

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DICKERSON PETROLEUM, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 09-87
	)	PCB 10-05
ILLINOIS ENVIRONMENTAL	)	(UST Appeal)
PROTECTION AGENCY,	)	(Consolidated)
	)	
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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA U.S. MAIL)</b>

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S FEBRUARY 4, 2010 ORDER directed to the Illinois Pollution Control Board, copies of which is herewith served upon you.

Respectfully submitted,

DICKERSON PETROLEUM, INC.,  
Petitioner,

Dated: March 11, 2010

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

DICKERSON PETROLEUM, INC.,	)	
	)	
Petitioner,	)	
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v.	)	PCB 09-87
	)	PCB 10-5
ILLINOIS ENVIRONMENTAL	)	(UST Appeal)
PROTECTION AGENCY,	)	(Consolidated)
	)	
Respondent.	)	

**MOTION FOR RECONSIDERATION OF THE ILLINOIS  
POLLUTION CONTROL BOARD'S FEBRUARY 4, 2010 ORDER**

NOW COMES Petitioner, DICKERSON PETROLEUM, INC. ("Petitioner") by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to 35 Ill. Admin. Code § 101.520, hereby moves the Illinois Pollution Control Board ("Board") to reconsider its February 4, 2010 Order. In support of this Motion, Petitioner states as follows:

**I. BACKGROUND**

Petitioner filed timely appeals with the Board of March 9, 2009 and June 10, 2009 final determination letters issued by the Illinois Environmental Protection Agency ("Illinois EPA") for a January 18, 2008 release at the Cahokia Quick Shop in Cahokia, Illinois. Amended Petition for Review, *Dickerson Petroleum, Inc. v. Illinois EPA*, PCB No. 09-87 (Ill.Pol.Control.Bd. May 26, 2009); Petition for Review, *Dickerson Petroleum, Inc. v. Illinois EPA*, PCB No. 10-05 (Ill.Pol.Control.Bd. July 7, 2009). On August 6, 2009, the Board consolidated the appeals, and on September 16, 2009, the Board held a hearing in this matter. Board Order, *Dickerson Petroleum, Inc. v. Illinois EPA*, PCB Nos. 09-87, 10-05 (consol.) (Ill.Pol.Control.Bd. Aug. 6, 2009) (hereafter "*Dickerson*"). Both

parties submitted post-hearing briefs and replies, and the Board issued an Opinion and Order on February 4, 2010 concluding that the final decision letters issued by the Illinois EPA were deficient and ordering that the letters be re-issued consistent with the Board's Order and statutory and regulatory requirements. Board Order, *Dickerson* at 27-28 (Ill.Pol.Control.Bd. Feb. 4, 2010) (hereafter "Order") (stating that the letters "failed to satisfy the requirements of 35 Ill. Adm. [Code] 734.505(b)"). The Board also concluded that the Petitioner had not "'prevailed' within the meaning of Section 57.8(l)" of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/ 57.8(l), "and thus decline[d] to exercise its discretion to direct the Agency to reimburse Dickerson's attorney fees from the UST Fund." Order at 29.

On March 5, 2010, the Illinois EPA, in response to the Board's Order, issued a No Further Remediation ("NFR") letter (attached hereto as Exhibit A) for the incident. In addition, on March 4, 2010, the Illinois EPA issued a letter (attached hereto as Exhibit B) approving the issuance of a voucher for payment of the reimbursement claim. These letters, which were issued to comply with the Board's Order, demonstrate that the Illinois EPA did not have a basis for initially deeming the incident a non-LUST incident since ultimately, an NFR letter and reimbursement approval were granted by the Illinois EPA.

The Board has observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." *Citizens Against Regional Landfill v. County Board of Whiteside*, PCB No. 92-156 (Ill.Pol.Control.Bd. Mar. 11, 1993) (quoting *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627 (1st Dist. 1992)); *see also* Board

Order, *In the Matter of: Petition of Maximum Investments, LLC for an Adjusted Standard from 35 Ill. Adm. Code 740.210(a)(3) for Stoney Creek Landfill in Palos Hills, Illinois*, AS No. 09-2 (Ill.Pol.Control.Bd. Feb. 5, 2009); 35 Ill. Admin. Code § 101.902. As discussed in detail below, the Board has erred in the application of existing law by concluding that that Petitioner is not a prevailing party within the meaning of Section 57.8(l) of the Act. Accordingly, Petitioner respectfully requests that the Board reconsider its determination that Petitioner is not a prevailing party and exercise its discretion to authorize reimbursement of legal fees.

