

ILLINOIS POLLUTION CONTROL BOARD  
September 2, 2010

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

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On May 26, 2009, Dickerson Petroleum, Inc. (Dickerson) timely filed an amended petition seeking the Board's review of a March 9, 2009 determination by the Illinois Environmental Protection Agency (Agency or Illinois EPA). The Agency determined that an incident at the site of the Cahokia Quick Shop (Site) in Cahokia, St. Clair County, was not subject to Parts 731, 732, or 734 of the Board's underground storage tank (UST) regulations (35 Ill. Adm. Code 731, 732, 734). The Agency found that an Addendum to Dickerson's 45-Day Report fell outside the scope and jurisdiction of the UST program. The Board accepted this petition for hearing and docketed it as PCB 09-87.

On July 10, 2009, Dickerson timely filed a second petition seeking the Board's review of a June 10, 2009 Agency determination. After Dickerson requested reimbursement from the UST Fund for costs associated with the same incident at the Site, the Agency determined that the incident was not subject to the UST provisions of the Environmental Protection Act (Act) or the Board's regulations. The Agency declined to review Dickerson's claim and to submit it for payment. The Board accepted this second petition for hearing and docketed it as PCB 10-5. On August 6, 2009, the Board granted Dickerson's motion to consolidate the two dockets and consolidated PCB 09-87 and PCB 10-5 for purposes of conducting the hearing but not necessarily for the Board's decisions.

In an order dated February 4, 2010, the Board found that the Agency's March 9, 2009 and June 10, 2009 denial letters failed to comply with the requirements of 35 Ill. Adm. Code 734.505(b). The Board remanded the proceedings to the Agency and directed the Agency to cure the deficiencies in those letters and within 30 days re-issue determinations consistent with the Board's order and with applicable statutory and regulatory requirements. In the same order, the Board declined to exercise its discretion to direct the Agency to reimburse Dickerson's attorney fees from the UST Fund. *See* 415 ILCS 5/57.8(1) (2008).

On March 11, 2010, Dickerson filed a motion for reconsideration of the Board's February 4, 2010 order (Mot.). On March 25, 2010, the Agency filed its response to Dickerson's motion (Resp.). Below, the Board summarizes the parties' arguments discussing the issues raised, grants

the motion for reconsideration, finds Dickerson to have prevailed before the Board, and directs Dickerson to file a statement of costs, to which the Agency may respond.

### **DICKERSON'S MOTION FOR RECONSIDERATION**

Dickerson argues that “the Board has erred in the application of existing law by concluding that Petitioner is not a prevailing party within the meaning of Section 57.8(1) of the Act.” Mot. at 3. Dickerson “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.” *Id.* In the following subsections, the Board summarizes the arguments raised by Dickerson in its motion.

#### **Background**

Dickerson notes that the Board’s February 4, 2010 order concluded that the Agency’s denial letters failed to comply with regulatory requirements and remanded the consolidated proceedings to the Agency with a direction to cure the deficiency and re-issue the letters. Mot. at 2, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 27-28 (Feb. 4, 2010). Dickerson further notes the following statement from the order: “the Board cannot conclude that Dickerson has “prevailed” within the meaning of Section 57.8(1) and thus declines to exercise its discretion to direct the Agency to reimburse Dickerson’s attorney fees from the UST Fund.” Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 29 (Feb. 4, 2010); *see* Mot. at 2.

Dickerson states that, on March 5, 2010, the Agency issued a No Further Remediation (NFR) letter regarding the incident at the Site. Mot. at 2, citing Mot., Exh. A; *see generally* 415 ILCS 5/57.10 (2008). Dickerson further states that, in a letter dated March 4, 2010, the Agency indicated that it would be preparing a voucher for payment of \$62,780.63 from the UST Fund with regard to the incident at the Site. Mot. at 2, citing Mot., Exh. B; *see generally* 415 ICLS 5/57.8 (2008). Dickerson argues that the two letters “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.” Mot. at 2.

Dickerson notes the Board’s statement 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.” Mot. at 2 (citations omitted). Relying on the last of these grounds, Dickerson argues that “the Board has erred in the application of existing law by concluding that the Petitioner is not a prevailing party within the meaning of Section 57.8(1) of the Act.” *Id.*, *see* 415 ILCS 5/57.8(1) (2008). Dickerson “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.” Mot. at 2.

