

ILLINOIS POLLUTION CONTROL BOARD

January 24, 2008

IN THE MATTER OF:)
)
PETITION FOR ADJUSTED STANDARD) AS 08-3
FROM 35 ILL. ADM. CODE 620.420 FOR) (Adjusted Standard - Groundwater)
NOBEL RISLEYS LANDFILL NO. 2)

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

In summary, the Board in this order requires petitioner to remedy two deficiencies concerning the November 30, 2007 amended petition, or this matter will be subject to dismissal. On or before February 29, 2008, petitioner must file notice of newspaper publication of the filing of the amended petition, as well as a second amended petition to cure noted informational deficiencies.

BACKGROUND

On September 5, 2007, the Board received a petition for adjusted standard from Nobel Risley's Landfill #2 (Landfill). Nobel Risley's Landfill #2 is located in rural Franklin County near the town of Benton. The adjusted standard concerns the Class II groundwater quality standard (Class II GWQS) for chloride at 35 Ill. Adm. Code 620.420. Rend Lake is the public water supply for the area, and no private wells are downgradient of the Landfill. The receiving body for the Landfill area's groundwater is the Big Muddy River.

The Landfill requested an increase of the chloride limit from 200 milligrams per liter (mg/L) to 600 mg/L, in order to allow the Illinois Environmental Protection Agency (Agency) to issue a closure certificate for the Landfill. The Landfill waived hearing "unless an objection is filed or a member of the public requests one." By order of October 4, 2007, the Board denied a motion for expedited decision, and granted the Agency's request for an extension of time until November 19, 2007 to file its Recommendation.

By order of November 1, 2007, Board first determined that the Landfill had 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 found that on September 12, 2007, the Landfill had filed a certificate of publication documenting that the required notice of the petition was provided in the Benton Evening News on September 8, 2007. The Board then directed the Landfill to file an amended petition curing noted deficiencies, without formally accepting the petition.

On November 30, 2007, the Landfill timely filed an amended petition. In the amended petition, the Landfill requested, in addition to the increase of the chloride limits contained in the first petition, an increase in the Class II GWQS for sulfate from 400 mg/L to 4500 mg/L.

The amended petition was accompanied by a motion for leave to file less than nine copies, which is granted. The Landfill also requested clarification that the Landfill retained its

rights to request hearing in the event of a negative Recommendation on the petition from the Agency. See 35 Ill. Adm. Code 104.416. The Board grants this motion, noting that a petitioner's initial waiver of a hearing does not prevent petitioner from making a later request for hearing in response to any Agency Recommendation. This is typically done as part of a response to a negative Recommendation, or in an amended petition. See 35 Ill. Adm. Code 104.416 (d), 104.416(a).

The Agency filed its Recommendation on January 4, 2007. The Agency recommended grant of the adjusted standard as to chloride, but denial of the adjusted standard as to sulfate. The Landfill has made no filings in response to the Agency Recommendation (Ag. Rec.).

NO PUBLICATION OF NOTICE OF THE AMENDED PETITION

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 (2006); 35 Ill. Adm. Code 104.408(b). Publication must take place within 14 days after the petition is filed. See, e.g., 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.

The Board generally does not find that the Act and its rules require the filing of notice of amendments to petitions. But, where the scope of the relief requested is changed, as it was here, additional publication is required to protect the right of the public to request a hearing on the full scope of the proposal eventually brought to the Board. The Board's procedural rules explicitly require the additional notice. See 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408, 104.418(a). Section 104.418(a) provides, in pertinent part, that "[i]f the petitioner amends the petition [so that it] requests additional or alternative relief, petitioner must re-notice the amended petition pursuant to Section 104.408." 35 Ill. Adm. Code 104.418(a); see also, e.g. Proposed Extension of Adjusted Standard Applicable to Illinois-American Water Company's Alton Public Water Supply Facility Discharge to the Mississippi River, AS 07-2 (Oct. 18, 2007) (amended petition filed April 2, 2007, and new certificate of publication filed April 26, 2007).

