

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF)	
)	
PETITION OF BRICKYARD DISPOSAL)	AS 13 - _____
& RECYCLING, INC.)	
PURSUANT TO 35 Ill. Adm. Code)	
814.402 (b)(3))	(Adjusted Standard-Land)

To: Pollution Control Board, Attn: Clerk	Division of Legal Counsel
100 West Randolph Street	Illinois Environmental Protection Agency
James R. Thompson Center, Suite 11-500	1021 North Grand Avenue, East
Chicago, Illinois 60601-3218	P.O. Box 19276
	Springfield, Illinois 62794-9276

NOTICE OF FILING

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the Appearances of Claire A. Manning and William D. Ingersoll on behalf of Brickyard Disposal & Recycling, Inc. and Petition for Adjusted Standard pursuant to 35 Ill. Adm. Code 814.402(b)(3) in the above matter. Copies of these documents are hereby served upon you.

BRICKYARD DISPOSAL & RECYCLING, INC.

By: /s/Claire A. Manning
One of Its Attorneys

Dated: May 31, 2013

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ADJUSTED STANDARD PETITION

NOW COMES Brickyard Disposal & Recycling, Inc. (“Brickyard” or “Petitioner”), by its attorneys Brown Hay & Stephens, LLP, and respectfully petitions the Illinois Pollution Control Board (“Board”) to grant an adjusted standard pursuant to Section 28.1 of the Illinois Environmental Protection Act (the “Act”) (415 ILCS 5/28.1) and, more specifically, Section 814.402 (b)(3) of the Board’s regulations (35 Ill. Adm. Code 814.402.(b)(3)).

I. BACKGROUND

Located in Vermilion County near Danville, Illinois, the Petitioner provides waste disposal and recycling services to Vermilion County and the surrounding east-central Illinois region. The Petitioner’s landfill facility consists of two separate waste units: Unit I (“Brickyard I”) and Unit II (“Brickyard II”), separated by a haul road. Together, the units cover approximately 152 acres within a 293 acre site. The facility is located at 601 Brickyard Road, Danville, Illinois and has been assigned Illinois Environmental Protection Agency (“IEPA”) Bureau of Land I.D. #1838040029.

Brickyard II, to the north of Brickyard I, is still an operational landfill and is not relevant to this petition. Rather, this petition concerns Brickyard I, an “existing landfill” under the Board’s landfill regulations. See 35 Ill. Adm. Code Part 814, Subpart D.

Brickyard I was initially permitted by the IEPA in 1981 (Log. No. 1981-24-DE). It is located in an area that had been disturbed by surface mining, primarily for coal and shale. Brickyard I ceased accepting waste in 1997 and initiated closure at that time. Brickyard I is considered an “existing landfill” under state landfill regulations as it pre-existed the newer federal Resource Conservation and Recovery Act (“RCRA”) rules, commonly known as the “Subtitle D” rules, which have now been incorporated into state regulations. The landfill has been in the closure process since 1997 pursuant to 35 Ill. Adm. Code Part 814, Subpart D. The Petitioner ultimately intends to seek final closure and post-closure care certification approvals from the IEPA and this adjusted standard is believed necessary to facilitate those approvals.

Specifically, Brickyard has been engaged in discussions with the IEPA concerning permitting required to achieve effective closure, and then to allow appropriate completion of post-closure care. Those discussions have led to this requested Petition for Adjusted Standard, as a result of the unique circumstances at this site. During the landfill’s operation, railroad ties and other construction debris (“extraneous fill materials”) were deposited and/or utilized in an area contiguous to the landfill, and now provide stability and support for Brickyard I, so that any environmentally responsible final closure will require incorporation of this fill area. Incorporation of the fill area will require an adjustment to the groundwater monitoring boundaries, as specifically allowed for via a Board adjusted standard, as provided for in 35 Ill. Adm. Code 814.402(b).

Thus, in order to appropriately monitor a closed Brickyard I consistent with the regulations, but accommodate the extraneous materials that remain, the Petitioner seeks an adjusted standard pursuant to 35 Ill. Adm. Code 814.402(b)(3). Such regulatory adjustment will allow the parties to fashion, in the permit, a workable and responsible closure and post-closure care monitoring plan that allows for the unique circumstances present here.

II. ADJUSTED STANDARD PETITION FACTORS

In Section 104.406 of its procedural rules, the Board has codified the statutory requirements generally necessary, *as applicable in context*, to justify the Board's grant of an adjusted standard. See 35 Ill. Adm. Code §104.406. Following is a discussion of those factors, as related to this petition.

A. Adjusted Standard Sought Pursuant to Section 814.402(b)(3)

Section 104.406(a) requires "(A) statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation." 35 Ill. Adm. Code 104.406(a).

