

ILLINOIS POLLUTION CONTROL BOARD

August 21, 2008

IN THE MATTER OF: )  
 )  
 PETITION OF STERICYCLE, INC. ) AS 08-2  
 FOR AN ADJUSTED STANDARD ) (Adjusted Standard - PIMW)  
 FROM 35 ILL. ADM. CODE 1422.111(b)(1), )  
 1450.105(a, b), 1450.200(e) )

JESSICA E. DEMONTE APPEARED ON BEHALF OF PETITIONER, STERICYCLE, INC.;  
and

WILLIAM D. INGERSOLL APPEARED ON BEHALF OF THE ILLINOIS  
ENVIRONMENTAL PROTECTION AGENCY.

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

Stericycle, Inc. (Stericycle) requests an adjusted standard from Illinois' requirement that Stericycle manually weigh and record the weight of each load of Potentially Infectious Medical Waste (PIMW) received at its Stickney transfer station at 3801 S. Laramie Street, Cicero, Cook County (Site) with a device certified under the Weights and Measures Act (225 ILCS 470/1 *et seq.* (2006)). Specifically, Stericycle seeks instead to use weight measurement and recording data generated at its PIMW treatment facilities in Clinton, Illinois, and Sturtevant, Wisconsin, for the calculation of PIMW transporter fees and other regulatory purposes. The Illinois Environmental Protection Agency (Agency) recommends that the Board grant the request.

The Board today finds that Stericycle has provided sufficient justification for an adjusted standard from Section 1422.111(b)(1) of the Board's PIMW regulations for the Site and therefore grants Stericycle an adjusted standard from those regulations, subject to conditions. 35 Ill. Adm. Code 1422.111(b)(1). However, the Board declines to grant Stericycle's petition for an adjusted standard from PIMW transporter fee regulations adopted by the Agency. 35 Ill. Adm. Code 1450.105(a), 1450.105(b), 1450.200(e). The Board finds that it lacks authority to do so under Section 28.1 of the Environmental Protection Act (Act). *See* 415 ILCS 5/28.1 (2006).

In this opinion and order, the Board first describes the legal framework for adjusted standard proceedings before providing the procedural history of this case. The Board then provides the factual background of the Site and Stericycle's operations. Next, the Board presents the pertinent regulatory standards now applicable to the Site, Stericycle's proposed adjusted standard, and the standard of review under the Act. Finally, the Board evaluates the statutory factors it must address in reviewing Stericycle's petition before reaching its conclusion and issuing its order.

**LEGAL FRAMEWORK**

The Act and Board rules provide that a petitioner may request, and the Board may grant, an environmental standard that is different from the generally applicable regulation that otherwise applies to that petitioner. *See* 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 104.400(a), 104.402. This form of regulatory relief is called an adjusted standard.

The procedures that govern an adjusted standard proceeding are found in Section 28.1 of the Act and Part 104, Subpart D, of the Board's procedural rules. *See* 415 ILCS 5/28.1 (2006); 35 Ill. Adm. Code 104.400-428. The Board's procedural rules specify the required contents for the adjusted standard petition. *See* 35 Ill. Adm. Code 104.406, 104.416. Once a petition for an adjusted standard is filed, the Agency must file its recommendation with the Board. *See* 415 ILCS 5/28.1(d)(3) (2006); 35 Ill. Adm. Code 104.416. The adjusted standard proceeding is adjudicatory in nature and therefore is not subject to the rulemaking provisions of the Act or the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.* (2006)). *See* 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 101.202 (defining "adjudicatory proceeding").

Section 28.1(d)(1) of the Act (415 ILCS 5/28.1 (2006)) and Section 104.408(a) of the Board's procedural rules (35 Ill. Adm. Code 104.408(a) (quoting the Act)) require the 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. Under those provisions, publication must take place within 14 days after the petition is filed. 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).

The burden of proof in an adjusted standard proceeding is on the petitioner. *See* 415 ILCS 5/28.1(b), (c) (2006); 35 Ill. Adm. Code 104.426. Once granted, the adjusted standard, instead of the rule of general applicability, applies to the petitioner. *See* 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 101.202, 104.400(a). In granting adjusted standards, the Board may impose conditions as may be necessary to accomplish the purposes of the Act. *See* 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 104.428(a).

### **PROCEDURAL HISTORY**

On September 5, 2007, Stericycle filed a petition for an adjusted standard (Pet.). The petition states that, "[u]nless an objection is raised by the Agency or a hearing is requested by a member of the public or an interested party, Stericycle hereby waives hearing in this matter." Pet. at 10 (¶42).

On September 28, 2007, Stericycle timely filed with the Board proof of publication indicating that the *Chicago Tribune* published notice of filing the petition on September 10, 2007. *See* 35 Ill. Adm. Code 104.410 (requiring filing of certificate of publication within 30 days after filing petition). The Board did not receive a request to hold a hearing in this matter.

In an order dated October 18, 2007, the Board found that Stericycle's petition did not provide all of the information required by the Act and the Board's regulations for an adjusted standard petition. *See* 415 ILCS 5/28.1 (2006); 35 Ill. Adm. Code 104.406. Accordingly, the

Board directed Stericycle to address seven points of information in an amended petition to be filed within 45 days.

On November 16, 2007, Stericycle file a motion for extension of time to file an amended petition. In an order dated November 28, 2007, the hearing officer granted Stericycle's motion and directed Stericycle to file an amended petition by December 21, 2007.

On December 20, 2007, Stericycle filed its amended petition (Am. Pet.).<sup>1</sup> The amended petition restated that, "[u]nless an objection is raised by the Agency or a hearing is requested by a member of the public or an interested party, Stericycle hereby waives hearing in this matter." Am. Pet. at 17 (¶66). In an order dated February 21, 2008, the Board accepted Stericycle's amended petition and directed the Illinois Environmental Protection Agency (Agency) to file its recommendation by April 7, 2008.

On April 14, 2008, the Agency filed its recommendation (Rec.) to Stericycle's amended petition. In its recommendation the Agency "requests that the adjusted standard sought by Stericycle be approved." Rec. at 3. The Agency further states that it bases this recommendation on the fact that the scale at Stericycle's Sturtevant facility satisfies the requirement of the Illinois Weights and Measures Act. *Id.* at 4. Consequently, the Agency recommends that, "[i]f at some future time the State of Wisconsin's weights and measures standards are amended so that the weighing device at the Sturtevant facility no longer meets the standards set forth in the Illinois Weights and Measures Act, Stericycle must continue to comply with Illinois law." *Id.*

In an order dated June 4, 2008, the hearing officer directed Stericycle to obtain certificates of conformance for the scales located at its Sturtevant facility on which it intends to rely for weighing PIMW under its requested adjusted standard. The order further directed Stericycle to file those certificates with the Board's Clerk within 14 days. On June 12, 2008, Stericycle timely filed Certificates of Conformance for three scales operated at its Sturtevant facility.

