

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DICKERSON PETROLEUM, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No.
	)	
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
<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 **PETITION FOR REVIEW**, directed to the Illinois Pollution Control Board, a copy 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

DICKERSON PETROLEUM, INC.,	)	
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Petitioner,	)	
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v.	)	PCB No.
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ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITION FOR REVIEW**

NOW COMES Petitioner, DICKERSON PETROLEUM, INC. (“Petitioner”), by and through its attorneys, HODGE DWYER & DRIVER, and pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40 and 35 Ill. Admin. Code Part 105, hereby requests review of the decision by the Respondent, Illinois Environmental Protection Agency (“Agency”), regarding Petitioner’s application for payment from the Leaking Underground Storage Tank (“LUST”) Fund. In support of this Petition, Petitioner states as follows:

1. Petitioner was the owner of underground storage tanks (“USTs”) formerly located at 823 Upper Cahokia Road, Cahokia, Illinois (“Site”), prior to their removal on May 14, 2008.

2. On January 18, 2008, during a preliminary investigation of the Site, Petitioner, in accordance with applicable Board and Office of the State Fire Marshal (“OSFM”) requirements, notified the Illinois Emergency Management Agency (“IEMA”) of a release from the USTs. IEMA assigned the release Incident No. 20080084.

Petitioner received an Eligibility and Deductibility determination from OSFM on April 4, 2008.

3. On February 15, 2009, Petitioner submitted an application for payment from the LUST Fund to the Agency. The application was for costs incurred by Petitioner during the early action period covering January 18, 2008 to September 5, 2008. The application requested reimbursement of costs totaling \$84,090.69.

4. By letter dated June 10, 2009, the Agency determined that “[b]ased on the information currently in the Illinois EPA’s possession, this incident is not subject to Title XVI: Petroleum Underground Storage Tanks of the Act and 35 Ill. Adm. Code 734, 732, or 731.” *See* Letter from Illinois EPA to Dickerson Petroleum, Inc. (June 10, 2009), attached hereto as Exhibit A. The Agency concluded, “[t]herefore, the Illinois EPA’s [sic] has determined that this claim cannot be reviewed and a voucher cannot be prepared for submission to the Comptroller’s Office for payment.” *Id.*

5. The date of service on the Petitioner of the Agency’s June 10, 2009 final decision was June 12, 2009. The Petition for Review was filed within 35 days after the date of service of the Agency’s final decision in accordance with Board’s rules governing service and LUST appeals. 35 Ill. Admin. Code §§ 101.300(c), 105.404.

6. The June 10, 2009 letter provides neither a statutory nor regulatory basis for its determination that the application for payment is not reviewable because the incident is not subject to regulation under the Act or UST regulations.

7. Early action activities are considered corrective action as defined by the Act in Section 57.2. 415 ILCS 5/57.2. An owner or operator of an UST may seek

reimbursement for corrective action costs, including costs incurred for early action activities, from the LUST Fund pursuant to the Act and Board regulations. 415 ILCS 5/57.8; 35 Ill. Admin. Code Part 734. Subpart B of Part 734, as well as other sections of Part 734, provide the requirements for seeking reimbursement from the LUST Fund for early action activities. 35 Ill. Admin. Code Part 734.

8. Petitioner submitted the documents required by the applicable statute and regulations to the Agency. The Agency's June 10, 2009 final decision determined that it cannot review Petitioner's application for payment from the LUST Fund because the incident is not subject to UST regulation. *See* Exhibit A. The June 10, 2009 letter was a final decision and may be reviewed by the Board pursuant to Section 40 of the Act. 415 ILCS 5/40.

9. The June 10, 2009 determination does not provide a factual, statutory, or regulatory basis and further fails to provide an explanation or justification for concluding that the release "is not subject to 35 Ill. Adm. Code 734, 732 or 731." *See* Exhibit A. This renders the Agency's final decision arbitrary, capricious, and without statutory or regulatory authority. Petitioner is entitled under the Act to review of the Agency's final decision and reversal of such decision. 415 ILCS 5/40.

10. The Agency's decision constitutes a refusal to reimburse corrective action costs, which is subject to review pursuant to Section 57.8(i) of the Act. 415 ILCS 5/57.8(i); 415 ILCS 5/40.

11. Petitioner is entitled to seek review of the Agency's June 10, 2009 final determination that the above-referenced incident is not subject to the State's LUST

regulations. The Agency's determination regarding this incident is arbitrary, capricious, and without statutory or regulatory authority.

12. On July 10, 2009, Petitioner filed a Motion to Consolidate an appeal of the Agency's final determination in a previous matter with this Petition since the two proceedings concern the same incident and stem from the same facts. *See* Motion to Consolidate, *Dickerson Petroleum, Inc. v. Illinois Environmental Protection Agency*, PCB No. 09-87 (July 10, 2009).

WHEREFORE, for the above and foregoing reasons, Petitioner, DICKERSON PETROLEUM, INC., respectfully requests that the Illinois Pollution Control Board grant the following relief:

- a. Find that the Agency's June 10, 2009 final decision is arbitrary, capricious, and without statutory or regulatory authority;
- b. Reverse the Agency's determination that the above-referenced incident is not subject to UST regulation and find that the incident must be regulated in accordance with 35 Ill. Admin. Code Part 734;
- c. Find that the above-referenced incident is eligible to access the LUST Fund and that costs incurred during the early action period for this release are eligible for reimbursement from the LUST Fund in accordance with applicable regulations;
- d. Award Petitioner reasonable attorney's fees and expenses incurred in bringing this action; and

- e. 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/ Petition for Review – Reimbursement Denial

PCB 2010-005

Exhibit

A



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

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

JUN 10 2009

CERTIFIED MAIL #

7008 1830 0001 4717 0889

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

Re: LPC 1630205077 - St. Clair County  
Cahokia / Dickerson Petroleum Inc.  
825 Upper Cahokia Road  
Incident-Claim No.: 20080084 -- 56231  
Queue Date: February 17, 2009  
Leaking UST Fiscal File

Dear Mr. Wuller:

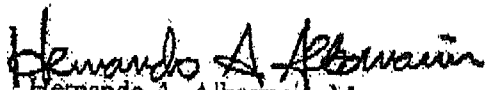
The Illinois Environmental Protection Agency (Illinois EPA) has received an application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734. Subpart F. This application for payment is dated February 13, 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.

Based on the information currently in the Illinois EPA's possession, this incident is not subject to Title XVI: Petroleum Underground Storage Tanks of the Act and 35 Ill. Adm. Code 734, 732 or 731. Therefore, the Illinois EPA's has determined that this claim cannot be reviewed and a voucher cannot be prepared for submission to the Comptroller's Office for payment. This constitutes the Illinois EPA's final action with regard to the above application for payment.

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,



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

HAA:BB

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



### 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 57.8(i) 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 request for 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

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

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

**CERTIFICATE OF SERVICE**

I, Edward W. Dwyer, the undersigned, hereby certify that I have served the attached PETITION FOR REVIEW 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 – Petition for Review – Reimbursement Denial