The Board's authorization to grant adjusted standards is found at Section 28.1 of the Act. Specifically, Section 28.1 provides that "[A]fter 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 consistent with subsection (a) of Section 27 of this Act." 415 ILCS 5/28.1.

The Board can do so in one of two ways: First, pursuant to Section 28.1(b) of the Act by providing for a specific adjusted standard in a rule of general applicability ("In adopting a rule of general applicability, the Board may specify the level of justification required of a petitioner for

an adjusted standard consistent with this Section.”) 415 ILCS 28.1(b)); Second, pursuant to certain factors listed in Section 28.1(c) of the Act: (“If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that [specific factors are met].” 415 ILCS 5/28.1(c)).

Here, Section 28.1(b) applies as the adjusted standard the Petitioner seeks is specifically provided for in the Board’s landfill regulations, at Section 814.402(b)(3). Section 814.402(b)(3) allows the Board to provide for, via an adjusted standard, a groundwater compliance zone different than that provided for in the general landfill regulations.

Such alternative groundwater compliance zone is believed necessary here, due to unique circumstances, in order for the landfill to achieve responsible final closure. The Petitioner has provided the IEPA with a draft of this petition several months before filing and the IEPA is believed to have no objections to the Board’s granting of this adjusted standard. The Petitioner believes that this adjusted standard can be granted pursuant to Section 814.402(b)(3), which allows for an adjusted standard related to groundwater at a landfill such as this one.

B. Federal Rules Not Implicated

Section 104.406(b) requires “(A) statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et. seq.), Safe Drinking Water Act (42 USC 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES.” 35 Ill. Adm. Code 104.406(b).

As discussed above, the Board's Part 811 landfill regulations fully implement the federal regulations concerning landfills, as required by the federal RCRA. The Part 814 regulations provide the segue between the regulations applicable to landfills that existed prior to the effective date of the new federal Subtitle D rules, such as Brickyard I, and to landfills subject to RCRA Subtitle D, such as Brickyard II. This petition will simply facilitate final closure of an existing (pre-Subtitle D) landfill; it does not seek to construct or operate any new unit; thus, the newer federally required Subtitle D landfill requirements are not implicated.

C. Necessary Level of Justification is Provided for in Section 814.402(b)(3)

Section 104.406(c) requires the Petitioner to discuss "the information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements." 35 Ill. Adm. Code 104.406(c).

The Petitioner believes that the adjusted standard contemplated here is substantially provided for in the relevant Board's landfill regulations, at Section 814.402(b)(3) which provides for its own level of justification as follows:

The Board may provide for a zone of attenuation and adjust the compliance boundary in accordance with Section 28.1 of the Act and the procedures of 35 Ill. Adm. Code 106.Subpart G¹ upon petition demonstration by the owner or operator that the alternative compliance boundary will not result in contamination of groundwater which may be needed or used for human consumption. In reviewing such petitions, the Board will consider the following factors:

- A) The hydrogeological characteristics of the unit and surrounding land, including any natural attenuation and dilution characteristics of the aquifer;
- B) The volume and physical and chemical characteristics of the leachate;
- C) The quantity, quality, and direction of flow of groundwater underlying the facility;
- D) The proximity and withdrawal rates of groundwater users;

¹ This regulatory reference appears to be a reference to the adjusted standard procedures as numbered prior to the Board's revision of its procedural rules in 2000. See *In the Matter of the Board's Revision of Procedural Rules*, R2000-20.

- E) The availability of alternative drinking water supplies;
- F) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater;
- G) Public health, safety, and welfare effects; and
- H) In no case shall the zone of compliance extend beyond the facility property line or beyond the annual high water mark of any navigable surface water.
- D) Notwithstanding the limitations of subsection 814.402(b)(3)(H), in no case shall the zone of compliance at an existing MSWLF unit extend beyond 150 meters from the edge of the unit.

(35 Ill. Adm. Code. 814.402(b)(3); Source: Amended in R93-10 at 18 Ill. Reg. 1284, effective January 13, 1994)

These factors were developed by the Board to address the transition between the old and new landfill rules, which was an issue of immediate importance at the time of adoption. These factors are also relevant to the adjusted standard sought here, as further explained below. Each of the above-referenced factors is addressed in summary fashion in this petition at Section I. H, and in detail in a Technical Support Document, prepared by Andrews Engineering, Inc. (AEI) which is attached hereto as Exhibit B.²

D. Petitioner's Activity is a Pre-Subtitle D Landfill Seeking Closure

Section 104.406(d) requires the petitioner to present "(A) description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity". 35 Ill. Adm. Code 104.406(d).

² The AEI report is hereinafter referred to as Exhibit B, AEI Tech. Supp. Doc. Exhibit A is the Board findings and Order language, proposed for purposes of effectuating the regulatory adjustment.

