

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DICKERSON PETROLEUM, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 09-87
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. John T. Therriault	Carol Webb, Esq.
Assistant Clerk	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
James R. Thompson Center	1021 North Grand Avenue East
100 West Randolph, Suite 11-500	Post Office Box 19274
Chicago, Illinois 60601	Springfield, Illinois 62794-9274
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a **NOTICE OF LIMITED WAIVER OF 120-DAY DECISION DEADLINE FOR AN ADDITIONAL 60 DAYS** and a **MOTION TO CONSOLIDATE** directed to the Illinois Pollution Control Board, copies of which is herewith served upon you.

Respectfully submitted,

DICKERSON PETROLEUM, INC.,
Petitioner,

Dated: July 10, 2009

By: /s/Edward W. Dwyer
 One of Its Attorneys

Edward W. Dwyer
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**NOTICE OF LIMITED WAIVER OF 120-DAY
DECISION DEADLINE FOR AN ADDITIONAL 60 DAYS**

NOW COMES Petitioner, DICKERSON PETROLEUM, INC. (hereinafter “Petitioner”), by and through its attorneys, HODGE DWYER & DRIVER, pursuant to 35 Ill. Admin. Code § 101.308(c)(2), hereby agrees to a limited waiver of the statutory 120-day decision deadline for final action by the Illinois Pollution Control Board (“Board”) in this proceeding for an additional sixty (60) days, or until November 22, 2009. In support of this Notice, Petitioner states as follows:

1. On April 15, 2009, Petitioner filed a Petition for Review of the Illinois Environmental Protection Agency’s (“Agency’s”) March 9, 2009 determination with the Illinois Pollution Control Board (“Board”). On May 7, 2009, the Board issued an order stating that Petitioner had until June 8, 2009 to file an amended Petition for Review to include the date of service of the Agency’s final decision and a statement specifying the grounds of appeal. *Dickerson Petroleum, Inc. v. IEPA*, PCB No. 09-87 (Ill.Pol.Control.Bd. May 7, 2009).

2. On May 26, 2009, Petitioner timely filed its Amended Petition for Review of the Agency’s March 9, 2009 determination issued to Petitioner. The current statutory

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deadline for this matter is September 23, 2009, or 120 days after May 26, 2009, the filing date of the Amended Petition for Review. Board Order, *Dickerson Petroleum, Inc. v. IEPA*, PCB No. 09-87 (Ill.Pol.Control.Bd. June 4, 2009).

3. Petitioner hereby voluntarily agrees to waive the statutory 120-day decision deadline for an additional sixty (60) days, or until November 22, 2009, in order to conduct settlement negotiations and/or pursue summary disposition in this matter.

WHEREFORE, Petitioner, DICKERSON PETROLEUM, INC., requests that the Illinois Pollution Control Board accept this limited waiver of the 120-day statutory decision deadline for an additional sixty (60) days for final action on Petitioner's appeal of the March 9, 2009 decision issued by the Illinois Environmental Protection Agency.

Respectfully submitted,

DICKERSON PETROLEUM, INC.
Petitioner,

Dated: July 10, 2009

By: /s/Edward W. Dwyer
One of its Attorneys

Edward W. Dwyer
Monica T. Rios
HODGE DWYER & DRIVER
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Post Office Box 5776
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CAHO:001/Fil/Waiver01

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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v.)	PCB No. 09-87
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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
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MOTION TO CONSOLIDATE

NOW COMES Petitioner, DICKERSON PETROLEUM, INC. (“Petitioner”) by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code §§ 101.406 and 101.500, in support of this Motion, hereby states as follows:

1. On April 15, 2009, Petitioner filed a Petition for Review of the Illinois Environmental Protection Agency’s (“Agency”) March 9, 2009 determination that LUST Incident No. 20080084 was not subject to regulation under 35 Ill. Admin. Code Parts 731, 732, or 734. *See Dickerson Petroleum, Inc. v. IEPA*, PCB No. 09-87 (April 15, 2009). On May 26, 2009, Petitioner filed an Amended Petition for Review of the March 9, 2009 Agency decision. *See Dickerson Petroleum, Inc. v. IEPA*, PCB No. 09-87 (May 26, 2009). On June 4, 2009, the Illinois Pollution Control Board (“Board”) accepted the Amended Petition for hearing. Board Order, *Dickerson Petroleum, Inc. v. IEPA*, PCB No. 09-87 (June 4, 2009).

2. On July 10, 2009, Petitioner filed a Petition for Review of the June 10, 2009 final decision of the Agency denying Petitioner’s application for payment from the LUST Fund. *See Dickerson Petroleum, Inc. v. IEPA*, PCB No. 10-05 (July 10, 2009).

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(We assume that if this Motion is granted, the two proceedings will have the same docket number.)

3. In both the above-captioned matter and the Petition filed with the Board on July 10, 2009, Petitioner is seeking review of almost identical Agency determinations that the above-referenced incident is not subject to LUST regulation under Title 16 of the Illinois Environmental Protection Act, 415 ILCS 5/57, *et seq.*, and 35 Ill. Admin. Code Parts 731, 732, or 734. *See* Exhibit A to Petitions filed in both matters.

4. Section 101.406 of the Board's regulations allows the Board to consolidate proceedings "if the consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party." 35 Ill. Admin. Code § 101.406.

5. The two proceedings concern the same incident, stem from the same facts, and involve the same determination by the Agency. Accordingly, it is convenient for the Board to consolidate the two proceedings in order to expeditiously and efficiently move toward closure of these matters. Further, consolidation of these two proceedings will save the parties and the Board valuable time and resources that would be expended to hold two separate hearings.

6. In addition, neither party will be materially prejudiced by consolidating the two proceedings since the claims in both petitions involve the same incident and challenge the Agency's nearly identical determinations.

WHEREFORE Petitioner, DICKERSON PETROLEUM, INC., requests that the Illinois Pollution Control Board grant its Motion to Consolidate the case of *Dickerson Petroleum, Inc. v. Illinois Environmental Protection Agency*, PCB No. 09-87 with the

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case *Dickerson Petroleum, Inc. v. Illinois Environmental Protection Agency*, PCB No.

10-05, and award such further relief as the Board deems just and equitable.

Respectfully submitted,

DICKERSON PETROLEUM, INC.,
Petitioner,

Dated: July 10, 2009

By: /s/Edward W. Dwyer
One of Its Attorneys

Edward W. Dwyer
Monica T. Rios
HODGE DWYER & DRIVER
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CAHO:001/Fil/ Mtn to Consolidate

CERTIFICATE OF SERVICE

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached NOTICE OF LIMITED WAIVER OF 120-DAY DECISION DEADLINE FOR AN ADDITIONAL 60 DAYS and MOTION TO CONSOLIDATE upon:

John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

via electronic mail on July 10, 2009; and upon:

James G. Richardson
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Carol Webb, Esq.
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Post Office Box 19274
Springfield, Illinois 62794-9274

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois on July 10, 2009.

/s/Edward W. Dwyer

Edward W. Dwyer

CAHO:001/Fil/NOF & COS – Waiver & Consolidate