

ILLINOIS POLLUTION CONTROL BOARD
June 21, 2012

THE PREMCOR REFINING GROUP, INC.,)
)
Petitioner,)
)
v.) PCB 12-130
) (Land)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

On May 22, 2012, The Premcor Refining Group, Inc. (Premcor) filed a petition (Pet.) asking the Board to review a January 13, 2012 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2010); 35 Ill. Adm. Code 101.300(b), 105.206. The Agency determined on January 13, 2012 that it would not approve Premcor's May 2, 2011 submittal, made in response to the Agency's April 1, 2011 letter, entitled "Response Action Plan for Groundwater Inward Gradient Control."¹ The determination concerns an inward gradient control along the western property boundary of Premcor's property in Hartford, Madison County. Until September 27, 2002, Premcor operated a petroleum refinery and distribution center on the site; presently the site does not operate as a refinery, but continues to be actively operated as a distribution center for petroleum products. Pet. at 1-2, and n. 1

Premcor's petition recites that, consistent with Agency directions in the January 13, 2012 determination letter, on January 25, 2012 Premcor requested from the Agency a 90-day extension of the time in which to file an appeal of January 13, 2012 determination characterized by the Agency as a "final decision". Pet. at 2-3. Premcor also asserts that the Agency agreed to the extension. Pet. at 3 and Exh. B.

The last full paragraph of Premcor's petition states:

To the extent that the Illinois EPA's letters of January 13, 2012 and February 7, 2012 constitute, respectively, a "final decision" and a valid extension of the 35-day deadline for appeals under Section 40 of the Act and 35 III. Admin. Code Part 105, Premcor hereby petitions the Board for review of the Illinois EPA's "final decision" and the findings/requirements in numbered paragraphs 1-4 of the January 13, 2012 letter as arbitrary, capricious, and not supported by the Act or Board regulations. Pet at 3.

¹ The April 1, 2011 Agency letter stated that other submittals reviewed include "April 2011 Gauging event and Groundwater Contour Maps" and an "August 2011 Gauging event and Groundwater Contour Maps." Pet. at 1.

The Board has not received filings from either party since May 22, 2012.

Section 40 set a 35-day period for appeal of an Agency determination, and then goes on to provide

However, the 35-day period for petition for a hearing may be extended for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period. 415 ILCS 5/40(a)(1) (2010); see also the Board's implementing procedural rules at 35 Ill. Adm. Code 105.206 and 105.208.

The Board has no record of receipt of a timely request for a 90-day extension for appeal of a January 13, 2012 Agency determination from these parties, and consequently has no record of ever issuing an order extending the appeal period. The parties are directed to provide evidence and argument, supported by legal citation, on the issue of the source of any Board jurisdiction of this matter. Premcor is directed to make its filing on or before July 6, 2012, and the Agency shall file a response no later than July 23, 2012. The Board presently expects to address this matter at its meeting of July 26 or August 9, 2012.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 21, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board