As discussed in the introduction and in greater detail in Exhibit B, the Petitioner operates a municipal landfill and recycling center, located in Danville, Illinois, for Vermilion County (with a population of approximately 81,000) and immediate surrounding areas. While Brickyard II is still open³, Brickyard I is no longer operational and has not accepted waste since 1997.

Brickyard I was first permitted in 1981. Brickyard I accepted its last load of waste in 1997, and initiated closure at that time, pursuant to Part 814, Subpart D. The fill area contiguous to Brickyard I pre-existed initiation of closure and the onset of the federal Subtitle D rules. No waste has been accepted at Brickyard I, or fill placed in the contiguous area, since 1997. However, best engineering practices related to closure and post-closure care require that the area is considered and integrated into permitting for purposes of final closure and post-closure care.

Specifically, this adjusted standard would allow the facility to monitor outside the area where extraneous fill materials have been deposited, so that potential impacts from either the landfill cell or the contiguous fill area are considered and understood and, if necessary, remediated. The adjusted standard is a necessary and appropriate means of dealing with the fill material since removal is not an environmentally sound or economically viable option. See Exhibit B, AEI Tech. Support Doc., at Section 4.7, Sections 4.7.1-4.7.6 and Section 5.3. This historic fill area provides support and stabilization of the existing landfill such that the area, in essence, provides a partial but essential framework for the existing landfill. Accordingly, environmentally responsible final closure needs to incorporate this area into final closure and post-closure care permitting. As the regulations do not squarely contemplate this scenario, this adjusted standard is believed necessary.

³ Brickyard II was developed after the new federal landfill rules and, accordingly, is a Subtitle D landfill. Brickyard II achieved local siting from Vermilion County in 1992, pursuant to Section 39.2 of the Act. 415 ILCS 5/39.2

As part of the closure process for Brickyard I, the Petitioner developed an assessment monitoring plan (Application Log Nos. 2004-098 and 2005-036) pursuant to Permit Condition VIII.A. 15. The application was approved by the IEPA on April 29, 2005 and temporary assessment monitoring wells (T106, T107 and T108) were installed. During the installation of these temporary wells the contractors investigated extraneous materials used as fill outside the permitted boundary of the landfill, but within the facility grounds and located in the area directly under the otherwise appropriate area for the location of the monitoring wells. Due to concerns related to locating the temporary assessment wells directly above the fill materials, additional investigations were proposed by the Petitioner, approved by the IEPA and implemented by AEI on behalf of the Petitioner. See Exhibit B, AEI Tech. Support Doc., at Section 3.

Extensive investigations were conducted in the area bordering Brickyard I, both in July and August of 2006 and again in the fall of 2008. As part of the 2006 testing, 13 test pits were completed along the northeast boundary of Brickyard I. The test pits were conducted in a sequence, chasing the extraneous fill material, or spot-checks verifying previous information. The results of the 2006 investigation indicated that the fill material was sporadic, but present more consistently west of the eastern haul road, and within the area appropriately designated the Groundwater Management Zone (GMZ). After discussions with IEPA, an additional field investigation was conducted during August and September of 2008 that included 59 additional test pits along the perimeter of Brickyard I. The results of this investigation were included as part of Application Log. No. 2006-013. The investigation revealed that the material was primarily broken and shredded railroad ties, with minor amounts of construction and demolition debris, such as scrap metal mixed with soil.

These investigation results are consistent with historical documents discovered in IEPA files. For example, in December of 1986 Charles Clark, from Clark Engineering Services wrote a letter to Glen Savage of IEPA which explained:

“[These extraneous materials] presently exceed the boundary of the permitted area along the north slope ... as it is not practical to remove the filled material, and since the company has received an administrative citation for the incursion...no corrective action is proposed.”

In addition, investigation and IEPA files provide the following information. The fill material covers approximately 18 acres in three different areas, generally contiguous to Brickyard I. The material was not continuously deposited, but exists in pockets. The entire area around Brickyard I had been historically utilized (and the land disturbed) by surface mining, either for shale, coal, or both.

E. Efforts Necessary to Comply with Regulation of General Applicability

Section 104.406(e) requires the petition to provide: “a description of the efforts that would be necessary if the Petitioner was to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs.” 35 Ill. Adm. Code 104.406(e).

Here, Section 814.402(b)(3) directly provides for the adjusted standard the Petitioner seeks. Thus, a discussion of compliance alternatives that would be necessary to justify an alternative to a rule of general applicability is not directly relevant here. Nonetheless, the Petitioner sets forth the following rationale, as related to the context of the Brickyard I situation.

