

ILLINOIS POLLUTION CONTROL BOARD
October 18, 2007

IN THE MATTER OF:)
)
PETITION OF STERICYCLE, INC.) AS 08-2
FOR AN ADJUSTED STANDARD) (Adjusted Standard)
FROM 35 ILL. ADM. CODE 1422.111(b)(1),)
1450.105(a, b), 1450.200(e), AND)
CONDITION 15 OF PERMIT NO. 1997-264-)
DE/OP, SUPPLEMENTAL PERMIT NO.)
2005-182-SP)

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

On September 5, 2007, Stericycle, Inc. (Stericycle) filed a petition for an adjusted standard (Pet.) from requirements applicable to potentially infectious medical waste (PIMW). Stericycle seeks an adjusted standard from the requirements that it weigh and record the weight of each load of PIMW at its Stickney transfer station (Stickney or the facility) located at 3801 S. Laramie Street, Cicero, Cook County. Pet. at 1. Specifically, Stericycle requests relief from 35 Ill. Adm. Code 1422.111(b)(1), 1450.105 (a, b), and 1450.200(e), and Condition 15 of its PIMW storage and transfer facility permit.

Each day at the facility, Stericycle transfers approximately 33,500 pounds of PIMW in sealed containers. Pet. at 3. Stericycle consolidates the containers for shipping to its treatment facilities in either Sturtevant, Wisconsin or Clinton, Illinois for final disposition and does not opened them during handling at the facility. *Id.* Stericycle now weighs each truckload of PIMW received at the facility on a truck scale and manually records the weight of each load. Pet. at 3; *see* 35 Ill. Adm. Code 1422.111(b)(1). However, Stericycle considers the weight measurement system at the facility to be “inherently inaccurate,” and it does not use this data to bill its customers or to determine transporter fees payable to the State of Illinois. Pet. at 3.

Stericycle instead proposes to weigh PIMW when it is transferred to either its Sturtevant or Clinton treatment facilities, which include automatic scale systems capable of weighing individual containers. Pet. at 4. Stericycle electronically transmits weight data on a daily basis to the facility and to its corporate headquarters in Illinois. *Id.* at 3-4. Stericycle relies on the weight information from Sturtevant and Clinton to bill customers and to determine transporter fees payable to the State of Illinois. *Id.*

The Illinois Environmental Protection Agency (Agency) has not yet filed its recommendation of the petition for an adjusted standard. *See* 35 Ill. Adm. Code 104.416. Stericycle states that, unless the Agency or an interested party requests one, it “waives hearing in the matter.” Pet. at 10.

In this order, the Board first determines whether Stericycle has satisfied the statutory notice requirements for adjusted standard petitions. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill.

Adm. Code 104.408, 104.410. The Board then identifies information deficiencies in Stericycle's petition and directs Stericycle to address specific deficiencies by filing an amended petition as directed below.

NOTICE

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1(d)(1) (2006)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a)) require the adjusted standard petitioner to publish notice of filing the petition. Those authorities require advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. The notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Publication must take place within 14 days after the petition is filed. 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(a); *see also, e.g., In re Petition of SCA Tissue North American, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005) (dismissing petition for adjusted standard for lack of jurisdiction when publication of notice occurred after 14-day period). Within 30 days after filing the petition, the petitioner must file a certificate of publication with the Board. 35 Ill. Adm. Code 104.410.

On September 28, 2007, Stericycle filed a certificate of publication documenting that the required notice of the petition was published in the *Chicago Tribune* on September 10, 2007. The Board finds that Stericycle has met the notice requirements of the Act and the Board's procedural rules. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408, 104.410.

INFORMATIONAL DEFICIENCIES

The Board finds that Stericycle has not provided all of the information required by the Act and the Board's regulations for an adjusted standard petition. 415 ILCS 5/28.1(c) (2006); 35 Ill. Adm. Code 104.406. Stericycle notes that the regulations of general applicability do not specify a level of justification required of a petitioner for an adjusted standard. Pet. at 3. In the absence of a specified level of justification, the Board cannot grant an adjusted standard unless, "upon adequate proof by the petitioner," it determines that Stericycle has satisfied the four factors in Section 28.1(c) of the Act. 415 ILCS 5/28.1(c) (2006); *see also* 35 Ill. Adm. Code 104.426 (a). Below, the Board identifies those informational deficiencies and directs Stericycle to cure them.

