconsider its decisions. (See also, WMI of Illinois, Inc. v. IPCB, Nos. 1-90-2702 & 1-90-2818, slip op. at 31-32 (1st Dist. June 11, 1992).) Similarly, Section 22.18b does not allow for Agency reconsideration of its UST decisions. Therefore, the Board finds that the Agency's decision is final as to the seven USTs deemed ineligible for the Fund and that Chemrex has properly filed a timely appeal of the Agency's denial of eligibility as to those tanks.¹ This case is ripe for review as to those seven tanks; however, the deductible amount applied to the eighth tanks is not ripe for review. (See, Reichhold Chemical v. IEPA (July 9, 1992), PCB 92-98; Village of Lincolnwood v. IEPA (June 4, 1992), PCB 91-83; Ideal Heating Co. v. IEPA (January 23, 1992), PCB 91-253.

¹ Chemrex has the option, of course, of filing a new application for these tanks to allow the Agency to consider new information. Reichhold, 204 Ill. App. 3d at 679-80.

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Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 70 days from the date of this Order.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

Within 10 days of accepting this case, the Hearing Officer shall enter a Hearing Officer Scheduling Order governing completion of the record. That Order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling Order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

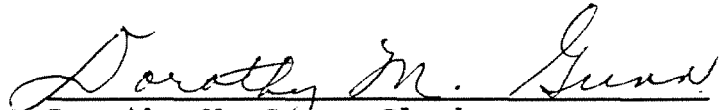
Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant

extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

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 3rd day of September, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board