

ILLINOIS POLLUTION CONTROL BOARD
June 16, 2005

RED ROOSTER CORPORATION)	
(f/k/a CLARK RETAIL ENTERPRISES,)	
INC.) (CLARK OIL #2086),)	
)	
Petitioner,)	
)	
v.)	PCB 05-125
)	PCB 05-126
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	(Consolidated)
)	
Respondent.)	

ORDER OF THE BOARD (by N.J. Melas):

On June 10, 2005, petitioner Red Rooster Corporation, f/k/a Clark Retail Enterprises, Inc. (Red Rooster) filed a motion to consolidate two underground storage tank decision appeals. Red Rooster filed the two appeals separately and the Board accepted the appeals for hearing and docketed them as PCB 05-125 and PCB 05-126. The Illinois Environmental Protection Agency (Agency) has not yet responded to this motion to consolidate. The hearing officer, however, has set a hearing date of Wednesday, June 29, 2005, and the Agency has filed the administrative record in both dockets. For the reasons set forth below, the Board grants Red Rooster's motion and consolidates these two appeals.

In its motion to consolidate, Red Rooster states that the petitions in both PCB 05-125 and PCB 05-126 involve the same facility, remediation, incident number, and consultants. Red Rooster further states that the records in the two matters are identical. According to Red Rooster, the issues differ only slightly. Red Rooster claims that consolidation of the two proceedings would be in the interest of a convenient, expeditious, and complete determination of the claims in accordance with Section 101.406 of the Board's procedural rules. 35 Ill. Adm. Code 101.406. Red Rooster concludes that consolidation would benefit both parties and not cause material prejudice to any party.

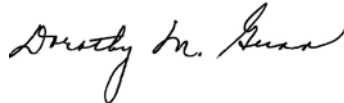
The Board notes that PCB 05-125 concerns a final Agency decision issued on December 6, 2004, while PCB 05-126 concerns a final Agency decision issued on December 30, 2004. According to Red Rooster, the December 30, 2004 Agency letter stated: "This letter rescinds the Agency letter of 12/6/04," and authorizes reimbursement of \$37,516.44 less than was authorized for reimbursement by the December 6, 2004 letter. Regarding each final Agency decision, Red Rooster claims the Agency's stated basis for denial of reimbursement and reconsideration is arbitrary, capricious, and without statutory authority.

Pursuant to Board rules, the Board will consolidate proceedings if consolidation is in the interest of convenient, expeditious and complete determination of claims, and if the consolidation would not cause material prejudice to any party. 35 Ill. Adm. Code 101.406. The Board finds that consolidation of PCB 05-125 and PCB 05-126 will not materially prejudice any party, and will assist in the expeditious and complete determination of the claims before us. As reflected in the caption above, the Board grants Red Rooster's motion to consolidate. The Board consolidates these appeals for hearing, but not necessarily for decision.

Under Section 101.500(d) of the Board's procedural rules, a party has 14 days after service of a motion to file a response to the motion. 35 Ill. Adm. Code 101.500(d). However, Section 101.500(d) also provides that the Board may grant a motion before expiration of the 14-day response period in order to avoid undue delay. 35 Ill. Adm. Code 101.500(d). Here, because the Agency has already filed the administrative record in both dockets and a hearing date has been set, the Board grants Red Rooster's motion to consolidate in the interest of a more expeditious determination of claims.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 16, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board