1. The petition does not specifically address whether factors relating to Stericycle "are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner." 415 ILCS 5/28.1(c)(1) (2006); 35 Ill. Adm. Code 104.426(a)(1). Stericycle states that "[t]he rules did not contemplate a transporter being required to operate dual weight measurement systems simply because it was transporting PIMW a short distance across the state line." Pet. at 8. Section 1420.101 of the Board's regulations provides that the Board's biological materials regulations apply "to all persons who

generate, transport, treat, store or dispose of potentially infectious medical waste” and “sets forth standards for such activities occurring in whole *or in part* within the State of Illinois.” 35 Ill. Adm. Code 1420.101 (emphasis added); *see also* Potentially Infectious Medical Waste: Treatments., Storage, and Transfer Facilities, and Transportation, Packaging, and Labeling (35 Ill. Adm. Code 1420, 1421, and 1422), R91-20, slip op. at 10 (Mar. 25, 1993) (responding to Stericycle comment in second notice opinion and order); *id.*, slip op. at 18-19 (June 17, 1993) (final opinion and order).

2. Stericycle must clarify its request for an adjusted standard to identify only the Board-adopted regulations from which the Board can grant relief under the Act. *See* 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 104.406(a). The Board notes that the Agency adopted Part 1450 of the Illinois PIMW regulations. *See* 415 ILCS 5/56.6(b) (2006); 17 Ill. Reg. 20268 (effective Nov. 15, 1993).
3. Under Section 104.406(d) of the Board’s regulations (35 Ill. Adm. Code 104.406(d)), the Board requests the following additional information.

First, the Board requests that Stericycle provide the street address of Sturtevant facility.

Second, the Board requests that Stericycle address the area affected by its activities in terms of the vicinity of the Stickney facility and the routes from the Stickney facility to Sturtevant and Clinton.

Third, the Board requests that Stericycle indicate whether the Sturtevant and Clinton facilities accept PIMW from sites other than Stickney. If so, the Board requests that Stericycle indicate how it accounts separately for transports from Stickney. The Board also requests that Stericycle indicate whether PIMW from Stickney is transported anywhere other than the Sturtevant or Clinton facilities.

Fourth, because the proposed adjusted standard would not require a contemporaneous record of the weight of PIMW arriving at Stickney, the Board requests that Stericycle indicate how it would ensure that leaks or losses occurring during transportation from the generator to either Sturtevant or Clinton are detected and accounted for.

Fifth, the Board requests that Stericycle indicate how a transporter indicates quantity on a manifest at the time of pick-up from the generator. Specifically, does the manifest received at Stickney indicate the quantity only in terms of the number and type of containers? At what point does Stericycle determine the net weight of the PIMW for purposes of the manifest and determining the state fee?

Sixth, for the purpose of completing the record in this proceeding, the Board requests that Stericycle provide a sample of the current PIMW manifest and the instructions for completing the manifest.

Seventh, the Board requests that Stericycle indicate how sensitive and accurate the scale at Stickney is in comparison with the scale at Sturtevant.

Eighth, the Board requests that Stericycle provide for the scale at Stickney a copy of the certification required by 35 Ill. Adm. Code 1422.111(b)(1).

4. Under Section 104.406(e) of the Board's regulations (35 Ill. Adm. Code 104.406(e)), the Board requests the following information.

First, the Board requests that, if the scale at Stickney is "inherently inaccurate," Stericycle address alternatives through which it could comply with the regulation of general applicability.

Second, the Board requests that Stericycle indicate whether the scale at Stickney meets State requirements for determining fees and confirming weights identified on PIMW manifests received and whether Stericycle's billing needs necessitate a scale at Stickney that can weigh individual containers.

Third, the Board requests that Stericycle indicate whether it weighs trucks only upon entering the Stickney facility. If so, the Board requests the Stericycle indicate how it determines the weight of the PIMW without weighing the truck after unloading. The Board also requests the Stericycle indicate whether it maintains a database of transport vehicles and their base weights.

Fourth, the Board requests that Stericycle address weighing trucks as they enter Stickney and after they have off-loaded as one alternative to address discrepancies caused by variable weights of drivers and fuels.

Fifth, the Board requests that Stericycle address costs associated with installing weighing equipment at Stickney that would meet the requirements of Section 1420.111(b)(1) of the Board's regulations and the need for tracking and weighing individual containers.