### **FACTUAL BACKGROUND**

Stericycle was founded in 1989 and maintains its corporate headquarters in Bannockburn, Illinois. Am. Pet. at 2 (¶¶1, 2). Since 1997, Stericycle has operated a PIMW transfer station at 3801 South Laramie Street, Cicero, Cook County, where the station occupies an area 40 feet by 55 feet within a 9.27 acre parcel. *Id.* at 1, 2 (¶¶2, 10). Stericycle employs approximately 23 persons at the Site. *Id.* at 3 (¶11). The Agency has issued the transfer station permit number 1997-264-DE/OP and on September 21, 2005 issued supplemental permit number 2005-182-SP.

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<sup>1</sup> In its original petition, Stericycle requested an adjusted standard from authorities including Condition 15 of Permit No. 1997-264-DE/OP, Supplemental Permit No. 2005-182-SP. Pet. at 1, 11. In its amended petition, Stericycle no longer seeks an adjusted standard from this condition, and the caption of its amended petition reflects this change in the relief requested from the Board. *See* Am. Pet. at 1. Accordingly, the Board on its own motion amends the caption in this proceeding, as reflected above.

*Id.* at 3 (¶10); *see* Pet., Exh. C (supplemental permit). Waste Management has owned the transfer station since the 1970s. Am. Pet. at 2 (¶2).

Stericycle “collects PIMW in sealed containers from approximately 8,000 individual customer locations such as medical facilities, hospitals, clinics, veterinary hospitals, outpatient surgery centers, dialysis centers and wound clinics across northern Illinois.” Am. Pet. at 3 (¶11). After collection, Stericycle transports the sealed containers to the Site, where they are transferred to another truck without being opened or otherwise compromised. *Id.* at 3 (¶¶12, 13). On a daily basis, Stericycle transfers approximately 33,500 pounds of PIMW at the Site. *Id.* at 3 (¶12). Stericycle weighs each truckload of PIMW as it arrives at the Site. *Id.* at 8 (¶32). The truck scale there weighs in 200-pound increments. *Id.* Stericycle does not maintain information regarding the base weights of transport vehicles. *Id.* Accordingly, the variability of vehicle weights, amounts of fuel on a particular vehicle, and drivers’ weights can all affect the weight data obtained at the Site. *Id.*

Stericycle ships most of the PIMW containers transferred at the Site along a specific day or night route to its treatment facility in Sturtevant, Wisconsin. Am. Pet. at 3 (¶¶13, 19). The Sturtevant facility treats PIMW with Electro-Thermal Destruction, after which the waste material is no longer considered to be PIMW. *Id.* at 3-4 (¶13). Containers that are not shipped from the Site to Sturtevant are shipped along a specific route to Stericycle’s facility in Clinton, Illinois, which treats PIMW by incineration. *Id.* at 4 (¶¶14, 20). Both the Sturtevant and Clinton facilities also accept PIMW in sealed containers from points other than the Site. *Id.* at 4 (¶15). Specifically, those two facilities receive PIMW directly from generators in their service areas and from other Stericycle transfer stations. *Id.* Stericycle typically transfers pathological and trace chemotherapy PIMW to Clinton and all other PIMW to Sturtevant. *Id.*

Stericycle employs a system known as BioTrack to track waste from a generator through the Site to a treatment facility. Am. Pet. at 4 (¶17). “The BioTrack system contains real-time records of the PIMW picked up from each generator, including the name of the generator, the time, the number of containers, the type of container, the driver and the route number.” *Id.* To collect this data, drivers employ a PDT<sup>2</sup>, a device described by Stericycle as being “similar to a UPS driver’s scanner.” *Id.* From its drivers, Stericycle daily downloads data, which is then accessible from any Stericycle computer connected to the BioTrack system and is available to generate daily reports. *Id.*; *see* Am. Pet., Exh. B (sample report).

Stericycle manually records the weight of each truck load of PIMW and maintains at the Site a paper log indicating by route number the PIMW collected and designating the trailer to which PIMW is transferred for shipment either to Sturtevant or Clinton. Am. Pet. at 5, 6 (¶¶21, 25). With these logs and its BioTrack data, “Stericycle tracks each container from the generator, to the transport vehicle, to the vehicle onto which the PIMW is transferred and stored, to the treatment and disposal facility.” *Id.* When PIMW arrives at Sturtevant or Clinton, Stericycle weighs it again and enters into BioTrack data including generation and transportation

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<sup>2</sup> While Stericycle’s amended petition does not provide the specific meaning of the acronym “PDT,” the Board considers the comparison to a scanning device instructive.

information. *Id.* (¶¶25, 26). These data reveal whether the PIMW was transferred from the Site or another transfer facility, how it was treated, and its final disposition. *Id.* (¶26).

In addition, a manifest accompanies containers of PIMW from each generator. Am. Pet. at 4 (¶17). When it collects PIMW from a generator, Stericycle “records the number, type, and volume of the containers in cubic feet on the State of Illinois PIMW waste manifest.” *Id.* at 6 (¶24); *see id.*, Exh. C (blank sample manifest). Stericycle determines the net weight of the PIMW when it is processed at either the Sturtevant or Clinton treatment facility. *Id.* at 6 (¶24). Stericycle uses the net weight determined there to complete the manifest and determine the state fee. *Id.*

Except in the case of an emergency or similar operating constraint, Stericycle does not transport PIMW from the Site to facilities other than Sturtevant or Clinton. Am. Pet. at 4 (¶ 18). In the event that Stericycle ships PIMW from the Site to another facility, “all Stericycle facilities are connected to the BioTrack system and use the same procedures for electronically tracking and recording all required information.” *Id.*

At the Site, Stericycle now uses a truck scale owned by Waste Management and certified in Illinois under the Weights and Measures Act to weigh each truckload of PIMW received there. Am. Pet. at 5, 9 (¶¶21, 41); *see* Am. Pet., Exh. G (scale calibration report). The scale measures weight in 200-pound increments. *Id.* at 9 (¶41). Factors such as the amount of fuel on board and the weight of the driver can cause some imprecision in the weight measurement system. *Id.* at 5 (¶21). Stericycle manually records the weight of each truckload of PIMW and maintains a daily weight log at the Site. *Id.* (¶¶21, 22). Stericycle keeps this log for compliance with Illinois regulations but does not use it either to bill customers or to determine transporter fees payable to the State of Illinois. *Id.* (¶22, 23).