**II. PETITIONER IS A PREVAILING PARTY WITHIN THE SCOPE OF SECTION 57.8(l) OF THE ACT.**

Section 57.8(l) of the Act states:

Corrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees.

415 ILCS 5/57.8(l). In *Illinois Ayers Oil Company v. Illinois EPA*, PCB No. 03-214 (Ill.Pol.Control.Bd. Aug. 5, 2004) (hereafter “*Ayers*”), the Board in granting the petitioner legal defense costs stated that “the first question the Board must address is whether or not the proceeding falls within the parameters of the statutory provision. Second, the Board must also determine whether or not to exercise [its] discretion.” *Ayers* at 7.

In the *Ayers* case, the petitioner appealed the rejection of a High Priority Corrective Action Plan and budget because the Illinois EPA determined that 10 of the 13 proposed borings “were unnecessary.” *Id.* at 8. The Board explained that there are “numerous steps” that an owner/operator must follow to seek and receive reimbursement

for corrective action costs, and the owner/operator must follow the “provisions of Title XVI” in order to seek reimbursement. *Id.* The Board concluded that “[h]ad Ayers not appealed the decision, Ayers would have been unable to seek reimbursement for the additional 10 borings.” *Id.* Therefore, “Ayers did prevail before the Board in significant part.” *Id.* The Board further explained:

Ayers did appeal a decision of the Agency under the provisions of Title XVI. In this instance, the provisions of Title XVI are necessary steps an owner or operator must first follow in order to later seek reimbursement from the UST Fund.

*Id.* The Board concluded that the petitioner in *Ayers* was “seeking payment under Title XVI and the plain language of Section 57.8(l) of the Act allows for the awarding of legal fees.” *Id.*; see also *Prime Location Properties LLC v. Illinois EPA*, PCB No. 09-67 (Ill.Pol.Control.Bd. Nov. 5, 2009) (where the Board reversed the Illinois EPA’s decision to reject petitioner’s plan and budget and held that petitioner was seeking payment under Title XVI).

As in *Ayers*, Petitioner in this matter is seeking payment under Title XVI, and thus, this proceeding falls within the parameters of Section 57.8(l) of the Act. Petitioner appealed two decisions, one in regards to a 45 Day Report and Addendum and the other in regards to a reimbursement application, where the Illinois EPA determined that the incident was a non-LUST incident. These submittals were necessary steps that the Petitioner had to take in order to seek reimbursement from the UST Fund.

The Board evaluated the letters on appeal, and in its Order stated that both the March 9, 2009 and June 10, 2009 denial letters “failed to satisfy the requirements of 35 Ill. Adm. [Code] 734.505(b).” Order at 27, 28. The Board also remanded the letters to

the Illinois EPA for reissuance. Accordingly, Petitioner has prevailed in this matter, since the letters on appeal were deemed deficient by the Board. Thus, like the petitioner in *Ayers*, Petitioner has prevailed before the Board in significant part.

In addition, in *Swif-T-Food Mart v. Illinois EPA*, PCB No. 03-185 (Ill.Pol.Control.Bd. Aug. 19, 2004) (hereafter “*Swif-T*”), the petitioner appealed the denial of reimbursement costs, and the Board issued an order reversing the Illinois EPA’s decision. *Swif-T* at 1. Subsequently, the Board granted legal fees to the petitioner and stated that it was “undisputed that Swif-T prevailed in its action seeking payment under Title XVI.” *Id.* at 2; *see also Ted Harrison Oil Company v. Illinois EPA*, PCB No. 99-127 (Ill.Pol.Control.Bd. Oct. 16, 2003) (hereafter “*Harrison*”) (where the Board granted legal defense costs pursuant to Section 57.8(l) holding that “the record did support petitioner’s request for reimbursement”). The Board further found that the “legal fees sought in the motion and supported by the affidavit and exhibit [were] reasonable.” *Swif-T* at 3. Here, as in *Swif-T* and *Harrison*, Petitioner appealed the denial of its reimbursement related matter, and as the petitioners in those cases, the Illinois EPA eventually approved reimbursement of costs for the incident (*see* Exhibit B), despite having initially determined that the incident was a non-LUST incident.

