

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

IN THE MATTER OF: )

)  
)  
Adjusted Standard Petition of )  
Brickyard Landfill, H&L Disposal )  
Company, a Division of Republic )  
Service, Inc., Pursuant to Title 35 of the )  
Illinois Administrative )  
Code Part 814.402(b)(3) )

AS 13-04  
(Adjusted Standard)

RECEIVED  
CLERK'S OFFICE

JUL 17 2013

STATE OF ILLINOIS  
Pollution Control Board

NOTICE

Illinois Pollution Control Board  
Attn: Mr. John Therriault, Clerk  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Brown Hay & Stephens, LLP  
Attn: Ms. Claire Manning, Esq.  
205 S. Fifth Street, Suite 700 – P. O. Box 2459  
Springfield, Illinois 62705

**PLEASE TAKE NOTICE** that I have today filed with the office of the Clerk of the Pollution Control Board the **RECOMMENDATION OF THE ILLINOIS EPA**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



Kyle Nash Davis, Esq.  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)

Dated: 15 JULY 2013

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

IN THE MATTER OF: )

Adjusted Standard Petition of )  
Brickyard Disposal & Recycling, Inc. )  
Pursuant to Title 35 of the )  
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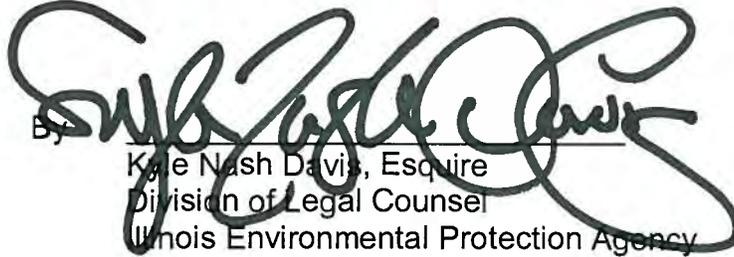
ENTRY OF APPEARANCE

NOW COMES the undersigned, as counsel for and on the behalf of the Environmental Protection Agency of the State of Illinois, and hereby enters his Appearance in the above captioned matter.

 ORIGINAL

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

By 

Kyle Nash Davis, Esquire  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue, East  
P.O. Box 19276  
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This filing submitted on recycled paper.

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**RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

The ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA/Respondent"), through its attorney Kyle Nash Davis, Esquire, hereby submits a **RECOMMENDATION** in the above captioned matter. This filing is submitted pursuant to Section 35 of the Illinois Environmental Protection Act ("EPAAct") [415 ILCS 5/35 (2010)] and 35 Ill. Adm. Code 104 *et seq.* For the reasons outlined below, the Illinois EPA recommends that the petition captioned above be **GRANTED**.

**I. INTRODUCTION**

1. On May 31, 2013, Brickyard Disposal & Recycling, Inc. ("Petitioner"), filed a Petition for Adjusted Standard ("Petition"). Petitioner's request for relief was to seek relief pursuant to Section 28.1 of the EPAAct, as well as, Section 814.402(b)(3) of the Board's regulations (35 Ill. Adm. Code 814.402(b)(3)). (Pet. at 1)
2. The Board docketed the Petition as AS: 13-04.
3. The Illinois EPA filed an Appearance in the matter AS 13-04 contemporaneously with the filing of this Recommendation.

4. On June 13, 2013, Petitioner filed its Certification of Publication with the Board.
5. According to the Petition, during the landfill's operation, wastes including but potentially not limited to railroad ties and other construction debris were deposited in an area contiguous to the landfill. According to Petitioner, incorporation of the material will require movement of the groundwater monitoring boundaries. (Pet. at 2 and 3)
6. Petitioner is requesting an adjusted pursuant to 35 Ill. Adm. Code 814.402(b)(3) "... 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 . . . ." (Pet. at 3)

## **II. INVESTIGATION**

7. To date, Respondent has not received a citizen inquiry regarding AS 13-04.
8. Respondent notes that Petitioner is a perpetual Illinois corporation registered with the Illinois Secretary of State's office and was assigned file number 49880308. Petitioner was incorporated in August 1971 and is an active corporation and currently in good standing in the State. (Attachment A)
9. Petitioner is the permitted owner and operator of Brickyard I, last receiving a permit modification in December of 2010; 1994-419-LFM, modification 97.