At both Sturtevant and Clinton, Stericycle owns and operates automatic scale systems that weigh individual containers of PIMW. Am. Pet. at 6 (¶27). “The Sturtevant scale measures the weight of each container of PIMW in increments of one-tenth of a pound.” *Id.* at 8 (¶33). The Sturtevant scale “is calibrated twice per year at a minimum, is certified by the State of Wisconsin Department of Agriculture, and has a certificate of conformance pursuant to National Institute of Standards and Technology Handbook 44.” *Id.* at 6-7 (¶27); *see* Am. Pet., Exh. D (scale calibration report); *see also* Petition of Stericycle, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 1422.111(b)(1), 1450.105(a), 1450.105(b), and 1450.200(e), AS 08-2 (June 12, 2008) (certificates of conformance). Both Illinois and Wisconsin regulations adopt the technical requirements of Handbook 44 for commercial weighing and measuring devices. *Id.* (¶35), citing 8 Ill. Adm. Code 600.330, WIS. ADMIN. CODE § ATCP 92.02(1); *see also* Am. Pet., Exh. F (regulatory language). The Sturtevant scale is maintained by Kohler Scale, Inc., which “is certified by the State of Illinois Department of Agriculture, Bureau of Weights and Measures, for registration of weighing devices.” Am. Pet. at 7 (¶28); *see* Am. Pet., Exh. E (certificate of registration issued to Kohler Scale, Inc.). As required by its Wisconsin permit, Stericycle weighs each container of PIMW at Sturtevant on its state-certified scale. Am. Pet. at 7 (¶28). Stericycle uses data from the Sturtevant scale system to bill its customers and to determine transporter fees due to the State of Illinois. *Id.* (¶29). Stericycle also performs regular calibration of the scale at

the Clinton facility, which “is obviously subject to the jurisdiction of the State of Illinois.” *Id.* (¶27).

### **CURRENT APPLICABLE STANDARDS**

Stericycle requests that the Board grant an adjusted standard from 35 Ill. Adm. Code 1422.111(b)(1), 1450.105(a), 1450.105(b), and 1450.200(e). Am Pet. at 1; *see* 35 Ill. Adm. Code 104.406(a). Section 1422.111(b)(1) of the Board’s regulations, addressing the design and operation of facilities for PIMW, provides that,

[i]n addition to the requirements listed in subsection (a) of this Section, storage operations required to have a permit pursuant to 35 Ill. Adm. Code 1420.105 of this Subtitle must also comply with the following requirements that the Agency shall review during the permitting process:

- 1) Storage operations shall weigh in pounds the amount of PIMW received, unless previously weighed by the transporter. PIMW must be weighed with a device for which certification has been obtained under the Weights and Measures Act (Ill. Rev. Stat. 1991, ch. 147, pars. 101 et seq.) [225 ILCS 470]. 35 Ill. Adm. Code 1422.11(b)(1).

Section 1450.105 of the Agency’s regulations, addressing procedures for operation of the PIMW waste transporter fee system, provides in its entirety that

- a) Although PIMW may be measured in other units, the transporter is responsible for accurately weighing any load of PIMW in pounds.
- b) The PIMW shall be weighed with a device for which certification has been obtained under the Weights and Measures Act (Ill. Rev. Stat. 1991, ch. 147, pars. 101 et seq.) [225 ILCS 470]. 35 Ill. Adm. Code 1450.105.

Section 1450.200(e) of the Agency’s regulations, addressing the daily PIMW report among procedures for operation of the PIMW waste transporter fee system, provides in its entirety that

[e]ntries on a Daily PIMW Report shall be made contemporaneously with the receipt of each load unless the transporter uses a different method of recording the required information which assures that required information can be entered on the Daily PIMW Report by the end of each business day, in which case the information must be entered in the Daily PIMW Report by the end of each business day. When an alternative method of contemporaneous recording is used, that record must be maintained in accordance with the records retention provisions of Section 1450.103 of this Part. 35 Ill. Adm. Code 1450.200(e).

### **STERICYCLE’S PROPOSED ADJUSTED STANDARD**

In its amended petition, Stericycle “requests an exemption from the requirements that each load of PIMW be weighed with a device for which certification has been obtained under the Weights and Measures Act.” Am. Pet. at 11 (¶47); *see* 225 ILCS 470/1 *et seq.* (2006). Specifically, Stericycle requests that the Board adopt as an order the following language:

- a. At the Stericycle facility permitted by the Agency under Permit No. 1997-264-DE/OP and Supplemental Permit No. 2005-182-SP issued on September 21, 2005 (the "Stickney transfer station"), Stericycle shall weigh in pounds the amount of PIMW received, unless 1) PIMW was previously weighed by the transporter, or 2) the PIMW subsequently will be weighed at a facility designed to treat PIMW to eliminate its infectious potential.
- b. The PIMW shall be weighed with a device for which a certificate of conformance has been obtained pursuant to National Institute of Standards and Technology Handbook 44. The PIMW may be weighed on a device outside the state of Illinois, provided the device conforms with the standards set forth in this section.
- c. The Daily PIMW Report shall be maintained at the location where the PIMW is weighed and at the transporter's corporate headquarters in Illinois.
- d. The Daily PIMW report shall be made contemporaneously with the receipt of each load at a facility designed to treat PIMW to eliminate its infectious potential. If the Daily PIMW report is generated at a facility outside the State of Illinois, the Daily PIMW report shall be transmitted electronically to the Stickney transfer station and its corporate headquarters at the close of each business day.
- e. The Daily PIMW report for the Stickney transfer station shall include all information required by Ill. Admin. Code tit. 35 § 1450.200(c).
- f. It shall be a violation of the conditions of this Permit if a Daily PIMW report cannot be produced by Stericycle within 24 hours of a request for such information by the Illinois Environmental Protection Agency.
- g. Stericycle shall apply separately for a permit amendment to Section 15 of Permit No. 1997-264-DE/OP and Supplemental Permit No. 2005-182-SP issued on September 21, 2005, to effectuate the above-described changes.
- h. Immediately upon adoption of Adjusted Standard Case Number AS 2008-002, Stericycle may change the method for weighing and recording PIMW shipments as described herein. Stericycle is hereby granted interim

authorization to operate pursuant to AS 2008-02 pending approval of the permit amendment as described above. Am. Pet. at 11-12 (¶48).

Stericycle states that, if the Board lacks authority to grant interim authorization under the requested subsection (h), the Stericycle requests that the Board disregard that proposed subsection. Am. Pet. at 12 n.11.