The Board erred in its determination that Petitioner was not a prevailing party. The Board’s own precedent, as discussed above, supports the conclusion that Petitioner is a prevailing party. Petitioner prevailed because the Board held that the Illinois EPA final determinations were deficient and did not comply with applicable regulations. Further, the Board remanded the letter for reissuance by the Illinois EPA, which subsequently issued an NFR letter and reimbursement approval for the incident. For the reasons

discussed above, Petitioner respectfully requests that the Board reconsider its Order and find that Petitioner is a prevailing party within the scope of Section 57.8(l) of the Act.

**III. THE BOARD SHOULD EXERCISE ITS DISCRETION AND AWARD LEGAL DEFENSE COSTS.**

It is in the Board's discretion to authorize the payment of legal fees pursuant to Section 57.8(l) of the Act. 415 ILCS 5/57.8(l). In past cases, the Board has looked at the facts of the case to determine whether legal fees should be awarded and whether the fees are reasonable. *See generally Ayers* at 9; *Swif-T* at 3; *Harrison* at 2.<sup>1</sup> For example, in *Ayers*, the Board noted that the petitioner prevailed not only on the budget issue, but also on a "technical issue involving the ultimate clean up of the site," which the Board found "persuasive in determining whether or not to allow for reimbursement of legal fees." *Ayers* at 8-9. In addition, in the *Ayers* case, the Board found that Illinois EPA's rate sheet was a rule and that the Board was not bound by it. *Id.* at 9. Further, the Board considered the affidavit and exhibit specifying legal costs, and determined the fees to be reasonable. *Id.*; *see also Prime Location* at 4 (providing a list of factors that the Board may consider in determining the reasonableness of legal costs).

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<sup>1</sup> The Board has declined to exercise its discretion and award legal costs in certain cases. *Rantoul Township High School District No. 193 v. Illinois EPA*, PCB No. 03-42 (Ill.Pol.Control.Bd. Apr. 17, 2003) (hereafter "*Rantoul*"); *L. Keller Oil Properties/Farina v. Illinois EPA*, PCB Nos. 06-189, 06-190 (consol.) (Ill.Pol.Control.Bd. Sept. 21, 2006) (where the Board stated petitioner "has not appeared before the Board for hearing and can in no way be said to have prevailed before the Board" and directed parties to "submit a filing describing the specific legal authority on which the Board might rely in authorizing payment of legal fees in this case . . ."); *Tolles Realty Co. v. Illinois EPA*, PCB No. 93-124 (Ill.Pol.Control.Bd. Mar. 17, 1994) (Board denied fees under Section 57.8(l) because petitioner did not establish amendments to the Act were applicable, made no election to proceed under the new amendments, took no "corrective action" after the date of the amendments, and did not prevail in this matter). For example, in *Rantoul*, the Board denied attorney fees because "*Rantoul* prevailed only on the issue of costs related to the removal of possible migration pathways, to which the Agency conceded." *Rantoul* at 7. *Rantoul* is different from Petitioner's case because Petitioner prevailed on both technical and reimbursement issues, and unlike in *Rantoul* where the Illinois EPA conceded that certain costs should have been approved, Illinois EPA in this matter did not concede that the incident was subject to LUST regulations.

As in *Ayers*, the Petitioner in this matter has prevailed before the Board on both technical and reimbursement issues. As noted above, the Board remanded two deficient letters to the Illinois EPA for reissuance. The first letter was issued by the Illinois EPA in response to the 45 Day Report and Addendum submittals, which detailed technical information on the release and early action activities. The second letter was issued by the Illinois EPA in response to a reimbursement application submittal. Recently, as directed by the Board, the Illinois re-issued the letters by issuing an NFR letter for the incident and approving the reimbursement claim (minus the deductible and other non-reimbursable portions of the claim). The issuance of the NFR letter and reimbursement approval are evidence that there had been a release at the site, as the Petitioner has always maintained.