10. The site Petitioner owns and operates contains solid waste disposal units which are regulated by Board regulations and other applicable law. Petitioner's site is approximately 293 acres in total size, devoting approximately 152 acres to waste disposal. (Pet. at 1) The facility is located generally south of the city of Danville within Vermillion County, Illinois.
11. Permitted disposal units at the site include Unit I ("Brickyard I") (Bureau of Land Permit #: 1838040029) and Unit II ("Brickyard II") (Bureau of Land Permit No. 1994-419-LFM). Brickyard I is separated from Brickyard II by a service roadway (haul road). Other waste disposal areas are located on-site, such waste located beyond the permitted boundaries of either Brickyard I or Brickyard II. Petitioner identifies some of this waste located near Brickyard I as including railroad ties and construction debris. (Pet. at 2)
12. Brickyard I was issued development permit 1981-024-DE in 1981 and accepted a final load of waste in 1997. As such, this unit operated for approximately 16 years, accepting solid waste during this time frame. (Pet. at 7) Brickyard II remains operational and continues to accept waste.
13. Petitioner offers that Brickyard I is subject to the Board's regulations as an "existing landfill." (Pet. at 2)
14. Based upon 35 Ill. Adm. Code 814.101(a) and the definitions of "existing facility" and "new facility" in 35 Ill. Adm. Code 811.103, any non-hazardous waste landfill that obtained a development permit before September 18, 1990, would be an

“existing facility.” Any existing facility that continued to accept waste after the date of September 18, 1992 and also ceased accepting waste before September 18, 1997, would be subject to the requirements of 35 Ill. Adm. Code 814 Subpart D, pursuant to 35 Ill. Adm. Code 814.401(a).

15. Section 814.101(a) of the Board’s regulations provides:

- a) This Part establishes the standards applicable to all existing landfill facilities, which includes facilities that are not considered to be new as defined at 35 Ill. Adm. Code 810.103. The existing landfill facilities covered by this Part include existing MSWLF units and lateral expansions, as defined at 35 Ill. Adm. Code 810.103. This Part establishes requirements for both new and existing disposal units within such existing landfill facilities. Landfill owners or operators are required to determine the date on which their facilities must begin closure, which is dependent upon the ability of existing units to meet the design and performance standards contained in this Part.

(Source: Amended in R93-10 at 18 Ill. Reg. 1284, effective January 13, 1994)

16. This proceeding stems, primarily, from the requirement contained within 35 Ill. Adm. Code 814.402(b)(3) and 811.318(b)(3). (Pet. at 1)

17. Section 814.402(b)(3) of the Board’s regulations provides:

- b) The following standards shall apply to units regulated under this Subpart:

\*\*\*

- 3) Groundwater Standards

A unit shall not contaminate a source of drinking water at the compliance boundary, defined as any point on the edge of the unit at or below the ground surface. At any point on the compliance boundary, the concentration of constituents shall not exceed the water quality standards specified in 35 Ill. Adm. Code 302.301, 302.303, 302.304, and 302.305. 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 G 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;



the applicable groundwater quality standards of Section 811.320 in a well located at or beyond the compliance boundary shall constitute a violation.

(Source: Amended at 31 Ill. Reg. 16172, effective November 27, 2007)

Thus, again, monitoring wells must be as close to the potential source of discharge as possible without interfering with the waste disposal operations... .

19. During the approximately 15 years between the filing of this Petition and Brickyard I accepting its final volume of waste, Brickyard I discovered "extraneous material" in the area which would be defined as on the edge of the unit. (Pet. at 8) Applications 2004-098 and 2005-036 were submitted detailing how Petitioner intended to develop an assessment monitoring plan. When installing temporary wells, the extraneous material was encountered. This triggered the Illinois EPA to request additional investigation of the area to determine the extent of the waste material beyond the footprint of Brickyard I; which investigation was conducted in 2006 and 2008. (Pet. at 8)
  
20. In general, the investigation revealed that a large amount of "extraneous material" is located to the direct south of Brickyard I's existing footprint. The extent of this material, although not known with specific detail, extends generally from beyond the eastern most Brickyard I footprint to beyond the western most Brickyard I footprint, again on the southern boundary of the facility. (See generally: Figure 9 Attachment to Pet.)
  
