

ILLINOIS POLLUTION CONTROL BOARD
February 21, 2008

IN THE MATTER OF:)
)
PETITION OF THE CITY OF CHICAGO) AS 08-7
HEIGHTS FOR AN ADJUSTED) (Adjusted Standard – Land)
STANDARD FROM 35 ILL. ADM. CODE)
810.103, 814.102, and 814.501(c))

ORDER OF THE BOARD (by T.E. Johnson):

On December 27, 2007, the City of Chicago Heights (City) filed a petition for an adjusted standard (Pet.) from Board regulations at 35 Ill. Adm. Code 810.103, 814.102, and 814.501(c). The City, which has waived hearing, seeks to close the Fitz-Mar landfill under the Board’s Part 807 non-hazardous solid waste landfill regulations (35 Ill. Adm. Code 807) rather than under the Board’s Part 811 non-hazardous solid waste landfill regulations (35 Ill. Adm. Code 811). The City originally sought this relief in AS 08-4, but that petition was dismissed on December 20, 2007, because the City did not file a certificate documenting that the statutorily-required newspaper notice was timely published. *See* Petition of the City of Chicago Heights for an Adjusted Standard from 35 Ill. Adm. Code 810.103, 814.102, and 814.501(c), AS 08-4, slip op. at 1 (Dec. 20, 2007).

In this order, the Board first provides background on the present adjusted standard petition. The Board then finds that the City’s newspaper notice for this petition failed to advise of the right of any person to request a hearing on the petition. Notice of the right to request a hearing is required by Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1(d)(1) (2006)), and the City’s omission here is a defect depriving the Board of jurisdiction over this case. However, as evidenced by the City’s two adjusted standard petitions, the City intends to pursue this regulatory relief. Accordingly, in the interest of efficiency, the Board identifies in this order numerous informational deficiencies in the instant petition, which the City must address in any new petition filed for this relief. The Board concludes this order by dismissing the proceeding for lack of jurisdiction, and closing the docket.

BACKGROUND

The Fitz-Mar landfill is located in Chicago Heights, Cook County, “on a parcel north of Chicago Heights Road and east of Union Avenue in the Steger Quadrangle.” Pet. at 1. The City owns the landfill. *Id.* at 3, 10. Fitz-Mar, Inc. operated the landfill from 1981 through 1989. *Id.* at 2. Wastes known to have been accepted include “municipal refuse, construction debris, industrial waste and wastewater treatment sludge.” *Id.* at 15, 21.

“Fitz-mar simply stopped accepting sanitary waste and abandoned the landfill.” Pet. at 2; *see also id.* at 5. The landfill’s cells are unlined and uncapped. *Id.* at 11, 16, 20. According to the City, it had been attempting to have Fitz-Mar, Inc. properly close the landfill since 1990, but

discovered in 2005 that the dissolved corporation “was no more than a bed-ridden stroke patient with no money.” *Id.* at 2-3; *see also id.* at 5 (Fitz-Mar, Inc. ceased being a corporation in 2004).

The City has been the official operator of the Fitz-Mar landfill since 2005. *Pet.* at 6. The landfill was left 21 feet above the permitted height and not properly closed. *Id.* at 2. With the adjusted standard, the City is planning to use construction and demolition debris to stabilize the steep side slopes and re-contour the grading for better stormwater runoff. *Id.* at 3-4, 6-7, 11-12. The City then plans to install a cap consisting of 2 feet of compacted clay and 2 feet of a vegetative/protective layer. *Id.* at 3. The petition states:

The landfill went over its permitted height while it was active as [a Part] 807 landfill. Further heightening will be to provide suitable sub grade cover. The landfill has not received municipal waste since 1989, and has no plans to accept any waste material other than C&D [construction and demolition debris] in order to achieve the [Part] 807 closure. *Id.* at 6-7.

To close the Fitz-Mar landfill under the requirements of Part 807 for older landfills, the City seeks relief from the requirements of Part 811 for new landfills. *Pet.* at 3-4. Generally, Part 807 requirements apply only to landfills that initiated closure by September 1992. *See Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills*, R88-7 (Aug. 17, 1990). The City requests an adjusted standard from 35 Illinois Administrative Code Section 810.103 (definition of “new facility” or “new unit”), Section 814.102 (compliance date), and Section 814.501(c) (when new permit not required). *Pet.* at 8-9.

