

ILLINOIS POLLUTION CONTROL BOARD
January 23, 1992

IDEAL HEATING COMPANY,)	
an Illinois Corporation,)	
)	
v.)	PCB 91-253
)	(Underground Storage
ILLINOIS ENVIRONMENTAL)	Tank Reimbursement)
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on its own motion. On December 20, 1991, petitioner Ideal Heating Company (Ideal) filed a petition for review, pursuant to Sections 22.18b(g) and 40 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(g) and 1040), of the Illinois Environmental Protection Agency's (Agency) determination that Ideal's request for reimbursement from the Underground Storage Tank Fund (Fund) is subject to a \$100,000 deductible. For the following reasons, the Board concludes that the Agency's determination on eligibility and deductibility alone, without a determination on the reimbursability of costs, is not an appealable order.

Section 22.18b(a) of the Act sets forth certain requirements that must be met in order to be eligible to access the Fund. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(a).) Section 22.18b(d) sets forth the applicable deductibles that apply to requests for reimbursement. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(d).) Requests for partial or final payment for claims under the UST provisions are directed to the Agency and must satisfy enumerated requirements, including a demonstration that the corrective actions costs incurred are reasonable. (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(d)(4).) In carrying out its duties under the Act, the Agency has consistently followed a two-step review process: (1) a review of the application to determine whether the applicant is eligible to access the Fund and what the appropriate deductible is; and (2) a review of the reimbursable costs pursuant to Section 22.18b(d)(4). (North Suburban Development Corp. v. IEPA, PCB 91-109 at 6 (December 19, 1991).)

The Act provides for Board review of the Agency's reimbursement determinations. "If the Agency refuses to reimburse or authorizes only a partial reimbursement, the affected owner or operator may petition the Board for a hearing in the manner provided for the review of permit decisions in Section 40 of this Act." (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1022.18b(g) (emphasis added).) The Board interprets this language as providing for Board review of Agency UST determinations only after the Agency has completed its two-step review process and made a final

determination as to the reimbursability of costs. Of course, where the Agency has denied eligibility, it has in essence also determined that the applicant is not entitled to any reimbursement such that the Agency's decision would be ripe for Board review.

Board review of Agency deductibility determinations prior to a complete determination on the reimbursability of costs is both inconsistent with Section 22.18b(g) of the Act quoted above and principles of administrative economy, such as the desire to avoid piecemeal appeals. The Board's prior practice of allowing appeals upon a deductible determination may foster multiple appeals to the Board. For example, petitioner may prevail before the Board on the issue of what deductible applies only to have to again seek Board review if the petitioner disagrees with the Agency's determination on what costs are reimbursable. Under a "worst case scenario", a petitioner found to be ineligible to access the Fund appeals that decision to the Board, the Board reverses the Agency and finds petitioner eligible and remands. On remand, the Agency applies a deductible amount which petitioner appeals to the Board. Regardless of the Board's determination on the correctness of the Agency's deductible determination, the case is remanded to the Agency for a finding on the reasonableness of costs. The Agency then determines the reasonableness of costs and petitioner again appeals to the Board. This "worst case scenario" results in three separate appeals to the Board. By holding today that, where the Agency finds that an applicant is eligible to access the Fund, the Agency's decision is not ripe for appeal to the Board until it has also reached its final determination on both deductibility and reasonableness of costs, multiple appeals can be avoided. Of course, where the Agency denies eligibility, an applicant may appeal to the Board. If the Board reverses the Agency's eligibility determination, the applicant may again seek Board review of the Agency's deductible and reasonableness of costs determination. Under today's holding, the "worst case scenario" would result in two separate appeals rather than three.

In determining how to implement the Board's holding that only complete determinations by the Agency are appealable, the Board finds that today's holding should apply to all UST cases which have not yet proceeded to hearing. In those cases, such as the instant case, where the petition for review has been filed but no hearing has been held the Board adopts the following procedure: the case is remanded to the Agency to complete its review of the reasonableness of costs and this docket is closed. Petitioner may file a new petition for review upon the Agency's final UST determination.¹ To avoid unfair prejudice, the Board will waive

¹ The Board notes that today's holding does not result in the waiver of any challenges to the Agency's deductible determination upon the proper filing of a new petition for review.

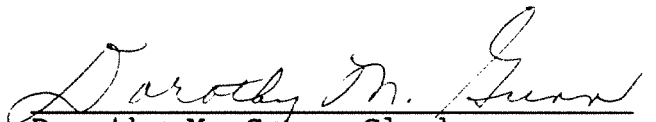
the \$75 filing fee as it was paid with the original filing. The Board asks that petitioner reference the original docket number of the case when filing the new petition for review.

The Board suggests the following Agency procedure in an attempt to alleviate any possible confusion resulting from today's holding. In those cases where the Agency has reached a determination finding the applicant eligible and assessing the appropriate deductible, the Agency should not include the "35-day appeal language". Instead, the Agency should notify the applicant that the deductible determination is not appealable to the Board until a review of the reimbursability of costs has also been completed. Regarding denial of eligibility determinations and complete determinations on reimbursability, the Agency should continue to include the "35-day appeal language".

In summary, the Board holds that Agency UST decisions are appealable to the Board only where: (1) the Agency has denied eligibility or; (2) the Agency has found the applicant eligible and has reached a final determination on both the proper deductible and the reasonableness of costs. This case is remanded to the Agency for a final determination on the reasonableness of costs pursuant to Section 22.18b(d)(4). Petitioner may file a new petition for review in accordance with this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 23rd day of January, 1992 by a vote of 5-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board