

ILLINOIS POLLUTION CONTROL BOARD

June 5, 2008

IN THE MATTER OF:)
)
RCRA DELISTING ADJUSTED) AS 08-10
STANDARD PETITION OF PEORIA) (Adjusted Standard – Land)
DISPOSAL COMPANY)

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

On April 25, 2008, Peoria Disposal Company (PDC) filed an adjusted standard petition (Pet.) to delist what PDC characterizes as the “stabilized residue generated by PDC from the treatment of K061 electric arc furnace dust” at PDC’s waste stabilization facility (WSF). Pet. at 1. The WSF is located at 4349 W. Southport Road in Peoria, Peoria County, and was approved for operations under PDC’s Resource Conservation and Recovery Act (RCRA) Part B permit. *Id.* at 1, 9. According to the petition, PDC seeks an “upfront and conditional delisting” for the residue based on PDC’s “new proprietary stabilization technology.” *Id.* at 2. PDC has waived hearing. *Id.* at 27. Today’s order provides no determination on the informational sufficiency or merits of PDC’s petition, but rather addresses several procedural items.

In this order, the Board first finds that PDC has satisfied the requirements for providing public notice of its petition. The Board then accepts this matter for hearing. Despite PDC’s hearing waiver, the Board must hold a hearing because public requests for a hearing have been timely filed. Next, the Board rules on PDC’s motions for expedited review and for relief from certain filing requirements. The motions were filed with the petition. The next portion of the order states the filing deadline for the recommendation of the Illinois Environmental Protection Agency (IEPA). Finally, the Board notes but reserves ruling on PDC’s application for non-disclosure, which PDC filed with the petition.

NOTICE

The Environmental Protection Act (Act) (415 ILCS 5 (2006)) requires an adjusted standard petitioner to publish notice of the petition’s filing 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 (2006); *see also* 35 Ill. Adm. Code 104.408(a). Publication must take place within 14 days after the petition is filed, or the Board lacks jurisdiction to hear the petition. *See, e.g., In re* 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 (Jan. 6, 2005). The newspaper 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. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Within 30 days after filing the petition, petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

On April 30, 2008, PDC filed a certificate of publication, documenting that the required notice of the petition was published on April 28, 2008, in the *Peoria Journal Star*. The Board finds that PDC has met the notice requirements of the Act and the Board's procedural rules.

HEARING

Although PDC waived its opportunity to have a hearing on the petition (Pet. at 27), the Board is required to hold a hearing when any person makes a timely request for hearing. Section 28.1(d)(2) of the Act states:

The Board shall adopt procedures applicable to such adjusted standards determinations which, at a minimum, shall provide:

- (2) that . . . upon the request of any person received by the Board within 21 days after publication of the notice of the filing of the petition, the Board shall hold a public hearing on the petition . . . 415 ILCS 5/28.1(d)(2) (2006).

The Board's procedural rules in turn provide that public requests for hearing "must be filed not later than 21 days after the date of publication of the petition notice." 35 Ill. Adm. Code 104.420(a). When a timely hearing request is filed, the Board will hold a hearing. *See* 35 Ill. Adm. Code 104.422(a)(2); *but see* 35 Ill. Adm. Code 104.420(b) (where all hearing requests are withdrawn).

Because notice of PDC's adjusted standard petition was published in the *Peoria Journal Star* on April 28, 2008, any hearing request was required to be filed with the Board by May 19, 2008. The Board has received four timely requests that a hearing be held. On May 12, 2008, Lisa Offutt filed a hearing request; on May 14, 2008, Tom Edwards filed a hearing request; on May 17, 2008, Kim McLean Converse filed a hearing request on behalf of Peoria Families Against Toxic Waste; and on May 19, 2008, Joyce Blumenshine filed a hearing request on behalf of the Heart of Illinois Group Sierra Club. *See* 35 Ill. Adm. Code 101.300(b)(2) (Converse's request, received on May 20, 2008, is deemed filed on the U.S. Mail postmark date under the "mailbox rule"). Any one of these hearing requests is alone sufficient to trigger the requirement to hold a hearing on PDC's requested relief. *See* 415 ILCS 5/28.1(d)(2) (2006); 35 Ill. Adm. Code 104.422(a)(2).

The Board therefore accepts this matter for hearing. The Board, through orders of its own or its hearing officer, may direct PDC to provide additional information concerning its request prior to or at hearing. *See* Petition of BFI Waste Systems of North America, Inc. for Waste Delisting, AS 08-5, slip op. at 1 (Jan. 10, 2008) (accepting petition for hearing while noting that orders may issue requiring more information from petitioner before or at hearing). Consistent with the Board's grant below of PDC's motion for expedited review, the Board directs the hearing officer to expeditiously schedule a hearing in this case. Details concerning the date, time, and place of the hearing will be provided in a notice of hearing that will be issued by the hearing officer.

