

ILLINOIS POLLUTION CONTROL BOARD

July 23, 2009

DICKERSON PETROLEUM, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 10-5
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by A.S. Moore):

On July 10, 2009, Dickerson Petroleum, Inc. (Dickerson) timely 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, 105.404. The Agency's determination concerns Dickerson's leaking underground storage tank (UST) site located at 823 Upper Cahokia Road in Cahokia, St. Clair County. For the reasons below, the Board accepts Dickerson's petition for hearing. The Board also notes that it has received Dickerson's motion to consolidate this case with Dickerson's appeal in PCB 09-87, but reserves decision on the motion until the expiration of the response period. *See* 35 Ill. Adm. Code 101.500(d).

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, as well as requests for cleanup cost reimbursement from the State's UST Fund, which consists of UST fees and motor fuel taxes. If the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2008); 35 Ill. Adm. Code 105.Subpart D. In this case, the Agency determined that Dickerson's UST incident is not subject to UST regulation and denied Dickerson's request for reimbursement from the UST Fund for early action activities. Dickerson appeals on the grounds that the Agency's determination is arbitrary, capricious, and without statutory or regulatory authority. Dickerson's 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. *See* 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. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its decision, information developed after the Agency's decision typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom. Community Landfill Co. & City of Morris v. PCB & IEPA*, 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3rd Dist. 2002).

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 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) (2008). Currently, the decision deadline is November 9, 2009, which is the first business day after the 120th day from the date on which the Board received the petition, July 10, 2009. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for November 5, 2009.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by August 10, 2009 which is the first business day after 30 days from the date on which Board received Dickerson's petition. *See* 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. *See* 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 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 Therriault, Assistant Clerk
Illinois Pollution Control Board