In addition, as stated in Petitioner's Reply Brief, the Illinois EPA never provided an explanation for its policy that laboratory analysis showing contamination above Tier I ROs is required in order to confirm a release. Reply to the Illinois EPA's Response to Petitioner's Post-Hearing Brief, *Dickerson* at 5 (Ill.Pol.Control.Bd. Dec. 9, 2009) (hereafter "Reply Brief"). As in *Ayers*, where the Illinois EPA inappropriately applied a rate sheet as a rule, the Agency's policy is not codified in either the Board or OSFM regulations; however, it was applied as a rule in violation of the Administrative Procedure Act's ("APA") rulemaking requirements. *Id.* at 5-6. Further, as articulated in Petitioner's Reply Brief, as early as April 3, 2009, Petitioner raised a related concern that if the Illinois EPA requires laboratory analysis to confirm a release, "it needs to communicate that to the regulated community." *Id.* (citing Record at 97-103). Note that the Illinois EPA never provided a response, written or otherwise, to Petitioner's request



for clarification on whether the LUST Program requires laboratory analysis to confirm a release. *Id.* at 6. As a result, instead of negotiating a settlement in this matter, Petitioner was forced to incur significant costs to appeal the application of an unpromulgated rule and to determine the basis for the rejection of Petitioner's submittals. In the end, the Illinois EPA has implicitly deemed the incident a LUST incident by issuing an NFR letter for the incident and authorizing payment for corrective action costs from the UST Fund.

The Board should exercise its discretion and direct the Illinois EPA to pay reasonable legal fees to Petitioner because Petitioner has prevailed not only on a reimbursement issue, but also on a technical issue. In addition, the facts of this case, as articulated in Petitioner's Post-Hearing Brief and Reply Brief, warrant the awarding of legal fees. Petitioner incurred significant costs to adjudicate this matter. Should the Board authorize the payment of legal fees, Petitioner will submit an affidavit and additional information summarizing its legal costs for review by the Board.

#### **IV. CONCLUSION**

The Board erred in its application of existing law when it concluded that the Petitioner had not prevailed before the Board. Therefore, Petitioner respectfully requests that the Board reconsider its Order and find that the Petitioner is a prevailing party within the scope of Section 57.8(1) of the Act. Petitioner further requests that the Board exercise its discretion and authorize payment of legal fees to Petitioner. Upon the Board's determination that legal fees are warranted in this matter, Petitioner will submit additional information to the Board regarding legal costs incurred during this proceeding.

WHEREFORE, DICKERSON PETROLEUM, INC. requests that the Board grant this Motion for Reconsideration of the Illinois Pollution Control Board's February 4, 2010 Order.

Respectfully submitted,

DICKERSON PETROLEUM, INC.,  
Petitioner,

Dated: March 11, 2010

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/Consolidated/Mtn for Reconsideration of 2.04.10 Order



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL

MAR 05 2010

7008 1830 0001 4716 8886

Dickerson Petroleum, Inc.  
Attn: Thomas H. Wuller  
920 N. Illinois St.  
Belleville, IL 62220

Re: LPC # 1630205077 – St. Clair County  
Cahokia/Cahokia Quick Shop  
823 Upper Cahokia Rd.  
Leaking UST Incident No. 20080084 -- NFR Letter  
Leaking UST Technical File

Dear Mr. Wuller:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 45-Day Report Addendum submitted for the above-referenced incident. This information was dated September 5, 200 and was received by the Illinois EPA on February 17, 2009. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Early Action Tier 1 Remediation Objectives Compliance Report and the Licensed Professional Engineer Certification submitted pursuant to Section 57.6 of the Act and 35 Ill. Adm. Code 734.135(d) indicate the remediation objectives have been met.

Based upon the certification by Thomas L. Herlacher, a Licensed Professional Engineer, and pursuant to Section 57.10 of the Act (415 ILCS 5/57.10), your request for a no further remediation determination is granted under the conditions and terms specified in this letter.

Issuance of this No Further Remediation Letter (Letter), based on the certification of the Licensed Professional Engineer, signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with; (2) all corrective action concerning the remediation of the occurrence has been completed; and (3) no further corrective action concerning the occurrence is necessary for the protection of human health, safety, and the environment. Pursuant to Section 57.10(d) of the Act, this Letter shall apply in favor of the following parties:

1. Dickerson Petroleum, Inc., the owner or operator of the underground storage tank system(s).
2. Any parent corporation or subsidiary of such owner or operator.