21. Complicating matters further, the Brickyard I facility began leaching and had proposed a Groundwater Management Zone in the area where the extraneous

material is disposed. Petitioner proposes, and the Illinois EPA approved wells in 2000, when the remedial action was implemented. The GMZ became part of Petitioner's permit, condition IX.

### **III. FACTS PRESENTED IN THE PETITION - RATIONALE FOR RECOMMENDATION**

22. Respondent would note for the Board's consideration that Petitioner has coined the term "extraneous material" within this Petition to include waste material disposed of on-site. No such term exists within the definition of the EPAAct. Yet, such materials would fit within terms defined in the EPAAct. Petitioner offers that "... railroad ties and other construction debris ("extraneous fill material") were deposited and/or utilized in an area contiguous to [Brickyard I]... ." (Pet. at 2)

23. The EPAAct provides:

Sec. 3.535. Waste. "Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant herto.

(Source: P.A. 92-574, eff. 6-26-02.)

The extraneous fill material referenced by Petitioner is located below grade, the material is covered by soil and surly would be within the definition of "waste" under Section 3.535.

24. Moreover, the EPAAct provides:

Sec. 3.160. Construction or demolition debris.

(a) "General construction or demolition debris" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall; plumbing fixtures; non-asbestos insulation; roofing shingles and other roof coverings; reclaimed or other asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and corrugated cardboard, piping or metals incidental to any of those materials. General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste. To the extent allowed by federal law, uncontaminated concrete with protruding rebar shall be considered clean construction or demolition debris and shall not be considered "waste" if it is separated or processed and returned to the economic mainstream in the form of raw materials or products within 4 years of its generation, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i) in subsection (b) of this Section.

(b) "Clean construction or demolition debris" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed or other asphalt pavement, or soil generated from construction or demolition activities. Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste. To the extent allowed by federal law, clean construction or demolition debris shall not be considered "waste" if it is (i) used as fill material outside of a setback zone if the fill is placed no higher than the highest point of elevation existing prior to the filling immediately adjacent to the fill area, and if covered by sufficient uncontaminated soil to support vegetation within 30 days of the completion of filling or if covered by a road or structure, and, if used as fill material in a current or former quarry, mine, or other excavation, is used in accordance with the requirements of Section 22.51 of this Act and the rules adopted thereunder or (ii) separated or processed and returned to the economic mainstream in the form of raw materials or products, if it is not speculatively accumulated and, if used as a fill material, it is used in accordance with item (i), or (iii)

solely broken concrete without protruding metal bars used for erosion control, or (iv) generated from the construction or demolition of a building, road, or other structure and used to construct, on the site where the construction or demolition has taken place, a manmade functional structure not to exceed 20 feet above the highest point of elevation of the property immediately adjacent to the new manmade functional structure as that elevation existed prior to the creation of that new structure, provided that the structure shall be covered with sufficient soil materials to sustain vegetation or by a road or structure, and further provided that no such structure shall be constructed within a home rule municipality with a population over 500,000 without the consent of the municipality. For purposes of this subsection (b), reclaimed or other asphalt pavement shall not be considered speculatively accumulated if: (i) it is not commingled with any other clean construction or demolition debris or any waste; (ii) it is returned to the economic mainstream in the form of raw materials or products within 4 years after its generation; (iii) at least 25% of the total amount present at a site during a calendar year is transported off of the site during the next calendar year; and (iv) if used as a fill material, it is used in accordance with item (i) of the second paragraph of this subsection (b).

(c) For purposes of this Section, the term "uncontaminated soil" means soil that does not contain contaminants in concentrations that pose a threat to human health and safety and the environment.

(1) No later than one year after the effective date of this amendatory Act of the 96th General Assembly, the Agency shall propose, and, no later than one year after receipt of the Agency's proposal, the Board shall adopt, rules specifying the maximum concentrations of contaminants that may be present in uncontaminated soil for purposes of this Section. For carcinogens, the maximum concentrations shall not allow exposure to exceed an excess upper-bound lifetime risk of 1 in 1,000,000; provided that if the most stringent remediation objective or applicable background concentration for a contaminant set forth in 35 Ill. Adm. Code 742 is greater than the concentration that would allow exposure at an excess upper-bound lifetime risk of 1 in 1,000,000, the Board may consider allowing that contaminant in concentrations up to its most stringent remediation objective or applicable background concentration set forth in 35 Ill. Adm. Code 742 in soil used as fill material in a current or former quarry, mine, or other excavation in accordance with Section 22.51 or 22.51a of this Act and rules adopted under those Sections. Any background concentration set forth in 35 Ill.