### **STANDARD OF REVIEW**

The regulations of general applicability at issue here do not specify a level of justification required to qualify for an adjusted standard. *See* 415 ILCS 5/28.1(c) (2006); 35 Ill. Adm. Code 104.406(c); *see also* Am. Pet. at 3, 13 (¶¶9, 57). Accordingly, under Section 28.1(c) of the Act, a petitioner must demonstrate that:

- 1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
- 2) the existence of those factors justifies an adjusted standard;
- 3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
- 4) the adjusted standard is consistent with any applicable federal law. 415 ILCS 5/28.1(c) (2006); *see* 35 Ill. Adm. Code 104.426(a); *see also* Am. Pet. at 13 (¶57).

Further, Section 28.1(a) of the Act provides that the Board may grant an adjusted standard “for persons who can justify such an adjustment consistent with subsection (a) of Section 27 of this Act.” 415 ILCS 5/28.1(a) (2006). Section 27(a) is a rulemaking provision that requires the Board to “take into account,” among other things, “the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.” 415 ILCS 5/27(a) (2006).

### **SUBSTANTIALLY DIFFERENT FACTORS**

Stericycle refers to the Board’s rulemaking docket R91-20, in which the Board adopted PIMW regulations in 1993. Am. Pet. at 13 (¶58), citing Potentially Infectious Medical Waste (PIMW): Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling (35 Ill. Adm. Code 1420, 1421, and 1422, R91-20 (Dec. 3, 1992) (first-notice proposal); *see also id.* (June 17, 1993) (final adoption of rules). Stericycle indicates that the Board’s opinion adopting those regulations does not specifically address “the requirement that PIMW be weighed on a scale certified by the State of Illinois.” Am. Pet. at 13 (¶58); *see* Potentially Infectious Medical Waste (PIMW): Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling (35 Ill. Adm. Code 1420, 1421, and 1422, R91-20, slip

op. at 28-32 (June 17, 1993) (analyzing Part 1422). However, Stericycle expresses the belief that “the regulations were primarily concerned with ensuring the accurate and consistent weighing of PIMW on an independently-certified weight measurement system and the accurate recording of such data, which is important for waste tracking and fee determination purposes.” Am. Pet. at 13-14 (¶¶58, 59); citing Potentially Infectious Medical Waste (PIMW): Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling (35 Ill. Adm. Code 1420, 1421, and 1422, R91-20, slip op. at 30 (June 17, 1993) (addressing standards for PIMW storage operations). Stericycle claims that Section 1422.111(b) “prescribe[s] general design and operating standards, most of which have nothing to do with weight measurement or recording.” Am. Pet. at 14 (¶59); see 35 Ill. Adm. Code 1422.11(b).

Stericycle claims that the factors relating to it are substantially different from the factors relied upon in adopting the generally applicable regulations. Am. Pet. at 14 (¶¶59, 61(1)). Stericycle argues that it “has in place a full set of systems and controls necessary to comply with all applicable rules and regulations – in spirit and in letter – yet is required to have an additional step that is unnecessarily burdensome.” *Id.* at 17 (¶61(1)); see *id.* (¶62). Stericycle further argues 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.” *Id.* at 14 (¶61). Stericycle claims that “granting the adjusted standard will allow significant cost savings to Stericycle with no threat to human health or the environment or decrease in accuracy of waste tracking or fee generation information.” *Id.* at 17 (¶¶61(1), 63).

Stericycle makes a number of arguments in support of its position on this justification.

First, Stericycle states that the regulations require it to operate duplicative scales at the Site and at the Sturtevant and Clinton treatment facilities. Am. Pet. at 14 (¶61). Stericycle argues that the “time, effort, materials and manpower” necessary to operate these duplicative systems place an unreasonable economic burden upon it. *Id.* (¶61(a)). Stericycle argues that its existing BioTrack system tracks and records PIMW in a manner that at all times maintains necessary information about the PIMW. *Id.* Stericycle further argues that weighing PIMW at the Site where it is merely moved between trucks “does not generate any new or more precise information.” *Id.* Stericycle states that the requested adjusted standard would reduce its administrative costs without compromising the accuracy or completeness of its weight data or posing any detriment to human health or the environment. *Id.* at 14-15 (¶61(a)).

Second, Stericycle reiterates that the scales at the Sturtevant and Clinton facilities are more precise and less susceptible to human error than the truck scale at the Site. Am. Pet. at 15 (¶61(b)). Stericycle states that it does not use the truck scale at the Site either to bill its customers or to determine fees payable to the State of Illinois. *Id.* Stericycle argues that “[t]he rules of general applicability apply differently because they require Stericycle to operate and maintain a system that is not essential for proper waste tracking and is not used for billing or state fee purposes.” *Id.*

Third, Stericycle argues that requiring PIMW to be weighed at the Site on a scale certified under Illinois law “does not protect human health or the environment, nor does it provide any additional assurance of accurate weight measurement or recordkeeping for the

PIMW.” Am. Pet. at 15 (¶61(c)). Stericycle argues that the requirement intends instead to ensure that the weight data obtained satisfy Illinois’ standards for accuracy. Am. Pet. at 15 (¶61(c)). Stericycle states that both Illinois and Wisconsin follow the same accuracy standards by requiring scales to conform to the National Institute of Standards and Technology Handbook 44. *Id.*; see 8 Ill. Adm. Code 600.330, WIS. ADMIN. CODE § ATCP 92.02(1); see also Am. Pet., Exh. F (regulatory language). Stericycle claims that regulations in the 40 states that have adopted Handbook 44 are “automatically updated” with any changes to the handbook so “that the rules remain consistent within all 40 states at all times.” Am. Pet. at 15 (¶61(c)). Stericycle suggests that the factors relating to it are substantially different than the factors relied upon in adopting the generally applicable regulation because it seeks to use a weight measurement system that, although situated in another state, is subject to the same technical standards. *See id.*

Fourth, Stericycle claims that Illinois adopted specific regulations to ensure that it “collected proper fees pursuant to the Illinois Medical Waste Transporter Fee System.” Am. Pet. at 15 (¶61(d)); citing 35 Ill. Adm. Code 1450.105(a), 1450.105(b). Stericycle restates that it does not use weight data from the Site for the purpose of fee payment but instead uses the more precise data from Sturtevant and Clinton. Am. Pet. at 15 (¶61(d)). Stericycle argues that the factors relating to it are substantially different than the factors relied upon in adopting the generally applicable regulation because it does not use weight data collected at the Site for payment of fees. *Id.* Stericycle further argues that, because it uses the weight data from Sturtevant and Clinton for both fees and billing, it “has an economic and regulatory incentive to ensure the most precise and consistent collection of PIMW weight data is used . . . .” *Id.*

Fifth, Stericycle states that the generally applicable rules require the Site to keep a daily PIMW report. Am. Pet. at 15 (¶61(e)). Stericycle restates that, although the Site generates a daily report from the truck scale there, the treatment facility at Sturtevant can electronically transfer weight data to the Site and to its corporate headquarters in Illinois. *Id.* Stericycle argues that the factors relating to it are substantially different than the factors relied upon in adopting the generally applicable regulation because the data from Sturtevant are more precise and accessible than the manual log at the Site. *Id.* at 15-16. Stericycle stresses that, although it may be generated in another state, “Illinois regulators have access to and can view Stericycle’s PIMW weight information without traveling outside the State of Illinois.” *Id.* at 16.