According to the petition, the proposed adjusted standard would allow the City to add construction and demolition debris to the landfill without creating a “new unit.” *Pet.* at 4. The requested relief, continues the petition, would also allow the City to install a four-foot thick cap under Part 807 instead of a Part 811 six-foot cap and gas and leachate collection systems, which would cost “tens of millions.” *Id.* at 15. “Conforming to the greater low permeability and protective soil layer thicknesses under an IAC 811 closure for existing units would take away from the City’s ability to use clean C&D [construction and demolition debris] for the sub grade, and thus the disposal revenues for the C&D to help pay for the closure.” *Id.* at 3.

The City emphasizes that it is currently \$56 million in debt and estimates the costs of closure with the adjusted standard under the Part 807 rules at \$7 million. *Pet.* at 4, 15. According to the petition:

If the City of Chicago Heights were to follow [Part] 811 rules as a “new unit” rather than a facility undergoing [Part] 807 closure, closure would be impossible. Standards within [Part] 811 for a “new unit” cannot be met. To meet the groundwater regulations of [Part] 811, the landfill would need to be moved so that new leachate collection system could be put in place. The IEPA has warned the City not to move any of the contents of the landfill as to cause a further pollution. *** Closing the landfill to meet [Part] 811 standards is not only near physically impossible but would cause a financial burden that the City of Chicago Heights could not bear. *Id.* at 4.

The Illinois Environmental Protection Agency (Agency) has not filed its recommendation on the adjusted standard petition. The City failed to provide proof that it served the petition on the Agency. The City has waived its opportunity for a hearing. Pet. at 24.

NOTICE

Section 28.1(d)(1) of the Act requires the adjusted standard petitioner to publish notice concerning the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. See 415 ILCS 5/28.1(d)(1) (2006); see also 35 Ill. Adm. Code 104.408(a) (quoting the Act). Publication must take place within 14 days after the petition is filed. *Id.* Within 30 days after filing the petition, the adjusted standard petitioner must file a certificate of publication with the Board. See 35 Ill. Adm. Code 104.410.

On January 18, 2008, the City timely filed a certificate of publication, documenting that notice of the petition was timely provided in the *Southtownstar* on January 3, 6, and 10, 2008. Section 28.1(d)(1) of the Act, however, requires that the newspaper notice must, among other things, “advise of the right of any person to request a hearing within 21 days of the publication of the notice.” 415 ILCS 5/28.1(d)(1) (2006). Section 104.408(b) of the Board’s procedural rules sets forth the required contents of the notice, including the following:

The concluding portion of the notice must read as follows:

“Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should clearly indicate the docket number for the adjusted standard proceeding, as found in this notice, and must be mailed to the Clerk of the Board, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601.” 35 Ill. Adm. Code 104.408(b).

Contrary to the Act and the Board’s procedural rules, the City’s notice made no mention of the ability of any person to cause a public hearing to be held on the proposed adjusted standard. The City has waived hearing in this case, but the Board must hold a public hearing “upon the request of any person received by the Board within 21 days after publication of the notice.” 415 ILCS 5/28.1(d)(2) (2006). The Board finds that the City’s omission from its notice is not a mere “technical violation” and cannot now be remedied more than 14 days after the petition’s filing. See 415 ILCS 5/28.1(d)(1) (2006); see also, e.g., Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c), AS 05-1, slip op. at 2-3 (Jan. 6, 2005) (dismissing adjusted standard petition for lack of jurisdiction when publication of notice took place after the 14-day period).