Adm. Code 742 that is adopted as a maximum concentration must be based upon the location of the quarry, mine, or other excavation where the soil is used as fill material.

(2) To the extent allowed under federal law and regulations, uncontaminated soil shall not be considered a waste.

(Source: P.A. 96-235, eff. 8-11-09; 96-1416, eff. 7-30-10; 97-137, eff. 7-14-11.)

The EPA's definition of "construction or demolition debris" above expressly includes the same type of material found disposed of within Petitioner site and adjacent to its Brickyard I facility.

25. Thereafter, Petitioner suggests that "... allowing the railroad ties and other extraneous fill material to remain in place [is believed necessary to facilitate final closure of Brickyard I]... ." (Pet. at 12) Within this discussion, Petitioner offers that removal of such material "... would pose risks more problematic than those involved within allowing it to remain in place." (Pet. at 12) While the Respondent can understand the rationale for this assertion, it cannot agree with this proposition in total. For purposes of this review, and according to current information, the Respondent would temper this rationale to include a caveat for time sensitivity and data availability. At this time, it may present more problems to remove than to allow such waste to remain. However, in the future, removal could be an option, depending upon the circumstances at that time.

26. Petitioner offers that Brickyard I and Brickyard II are separately permitted and that Brickyard II is not relevant to this petition. (Pet. at 2) Respondent agrees with this assertion. In a like manner, the waste beyond the footprint of Brickyard I is

technically not a waste disposal unit which is a part of this Petition. Although it exists, and although it is unpermitted, the Illinois EPA would consider that, for purposes of this pleading, waste disposal unit a separate disposal unit and as Petitioner offers later not a lateral expansion of Brickyard I or its waste footprint. (Pet. at 19)

27. Petitioner concludes that what it seeks in this review is a manner by which it may achieve final closure of Brickyard I consistent with existing circumstances and regulation. (Pet. at 18) Respondent, however, would note that allowing the monitoring wells for Brickyard I outside of the edge of the existing unit to just beyond the existing edge of the newly discovered waste disposal unit will give both Petitioner and Respondent the ability to monitor both areas in an attempt to insure neither one nor the other, nor for that matter both combined, poses a threat to the environment.

28. Petitioner provides that “[i]t is estimated that monetary costs for [removing the extraneous fill area] would [be] (sic) considerable.” Respondent cannot challenge this statement since absolutely no information, data or even rationale is provided in support this conclusion. Respondent does note that Petitioner expressly states that “... costs of removal are not discussed in this Petition.” (Pet at 10) As such, the Illinois EPA and the Board cannot give any weight to the above contention or draw upon it for a basis for any conclusion.

29. Respondent offers that Petitioner is responsible for all of the waste disposal units (permitted or otherwise) on-site. (See: Pet. at 10 “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.”) Petitioner’s responsibility for the extraneous fill area unit is pertinent to the Respondent’s Recommendation in that Respondent deems that capping (to reduce the risk of permeation of the waste from precipitation) and monitoring of the “extraneous waste fill area”, even as in addition to monitoring the adjacent Brickyard I facility, is environmentally in the best interest of the State. Additional monitoring of this waste disposal unit will allow Petitioner and Respondent to assess in more detail any environmental impacts that are occurring or may occur from this unit.

30. Respondent cannot provide an analysis of the assertions within Exhibit B relative to the volume of leachate calculation within subsection 4.2.1. The Respondent notes that this calculation is based upon an assumption of a three (3) foot depth of leachate in Unit I. Respondent would need actual calculations and data supporting such data to provide comment. Elevation of Leachate Surface (Storet 71993) data does not appear to have been provided to the Illinois EPA since 2001. Similarly, Leachate Level from Monitoring Point (Storet 72109) data does not appear to have been provided to the Illinois EPA since 2006. However, from the elevation data available, it indicates fluctuations in elevation greatly exceeding three feet.
  
31. The Agency has reviewed the submitted information and proposal with regard to the investigation of the cover for the waste disposal unit under and adjacent to Brickyard I and provides no additional comment on that proposal other than a request to incorporate such work as a condition of acceptance of this petition.