MOTION FOR EXPEDITED REVIEW

In its motion for expedited review (Mot. Exp.), PDC states that the stabilized residue proposed for delisting is presently disposed of in PDC's on-site RCRA Subtitle C hazardous waste landfill, the "PDC No. 1 Landfill." Mot. Exp. at 1. Besides the PDC No. 1 Landfill, the nearest Subtitle C landfill accepting waste is located some 220 miles away in Roachdale, Indiana. *Id.* According to PDC, the PDC No. 1 Landfill is predicted to be "completely full in 2009," at which time PDC, absent the adjusted standard, would have to transport the stabilized residue hundreds of miles for disposal. *Id.* at 1-2; *see also* Pet. at 11 (time to reach capacity is based on the current rate of receipts).

If, however, the stabilized residue is excluded from the list of hazardous wastes, PDC maintains that it would be able to haul the material to a RCRA Subtitle D non-hazardous solid waste landfill. Mot. Exp. at 2. PDC intends to transport the delisted material to its affiliated Subtitle D landfill in Tazewell County, the "Indian Creek Landfill No. 2," or to two other Subtitle D landfills in Illinois affiliated with PDC. Pet. at 3.

Depending upon whether the adjusted standard is granted, the difference in costs that PDC would face, according to the petition, stems from the differing costs of post-treatment transportation to and disposal at a Subtitle D landfill versus post-treatment transportation to and disposal at an off-site Subtitle C landfill. Pet. at 12-13. The former is estimated to cost \$3,203,460 per year while the latter is estimated to cost \$15,735,360. *Id.*

PDC maintains that the cost differential (\$112.90 per ton totaling \$12,531,900 per year) between these two compliance alternatives would:

be an unbearable hardship for PDC that would result in the loss of most of its K061 accounts (which comprise the majority of the WSF receipts), as well as a dramatically increased and perhaps equally unbearable cost burden for its K061-generating customers in the Midwest, many of which (as discussed above) have no feasible or economically viable alternative. Pet. at 13; *see also* Mot. Exp. at 6.

Supporting PDC's petition and motion for expedited review is, respectively, an affidavit and a certification of Ron. L. Edwards, Vice President of PDC.

Motions for expedited review are governed by Section 101.512 of the Board's procedural rules, and must contain, among other things, a complete statement of the facts and reasons for the request. *See* 35 Ill. Adm. Code 101.512(a). In ruling on a motion for expedited review, the Board considers, at a minimum, all statutory requirements and whether material prejudice will result from the motion being granted or denied. *See* 35 Ill. Adm. Code 101.512(b). IEPA has filed no response to PDC's motion and therefore waives any objection to it being granted. *See* 35 Ill. Adm. Code 101.500(d). Considering all of the factors, including the economic information PDC has presented, the Board grants the motion for expedited review, consistent with decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c); *see also* Petition of Big River Zinc Corp. for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c),

AS 06-4, slip op. at 1-2 (Aug. 4, 2006) (granting motion to expedite review). As stated above, the Board directs the hearing officer to proceed expeditiously to hearing.

MOTION TO FILE REDUCED NUMBER OF COPIES

Along with its petition, PDC filed a motion to file a reduced number of copies (Mot. Red.) of its Technical Support Document, which is Attachment 2 to the petition. *See* 35 Ill. Adm. Code 101.302(h) (original document plus nine hard copies generally required). PDC seeks to file the original document plus only four hard copies. Mot. Red. at 1. The motion explains that the attachment is especially voluminous (“two (2) large three-ring binders, or approximately eight (8) inches of paper, per copy”), excluding Appendix N to the Technical Support Document. *Id.* at 1-2. The Technical Support Document’s Appendix N, which contains laboratory raw data, consists of “two (2) ‘Banker’s Boxes’ of paper.” *Id.* at 2. PDC asks that it be allowed to file an original and one hard copy of Appendix N, along with three compact discs each containing Appendix N. *Id.* No response has been filed to the motion, which is granted. *See* 35 Ill. Adm. Code 101.500(d).

IEPA RECOMMENDATION

IEPA must file its recommendation on PDC’s petition by June 12, 2008, which is the 45th day after the filing of the petition. *See* 35 Ill. Adm. Code 104.416(a).

APPLICATION FOR NON-DISCLOSURE

PDC filed along with its petition an application to treat as “non-disclosable information” certain portions of Appendix B and Appendix F to the Technical Support Document attached as Attachment 2 to the petition. *See* 35 Ill. Adm. Code 130. PDC has filed two versions of these appendices, one with the claimed information redacted and the other un-redacted. *See* 35 Ill. Adm. Code 130.404(a)(1), 130.404(c)(4). The Board reserves ruling on the application. The claimed information is not subject to public inspection while the application is pending. *See* 35 Ill. Adm. Code 130.406(a).

CONCLUSION

As described above, today the Board (1) finds that PDC has satisfied the jurisdictional requirement of providing newspaper notice of its petition for an adjusted standard; (2) accepts this matter for hearing based on the timely public requests for hearing; (3) grants PDC’s motion to expedite review; (4) grants PDC’s motion to file a reduced number of copies of specified documents; (5) notes the filing deadline of June 12, 2008, for IEPA’s recommendation; and (6) reserves ruling on PDC’s application for non-disclosure.

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 June 5, 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 flourish extending to the right.

John T. Therriault, Assistant, Clerk
Illinois Pollution Control Board