EXHIBIT

A

Page 2

3. Any co-owner or co-operator, either by joint tenancy, right-of-survivorship, or any other party sharing a legal relationship with the owner or operator to whom the Letter is issued.
4. Any holder of a beneficial interest of a land trust or inter vivos trust whether revocable or irrevocable.
5. Any mortgagee or trustee of a deed of trust of such owner or operator.
6. Any successor-in-interest of such owner or operator.
7. Any transferee of such owner or operator whether the transfer was by sale, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest.
8. Any heir or devisee of such owner or operator.
9. An owner of a parcel of real property to the extent that this Letter applies to the occurrence on that parcel.

This Letter and all attachments, including but not limited to the Leaking Underground Storage Tank Environmental Notice, must be filed within 45 days of receipt as a single instrument with the Office of the Recorder or Registrar of Titles in the county in which the above-referenced site is located. This Letter shall not be effective until officially recorded by the Office of the Recorder or Registrar of Titles of the applicable county in accordance with Illinois law so it forms a permanent part of the chain of title for the above-referenced property. Within 30 days of this Letter being recorded, an accurate and official copy of this Letter, as recorded, shall be obtained and submitted to the Illinois EPA. For recording purposes, it is recommended that the Leaking Underground Storage Tank Environmental Notice of this Letter be the first page of the instrument filed.

#### CONDITIONS AND TERMS OF APPROVAL

##### LEVEL OF REMEDIATION AND LAND USE LIMITATIONS

1. The remediation objectives for the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, were established in accordance with the requirements of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) rules.
2. As a result of the release from the underground storage tank system(s) associated with the above-referenced incident, the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter, shall not be used in a manner inconsistent with the following land use limitation: There are no land use limitations.
3. The land use limitation specified in this Letter may be revised if:

Page 3

- a. Further investigation or remedial action has been conducted that documents the attainment of objectives appropriate for the new land use; and
- b. A new No Further Remediation Letter is obtained and recorded in accordance with Title XVII of the Act and regulations adopted thereunder.

PREVENTIVE, ENGINEERING, AND INSTITUTIONAL CONTROLS

4. Preventive: None.  
  
Engineering: None.  
  
Institutional: This Letter shall be recorded as a permanent part of the chain of title for the above-referenced site, more particularly described in the attached Leaking Underground Storage Tank Environmental Notice of this Letter.
5. Failure to establish, operate, and maintain controls in full compliance with the Act, applicable regulations, and the approved corrective action plan, if applicable, may result in avoidance of this Letter.

OTHER TERMS

6. Any contaminated soil or groundwater removed or excavated from, or disturbed at, the above-referenced site, more particularly described in the Leaking Underground Storage Tank Environmental Notice of this Letter, must be handled in accordance with all applicable laws and regulations under 35 Ill. Adm. Code Subtitle G.
7. Further information regarding the above-referenced site can be obtained through a written request under the Freedom of Information Act (5 ILCS 140) to:  
  
Illinois Environmental Protection Agency  
Attention: Freedom of Information Act Officer  
Bureau of Land - #24  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276
8. Pursuant to 35 Ill. Adm. Code 734.720, should the Illinois EPA seek to void this Letter, the Illinois EPA shall provide Notice of Voidance to the owner or operator of the leaking underground storage tank system(s) associated with the above-referenced incident and the current title holder of the real estate on which the tanks were located, at their last known addresses. The notice shall specify the cause for the voidance, explain the provisions for appeal, and describe the facts in support of the voidance. Specific acts or omissions that may result in the voidance of this Letter include, but shall not be limited to:
  - a. Any violation of institutional controls or industrial/commercial land use restrictions;

Page 4

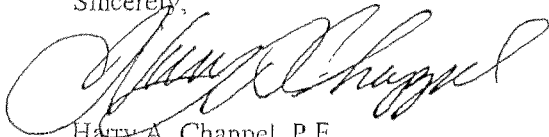
- b. The failure to operate and maintain preventive or engineering controls or to comply with any applicable groundwater monitoring plan;
- c. The disturbance or removal of contamination that has been left in-place in accordance with the Corrective Action Plan or Completion Report;
- d. The failure to comply with the recording requirements for the Letter;
- e. Obtaining the Letter by fraud or misrepresentation; or
- f. Subsequent discovery of contaminants, not identified as part of the investigative or remedial activities upon which the issuance of the Letter was based, that pose a threat to human health or the environment.

Submit an accurate and official copy of this Letter, as recorded, to:

Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Jay F. Gaydosh, at 217-785-0231.