### Prevailing Party

Dickerson first cites Section 57.8(1) of the Act, which provides that “[c]orrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title [XVI] unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees.” Mot. at 3, citing 415 ILCS 5/57.8(1) (2008). Dickerson then cites Illinois Ayers Oil Co. v. IEPA, PCB 03-214 (Aug. 5, 2004) (Ayers), indicating that the case provides the framework for the Board’s consideration of this issue: “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.” Mot. at 3, citing Ayers, slip. op. at 7.

Dickerson argues that, in Ayers, “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.’” Mot. at 3, citing Ayers, slip op. at 8. Dickerson notes the Board’s statement in Ayers that “Title XVI includes numerous steps which must be followed in order for an owner or operator to seek and receive reimbursement” for corrective action costs. Mot. at 3-4, citing Ayers, slip op. at 8. Dickerson further notes the statement that, “[h]ad Ayers not appealed the decision, Ayers would have been unable to seek reimbursement for the additional 10 borings.” Mot. at 4, citing Ayers at 8 (citations omitted). Dickerson stresses the Board’s statement that

Ayers did prevail before the Board in significant part. 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. The Board finds that Ayers was seeking payment under Title XVI and the plain language of Section 57.8(1) of the Act . . . allows for the awarding of legal fees. Mot. at 4, citing Ayers, slip op. at 8.

Dickerson states that it separately submitted to the Agency a 45-Day Report and Addendum and a request for reimbursement. Mot. at 4. Dickerson characterizes these submissions as steps it “had to take in order to seek reimbursement from the UST Fund.” *Id.* Dickerson further states that it appealed the Agency’s determinations “that the incident was a non-LUST incident.” *Id.* Dickerson argues that the Board reviewed the Agency’s denial letters and found that they both failed to satisfy the requirements of 35 Ill. Adm. Code 734.505(b). Mot. at 4, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 27, 28 (Feb. 4, 2010). Dickerson further argues that the Board “also remanded the letters to the Illinois EPA for reissuance.” Mot. at 4-5. Dickerson likens itself to Ayers and argues that, because it sought payment under Title XVI, “this proceeding falls within the parameters of Section 57.8 (1) of the Act.” *Id.* Dickerson further claims that, because the Board found the letters deficient on appeal, it has like Ayers “prevailed before the Board in significant part.” *Id.* at 5.

Dickerson also cites the case of Swif-T Food Mart v. IEPA, PCB 03-185 (Aug. 19, 2004) (Swif-T). Dickerson argues that Swif-T “appealed the denial of reimbursement costs, and the Board issued an order reversing the Illinois EPA’s decision.” Mot. at 5, citing Swif-T, slip op. at

1. Dickerson further argues that the Board stated that it was “undisputed that Swif-T prevailed in its action seeking payment under Title XVI” and awarded legal fees. Mot. at 5, citing Swif-T at 2; Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003) (Harrison). Dickerson likens itself to Swif-T, stating that, after it appealed denial of reimbursement, the Agency “eventually approved reimbursement of costs for the incident . . . , despite having initially determined that the incident was a non-LUST incident.” Mot. at 5, citing Mot., Exh B. Dickerson concludes that these Board precedents support “the conclusion that Petitioner is a prevailing party.” Mot. at 5.

Dickerson argues that the Board erred in stating that it “cannot conclude that Dickerson has ‘prevailed’ within the meaning of Section 57.8(1). . . .” Mot. at 5; *see* Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 29 (Feb. 4, 2010). Dickerson claims that it has “prevailed because the Board held that the Illinois EPA final determinations were deficient and did not comply with applicable regulations.” Mot. at 5. Dickerson further claims that “the Board remanded the letter for reissuance by the Illinois EPA, which subsequently issued an NFR letter and reimbursement approval for the incident.” *Id.* Dickerson argues that Board precedents support its position and “respectfully requests that the Board reconsider its Order and find that Petitioner is a prevailing party within the scope of Section 57.8(1) of the Act.” *Id.* at 5-6; *see* 415 ILCS 5/57.8(1) (2008).

### **Exercise of Board Discretion**

Dickerson states that “[i]t is in the Board’s discretion to authorize the payment of legal fees pursuant to Section 57.8(1) of the Act. Mot. at 6, citing 415 ILCS 5/57.8(1) (2008). Dickerson acknowledges that “[t]he Board has declined to exercise its discretion and aware legal costs in certain cases. Mot. at 6 n.1 (citations omitted). However, Dickerson argues that the Board examines the facts of a case in order to determine whether to award fees. Mot. at 6 (citations omitted).