Sixth, Stericycle argues that, “in adopting the rules, it was apparently assumed that transfer stations would transfer PIMW to other facilities in Illinois or to facilities not owned or operated by the transporter or transfer station operator.” Am. Pet. at 16 (¶61(f)). Stericycle claims that its interstate system of collection, transportation, and treatment enables it to track containers of PIMW from generation to disposition without having to weigh it at the Site. *Id.* Stericycle claims that “[t]he requirement that PIMW be weighed twice by different scales applies differently to Stericycle than it would for a wholly intrastate operation or to transporters, transfer stations and disposal facilities that operate independently.” *Id.*

Seventh, Stericycle states that the scale at the Site satisfies requirements to determine fees and confirm weights on manifests received there. Am. Pet. at 16 (¶61(g)). Stericycle argues, however, that “using the scale to weigh each contained of PIMW with the accuracy required for

fee generation and customer billing purposes is not practicable.” *Id.* Stericycle further argues that the Site’s scale would not be as precise as measurements obtained at Sturtevant. *Id.*

Eighth, Stericycle argues that, because of the size of the Site, it does not believe that it is possible to install a scale able to measure each container of PIMW precisely for billing and for calculating fees. Am. Pet. at 16 (¶61(h)). Stericycle further argues that, even if it could install such as system at the Site, it would duplicate the equipment already in place at Sturtevant and would require capital costs estimated to be approximately \$250,000. *Id.* In addition, Stericycle claims that such a duplicate system would require Stericycle to weigh each container as it is transferred from one vehicle to another at the Site and again at the treatment facility. *Id.* (¶61(i)). Specifically, Stericycle states that, instead of unloading each incoming truck to a transfer vehicle, “each container would have to be weighed on the scale before being transferred.” *Id.* (¶61(k)). Stericycle further claims that “[t]his would create an additional and unnecessary step into the transportation process, decreasing the efficiency of the operation and the safety of human health and the environment.” *Id.* (¶61(j)).

In its recommendation, the Agency states that it “is of the opinion that Stericycle has met the level of justification necessary to obtain the adjusted standard that it is seeking.” Rec. at 3; *see* 35 Ill. Adm. Code 104.406(h).

Stericycle states that, by maintaining duplicate weight recording systems, it complies with the regulation from which it seeks an adjusted standard. Am. Pet at 9 (¶¶39, 40). Specifically, Stericycle states that it manually records the weight of each truckload of PIMW at the Site. *Id.* (¶40). Stericycle claims that, although the scale at the Site is not as precise as those at Sturtevant and Clinton, it complies with the regulations by providing an accurate weight of a load of PIMW in pounds with a device certified under the Weights and Measures Act. *Id.* (¶41); citing 35 Ill. Adm. Code 1450.105(a), 1450.105(b). Stericycle claims that it also complies with the regulations by electronically and more precisely recording the weight of each container of PIMW at the Sturtevant or Clinton facility. *Id.* (¶40, 41); *see* 35 Ill. Adm. Code 1450.105(a). Because Stericycle uses these electronic weight data to determine customer billing and fees payable to the State of Illinois, Stericycle claims that the Site does not require a scale that is capable of weighing individual containers of PIMW. *Id.* (¶42). Stericycle states that “[t]he weight information generated in Sturtevant (and Clinton) is transmitted daily to Stericycle’s corporate headquarters in Illinois.” *Id.* (¶40).

Stericycle states that it measures and weights PIMW at Sturtevant and Clinton just as it would if it transported the PIMW directly from the generator to the treatment facility. Am. Pet. at 10 (¶43). Stericycle argues that “granting the Adjusted Standard will not make it any more or less likely that there will be a leak or loss of PIMW during transportation, nor will it make it any more or less likely that such a leak or loss will be promptly detected and remediated in compliance with all applicable laws, rules and regulations.” *Id.*

Stericycle claims that it would be “burdensome and time-consuming” to weigh each truckload as it arrives at the Site and then re-weigh each truck there after it has been unloaded. Am. Pet. at 10 (¶44). Although Stericycle acknowledges that this process may provide an alternative for addressing the varying weights of fuel and drivers from truck to truck, it “does not

cure the problem necessitating this Adjusted Standard.” *Id.* Stericycle claims that it would still need to re-weigh each load of PIMW upon arrival at either Sturtevant or Clinton in order to obtain data for customer billing and state fees. *Id.*; see 35 Ill. Adm. Code 104.406(e).

In addition, Stericycle argues that it “is not possible” to install at the Site a scale equivalent to the system in place in Sturtevant. Am. Pet. at 10 (¶45). Stericycle claims that the Site “is too small to allow the installation of such a system.” *Id.* Stericycle further claims that, even if it could construct such a system, “it would be cost prohibitive.” *Id.* Stericycle estimates the cost of constructing a loading and unloading dock and the installation of additional equipment to be approximately \$250,000. *Id.* Stericycle also estimates that the “costs of operating such a system could be approximately \$390,000 per year.” *Id.*

Addressing another alternative, Stericycle claims that “the cost and time to weigh each individual container of PIMW at the generator pick-up location would also be prohibitive.” Am. Pet. at 10 (¶46). Stericycle argues that this alternative would require it to operate a certified scale at each of approximately 8,000 customer facilities or on each of its transport vehicles. *Id.* Stericycle estimates that installation cost would be approximately \$3,000 per scale and that annual operating costs “could well exceed \$390,000 per year.” *Id.* Stericycle claims that this alternative would result in significant operating costs “for scale maintenance, for inefficiencies in weighing each container at the time of pick-up; for training each driver to operate and accurately operate the scale; and for other unanticipated costs.” *Id.*

Stericycle adds that it “will incur no additional costs to comply with the Adjusted Standard.” Am. Pet. at 12 (¶49). Stericycle argues that, if it is no longer required to operate the scale at the site, it will annually save approximately \$42,000. *Id.* Stericycle claims that “[t]hese savings include the costs to operate, certify and maintain the scale and the additional costs of recordkeeping.” *Id.*

In its recommendation, the Agency states that Stericycle now complies with the regulations by weighing each load of PIMW with the truck scale at the Site. Rec. at 2. Noting that Stericycle seeks to forego weighing at the Site and replace it with weighing at either Sturtevant or Clinton, the Agency states that “[t]he treatment facility weighing devices are much more accurate and do not have to take into account the weight of the transporting truck.” *Id.* at 2-3. The Agency further states that the Site lacks space for the installation of the same type of scale as used at the treatment facilities. *Id.* at 3; see 35 Ill. Adm. Code 104.406(e).