Sincerely,



Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:JFG\20080084 NFR Letter

Attachments: Leaking Underground Storage Tank Environmental Notice  
Site Base Map  
Legal Description

cc: Herlacher Angleton Assoc., LLC  
BOL File

PREPARED BY:

Name: Dickerson Petroleum, Inc.

Address: 823 Upper Cahokia Rd.  
Cahokia, IL 62206

RETURN TO:

Name: Dickerson Petroleum, Inc.  
Attn: Thomas H. Wuller

Address: 920 N. Illinois St.  
Belleville, IL 62220

(THE ABOVE SPACE FOR RECORDER'S OFFICE)

LEAKING UNDERGROUND STORAGE TANK ENVIRONMENTAL NOTICE

THE OWNER AND/OR OPERATOR OF THE LEAKING UNDERGROUND STORAGE TANK SYSTEM(S) ASSOCIATED WITH THE RELEASE REFERENCED BELOW, WITHIN 45 DAYS OF RECEIVING THE NO FURTHER REMEDIATION LETTER CONTAINING THIS NOTICE, MUST SUBMIT THIS NOTICE AND THE REMAINDER OF THE NO FURTHER REMEDIATION LETTER TO THE OFFICE OF THE RECORDER OR REGISTRAR OF TITLES OF ST. CLAIR COUNTY IN WHICH THE SITE DESCRIBED BELOW IS LOCATED.

