

ILLINOIS POLLUTION CONTROL BOARD
July 9, 1992

REICHHOLD CHEMICALS, INC.,)	
)	
Petitioner,)	
)	PCB 92-98
vs.)	(Underground Storage
)	Tank Fund Reimbursement
ILLINOIS ENVIRONMENTAL)	Determination)
PROTECTION AGENCY,)	
)	
Respondent.)	

DISSENTING OPINION (by B. Forcade):

I respectfully dissent from today's action by the majority as premature. In its May 26, 1992 denial letter, the Agency stated:

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.

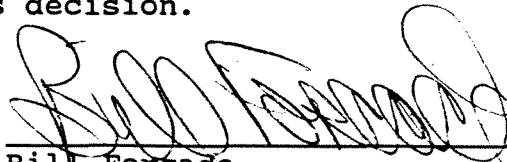
The majority finds this an unacceptable attempt to reserve a right to "reconsider", inconsistent with Reichhold Chemicals, Inc v. IPCB (1990), 204 Ill. App. 3d 674, 561 N.E.2d 1343.

In Ideal Heating Company v. IEPA, PCB 91-253, January 23, 1992, the Board interpreted the Act as providing for Board review of Agency UST determinations only after the Agency had completed its two-step review process and made a final determination as to the reimbursability of costs. In my mind the above quoted language does little more than implement the Ideal decision.

Without objection from the Petitioner as to this language, the Board has jumped on the Agency for attempting to secure an unauthorized right to change its mind based on new information. I certainly support the Agency's ability to change its mind based on new information. (See Dissenting Opinions in Clinton County Oil Co., Inc., Hoffman/Meier's Shell and Clarence Meier v. Illinois Environmental Protection Agency, PCB 91-163 (March 24, 1992), and Burwell Oil Service, Inc. v. Illinois Environmental Protection Agency, PCB 92-42 (July 9, 1992). But I do not believe that is what has happened here.

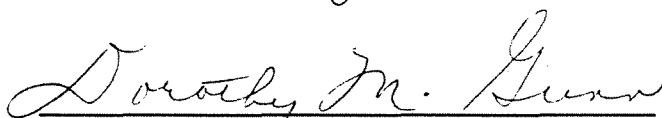
0135-0073

I would have tentatively set this matter for hearing, and asked the parties to brief whether there is in fact a conflict regarding the finality of this decision.



Bill Forcade

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above Dissenting Opinion was submitted on the 16th day of July, 1992.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board