Compliance with the rule of general applicability, without invoking the groundwater compliance adjustment allowed for in Section 814.402(b)(3), would require the Petitioner to monitor directly above the extraneous fill material buried outside the landfill cell. This is

problematic of course as potential groundwater impacts from the landfill are not capable of accurate assessment, since any potential impact can be related to the buried material, as opposed to the landfill. Nonetheless the Petitioner recognizes that, no matter what the source of any impact (the landfill or the buried material outside the landfill), the Petitioner is responsible for such impact, as the owner of the entire landfill area. Thus from an environmental perspective, the Petitioner and the IEPA agree that monitoring outside this area is appropriate, as monitoring will then be able to ascertain *any* impact, whether it be from the landfill or from the buried materials.

The only other alternative discussed and considered was removal of the material that was historically placed outside the landfill. It is estimated that monetary costs for doing so would be considerable. However, this alternative must be rejected not solely because of its economic cost, but because of infeasibility and potential adverse environmental impact. Thus, costs of removal are not discussed in this Petition. Instead, see discussion at Section I.G of this petition.

Quite simply, removal would jeopardize the stability of the existing landfill such that the minimum safety factors under the Board's Part 811 rules could not be met. See 35 Ill. Adm. Code 811.304(d). Removal of the buried materials would require removal of much of the existing cover and interruption of the gas extraction system – creating both safety and nuisance concerns. It would require dewatering which could promote mine void collapse, liner fatigue and possible failure and other potentially serious problems. See Exhibit B, AEI Technical Support Doc., specifically at Section 4.7.4 and Section 5.3.

For these reasons, the Petitioner and IEPA agree that a simple solution to achieve the permitting necessary for effective closure and post-closure care monitoring, consistent with the

spirit of the landfill regulations, is to invoke the procedure the Board has set forth in Section 814.402(b)(3).

F. Proposed Adjusted Standard

Section 104.402(f) requires “(A) narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented.” 35 Ill. Adm. Code 104.402(f).

The Petitioner has attached a proposed Board order, setting forth the language which could be utilized in granting the adjusted standard. See Exhibit A. The Petitioner has discussed this language with the IEPA and believes it to be supportive of its adoption. The proposed standard (adjusted groundwater compliance boundary) can be incorporated into the Petitioner’s closure plan and permit, and will be a normal part of the landfill’s post-closure care operational costs.

G. Quantitative and Qualitative Environmental Impact of Compliance with Existing Regulations versus Adjusted Standard (35 Ill. Adm. Code 104.406(g))

Section 104.406(g) requires a discussion of “(T)he quantitative and qualitative description of the impact of the petitioner’s activity on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative nature of emissions, discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard.” 35 Ill. Adm. Code 104.406(g).

In promulgating the specific adjusted standard provided for in Section 814.402(b)(3) of the Board’s landfill regulations, the Board has in large part already accounted for the above

considerations. For example, the justification required in Section 814.402(b)(3) requires consideration of hydrogeological characteristics; surrounding land; geologic considerations; leachate considerations; groundwater flow considerations; proximity of groundwater users; etc. These are the very criteria which obviously motivated the Board to require a discussion of environmental impact in the petition, as provided in Section 104.406(g) of its procedural rules. Thus, the Petitioner's discussion of the Section 814.402(b)(3) factors in essence also addresses the considerations that would be important to the Board pursuant to Section 104.406(g) of its procedural rules. Nonetheless, the Petitioner presents the following for the Board's consideration.

1. Lack of Interference with Current Beneficial Use of Ground Water

For the reasons set forth in the AEI Technical Support Document, as summarized in Section I. H of this petition, the adjustment of Brickyard I's groundwater compliance boundary as contemplated in Section 814.402(b)(3) will not interfere with anyone's beneficial use of groundwater.

2. Economic and Social Necessity

As a more general matter, this adjusted standard is believed necessary in order to facilitate final closure of Brickyard I in a manner consistent with relevant landfill regulations, while allowing the railroad ties and other extraneous fill materials to remain in place. Removal of this material is not warranted environmentally and, in fact, removal will jeopardize the stability of the existing landfill and would pose risks more problematic than those involved with allowing it to remain in place. These items are discussed in greater detail in the Exhibit B, AEI Technical Doc., specifically at Section 4.7, Section 4.7.1-4.7.6 and Section 5.3, but are summarized and reiterated here.

First, because of its location around the landfill, removal could create slope stability problems for Brickyard I, threatening the structural integrity of the landfill. Second, the fill area is generally capped with clean soil and vegetation, which need not be disturbed. Third, the removal of the debris would put the Petitioner's employees and the environment at an increased risk of exposure by the excavation, which could jeopardize the contiguous landfill's integrity, potentially causing unnecessary and unwarranted exposure routes. Considering the elevated risks of extraction, the most protective approach for dealing with this historic deposition is to leave it in place, add protections, and continue to monitor it as the landfill is being monitored. However, this responsible solution is believed to require the adjustment provided for via adjusted standard in Section 814.402(b)(3).