More than 30 days have elapsed since the Landfill filed its adjusted standard petition with the Board. The Landfill has not filed a certificate documenting that the necessary notice of its amended petition was published within 14 days after the petition's filing. The Board directs the Landfill to file the required certificate by February 29, 2008, or that portion of the amended petition seeking relief from the sulfate standard will be dismissed. The Board notes that such dismissal would not prevent the Landfill from filing another adjusted standard petition for the same relief and providing proof of the required notice. See, e.g. Petition of the City of Chicago

Heights for an Adjusted Standard from 35 IAC 810.103, 814.102, and 814.501(c), AS 08-4 and AS 08-7. Alternatively, if publication has not occurred, the Landfill may choose to withdraw this petition, closing the docket, and file a new petition in a new docket. See, e.g. Petition of Illinois Department of Transportation, District 8, for an Adjusted Standard from 35 Ill. Adm. Code 302.208(g) (NPDES Permit No. ILD0070955), AS 07-7 and AS 08-1.

INFORMATIONAL DEFICIENCIES AS TO SULFATE REQUEST

Generally, the Board cannot grant an adjusted standard unless, “upon adequate proof by the petitioner,” the Board determines that petitioner 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). The Board has completed its initial review of the Landfill’s amended petition (Am. Pet.).

In its amended petition, the Landfill has adequately addressed the informational deficiencies identified by the Board’s order of November 1, 2007 concerning the requested adjustment of the Class II GWQS for chloride. The Board finds that the sulfate portion of the amended petition satisfies informational requirements of 35 Ill. Adm. Code 104.426(a) for the most part. But, the Board shares the Agency’s concerns regarding the lack of support in the petition for Landfill’s request for increase of the sulfate limit from 400 mg/L to 4500 mg/L. The proposed sulfate limit (4500 mg/L) is significantly higher than the highest sulfate concentration measured in the downgradient-monitoring well (G104).

The petitioner states that although sulfate concentrations have never exceeded 3300 mg/L in the downgradient-monitoring well G104, the proposed higher limit is necessary to account for potential spatial and temporal variation. Am. Pet. at 11. The petitioner has not supported its assertions regarding the variability of sulfate concentrations with any statistical analysis of the groundwater monitoring data.

According to the amended petition, the highest sulfate concentration measured in G104 was 3290 mg/L on January 14, 2000. Am. Pet. Exh. 2, Append. B, Table B-1. The monitoring data also show a decreasing trend with a sulfate concentration of 2090 mg/L measured on September 2, 2004 when the operator terminated the quarterly groundwater monitoring. The Agency verified the decreasing trend in sulfate concentration in well G104. Ag. Rec. at 6, and Exh. 5. A recent sample taken from the same well on May 9, 2007 had a sulfate concentration of 941 mg/L. Id. The Agency’s recommendation notes that while a statistical analysis of the sulfate monitoring data identified the May 2007 sulfate concentration as an outlier, the data point is considered a valid observation since the petitioner has not demonstrated that data point is due to a sampling or laboratory error. Ag. Rec. at 6. Further, the prediction limits developed by the Agency for well G104 were significantly lower than the proposed sulfate concentration of 4500 mg/L. Id.

The Board directs the Landfill, in an amended petition, to provide additional justification to support the proposed sulfate limit of 4,500 mg/L, or to propose a revised sulfate limit consistent with the Agency’s statistical data analysis and any other justification the Landfill may submit. If an amended petition curing the noted deficiencies is not filed on or before February

29, 2008, this matter is subject to dismissal. The Agency is free to file an amended Recommendation in response to any amended petition.

If the Landfill needs additional time to file an amended petition, or the Agency needs additional time to file any amended Recommendation, the Board directs the parties to apply to the hearing officer for any extension of time, and grants the hearing officer authority to extend the deadlines set in the Board order today.

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 January 24, 2008, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board