Dickerson cites Ayers, in which the Board noted that Ayers prevailed not only on the issue of a budget but also “on a technical issue involving the ultimate clean up of the site.” Mot. at 6, citing Ayers, slip op. at 8. Dickerson claims that the Board found this “persuasive in determining whether or not to allow for reimbursement of legal fees.” Mot. at 6, citing ” Mot. at 6, citing Ayers, slip op. at 8-9. In addition, Dickerson stresses that, in Ayers, the Board found it was not bound by an Agency rate sheet used by the Agency applied as a rule. Mot. at 6, citing Ayers, slip op. at 9; *see* 5 ILCS 100/10-55 (2008) (Illinois Administrative Procedure Act).

Dickerson argues that, like Ayers, it “has prevailed before the Board on both technical and reimbursement issues.” Mot. at 7. Dickerson claims that the Board remanded two determination letters to the Agency: the first a response to Dickerson’s 45-Day Report and Addendum, and a second a response to a request for reimbursement. *Id.* Dickerson argues that “as directed by the Board, the Illinois [EPA] re-issued the letters by issuing an NFR letter for the incident and approving the reimbursement claim. . . .” *Id.* Dickerson characterizes these re-issued letters as “evidence that there had been a release at the Site, as the Petitioner has always maintained.” *Id.*

Dickerson renews its argument that the Agency “never provided an explanation for its policy that laboratory analysis showing contamination above Tier 1 ROs [remediation objectives] is required in order to confirm a release.” Mot. at 7, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 5 (Dec. 9, 2009) (petitioner’s reply brief). Dickerson argues that, as in Ayers, the Agency applied as a rule a policy that had not been codified in the Board’s UST regulations. Mot. at 7. Dickerson claims that this application of the Agency’s policy violates the Illinois Administrative Procedure Act. *Id.*, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 5-6 (Dec. 9, 2009) (petitioner’s reply brief). Dickerson argues that the Agency has not clarified the issue of requiring laboratory analysis or negotiated a settlement of this matter. Mot. at 8. Dickerson further argues that it “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.” Mot. at 8. Dickerson claims that, when the Agency issued an NFR letter and payment from the UST Fund, it “implicitly deemed the incident a LUST incident.” *Id.*

Dickerson concludes by arguing that “[t]he 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 one.” Mot. at 8. Dickerson claims that it has incurred significant costs in this matter and that the facts of the case warrant awarding legal fees. *Id.* Dickerson states that, if the Board authorizes payment of legal fees, it “will submit an affidavit and additional information summarizing its legal costs for review by the Board.” *Id.*

### **AGENCY’S RESPONSE**

The Agency requests that the Board deny Dickerson’s motion for reconsideration. Resp. at 1, 4. In the following subsections, the Board summarizes the arguments raised by the Agency in its motion.

#### **Background**

The Agency notes the Board’s finding that the Agency’s March 9, 2009 and June 10, 2009 denial letters “did not satisfy the requirements of 35 Ill. Adm. Code 734.505(b).” Resp. at 1; see Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 27-28 (Feb. 4, 2010). The Agency also notes the Board’s remand of the letters to the Agency with the direction to cure their deficiencies and re-issue them. Resp. at 1-2, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 28-29 (Feb. 4, 2010). The Agency stresses that “[t]he Board declined to exercise its discretion and order reimbursement of Dickerson’s attorney fees as it could not conclude that Dickerson had prevailed within the meaning of Section 57.8(1) of the Illinois Environmental Protection Act . . . based on its finding and remand.” Resp. at 2; see Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 29 (Feb. 4, 2010).

The Agency notes that on March 5, 2010, it issued an NFR letter to Dickerson for the Site. Resp. at 2, citing Mot., Exh. A. The Agency also notes that, on March 4, 2010, it re-issued a determination addressing Dickerson’s request for reimbursement of \$84,090.69 from the UST Fund. Resp. at 2, citing Mot., Exh. B. The Agency states that, after applying a \$10,000 deductible and denying \$11,310.06 in costs, it authorized payment of \$64,780.63. Resp. at 2.

The Agency argues that “[a]lmost all of the denied costs exceeded either the maximum payment amounts allowed by the LUST regulations or the minimum requirements necessary to comply with the Act.” *Id.*

### Agency Arguments

The Agency dismisses as “baseless” Dickerson’s argument that the NFR letter and approval of reimbursement “demonstrate that the Illinois EPA did not have a basis for initially deeming the incident a non-LUST incident.” Resp. at 2, citing Mot. at 3. First, the Agency notes the Board’s statement that “the record appears to indicate that the Agency believed it had some basis for its determinations.” Resp. at 2, citing Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 28 (Feb. 4, 2010). Second, the Agency argues that,

during litigation parties routinely re-examine their litigation strategies as the case evolves, especially when the decision-maker in the cases makes findings and issues order. There are a multitude of reasons for changes in strategy, such as particular evidence not having a predicted impact or the re-allocation of litigation resources. Resp. at 2.