The proposed adjusted standard is both environmentally protective and economically feasible. Brickyard I has and will continue to use safe and appropriate institutional controls to contain the extraneous materials in the existing locations. The adjusted standard will allow Brickyard I to redefine the groundwater parameters and to allow testing to be conducted outside the extraneous fill area. Currently, as required by the IEPA pursuant to the general regulations, the monitoring wells are within the appropriate distance from the perimeter of Brickyard I, but that distance requires monitoring directly in the extraneous I area and, for that reason alone, is ineffective to monitor surrounding potential groundwater impacts from the landfill.

As set forth in more detail in Exhibit B, twelve assessment wells have already been constructed to the east, south and west of the extraneous fill areas and are currently monitoring any potential impact to surrounding groundwater. In addition, the proposed adjusted standard would facilitate final closure of Brickyard I, allowing the Petitioner to begin post-closure care.

3. All Technically Feasible and Economically Reasonable Methods Are Being Used to Prevent the Degradation of the Groundwater Quality

The proposed adjusted standard will not adversely impact groundwater quality but instead, will achieve a greater degree of protection as would be achieved without it since monitoring within the compromised area will not achieve accurate results and removal of the material from the compromised area may indeed lead to more serious problems, including possible adverse groundwater impact. See Exhibit B, AEI Tech. Report, at Section 4, Sections 4.7.1-4.7.6 and Section 5.

Responding to comments from IEPA, AEI, in October and November 2012, performed additional investigation of the existing cover overlying areas with the extraneous materials. The report of that investigation may be found in Exhibit C, "Extraneous Materials Cover Plan." The investigation showed that the vast majority of the areas with extraneous materials had considerable cover with very low hydraulic conductivity. In addition, the Cover Plan includes plans for Brickyard to insure that all these areas have at least two feet of protective cover and six inches of a vegetative layer.⁴

H. Justification of Proposed Adjusted Standard

Section 104.406(h) requires that the Petitioner explain how it "seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard." 35 Ill. Adm. Code 104.406(h).

The Petitioner has engaged the services of AEI, who performs substantial engineering and other technical work at both Brickyard I and II, to prepare a Technical Support Document justifying this adjusted standard consistent with the Board's requirements found at Section 814.402(b)(3). As stated above, that Technical Support Document is included with this filing as

⁴ See "Extraneous Materials Cover Plan, Exhibit C at Page 6. The work will be certified by a Professional Engineer as being completed consistent with the Plan. Brickyard expects such completion to occur within one year

Exhibit B. The technical information contained in Exhibit B, as applied to an analysis of the factors set forth in Section 814.402(b)(3), warrant the following conclusions:

- The hydrogeological characteristics of the unit, the surrounding land and the site do not pose an environmental risk if the boundary is adjusted as requested;
- The volume and physical and chemical characteristics of the leachate do not pose an environmental risk if the boundary is adjusted as requested;
- The quantity, quality, and direction of flow of groundwater underlying the facility is not subject to further risk, and does not pose further risk, if the boundary is adjusted as requested;
- There are no groundwater users who would be impacted if the boundary is adjusted as requested, such that availability of alternative drinking water sources will not be necessary;
- The existing quality of the groundwater will not be adversely impacted if the boundary is adjusted as requested;
- The public health, safety, and welfare will be protected, not adversely impacted, if the boundary is adjusted as requested;
- The proposed zone of compliance will not extend beyond the facility property line nor beyond the annual high water mark of any navigable surface water;
- The proposed zone of compliance will not extend beyond 150 meters from the edge of Brickyard I.

While other Board cases have examined adjusted standards sought in similar contexts, none are directly on point here. See *In the Matter of Petition of Johns Manville for an Adjusted Standard from 35 Ill. Adm. Code 811.310, 811.311, 811.318, 811.320 and 814*, AS 04-4

(December 6, 2007); *In the Matter of Petition of Carus Chemical for an Adjusted Standard from 35 Ill. Adm. Code 814, Subpart D, AS 98-1* (September 18, 1997); *In the Matter of Petition of Commonwealth Edison for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814, AS 96-9* (August 15, 1996). Although none of these cases directly implicate Section 814.402(b)(3), they each provide some guidance for the adjusted standard sought here.

For example, in the Johns Manville case, the Board granted an adjusted standard which allowed for the drilling of test wells in a different location than required by the regulations of general applicability. Had the adjusted standard not been granted the company would have been required to drill through a cover into a contaminated area. As here, Manville was able to demonstrate that the adjusted standard would be equally protective of the environment as the generally applicable regulation. See *In the Matter of Petition of Johns Manville for an Adjusted Standard from 35 Ill. Adm. Code 811.310, 811.311, 811.318, 811.320 and 814, AS 04-4* (September 18, 1997). 2007 WL 4305448.