Sixth, the Board requests that Stericycle describe, including capital and operating costs, any changes involved in having transporters weigh individual containers of PIMW at the generator's pick-up location.

5. Under Section 104.406(f) of the Board's regulations (35 Ill. Adm. Code 104.406(f)), the Board requests the following information.

First, the Board requests that Stericycle address the costs, if any, associated with efforts necessary to comply with the adjusted standard.

Second, the Board requests that Stericycle indicate whether it would continue weighing at Stickney if the Board grants the proposed adjusted standard, even if the weight data were not used for reporting or billing customers.

Third, the Board also requests that Stericycle indicate whether it would transmit its daily PIMW report to its corporate headquarters in addition to transmitting it to Stickney.

Fourth, the Board requests that Stericycle cite to any Wisconsin regulation pertaining to certification of the scale at the Sturtevant facility and address whether that regulation is similar to the Illinois Weights and Measures Act in terms of registration, inspection, fees, and penalties.

Fifth, the Board notes that the proposed adjusted standard refers only to National Institute of Standards and Technology (NIST) Handbook 44 and requests that Stericycle indicate whether that is the only handbook applicable to the Sturtevant scale or whether NIST Handbooks 105-1, 105-2, 105-3, or 105-4 and any subsequent revisions or supplements apply to it.

6. Under Section 104.406(g) of the Board's regulations (35 Ill. Adm. Code 104.406(g)), the Board notes that the previous federal Medical Waste Tracking Form and the current Illinois PIMW manifest contain similar requirements for reporting discrepancies between waste described on those documents and waste received at a facility. Instructions for the Discrepancy Box for the federal Medical Waste Tracking Form stated that "[t]he authorized representative of the destination (or alternate) facility, on behalf of the owner or operator, must note any discrepancy between the waste described on the tracking form and the waste actually received at the facility. (Note: In some instances, due to consolidation or remanifesting provisions of this part, transporters and intermediate handlers may also need to record discrepancies.) All discrepancies must be noted by inclusion in Box 23 " 54 Fed.Reg. 12385 (Mar. 24, 1989). The Board requests that Stericycle indicate how it would detect and report discrepancies if the Board granted the proposed adjusted standard. The Board also requests that Stericycle indicate what the environmental and health effects would be if an undetected loss occurred between the generator and Stickney or between Stickney and either the Sturtevant or Clinton facility.
7. Under Section 104.406(k) of the Board's regulations (35 Ill. Adm. Code 104.406(k)), the Board requests the following information.

First, the petition indicates that Exhibit A includes a sample report, although the exhibit includes only excerpts of Board regulations. The Board requests that Stericycle submit a sample report as indicated on page 4 of the petition.

Second, although the Board notes that Exhibit D is a Calibration Report issued by the Wisconsin Department of Agriculture, Trade and Consumer Protection, it does not appear to contain a certification that the scale meets the requirements of NIST Handbooks 44, 105-1, 105-3, or 105-4, or any subsequent revisions or supplements. The Board requests that Stericycle submit the Certificate of Conformance issued by the National Conference on Weights and Measures and indicating that the scale at Sturtevant meets the requirements of 35 Ill. Adm. Code 1422.111(b)(1).

Third, although Exhibit E is a registration certificate issued to Koehler Scale, the Board notes that the certificate expired on February 28, 2007 and requests that Stericycle submit a valid certificate.

The Board again notes that Stericycle has waived hearing in this proceeding unless the Agency or an interested person requests one. Pet. at 10. Unless Stericycle offers adequate proof in an amended petition, the Board cannot determine that the required factors have been satisfied and cannot grant the petition for an adjusted standard. 415 ILCS 5/28.1(c) (2006). Accordingly, the Board directs Stericycle to address these informational deficiencies by filing an amended petition within 30 days of the date of this order. The Board notes that Stericycle has discussed the proposed adjusted standard with the Agency. See Pet. at 10. The Board recognizes that Stericycle may have provided the Agency with some or all of the requested information, but that information must be developed in the record of this proceeding in order for the Board to fulfill its statutory obligations.

As noted above, the Agency has not yet filed its recommendation. Under the Board's procedural rules, that recommendation is not generally due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. 35 Ill. Adm. Code 104.416(a). Under the Board's procedural rules, Stericycle may file a response to the recommendation within 14 days after the date of service of the recommendation. 35 Ill. Adm. Code 104.416(d).

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 October 18, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board