

ILLINOIS POLLUTION CONTROL BOARD
July 23, 2009

PEACOCK OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 09-114
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On May 27, 2009, Peacock Oil Company (Peacock) filed a petition asking the Board to review a determination by the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2008); 35 Ill. Adm. Code 101.300(b), 105.402. The Agency's determination concerns Peacock's High Priority Corrective Action Completion Report (report) regarding an underground storage tank (UST) site located at 6900 North Mannheim Road in Rosemont, Cook County.

On June 4, 2009, the Board accepted Peacock's petition as timely filed, pursuant to 35 Ill. Adm. Code 105.404. However, the Board found that Peacock's petition was deficient under the Board's procedural rules because it did not include a statement specifying the date of service of the Agency's final decision or a statement specifying the grounds of Peacock's appeal. *See* 35 Ill. Adm. Code 105.408(b). The Board also noted that, based on the date of the Agency's letter, Peacock's appeal might be untimely. The Board issued an order granting Peacock 30 days to cure the deficiencies by filing an amended petition on or before July 6, 2009.

On July 6, 2009, Peacock timely filed an amended petition. The filing of an amended petition restarts the Board's decision deadline. *See* 35 Ill. Adm. Code 105.114(b). Peacock's amended petition cures the defects described in the Board's order by including the date of service of the Agency's final decision and a statement specifying the grounds of appeal. The amended petition lists April 25, 2009, as the date of service on Peacock of the Agency's April 22, 2009 final decision. Because the Board received Peacock's original petition on May 27, 2009, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. Peacock's amended petition also includes a statement specifying Peacock's grounds for appealing the Agency's determination concerning the report. Peacock appeals on the grounds that the Agency erred in determining that the Highway Authority Agreement submitted by Peacock in support of the report did not comply with relevant provisions of the Environmental Protection Act and the Board's regulations. Peacock's amended petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board therefore accepts the petition for hearing.

Peacock has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner,

consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2008)), which only Peacock may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Peacock may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2008). Currently, the decision deadline is September 24, 2009 (the 120th day after May 27, 2009). *See* 35 Ill. Adm. Code 105.114. There is a Board meeting scheduled to occur on September 17, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by June 26, 2009, which is 30 days after Peacock filed the amended petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 23, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board