

ILLINOIS POLLUTION CONTROL BOARD

June 4, 2009

DICKERSON PETROLEUM, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 09-87
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On April 15, 2009, Dickerson Petroleum, Inc. (Dickerson) filed a petition asking the Board to review a determination by the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.402. The Agency's determination concerns Dickerson's 45-Day Report and 45-Day Report Addendum (report) regarding an underground storage tank site located at 823 Upper Cahokia Road, Cahokia, St. Clair County.

On May 7, 2009, the Board accepted Dickerson's petition as timely filed, pursuant to 35 Ill. Adm. Code 105.404. However, the Board found that Dickerson's petition was deficient under Section 105.408 of 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 Dickerson's appeal. See 35 Ill. Adm. Code 105.408(b). The Board also noted that, based on the date of the Agency's letter, Dickerson's appeal might be untimely. The Board issued an order granting Dickerson 30 days to cure the deficiencies by filing an amended petition on or before June 8, 2009.

On May 26, 2009, Dickerson 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). Dickerson'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 March 11, 2009, as the date of service on Dickerson of the Agency's March 9, 2009, final decision. Because the Board received Dickerson's original petition on the April 15, 2009, deadline for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. Dickerson's amended petition also includes a statement specifying Dickerson's grounds for appealing the Agency's determination concerning the report. Dickerson appeals on the grounds that the Agency's conclusion that the report falls outside the scope of the Leaking Underground Storage Tank Program was arbitrary, capricious, and without authority. Dickerson's amended petition meets the content requirements of 35 Ill. Adm. Code 105. 408. The Board accepts the petition for hearing.

Dickerson 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) (2006)), which only Dickerson may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Dickerson may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2006). Currently, the decision deadline is September 23, 2009 (the 120th day after May 26, 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 25, 2009, which is 30 days after Dickerson 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 June 4, 2009, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board