The Commonwealth Edison case provides yet another similar example. There, the petitioner established that testing in accordance with the regulations of general applicability would have been technically and economically impractical, given the unique circumstances at their site (landfill location proximate to quarry required alternative leachate collection and groundwater monitoring). The Petitioner established that following the general regulation would require tremendous expense for minimal and even questionable environmental benefit. The Board thus allowed the proposed adjustments. See *In the Matter of Petition of Commonwealth Edison for an Adjusted Standard from 35 Ill. Adm. Code Parts 811 and 814, AS 96-9* (August 15, 1996). 1996 WL 473638.

Similarly, this case presents the Board with a petitioner who, without the adjusted standard, will be required to perform groundwater monitoring in an area that contains extraneous fill material used, in part, as structural support for the pre-Subtitle D landfill. Groundwater monitoring in that area will be ineffective to ascertain any accurate environmental impacts, a situation not anticipated in the promulgation of the rules of general applicability. Thus, like the above referenced cases, the Brickyard situation is appropriate for employing the adjustment standard mechanism provided for by the Board in Section 814.402(b)(3).

I. Consistency with Federal Law

Section 104.406(i) requires “(A) statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The Petitioner must also inform the Board of all procedural requirements applicable to the Board’s decision on the petition that are imposed by federal hazardous waste laws are not required by this Subpart. Relevant regulatory and statutory authorities must be cited.” 35 Ill. Adm. Code 104.406(i).

This adjusted standard request is consistent with federal law and there are no additional procedural requirements imposed by federal law. None of the extraneous material constitutes hazardous waste, and therefore, federal law is not implicated.

Further, as stated above, Brickyard I is a landfill defined and regulated pursuant to Part 814, Subpart D (“Standards for Existing Units Accepting Chemical and Putrescible Wastes that Must Initiate Closure Within Seven Years”). Although certain regulations adopted pursuant to the newer federal Subtitle D regulations may be relevant to various aspects of Brickyard landfill, particularly Unit II, Section 814.402 is applicable here and specifically exempts Brickyard I from the following requirements: (1) the location standards in 35 Ill. Adm. Code 811.302(a), (c), (d), (e), and (f); (2) the foundation and mass stability analysis standards in 35 Ill. Adm. Code 811.304

and 811.305; (3) the liner and leachate drainage and collection requirements of 35 Ill. Adm. Code 811.306, 811.307, and 811.308; (4) the final cover requirements of 35 Ill. Adm. Code 811.314 shall not apply to units or parts of units closed, covered and vegetated prior to the effective date of this Part; (5) the hydrogeological site investigation requirements of 35 Ill. Adm. Code 811.315; (6) the groundwater impact assessment standards of 35 Ill. Adm. Code 811.317; the groundwater monitoring program requirements of 35 Ill. Adm. Code 811.318(c); and (7) the groundwater quality standards of 35 Ill. Adm. Code 811.320(a), (b) and (c).

Thus, the Petitioner and IEPA agree that the Petitioner does not need an exemption from any of those requirements. However, to the extent any of those enumerated Part 811 groundwater location standards apply to Brickyard I, the Petitioner and IEPA agree that the requested adjusted standard, sought pursuant to Section 814.402(b)(3), can be granted consistent with federal law and, if granted, would apply in lieu of those Part 811 standards. The proposed Order language (set forth in Exhibit A) so reflects.

Section 814.402(b)(3) sets forth certain standards that are applicable to Part 814, Subpart D facilities, such as this one. Worthy of discussion in the instant situation is Section 814.402(b)(1) which reads:

“No new units shall be opened and an existing unit may not expand beyond the area included in a permit prior to the effective date of this Part or, in case of permit exempt facilities, beyond the area needed for landfilling to continue until closure is initiated.” 35 Ill. Adm. Code 814.402(b)(1).

This provision was promulgated to ensure that existing landfills (those in place prior to the federal Subtitle D rules) not be permitted to expand. Here, the Petitioner does not seek to expand this pre-Subtitle D landfill; rather, it seeks only to achieve final closure, consistent with the regulatory requirements, giving due consideration to its unique and historic circumstances. The Petitioner does not seek to receive new waste or expand the boundaries of Brickyard I. Instead,

it seeks simply to achieve final closure in a manner consistent with existing circumstances. Thus, Section 814.402(b)(1) is not implicated. For the same reasons, Section 814.402(e) is also not implicated. This section requires application of various Part 811 regulations to a “lateral expansion” at existing MSWLF units; again, as the Petitioner does not seek to “expand” beyond the permitted boundary or accept any new waste, the section is not implicated. Thus, the requirements of Part 811 which are set forth in that section (foundation and mass stability standards, liner and leachate drainage and collection, groundwater impact assessment, groundwater monitoring systems, and groundwater quality standards) are also not implicated.