32. Respondent notes that the Petition is almost void of the reference to the actual relief sought, and provides within its Attachment A that relief is sought "...from the following requirement: the standards for the location of monitoring points found in 35 Ill. Adm. Code 811.318(b)(3), specifically the requirement that monitoring wells shall be located within half the distance from the edge of the potential discharge source to the edge of the zone of attenuation." This would only be part of the relief necessary to accomplish the proposed location of the monitoring wells.

33. Petitioner has not reviewed either the applicability of 35 Ill. Adm. Code 811.318(b)(5) nor 35 Ill. Adm. Code 811.320(c). The Petition does seek relief from Section 811.318(b)(5) (Pet. at Attachment A). Respondent has included the text of this regulation above within subsection xx. Regarding Section 811.320(c), it states:

\*\*\*

- c) Determination of the Zone of Attenuation
  - 1) The zone of attenuation, within which concentrations of constituents in leachate discharged from the unit may exceed the applicable groundwater quality standard of this Section, is a volume bounded by a vertical plane at the property boundary or 100 feet from the edge of the unit, whichever is less, extending from the ground surface to the bottom of the uppermost aquifer and excluding the volume occupied by the waste.
  - 2) Zones of attenuation shall not extend to the annual high water mark of navigable surface waters.
  - 3) Overlapping zones of attenuation from units within a single facility may be combined into a single zone for the purposes of establishing a monitoring network.  
(Source: Amended at 31 Ill. Reg. 16172, effective November 27, 2007)

\*\*\*

34. Respondent presumes that the arguments made within the Petition would apply with the same rationale to the above cited provision and that Petitioner would seek relief including relief from the above noted regulations.
35. Respondent has no issues with the citations to In the Matter of Petition of Johns Manville for an Adjusted Standard from 35 Ill. Adm. Code 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); or In the Matter of Petition of Commonwealth Edison for an Adjusted Standard from 35 Ill. Adm. Cod Parts 811 and 814, AS 96-9 (August 15, 1996). Respondent agrees with Petitioner, none of these decisions is directly on point, particularly the Commonwealth Edison proceeding where the Board considered argument relative to expense, which is not raised within this matter. This proceeding is more a matter of first impression on the issue raised.
36. Respondent notes that Petitioner is requesting that "...The groundwater monitoring wells at the locations specified on Figure 9 (May 14, 2012) attached to and made a part of this order) of Exhibit B to the adjusted standard petition shall be considered "Applicable Groundwater Quality Standard" (AGQS) wells consistent with the requirements of 35 Ill. Adm. Code 811.318(b)(5)." (Pet. at Attachment A) However, Respondent would not agree with this contention since the wells identified within figure 9 of Exhibit B are only "temporary wells" under Section 5.5 of Exhibit B. As such, any Board finding on this point should specifically note, as Respondent will within its proposal below, that these well will be AGQS until the locations can be finalized via the permitting process.

## **IV. STATUTORY CRITERIA**

### **STANDARD FROM WHICH ADJUSTED STANDARD IS SOUGHT [35 Ill. Adm. Code 104.406(a)]**

37. Petitioner provides a thorough recitation of the provision which would allow for the relief requested (Section 814.402(b)(3)). (Pet a 1) However, above, Respondent has highlighted and provided the regulatory provisions from which relief is sought.

### **STATEMENT OF IMPLEMENTATION OF FEDERAL REQUIREMENTS [35 Ill. Adm. Code 104.406(b)]**

38. The requirements within 35 Ill. Adm. Code Part 814, Subtitle D, were enacted consistent with federal regulations within the Resource Conservation and Recovery Act (P.L. 94-580; 42 USC 6901 *et seq.*). Petitioner's facility, which is the subject of this proceeding, is an existing facility under applicable Board regulations.

### **LEVEL OF JUSTIFICATION [35 Ill. Adm. Code 104.406(c)]**

39. The regulations do specify a level of justification or other requirements.

The EPAAct provides:

"[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)

Board regulations, 35 Ill. Adm. Code Section 814.402(b)(3) provide as follows:

- b) The following standards shall apply to units regulated under this Subpart:

\*\*\*

- 3) Groundwater Standards

A unit shall not contaminate a source of drinking water at the compliance boundary, defined as any point on the edge of the unit at or below the ground surface. At any point on the compliance boundary, the concentration of constituents shall not exceed the water quality standards specified in 35 Ill. Adm. Code 302.301, 302.303, 302.304, and 302.305. 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 G 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;
- 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.
- I) 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.