In Petition of the Ensign-Bickford Company for an Adjusted Standard from 35 Ill. Adm. Code 237.103, AS 00-5 (Oct. 21, 2005), the Board found that certain “typographical errors” in a notice, while “technical violations” of the Board’s procedural rule, were “not jurisdictional.” Ensign-Bickford, AS 00-5, slip op. at 2. The petitioner there was allowed to cure, with a new

newspaper notice, errors in the Board’s Zip Code and docket number appearing in the original notice, which “may have impaired the notice’s effectiveness.” *Id.* The petitioner in Ensign-Bickford nevertheless “included the information required by Section 28.1(d)(1).” *Id.*

Here, the City’s failure to mention the public’s right to request a hearing on the proposed adjusted standard defeats a fundamental purpose of the notice, which is “to inform interested persons that they may request a hearing on the adjusted standard petition.” Ensign-Bickford, AS 00-5, slip op. at 1; *see also* Petition of Takasago International Corporation (U.S.A.) for an Adjusted Standard from 35 Ill. Adm. Code 302.208 and 304.105, AS 00-4, slip op. at 1 (Oct. 21, 1999). The Board finds that the critical omission from the City’s notice of the public’s statutory right to request a hearing deprives the Board of jurisdiction over this proceeding.¹ *See* Petition of Sun Chemical Corporation for an Adjusted Standard from 35 Ill. Adm. Code 218.626(b), AS 99-2, slip op. at 1 (Oct. 15, 1998) (“Such notice must include . . . advisement that any person has the right to request a hearing within 21 days of the publication of the notice.”). For that reason, the Board today is dismissing this case.

INFORMATIONAL DEFICIENCIES

In the interest of efficiency, the Board takes the opportunity of this order to identify below numerous informational deficiencies in the City’s petition, which the City must address in any new petition filed for this relief. *See* 415 ILCS5/28.1(a), (c) (2006); 35 Ill. Adm. Code 104.406. The Board recognizes that some or all of the requested information may have been provided to the Agency over time or may otherwise be publicly available, but these items would need to be developed in the record of a Board proceeding should the City renew its request for relief.

1. **Pollution Control**: Please describe any pollution control equipment currently in place for landfill management, such as for leachate or gas.
2. **Landfill Design**: Please describe what is known of the design and construction of the landfill.
3. **Location**:
 - a. The petition describes the location of the landfill as “north of Chicago Heights Road, east of Union Avenue.” Pet. at 1. Please provide additional description of the landfill’s location. For example, what roads border the landfill besides East End Ave. on the west and an unnamed access road on the north? *Id.* at 21.

¹ The City’s notice also fails to include the Board docket number, required by 35 Ill. Adm. Code 104.408(b), and includes a citation (“35 IAC 104.106”) to a rule section that does not exist. The City’s notice does mention that “the reason for the Adjusted Standard . . . is to allow the City of Chicago Heights to close Fitz-Mar landfill with [an] Adjusted Standard from 35 IAC 810.103, 814.102 and 814.501(c).” The notice, however, should further note that the City seeks to close the landfill under Part 807 of the Board’s regulations.