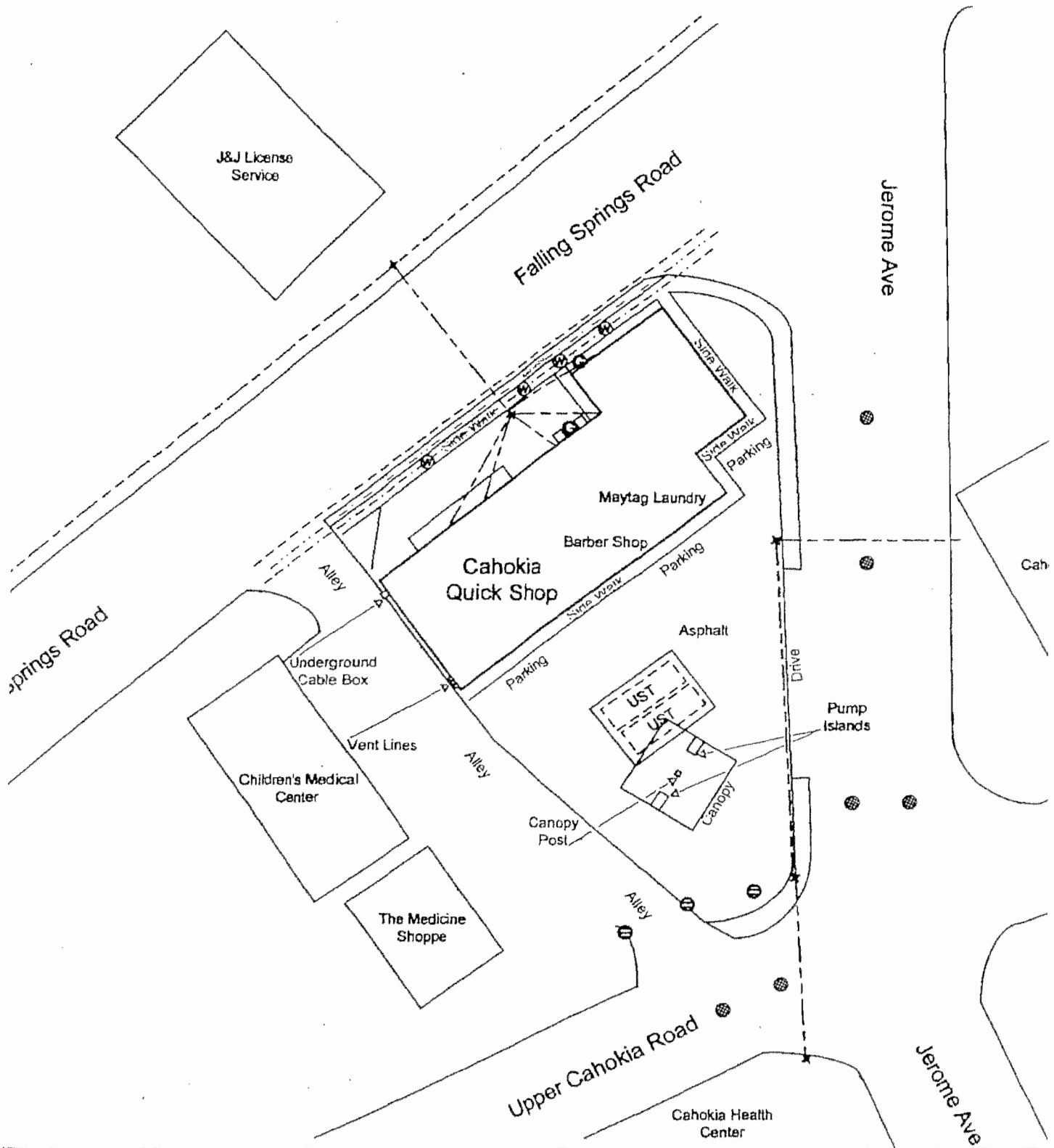
Illinois EPA Number: 1630205007

Leaking UST Incident No.: 20080084

Dickerson Petroleum, Inc., the owner and/or operator of the leaking underground storage tank system(s) associated with the above-referenced incident, whose address is 920 N. Illinois St., has performed investigative and/or remedial activities for the site identified as follows and depicted on the attached Site Base Map:

1. Legal Description or Reference to a Plat Showing the Boundaries: See Attached.
2. Common Address: 823 Upper Cahokia Rd.
3. Real Estate Tax Index/Parcel Index Number: 01-35-0-313-016 & 01-35-0-313-017
4. Site Owner: Dickerson Petroleum, Inc.
5. Land Use Limitation: There are no land use limitations.
6. See the attached No Further Remediation Letter for other terms.

jfg



erty Line  
Line  
d Gas Line  
line  
ead Lines

Drawn By: DKH  
Checked By: JGF  
Date: 2/1/08

LUST Site Diagram (LUST No. 20080084)

Dickerson Petroleum: Cahokia Quick Shop  
823 Upper Cahokia Road  
Cahokia, Illinois





ATTORNEYS' TITLE GUARANTY FUND, INC.

LEGAL DESCRIPTION

JAN 29 2008

919

Legal Description

PARCEL 1:

All that part of Lot No. 214 of the "COMMONFIELDS OF CAHOKIA"; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "E" on Pages 16 and 17 and all that part of the former right of way of the East St. Louis, Columbia and Waterloo Railway, lying Southeasterly of the Southeasterly right of way line of the Lower Cahokia Road (County Highway No. 10) and Northwesterly of the Northwesterly right of way line of Upper Cahokia Road (County Highway No. 36) and Westerly of the Westerly right of way line of State Aid Route No. 62 as shown on plat recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "64" on Page 171.

Situated in St. Clair County, Illinois.

PARCEL 2:

A part of the former right of way of the East St. Louis, Columbia and Waterloo Railway across Lot No. 214 of the "COMMONFIELDS OF CAHOKIA"; reference being had to the plat thereof recorded in the Recorder's Office of St. Clair County, Illinois, in Book of Plats "E" on Pages 16 and 17; being more particularly described as follows:

Commencing at a point in the Westerly right of way line of County Highway 62; reference being had to the plat thereof recorded in the said Recorder's Office in Book of Plats "45" on Page 81; that is 15 feet Southeasterly of the former centerline of the East St. Louis, Columbia and Waterloo Railway; thence in a Southwesterly direction, 15 feet from and parallel to said centerline, a distance of 59.0 feet to the point of beginning of the tract of land to be conveyed herein; thence continuing along the last described course, a distance of 36 feet; thence in a Northwesterly direction, at right angles to the last described course, a distance of 10.5 feet; thence in a Northeasterly direction, parallel to said centerline, a distance of 36 feet; thence in a Southeasterly direction at right angles to the last described course, a distance of 10.5 feet, to the point of beginning.

Situated in St. Clair County, Illinois.