The Agency also dismisses Dickerson’s claim that the Board erred in the application of existing law by concluding that Dickerson is not a prevailing party. Resp. at 2, citing Mot. at 3. The Agency argues that Dickerson’s reliance upon Ayers, Swif-T, and Harrison is “flawed.” Resp. at 3. The Agency claims that the Board in those three cases “had already reversed a determination of the Illinois EPA before turning to the issues of whether attorney fees should be awarded.” *Id.* The Agency emphasizes the Board’s finding that the Agency’s determinations did not satisfy the UST regulations and the Board’s remand to the Agency. *Id.* The Agency argues that, by issuing an NFR letter and approving reimbursement, it has complied with the Board’s order and granted Dickerson the relief it sought. *Id.* The Agency further argues that “[t]he Board has yet to reverse a determination of the Illinois EPA in the instant case.” *Id.* The Agency claims that “this case should now be over without the need for the Board to enter a ruling affirming or reversing an Illinois EPA determination or to consider whether attorney fees should be awarded.” *Id.*

The Agency argues that Dickerson overlooks the history and nature of fee-shifting statutes such as Section 57.8(l) of the Act. Resp. at 3; *see* 415 ILCS 5/57.8(l) (2008). The Agency further argues that “[s]uch statutes must be strictly construed since they are in derogation of common law.” Resp. at 3 (citations omitted). The Agency also notes the Board’s “broad discretionary powers concerning the amount of fees to be awarded.” *Id.* at 4 (citations omitted). The Agency suggests that, instead of addressing these principles, Dickerson merely restates arguments “that are neither germane nor relevant to the issue presently before the Board.” *Id.* The Agency states that the Board has exercised its discretion and has decided not to award attorney fees in this case. *Id.* The Agency continues by stating that “[i]t could be argued that it is inherently impossible to challenge such a decision.” *Id.* The Agency concludes that, “if it can be challenged, Dickerson’s Motion falls short of justifying a change of the Board’s February 4, 2010 order” and should be denied. *Id.*

## **BOARD DISCUSSION**

### **Motion for Reconsideration**

A motion to reconsider may be filed in order “to bring to the [Board’s] attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board’s] previous application of existing law.” Citizens Against Regional Landfill v. County Board of Whiteside County, PCB 92-156, slip op. at 2 (Mar. 11, 1993), citing Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1991); *see also* 35 Ill. Adm. Code 101.902. A motion to reconsider may also specify “facts in the record which were overlooked.” Wei Enterprises v. IEPA, PCB 04-23, slip op. at 3 (Feb. 19, 2004). In its motion to reconsider the Board’s February 4, 2010 order, Dickerson claims that the Board erred in applying existing law “by concluding that the Petitioner is not a prevailing party within the meaning of Section 57.8(l) of the Act.” Mot. at 2.

The Board grants Dickerson’s motion to reconsider and proceeds below to its reconsideration of whether Dickerson has “prevailed” for the purposes of Section 57.8(l) of the Act. *See* 415 ILCS 5. 57.8(l) (2008).

### **Prevailing before the Board**

Title XVI of the Act establishes the Leaking Underground Storage Tank Program. 415 ILCS 5/57 (2008). The purposes of Title XVI include administering a UST Fund and establishing requirements for eligible owners to seek reimbursement from it. 415 ILCS 5/57(3), 57(8) (2008). Section 57.8(l) of the Act provides that the Board “may authorize payment of legal fees” if the owner or operator “prevails before the Board” in seeking payment under Title XVI. 415 ILCS 5/57.8(l) (2008); *see* 35 Ill. Adm. Code 734.630(g). Because this subsection of the Act provides for the reimbursement of legal fees incurred in prevailing before the Board, it constitutes a “fee-shifting” statute. *See Brundidge, et al. v. Glendale Federal Bank, F.S.B.* 168 Ill. 2d 235, 245, 659 N.E.2d 909, 914 (1995). The Board must strictly construe fee-shifting statutes, and the amount of fees to be awarded lies within the broad discretionary powers of the Board. *See Globalcom*, 347 Ill. App. 3d at 618, 806 N.E.2d at 1214 (citations omitted). This discretion includes determining the reasonableness of the requested fees. Ayers, slip op. at 8 (citations omitted).