- b. Please provide a map showing the location of the Fitz-Mar landfill, property boundaries, nearby landfills (Chicago Heights Municipal, Refuse Depot, Triem, LoBue), and surface waters.
 - c. The petition states that cell 16 was “disconnected from the rest of the landfill in a supplemental permit.” Pet. at 1. Does the City propose that the adjusted standard include this cell? Please define the extent of the property affected by the proposed adjusted standard.
4. **Area Affected:** Please identify the area affected by the adjusted standard. The petition mentions beaver dams, an intermittent stream, surface waters, potable water supplies, groundwater, and nearby residents. Pet. at 15, 20-21.
5. **Water Impacts:**
- a. The petition states that the “Niagaran dolomite is the underlying rock formation. Nearly all of the public wells left in the Chicago area draw water from the dolomite.” Pet. at 21. Please elaborate on any evaluation conducted to identify all public and private wells affected by the Fitz-Mar landfill.
 - b. According to the petition, there have been leachate seeps at the site and some of the infiltrated rainwater also “ends up in the upper aquifer as indicated by elevated groundwater results from [United States Environmental Protection Agency] sampling. Precipitation that does not run-off from the landfill mixes with landfill waste and presents a pathway for contaminants to enter nearby surface water bodies including the creek located to the east.” Pet. at 20. The petition states that “[l]aboratory analysis of samples collected [from] on site monitoring wells during the 1988 CERCLA [Comprehensive Environmental Response, Compensation, and Liability Act] investigation revealed VOC [volatile organic compound] contamination. Similar contaminants have been observed in Chicago Heights Well #3, which is believed to be downgradient of the Site.” *Id.* at 21. On-site soil sampling “revealed the presence of semi-volatile, pesticide and polychlorinated biphenyl (PCB), and inorganic contaminants that meet the CERCLA criteria for an observed release.” *Id.* The petition also notes that groundwater sampling (4 feet deep) along northern border detected Dieldrin and Aroclor-1254, with iron and Aroclor-1254 levels exceeding Class II groundwater standards at 35 Ill. Adm. Code 620. *Id.* In addition, the petition states that the “City of South Chicago Heights had reported VOC contamination problems in the past that could be attributed to the Site.” *Id.* The petition also states that “[p]otable groundwater exposures are incomplete since South Chicago Heights is now on Lake Michigan water.” *Id.* at 22-23. According to a summary on the Fitz-Mar landfill in a December 2000 Agency report (IEPA/BOL/00-021), “[g]roundwater flow is to the southwest and Municipal Well No. 3 was taken out of service during 1987 because of vinyl chloride contamination in the groundwater. Municipal Well No. 2 was also taken out of service in 1987 to avoid influencing the contamination plume. Onsite groundwater wells have elevated concentrations of sulfate, chlorides, ammonia, boron, TOC [total organic compound] and vinyl chloride.” The same Agency document notes that “[r]eports of hazardous waste disposal exist.” <http://www.epa.state.il.us/land/cleanup-programs/33-abandoned-landfills-book/abandoned-landfill-book.pdf>.

- i. Please identify all water supply wells (public and private) in which contamination attributable to the Fitz-Mar landfill has occurred (*e.g.*, Chicago Heights, South Chicago Heights).
- ii. How is contamination in the groundwater and water supplies being managed?
- iii. Are all potable water supplies in South Chicago Heights supplied now by Lake Michigan?
- iv. Please describe any groundwater ordinances prohibiting the use of drinking water adversely affected by the Fitz-Mar landfill, or any ordinances generally prohibiting the use of groundwater for potable uses (*e.g.*, Chicago Heights, South Chicago Heights).
- v. Were surface waters adversely affected by the Fitz-Mar landfill used as a source of drinking water or primary contact (*e.g.*, Chicago Heights, South Chicago Heights)? If so, please describe the impacts and any mitigation efforts.

6. **Efforts Necessary to Comply:**

- a. The petition states that the cost of closing the landfill under Part 811 (35 Ill. Adm. Code 811) “would be in the tens of millions of dollars.” Pet. at 15. Please provide a breakdown of costs for landfill closure under Part 811. Include the cost differences between Part 811 and Part 807 (35 Ill. Adm. Code 807) regarding cover and monitoring.
- b. Please explain the City’s statement that the closure proposed in the adjusted standard petition “can be done using the existing closure plan of the landfill.” Pet. at 3. Please provide a copy of the existing and any revised closure plan.
- c. Please explain whether and to what extent federal or State funding is available to assist with the closure of the Fitz-Mar landfill.

7. **Proposed Adjusted Standard:**

- a. No language is proposed for the adjusted standard. Please provide proposed language for a Board order that would impose the adjusted standard.
- b. No institutional control is proposed to prohibit the use of groundwater beneath the site for potable use. Please include provisions in the proposed adjusted standard to address the use of water adversely affected by the Fitz-Mar landfill.
- c. The petition states that the final grade elevation will be 766 above mean sea level. Pet. at 6, 7. Please describe what elevation was permitted in the landfill’s permit. Please provide a copy of the landfill’s permit.
- d. Please explain whether the City proposes that the construction and demolition debris to be brought on-site would constitute “general construction or demolition debris” (415 ILCS 5/3.160(a) (2006)) or “clean construction or demolition debris” (415 ILCS 5/3.160(b) (2006)) as defined in the Act.
- e. Please estimate the volume of construction and demolition debris that would be used to achieve the final grading plan.
- f. The petition states that “[u]ltimately, the City is asking the Board to change the compliance date found in Section 814.501 of the Board Rules to a future date.” Pet. at 8. The City later adds that it “is requesting an adjusted standard from Section 810.103, 814.102, and 814.501c of the Board Rules to June 13, 2007, which would allow the City to close the landfill under 807.509 Board Rules and the Permit.” *Id.* at 9. Please elaborate on the references to “a future date” and “June 13, 2007.”