### **IMPACT ON THE ENVIRONMENT**

Stericycle argues that, if the Board grants the adjusted standard, “[t]here will be no qualitative or quantitative impact on human health and the environment,” and “it will not result in any emission, discharges, or release of any constituent.” Am. Pet. at 12 (¶¶53, 54). Stericycle further argues that, if granted an adjusted standard, it “will continue to operate its facilities in Illinois and Wisconsin in compliance with all applicable federal, state and local laws, rules and regulations so as to minimize the chance for release or discharge of any PIMW.” *Id.* (¶55). Stericycle concludes by claiming that “[t]here will be no environmental impact if the adjusted standard is granted.” *Id.* (¶52); see 35 Ill. Adm. Code 104.406(g).

In its recommendation, the Agency states that “[t]he regulations in question are administrative requirements to weigh and record weights of PIMW at the transfer station. At no time is the PIMW ever exposed to the environment. As such, adopting the proposed standard will have no environmental impact.” Rec. at 3; *see* 35 Ill. Adm. Code 104.406(g).

### **CONSISTENCY WITH FEDERAL LAW**

Stericycle argues that “[t]he Board may grant the adjusted standard consistent with federal law including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, the National Primary Drinking Water Regulations, the Underground Injection Control Program, the Resource Conservation and Recovery Act [RCRA], and all federal regulations adopted pursuant thereto.” Am. Pet. at 17 (¶64). Stericycle further argues that “[t]he Facility does not have any air emissions or water discharges, and granting the adjusted standard will not impact air emissions, water discharges, or public drinking water.” *Id.*; *see* Am. Pet. at 8 (¶36). In addition, Stericycle states that the Site “is not subject to regulation under the Underground Injection Control Program or RCRA.” *Id.* at 17 (¶64). Stericycle concludes by claiming that “[t]he adjusted standard in consistent with federal law.” *Id.* (¶65); *see* 35 Ill. Adm. Code 104.406(i).

In its recommendation, the Agency states that it “is unaware of any inconsistencies that the proposed adjusted standard would have with federal law.” Rec. at 3.

### **AGENCY RECOMMENDATION**

In its recommendation, the Agency provides four reasons for its request that the Board approve the adjusted standard sought by Stericycle. First, the Agency states that the weight measurements obtained by the truck scale at the Site are less accurate than those obtained at the facilities at Sturtevant and Clinton. Rec. at 3. Second, the Agency claims that adopting the proposed adjusted standard will not adversely affect the environment. *Id.* at 4. Third, the Agency indicates that it “has been informed by the Wisconsin Department of Natural Resources that Stericycle has had no compliance issues with regard to weighing PIMW at its Sturtevant facility.” *Id.* Fourth, the Agency claims that Illinois and Wisconsin have equivalent weights and measures standards. *Id.*

The Agency notes that its recommendation relies on the fact that the weighing system at the Sturtevant facility satisfies the Illinois Weights and Measures Act. Rec. at 4. The Agency states that, “[i]f at some future time the State of Wisconsin’s weights and measures standards are amended so that the weighing device at the Sturtevant facility no longer meets the standards set forth in the Illinois Weights and Measures Act, Stericycle must continue to comply with Illinois law.” *Id.*

### **BOARD DISCUSSION AND DETERMINATION**

#### **Board Authority**

### **Stericycle's Amended Petition**

The Board previously directed Stericycle to “clarify its request for an adjusted standard to identify only the Board-adopted regulations from which the Board can grant relief under the Act.” Petition of Stericycle, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 1422.111(b)(1), 1450.105(a), 1450.105(b), and 1450.200(e), AS 08-2, slip op. at 3 (Oct. 18, 2007), citing 415 ILCS 5/28.1(a) (2006); 35 Ill. Adm. Code 104.406(a). In the same order, the Board noted that the Agency had adopted Part 1450 of Illinois’ PIMW regulations. Petition of Stericycle, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 1422.111(b)(1), 1450.105(a), 1450.105(b), and 1450.200(e), AS 08-2, slip op. at 3 (Oct. 18, 2007), citing 415 ILCS 5/56.6(b) (2006) (requiring Agency to establish fee collection procedures), 17 Ill. Reg. 20268 (effective Nov. 15, 1993).

Stericycle claims that the Act provides the Board with authority to conduct proceedings

upon other petitions for review of final determinations which are made pursuant to this Act or Board rule and which involve a subject which the Board is authorized to regulate. The Board may also conduct other proceedings as may be provided by this Act or any other statute or rule. Am. Pet. at 12 (¶56), citing 415 ILCS 5/5(d) (2006), 2 Ill. Adm. Code 2175.600(11).

Stericycle further claims that the Act provides that the Board’s authority to grant adjusted standards “shall not be construed so as to affect or limit the authority of the Board to adopt, amend or repeal regulations specific to individual persons, geographic areas or sites.” Am. Pet. at 12 (¶56), citing 415 ILCS 5/28.1(h) (2006); *see* 35 Ill. Adm. Code 104.406(h).

Stericycle argues that the regulations adopted by the Agency and codified at 35 Ill. Adm. Code 1450 “are final determinations made under the Act which involve subject that the Board is authorized to regulate.” Am. Pet. at 13 (¶56). Stericycle further argues that both the Act and the regulations provide the Board with “authority to grant an adjusted [] standard to rules of ‘general applicability.’” *Id.*, citing 415 ILCS 5/28.1 (2006); *see* 35 Ill. Adm. Code 104.400 *et seq.* Stericycle also claims that “the Board is not restricted in its authority to adopt or amend regulations specific to individual sites.” Am. Pet. at 13 (¶56). Stericycle concludes that “the Board has the authority to grant the adjusted standard as requested.” *Id.* at 12, 13 (¶56). However, Stericycle states that,

[i]f the Board finds that is it not within the Board’s authority to grant the adjusted standard for all regulations set forth in this petition, Stericycle respectfully requests that the Board grant the adjusted standard as to those regulations that are within its power to grant, and deny this petition only with regard to the regulations that the Board deems outside its authority. *Id.* at 13 (¶56).