The Board has stated that “[t]he plain language of Section 57.8(l) of the Act . . . guides the Board in our analysis of when to allow the prevailing party to receive legal defense costs.” Ayers, slip op. at 7. “The first question the Board must address is whether or not the proceeding falls within the parameters of the statutory provision.” *Id.* In this case, the Board must effectively first determine whether the record on reconsideration demonstrates that Dickerson has prevailed before the Board in seeking payment under Title XVI. *See* 415 ILCS 5/57.8(l) (2008).

In its February 4, 2010 order, the Board found that the Agency’s March 9, 2009 and June 10, 2009 denial letters failed to comply with the requirements of 35 Ill. Adm. Code 734.505(b), which lists information that must be included in the Agency’s written rejection of a plan, budget,

or report. The Board's order stated that "[e]ven a cursory review of the Agency's denial letters dated March 9, 2009, and June 10, 2009, shows that the letters fall short of these requirements." Dickerson Petroleum, Inc. v. IEPA, PCB 09-87, 10-5 (cons.), slip op. at 27 (Feb. 4, 2010). Consequently, the Board remanded the consolidated proceedings to the Agency, directed the Agency to cure the deficiencies in those letters, and further directed the Agency within 30 days to re-issue determinations consistent with the Board's order and with applicable statutory and regulatory requirements. *Id.* at 28-29. The Board stated after remanding that it "cannot conclude that Dickerson has 'prevailed' within the meaning of Section 57.8(1) and thus declines to exercise its discretion to direct the Agency to reimburse Dickerson's attorney fees from the UST Fund." *Id.* at 29.

However, the record on reconsideration makes clear that, within 30 days of the Board's remand order, the Agency issued a No Further Remediation (NFR) letter to Dickerson for the site. Mot., Exh. A; see 415 ILCS 57.10 (2008). Within 30 days of that order, the Agency also issued a letter authorizing payment of \$62,780.63 of Dickerson's requested costs from the UST Fund. Mot., Exh. B. Of the \$84,090.69 requested by Dickerson, the Agency on various grounds denied reimbursement of \$11,310.66 after withholding a deductible of \$10,000. *Id.*

On the basis of this record on reconsideration, the Board concludes that Dickerson has prevailed before the Board in seeking payment under Title XVI. The Board's February 4, 2010 order found numerous deficiencies in the Agency's determinations. The Board remanded to the Agency with a direction to re-issue its determinations within 30 days. Within that 30-day period, Dickerson received substantially the relief it had sought.

Although the Board did not explicitly find that the Agency lacked any basis for its original determinations, the Board concluded that the determinations failed to comply with regulatory requirements. Finding that the Agency had erred and setting a 30-day deadline to cure the error led directly and without delay to an NFR letter and reimbursement of \$62,780.63. *See Ayers*, slip op. at 7-8. Even in the absence of an explicit reversal, the Board's February 4, 2010 order resulted in relief including reimbursement substantially as sought by Dickerson. *See Swif-T Food Mart v. IEPA*, PCB 03-85, slip op. at 2-3 (Aug. 19, 2004). Consequently, the Board concludes on the basis of the record on reconsideration that Dickerson has "prevailed before the Board" for the purposes of Section 57.8(1) of the Act.

### Attorney Fees

Having determined above that Dickerson has under the facts and circumstances of this case prevailed before the Board for the purposes of Section 57.8(1) of the Act (415 ILCS 5/57.8(1) (2008)), the Board turns to the question of the amount of legal costs to be awarded to Dickerson. *Ayers*, slip op. at 7. However, the record does not now include any amount of "legal costs for seeking payment" incurred by Dickerson in this proceeding. *See* 415 ILCS 57.8(1) (2008). Consequently, the Board today reserves ruling on the amount of reimbursement of legal costs.

Dickerson is directed to file on or before September 23, 2010, 21 days from the date of this order, a statement of its legal costs that may be eligible for reimbursement. *See* 415 ILCS



5/57.8(1) (2008); 35 Ill. Adm. Code 734.630(g). In this regard, the Board notes Dickerson's indication that, "[s]hould 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." Mot. at 8. The Agency may respond to this Dickerson's statement by filing its response with the Board on or before October 7, 2010.

### **CONCLUSION**

The Board grants Dickerson's motion for reconsideration and, on reconsideration, determines based on the facts and circumstances of this case that Dickerson has prevailed before the Board for the purposes of Section 57.8(1) of the Act. The Board directs Dickerson to file on or before September 23, 2010, a statement of its legal costs that may be eligible for reimbursement. The Agency may respond to this Dickerson's statement by filing its response with the Board on or before October 7, 2010.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 2, 2010, by a vote of 4-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board