- g. According to the petition, “the City will have a hearing to obtain a vertical increase in elevation to 766 feet above mean sea level,” later referring to the “vertical siting approval” and “vertical expansion siting approval.” Pet. at 7, 24. Please verify whether the City is referring to local siting approval under Section 39.2 of the Act (415 ILCS 5/39.2 (2006)) for the material already deposited at the landfill above the permitted height. Please elaborate upon the City’s statement that it is “[i]mplicit . . . that the planned 807 closure does not create a ‘new unit’ and would not be considered a lateral expansion, as Fitz-Mar will be using C&D [construction and demolition debris] only for capping/closure purposes.” Pet. at 17.

8. **Impact on the Environment:**

- a. The petition states that “[e]valuations of human health and ecological risks have been performed through the preparation of screening level risk models (see Attachment B). These models incorporate laboratory data and observations from prior landfill inspections.” Pet. at 19. According to the petition, “the attached Site Risk Models (Attachment B)” examine the risks posed by “the Current Unclosed Condition and . . . the future IAC 807 Closed Landfill Condition.” *Id.* at 22. Further, the petition states that “[a]s described in the risk evaluations, leachate will be reduced through the capping of the landfill.” *Id.* at 23. However, Attachment B, which is a one-page flow chart entitled “Current Site Risk Model,” appears to address only the site’s current condition. Additionally, Attachment B appears to address contaminant transport and exposure in only qualitative terms, without presenting the screening level analysis or laboratory data alluded to on page 19 of the petition.
- i. Please provide further information concerning the referenced current and future site conditions, screening level risk analyses, and laboratory data.
 - ii. Please indicate how laboratory data and observations were used to prepare the screening level risk models.
 - iii. Please indicate what screening level equations were used and the associated parameters.
- b. The City mentions a contaminant pathway to a creek located to the east, as well as an eastern drainage ditch discharging to a stream north of the property. Pet. at 20. Do the creek and stream have names? Please provide a map identifying the creek, stream, and drainage ditch.

9. **Justification:** The petition states that “[c]onforming to the greater low permeability and protective soil layer thicknesses under an IAC 811 closure for existing units would take away from the City’s ability to use clean C&D for the sub grade.” Pet. at 3. Please explain why using construction and demolition debris for the subgrade would impact the feasibility of installing a thicker cap.

10. **Consistency:** Please explain whether the proposed adjusted standard is consistent with the United States Environmental Protection Agency’s Resource Conservation and Recovery Act (RCRA) Subtitle D regulations.

11. **Attachment A:** Please provide a larger version of Attachment A to the petition for legibility and include the referenced (Pet. at 7, 12) “cross sections along the centerline of the landfill.”

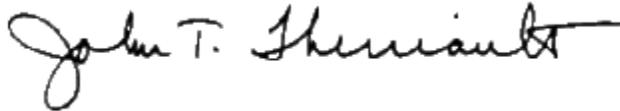
CONCLUSION

The Board finds that the City has not satisfied the jurisdictional requirement of providing the required newspaper notice concerning its adjusted standard petition. Specifically, the City's notice, while timely, failed to advise the public of its statutory right to request a hearing on the City's adjusted standard request. Further, as described above, the Board finds that the City has not provided all of the necessary information in its petition.

The Board dismisses this proceeding for lack of jurisdiction and closes the docket. Nothing in this order precludes the City from filing another adjusted standard petition for the same relief and providing the required notice. Any new petition from the City requesting this relief must include information curing the petition deficiencies identified in this order. Finally, contrary to the Board's procedural rules, the City never filed with the Board any proof of service of the petition on the Agency. *See* 35 Ill. Adm. Code 101.304(d), 104.402. Any new petition filed by the City must be accompanied by the proper proof of service on the Agency.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2008, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board