### **Agency Recommendation**

In its recommendation, the Agency does not specifically address the Board’s authority to grant an adjusted standard from a regulation adopted by the Agency. *See generally* Rec. In

addressing Stericycle’s justification of its proposed adjusted standard, the Agency states that it “is of the opinion that Stericycle has met the level of justification necessary to obtain the adjusted standard that it is seeking.” *Id.* at 3.

### **Board Discussion and Conclusion**

Section 5(d) of the Act confers upon the Board authority to conduct proceedings on a number of bases, including “petitions for review of final determinations which are made pursuant to this Act or Board rule and which involve a subject which the Board is authorized to regulate.” 415 ILCS 5/5(d) (2006). Stericycle claims that Agency regulations are final determinations made pursuant to the Act and involving a subject the Board is authorized to regulate, thus providing the Board with authority to grant an adjusted standard from the regulations adopted by the Agency specified in its amended petition. However, this claim overlooks language in Section 5(d) specifically authorizing the Board to conduct proceedings on a petition for an adjusted standard. *Id.* The Board reads this specific authorization in conjunction with the language of Section 28.1, which implements that authority. *See* 415 ILCS 5/5(d), 28.1 (2006).

Section 28.1(a) provides in pertinent part that, “*after adopting a regulation of general applicability*, the Board may grant, in a subsequent adjudicatory determination, an adjusted standard for persons who can justify such an adjustment . . .” 415 ILCS 5/28.1(a) (2006) (emphasis added). The Board construes this language as allowing it to grant an adjusted standard only from regulations that it has itself adopted. Neither Stericycle nor the Agency has cited authority persuasively supporting the argument that the Board may grant relief from a regulation adopted by the Agency. Accordingly, the Board declines to grant Stericycle’s petition for an adjusted standard from Sections 1450.105(a), 1450.105(b), and 1450.200(e) of the Agency’s PIMW transporter fee regulations (35 Ill. Adm. Code 1450.105(a), 1450.105(b), 1450.200(e)). However, the Board proceeds below to determine whether Stericycle’s petition for an adjusted standard from Section 1422.11(b)(1) of the Board’s PIMW regulations satisfies the standard of review at Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (2006)).

### **Substantially Different Factors**

In adopting PIMW regulations, the Board contemplated that activities managing PIMW might take place outside the State of Illinois. Addressing the scope and applicability of those regulations, Section 1420.101 provides in its entirety that “[t]his Subtitle applies to all persons who generate, transport, treat, store or dispose of potentially infectious medical waste. It 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). The Board’s opinion adopting these regulations clarifies “that part of any PIMW wastestream activity (*e.g.*, transporting) that takes place in Illinois is subject to these regulations, even if some portion of the PIMW wastestream activity (*e.g.*, disposal) does not.” Potentially Infectious Medical Waste (PIMW): Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling (35 Ill. Adm. Code 1420, 1421, and 1422, R91-20, slip op. at 19 (June 17, 1993)).

However, that Board opinion does not specifically address the requirement in Section 1422.11(b)(1) that a storage operation must weigh PIMW it receives with a device certified

under the Weights and Measures Act, unless a transporter previously weighed it. *See Potentially Infectious Medical Waste (PIMW): Treatment, Storage, and Transfer Facilities and Transportation, Packaging, and Labeling* (35 Ill. Adm. Code 1420, 1421, and 1422, R91-20, slip op. at 29-30 (June 17, 1993)). Stericycle argues persuasively that, for purposes of both waste tracking and PIMW fees, this requirement seeks to ensure that storage operations accurately and consistently weigh PIMW on a certified scale. The requirement does not specifically address the use of a weight-measurement system that, while located in another state, is subject to the same technical standards for accuracy. It also does not specifically address an Illinois storage operation relying upon this same out-of-state scale for the purpose of determining state PIMW fees. The Board thus finds that the factors relating to Stericycle are substantially and significantly different than the factors considered by the Board in adopting 35 Ill. Adm. Code 1422.111(b)(1). The Board further finds that this factor supports granting an adjusted standard from that provision.

### **Efforts to Achieve Compliance and Alternatives**

Stericycle weighs each truckload of PIMW at the Site on a scale certified under the Weights and Measures Act. This weighing complies with the regulation from which Stericycle seeks an adjusted standard. For the purposes of billing its customers and determining PIMW fees, however, Stericycle relies on more precise electronic scales at its Sturtevant and Clinton treatment facilities to weigh individual containers of PIMW. Consequently, Stericycle's operations at the Site do not require a scale capable of weighing individual containers of PIMW. Stericycle suggests that it weighs truckloads of PIMW there solely to comply with the regulation from which it seeks relief in this proceeding. Stericycle estimates that, if it no longer operates a scale at the site, it would realize annual savings of approximately \$42,000.

Stericycle acknowledges that it is possible to weigh each truckload arriving at the Site and then re-weigh each truck after it has been unloaded. Stericycle states that, while this may provide data more precise than simply weighing the fully-loaded truck, it would be time-consuming and burdensome and would still require duplicative procedures and scales. Furthermore, Stericycle relies upon more precise weight measurement systems at its Sturtevant and Clinton treatment facilities.

Stericycle states that the Site is too small for the installation of a weight measurement system equivalent to that at either Sturtevant or Clinton. Stericycle estimates that, even if it could construct such a system there, construction and installation costs would be approximately \$250,000 and annual operating costs would be approximately \$390,000.

Stericycle characterizes as "prohibitive" the cost of weighing each container of PIMW at the generator's location. This alternative would require Stericycle to operate a certified scale on each of its vehicles or at each of approximately 8,000 customer facilities. Stericycle estimates the cost of installing each scale would be approximately \$3,000 and that annual operating costs would be approximately \$390,000.

The Board finds that the existence of substantially and significantly different factors relating to Stericycle's procedures and facilities justifies issuance of the requested adjusted

standard. While there are alternatives that would allow the Site both to comply with Section 1422.111(b)(1) and to provide weight data for the purposes of billing and fees, the Board finds that those alternatives are not economically or practically feasible. Therefore, the Board finds that this factor supports the granting of an adjusted standard.

### **Impact on the Environment**

The Board is persuaded by the information provided by the parties that the requested adjusted standard will not cause an impact on the environment substantially and significantly more adverse than the effects considered by the Board in adopting 35 Ill. Adm. Code 1422.111(b)(1). Stericycle stated that granting the adjusted standard would result in no emission, discharge, or release of any constituent and would have no effect on human health or the environment.

Stericycle acknowledges that an undetected loss of PIMW may result in the threat of human exposure to pathogens or other infectious material, contamination of soil or groundwater by infectious materials, and litter. However, Stericycle's PIMW tracking system allows Stericycle to detect and report loss of PIMW. Specifically, the BioTrack system records the number of containers collected from a generator and again when Stericycle weighs the containers at the treatment facility in order to detect any discrepancies. Stericycle also visually inspects containers during collection, transfer, and receipt at the treatment facility in order to detect any leaks or losses.

