

ILLINOIS POLLUTION CONTROL BOARD

July 15, 2010

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 C.K. Zalewski):

Since shortly after this action's filing in May, 2007, proceedings have been stayed at the request of petitioner, Cabot Corporation (Cabot). In summary, this order grants Cabot's June 14, 2010 unopposed motion to lift the stay in this proceeding and to amend the petition (Mot.). Respondent's time for filing its Recommendation is extended until 45 days after the date of this order, *i.e.* on or before August 30, 2010. Cabot may file any response thereto within roughly 14 days, *i.e.* on or before September 13, 2010.

In the meantime, since the stay is lifted, the Board will review Cabot's petition and its amendments to make the Board's initial determination on the technical sufficiency of this petition under 35 Ill. Adm. Code 104.406.

THE PREVIOUS 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 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 (SiO₂), 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 (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. At that time, USEPA had yet to rule on Cabot's application.

By order of August 9, 2007, the Board first noted that it has authority to rule upon Cabot's petition in advance of any ruling by USEPA. But, the Board agreed to defer action on this request until after a USEPA ruling on Cabot's March 8, 2007 application, as Cabot has requested. The Board assigned a hearing officer to manage this case through the stay period, and to hold any public hearing that may later be requested. The Board told the parties to direct to the hearing officer any motions to request extensions of the stay and time for filing of the Recommendation by request to the hearing officer. The Board also stated that, given the stay in this proceeding, and to conserve its own scarce resources, the Board would 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.

Upon motion, the hearing officer extended the stay and granted the Agency extensions of time in which to file the Recommendation. See hearing officer orders of February 7, 2008, July 22, 2008, January 2, 2009, July 20, 2009, and January 11, 2010. The stay is currently in effect until August 9, 2010, with the Agency due to file its Recommendation September 23, 2010.

CABOT'S JUNE 14, 2010 MOTION

In its June 14, 2010 motion, Cabot reports that the USEPA has ruled on, and approved, Cabot's exemption request. Cabot attached to its motion USEPA's Notice of Final Decision, and asks leave to supplement the record with that Notice. *See* Mot. at 2, citing 75 Fed. Reg. 30392 (June 1, 2010). Cabot also seeks leave to allow Cabot to amend the petition with additional documents submitted to USEPA on December 2, which are also attached to the motion. Cabot states that grant of the request to supplement will mean that the Board has before it for decision all of the information USEPA received.

Cabot further requests that the Board lift the stay in this action, currently scheduled to expire August 9, 2010. Cabot suggests that the Board give the Agency 45 days from the date of any order lifting the stay in which to file the Recommendation, and Cabot 14 days thereafter in which to file any response. Cabot reiterates that it is not requesting a hearing on its petition.

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'S RULING

The Board grants Cabot's motion in its entirety, and orders recommencement of these proceedings. The Board accepts the attachments to the motion as supplements to the petition. Respondent's time for filing its Recommendation is extended until 45 days after the date of this order, *i.e.* on or before August 30, 2010. Cabot may file any response thereto within roughly 14 days, *i.e.* on or before September 13, 2010. Any extension requests should be made to the hearing officer previously assigned to manage this case.¹

In the meantime, since the stay is lifted, the Board will review Cabot's petition and its amendments to make the Board's initial determination on the technical sufficiency of this petition under 35 Ill. Adm. Code 104.406.

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 July 15, 2010 by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board

¹ The Board takes note that Cabot does not presently request a hearing on this petition, but also notes that Cabot may choose to request one in any response it may make to the Agency Recommendation.