Permanent Index Number:

Property ID: 01-5-0-313-016

Property ID: 01-5-0-313-017

Property Address:

823, 825, 827, 829, & 831 Upper Cahokia Road  
Cahokia, IL 62206

\*\*\*\*\*



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

DOUGLAS P. SCOTT, DIRECTOR

**RECORDING REQUIREMENTS FOR  
NO FURTHER REMEDIATION LETTERS**

**Introduction**

The Illinois Environmental Protection Agency's (Illinois EPA) Bureau of Land/Leaking Underground Storage Tank Section issues a No Further Remediation (NFR) Letter after a demonstration of compliance with Title XVI of the Environmental Protection Act and applicable regulations is made. The NFR Letter signifies that: (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with, (2) all corrective action concerning the remediation of the occurrence has been completed, and (3) no further corrective action concerning the occurrence is necessary so long as the site is used in accordance with the terms and conditions of the NFR Letter.

**Significance**

When properly recorded, the NFR Letter holds legal significance for all applicable parties outlined at Section 57.10(d) of the Environmental Protection Act. (See 415 ILCS 5/57.10(d).) If not properly recorded, the Illinois EPA *will* take steps to void the NFR Letter in accordance with the regulations.

**Duty to Record**

The duty to record the NFR Letter is *mandatory*. You *must* submit the NFR Letter, with a copy of any applicable institutional controls proposed as part of a corrective action completion report, to the Office of the Recorder or the Registrar of Titles of the county in which the site is located *within 45 days after receipt of the NFR Letter*. You must record the NFR Letter and any attachments. The NFR Letter shall be filed in accordance with Illinois law so that it forms a permanent part of the chain of title to ensure current and future users of the property will be informed of the conditions and terms of approval including level of remediation; land use limitations; and preventive, engineering, and institutional controls. A certified or otherwise accurate and official copy of the NFR Letter and any attachments, as recorded, must be submitted to the Illinois EPA. Failure to record the NFR Letter in accordance with the regulations will make the NFR Letter voidable.

**For More Information**

Please refer to Tiered Approach to Corrective Action Objectives (TACO) Fact Sheet 3 available from the Illinois EPA by calling 1-888-299-9533 or by accessing it on the Illinois EPA Web site at <http://www.epa.state.il.us/land/taco/3-no-further-remediation-letters.html>.



## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829  
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

CERTIFIED MAIL #

MAR 04 2010

7008 1830 0001 4716 8855

Dickerson Petroleum Inc.  
Thomas H. Wuller  
920 North Illinois St.  
Belleville, Illinois 62220

Re: LPC 1630205077 – St. Clair County  
Cahokia / Dickerson Petroleum Inc.  
823 Upper Cahokia Road  
Incident-Claim No.: 20080084 -- 55225  
Queue Date: February 17, 2009  
Leaking UST Fiscal File

Dear Mr. Wuller:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This application for payment is dated February 15, 2009 and was received by the Illinois EPA on February 17, 2009. It covers the period from January 18, 2008 to September 5, 2008. The amount requested is \$84,090.69.

On February 17, 2009, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$62,780.63 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 907-7760  
Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131  
Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5463  
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-2200

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000  
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463  
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800  
Marion • 100 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

EXHIBIT

B

Page 2

The deductible amount of \$10,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Brian Bauer of my staff at 217/782-3335.

Sincerely,

A handwritten signature in black ink, reading "Hernando A. Albarracin". The signature is fluid and cursive, with the first name being the most prominent.

Hernando A. Albarracin, Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAA:BB

Attachments: Attachment A

c: Herlacher Angleton Associates, LLC  
Leaking UST Claims Unit  
Brian Bauer  
Greg Richardson DLC

Attachment A  
Deductions

Re: LPC 1630205077 – St. Clair County  
Cahokia / Dickerson Petroleum Inc.  
823 Upper Cahokia Road  
Incident-Claim No.: 20080084 -- 58225  
Queue Date:  
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$2,622.76, deduction for costs for backfill beyond the Section 734. Appendix C amounts, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).
2. \$1,347.84, deduction for backfill costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
3. \$12.21, deduction for UST removal costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
4. \$3,759.21, deduction for asphalt replacement costs that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
5. \$2,633.89, deduction for costs for asphalt replacement, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site

investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

6. \$934.15, deduction for handling charges for subcontractor costs that have been billed directly to the owner or operator. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(hh). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

**CERTIFICATE OF SERVICE**

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached MOTION FOR RECONSIDERATION OF THE ILLINOIS POLLUTION CONTROL BOARD'S FEBRUARY 4, 2010 ORDER 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 March 11, 2010; 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 March 11, 2010.

/s/Edward W. Dwyer

Edward W. Dwyer