Also in this regard, the Board notes that, in its recommendation, the Agency stated that the regulation at issue is an administrative requirement to weigh PIMW at the Site. Because the PIMW is not exposed to the environment there, states the Agency, granting the requested adjusted standard would have no environmental impact. Accordingly, the Board finds that Stericycle has demonstrated that the requested adjusted standard would not have a detrimental environmental effect. The Board further finds that this factor supports granting an adjusted standard from 35 Ill. Adm. Code 1422.111(b)(1).

### **Consistency with Federal Law**

The Board is persuaded by the information provided by the parties that the requested adjusted standard is consistent with federal law. Stericycle stated that operation of the Site does not involve air emissions or discharges onto land or into water and suggested that the requested adjusted standard would therefore be consistent with federal authorities including the Clean Air Act, the Clean Water Act, the Safe Drinking Water Act, and regulations adopted under them. The Board also notes Stericycle's statement that the Site is not regulated under the Resource Conservation and Recovery Act or the underground injection control program. In its recommendation, the Agency indicated that it is not aware of any way in which the proposed adjusted standard would be inconsistent with federal law. Accordingly, the Board finds that Stericycle has demonstrated that the requested adjusted standard is consistent with federal law. The Board further finds that this factor supports granting an adjusted standard from 35 Ill. Adm. Code 1422.111(b)(1).

## CONCLUSION

The Board today finds that Stericycle has provided sufficient justification for an adjusted standard from Section 1422.111(b)(1) of the Board's PIMW regulations for the Site and therefore grants Stericycle an adjusted standard from those regulations, subject to conditions. 35 Ill. Adm. Code 1422.111(b)(1). However, the Board declines to grant Stericycle's petition for an adjusted standard from PIMW transporter fee regulations adopted by the Agency. 35 Ill. Adm. Code 1450.105(a), 1450.105(b), 1450.200(e). The Board finds that it lacks authority to do so under Section 28.1 of the Act. *See* 415 ILCS 5/28.1 (2006).

The relief from Section 1422.111(b)(1) granted by the Board below in its order differs in four significant respects from that requested by Stericycle in its amended petition. First, Stericycle requested that a Board order granting its requested adjusted standard include a condition requiring Stericycle to apply for an amendment to Section 15 of its permit in order to effectuate the adjusted standard. Am. Pet. at 11. Instead, the Board provides below that, upon receipt of a complete application from Stericycle for a modification of Condition 15 of its permit, the Agency shall modify that permit in a manner consistent with the terms of this order.

Second, Stericycle requested that a Board order granting its requested adjusted standard include a condition that "[i]t shall be a violation of the conditions of this permit if a Daily PIMW report cannot be produced by Stericycle within 24 hours of a request for such information by the Illinois Environmental Protection Agency." Am. Pet. at 11. Instead, the Board provides below that, if Stericycle files an application for modification of its permit for the Site, the Agency may add to that permit a condition requiring that Stericycle produce a Daily PIMW report within 24 hours of a request for such a report by the Agency.

Third, Stericycle requested that a Board order granting its adjusted standard include a condition that, "[i]mmediately upon adoption of Adjusted Standard Case Number AS 2008-002, Stericycle may change the method for weighing and recording PIMW shipments as described herein. Stericycle is hereby granted interim authorization to operate pursuant to AS 2008-02 pending approval of the permit amendment as described above." Am. Pet at 11-12. As the Act confers upon the Board no specific authority to grant relief in the form of an "interim authorization," the Board at Stericycle's request disregards this proposed condition. *See* Am. Pet. at 12 n.11; *but see* 415 ILCS 5/35 (2006) (variances and provisional variances).

Finally, the Board notes that the Agency premised its recommendation to grant the requested adjusted standard

on the fact that Stericycle's weighing device at its Sturtevant facility meets the standards set forth in the Illinois Weights and Measures Act. If at some future time, the State of Wisconsin's weights and measures standards are amended so that the weighing device at the Sturtevant facility no longer meets the standards set forth in the Illinois Weights and Measures Act, Stericycle must continue to comply with Illinois law. Rec. at 4; *see* 225 ILCS 470/1 *et seq.* (2006).

The Agency's recommendation is reflected in the conditions below in the Board's order.

The Board grants relief from Section 1422.111(b)(1) as described in the order below.

This opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

Effective August 21, 2008, the Board grants Stericycle, Inc. (Stericycle) an adjusted standard from 35 Ill. Adm. Code 1422.111(b)(1) for its transfer station located at 3801 South Laramie Street, Cicero, Cook County, subject to the following conditions:

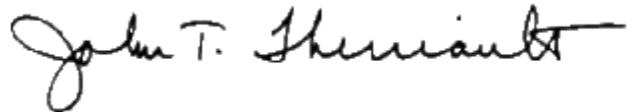
1. At the Stericycle facility permitted by the Illinois Environmental Protection Agency under Permit No. 1997-264-DE/OP and Supplemental Permit No. 2005-182-SP issued on September 21, 2005, also known as the Stickney transfer station, Stericycle shall weigh in pounds the amount of potentially infectious medical waste received unless (1) the potentially infectious medical waste was previously weighed by the transporter, or (2) the potentially infectious medical waste will subsequently be weighed at a facility designed to treat potentially infectious medical waste to eliminate its infectious potential.
2. The potentially infectious medical waste shall be weighed with a device for which a certificate of conformance has been obtained pursuant to National Institute of Standards and Technology Handbook 44. The potentially infectious medical waste may be weighed on a device outside the State of Illinois, provided that the device complies with the weights and measures regulations of that other state and conforms to the requirements set forth in the conditions of this adjusted standard.
3. Upon receipt of a complete application from Stericycle for a modification of Condition 15 of its Permit No. 1997-264-DE/OP and Supplemental Permit No. 2005-182-SP issued on September 21, 2005, the Agency shall modify that permit in a manner consistent with this order.
4. If Stericycle files an application for modification of its permit for the Site, the Agency may add to that permit a condition requiring that Stericycle produce a Daily PIMW report within 24 hours of a request for such a report by the Agency.
5. If the State of Wisconsin amends its weights and measures standards so that the weighing device at Stericycle's Sturtevant PIMW treatment facility no longer meets the standards in the Illinois Weights and Measures Act, Stericycle is required to notify the Agency of the amended standard and must then comply with the equivalent requirements of Illinois law. If Stericycle files an application for modification of its permit for the Site,

the Agency may modify that permit in a manner consistent with the language of this condition.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 21, 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.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board