J. Waiver of Hearing (35 Ill. Adm. Code 104.406(j))

The Petitioner hereby waives hearing on this Petition.

K. Supporting Documents (35 Ill. Adm. Code 104.406(k))

Enclosed with this Petition is Exhibit B, a Technical Support document prepared by AEI specifically as justification for this adjusted standard and Exhibit C, the “Extraneous Materials Cover Plan.”. AEI is an engineering firm with vast landfill experience, including specific experience with the Brickyard landfill.

III. CONSISTENCY WITH SECTION 27(a) OF THE ACT

Section 28.1 of the Act requires that the Board, in granting adjusted standards, do so “consistent with Section 27(a) of the Act.” Section 27(a) of the Act reads, in pertinent part, as follows:

“In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality or receiving body of water, as the case may be, and the technical feasibility in economic reasonableness of measuring or reducing the particular type of pollution.” 415 ILCS Section 5/27(a).

The various courts that have reviewed the Board's evaluation of the Section 27(a) factors have not required the Board to independently consider each and every factor. See *Granite City Division of National Steel Company v. Illinois Pollution Control Board*, 155 Ill. 2d. 149, 613 N.E. 2d, 719, 184 Ill. Dec. 502 (1993). Moreover, Section 28.1 only requires consistency in the context of the adjusted standard request before the Board. Here, the Board can certainly grant its adjusted standard consistent with Section 27(a) for the following reasons:

- The character of the area involved is such that the landfill, which has existed since 1981, is appropriately placed;
- The existing physical conditions at this landfill, as explained above and in the AEI Technical Support document, warrant the grant of an adjusted standard creating an alternative groundwater monitoring zone so that impacts may be more accurately assessed and the environment better protected;
- The nature of the existing air quality will not be disturbed by an adjusted standard which simply allows an adjustment to the groundwater monitoring zone; rather, removal of material to accommodate monitoring outside the extraneous fill area *would* result in a risk to the existing air quality;
- An adjustment to the groundwater monitoring zone is technically feasible;
- The solution proposed in this petition is an economically reasonable one, specifically geared to address a unique situation: given due consideration to historically placed fill materials, in order to accurately monitor any relevant groundwater impacts during the post-closure care period of this pre-Subtitle D landfill.

CERTIFICATE OF SERVICE

I, the undersigned certifies that service of the Appearances of Claire A. Manning and William D. Ingersoll on behalf of Brickyard Disposal & Recycling, Inc. and Petition for Adjusted Standard pursuant to 35 Ill. Adm. Code 814.402(b)(3) were made, as indicated below to:

Pollution Control Board, Attn: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218
(Via Electronic Filing)

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
(Via Certified Mail)

/s/William D. Ingersoll

Dated: May 31, 2013

BROWN, HAY & STEPHENS, LLP

Claire A. Manning
Registration No. 3124724
William D. Ingersoll
Registration No. 6186363
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217) 544-8491

EXHIBIT A

SUGGESTED BOARD FINDING

The Board finds that Brickyard I has proven that Section 28.1 of the Act (415 ILCS 5/28.1) and Section 814.402(b)(3) of the Board's rules (35 Ill. Adm. Code 814.402(b)(3)) support granting the adjusted standard. Therefore, the Board will grant Brickyard I an adjusted standard from the following requirement:

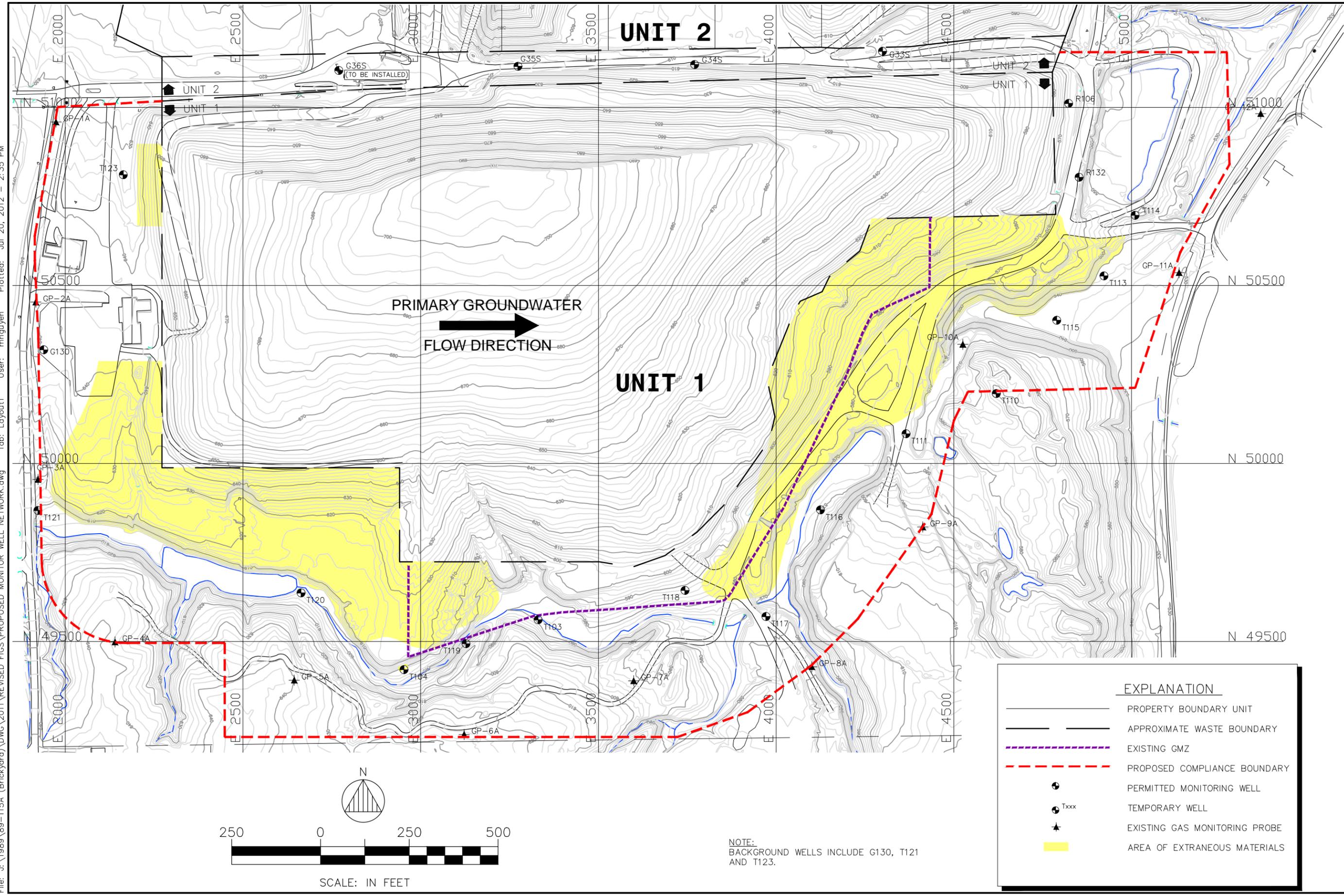
the standards for the location of monitoring points found in 35 Ill. Adm. Code 811.318(b)(3), and as relates to the compliance boundary or zone of attenuation referenced in 811.318(b)(5) and 811.320(c).

PROPOSED BOARD ORDER

Brickyard Disposal and Recycling, Inc. is granted an adjusted standard from the requirements of 35 Ill. Adm. Code Sections 811.318(b)(3), 811.318(b)(5) and 811.320(c) for the monitoring network wells relative to Brickyard, Unit I, permit 1981-24-DE, Site Number 1838040029. This adjusted standard is subject to the following conditions:

1. Unless and until modified by a final permit decision of the Agency, in lieu of the requirements of 811.318(b)(3), the zone of attenuation and "temporary Applicable Groundwater Quality Standard (AGQS)" for Unit I shall be as identified by redlining, in Figure 9 (dated May 14, 2012) (attached hereto and made part of this Order).
2. Within 90 days of the date of this Order, Brickyard shall submit a significant permit modification to the Agency for a groundwater monitoring network for Unit I, consistent with the relief granted herein.

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EXPLANATION	
	PROPERTY BOUNDARY UNIT
	APPROXIMATE WASTE BOUNDARY
	EXISTING GMZ
	PROPOSED COMPLIANCE BOUNDARY
	PERMITTED MONITORING WELL
	TEMPORARY WELL
	EXISTING GAS MONITORING PROBE
	AREA OF EXTRANEOUS MATERIALS

ANDREWS ENGINEERING, INC.
 3300 Ginger Creek Drive, Springfield, IL 62711-7233
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 Pontiac, IL • Naperville, IL • Indianapolis, IN • Warrenton, MO

APPROVED BY: JLR DESIGNED BY: JLR DRAWN BY: WCU

PROPOSED MONITOR WELL NETWORK

PLANS PREPARED FOR
BRICKYARD DISPOSAL & RECYCLING
 DANVILLE, ILLINOIS

DATE: MAY 2012

PROJECT ID: 89-115A

SHEET NUMBER:

FIG. 9

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