

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2007

IN THE MATTER OF: )  
)  
PETITION OF CABOT CORPORATION ) AS 07-06  
FOR AN ADJUSTED STANDARD FROM 35 ) (Adjusted Standard - Land)  
ILL. ADM. CODE PART 738.SUBPART B )

ORDER OF THE BOARD (by N.J. Melas):

In summary, this order stays this proceeding, in response to a request from petitioner, through February 9, 2008. The Board will assign a hearing officer to manage this case, although the Board notes hearing has been waived. The hearing officer is authorized to extend the extension at petitioner's request, accompanied by a status report. Respondent's time for filing its Recommendation is extended until 45 days after the expiration of the stay, or at such other time as specified by hearing officer order.

THE FILINGS

On May 29, 2007, Cabot Corporation (Cabot) filed a Petition for Reissuance of Adjusted Standard, a Motion for Incorporation of Documents, and a Motion for Relief From Filing Requirements, and a Motion to Stay Proceedings pending decision by the United States Environmental Protection Agency (USEPA) of Cabot's request for similar relief. This petition is a replacement for the petition recently dismissed due to Cabot's failure to timely file a certificate of publication. Petition of Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code Part 738, Subpart B, AS 7-5 (May 17, 2007). Here, on June 6, 2007, Cabot timely filed the certificate of publication required by Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2006)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a)).

Cabot seeks a reissuance of a previous adjusted standard applicable to Cabot's inorganic chemical manufacturing facility, where Cabot manufactures fumed silica dioxide (SiO<sub>2</sub>), in Tuscola, Douglas County (Tuscola facility). Petition of the Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738, Subpart B, AS 96-3 (Mar. 7, 1996); see also Petition of the Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738, Subpart B, AS 92-8 (September 7, 1995). Cabot's previous adjusted standard allowed Cabot to dispose of leachate, purge water, and other restricted wastes into three wells (Wells #1, #2, and #3) at the Tuscola facility.

Cabot seeks a reissuance of the previous adjusted standard so that it may continue to inject hazardous waste into Wells #2 and #3 at the Tuscola facility through December 31, 2027. Cabot has waived hearing on the petition.

Cabot's petition relies "solely" (pet. at 4) on Cabot's March 8, 2006 application made to the United States Environmental Protection Agency (USEPA) for extension until December 21, 2027 of the "no-migration exemption" USEPA issued. USEPA has yet to rule on this petition.

By order of June 21, 2007, the Board granted various Cabot motions for relief from filing requirements, and directed it to serve the Agency with a copy of the entire petition. The Board reserved ruling on the motion for stay, and allowed the Agency until August 2, 2007 to file any response to the motion for stay. Cabot filed proof of the required service on June 28, 2007. On July 2, 2007, the Agency filed a request for extension of time to file its Recommendation. In the extension request, the Agency asked that, if any stay is granted in response to Cabot's request, the Recommendation be due only after any USEPA ruling on Cabot's March 8, 2007 application, to allow Agency review of the USEPA ruling. The Agency has not responded to the stay motion, and so is deemed to have waived any objection to its grant under 35 Ill. Adm. Code 101.500(c).

#### BOARD DISPOSITION

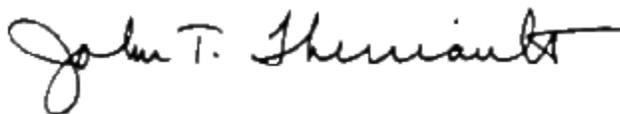
The Board first notes that it has authority to rule upon Cabot's petition in advance of any ruling by USEPA. But, the Board can certainly defer action on this request until USEPA has ruled on Cabot's March 8, 2007 application as Cabot has requested.

As the Board does not favor open-ended stays, the Board will grant an initial six-month stay, until February 9, 2008. The Agency request for extension of time to file its Recommendation is also granted, until March 26, 2008. The Board will assign a hearing officer to manage this case through the stay period, and to hold any public hearing that may later be requested. The parties may request extensions of the stay and time for filing of the Recommendation by request to the hearing officer. Such requests must be accompanied by a status report indicating when any USEPA action is expected, or alternatively what disposition USEPA has made of Cabot's application.

Given the stay in this proceeding, and to conserve its own scarce resources, the Board will continue to reserve its own determination on the technical sufficiency of this petition under 35 Ill. Adm. Code 104.406 until after expiration of the stay in this proceeding.

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 August 9, 2007, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board