(Source: Amended in R93-10 at 18 Ill. Reg. 1284, effective January 13, 1994)

According to this authority, the Board has discretion to move the “compliance boundary” provided the Petitioner demonstrates that an alternative compliance boundary will not result in contamination of groundwater and further that the altered compliance boundary meets the expressed factors.

#### **DESCRIPTION OF PETITIONER’S ACTIVITY [35 Ill. Adm. Code 104.406(d)]**

40. Petitioner’s waste disposal unit known as Brickyard I is a permitted solid waste landfill, which has not accepted waste since 1997. This facility is located above and adjacent to another solid waste disposal unit.

**DESCRIPTION OF COMPLIANCE EFFORTS AND ALTERNATIVES**  
**[35 Ill. Adm. Code 104.406(e)]**

41. The Illinois EPA does not take issue, generally, with Petitioner's representations concerning a description of compliance efforts and alternatives. However, as noted above, should facts change or if data warrants, removal and disposal of the 'extraneous material' may become warranted. Further, as detailed below, additional work on-site is necessary to allow for proper technical review of issues, such as, addition of the proposed cover for the extraneous waste fill area.

**PROPOSED ADJUSTED STANDARD**  
**[35 Ill. Adm. Code 104.406(f)]**

42. Petitioner offers the following language for the Board's consideration:

**EXHIBIT A**

**SUGGESTED BOARD FINDING**

The Board finds that Brickyard I (sic) 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 (sic) 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), specifically the requirement that monitoring wells shall be located within half the distance from the edge of the potential discharge source to the edge of the zone of attenuation.

**PROPOSED BOARD ORDER**

Brickyard Disposal and Recycling (sic) Unit I is hereby granted an adjusted standard from 35 Ill. Adm. Code 811.318(b)(3). Pursuant to this adjusted standard, the requirements of 35 Ill. Adm. Code 811.318(b)(3) shall not apply to Brickyard's Unit I in Danville, Illinois. This adjusted standard is subject to the following conditions: The groundwater monitoring wells at the locations specified on Figure 9 (May 14, 2012) attached to and made a part of this order) of Exhibit B to the adjusted standard petition shall be considered "Applicable Groundwater Quality Standard" (AGQS) wells consistent with the requirements of 35 Ill. Adm. Code 811.318(b)(5).

43. If Petitioner's request is granted by the Board, Respondent suggests the following revisions to the above proposed language:

#### 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 Permit No. 1994-419-LFM, Site Number 1838040029.

For a period of time, not to exceed 12 months from the date of this Adjusted Standard, groundwater monitoring wells as identified within Figure 9 of Exhibit B of this Petition shall be considered "Applicable Groundwater Quality Standard" wells for Unit I.

Within the 12 calendar months following issuance of this ruling, Petitioner shall submit this adjusted standard in the form of a permit modification to the Illinois EPA for inclusion of the temporary well locations (T110, T111, T113 through T121, and T123) to be included within the facility permit as formal monitoring wells.

Moreover, within the 12 calendar months following issuance of this ruling, Petitioner shall have installed the finalized groundwater monitoring network resulting from an Illinois EPA approved permit modification which revises the existing groundwater monitoring network to satisfy the design requirements of 35 Ill. Adm. Code 811.318(b). This permit modification will include additional modeling simulating a release from the facility using programs such as PLUME or MEMO and other information necessary for the Illinois EPA to make a determination relative to finalize the permanent locations of such wells.

In addition, within the 12 calendar months following issuance of this ruling, Petitioner shall complete the items set forth in Exhibit C of this Petition (Cover Plan) consistent with the description of such items as set forth in Section 4 of Exhibit C.

#### **IMPACT ON THE ENVIRONMENT [35 Ill. Adm. Code 104.406(g)]**

44. The Illinois EPA does not take issue with Petitioner representation of the environmental impact of issuing this adjusted standard. Respondent does note that the Board regulations do expressly provide for monitoring beyond the waste

boundary and allows for the petition for an adjusted standard as the means.

**JUSTIFICATION FOR PROPOSED ADJUSTED STANDARD**  
**[35 Ill. Adm. Code 104.406(h)]**

45. The Burden of Proof contained at Section 104.426 of 35 Ill. Adm. Code, provides the Board with those matters which should consider in rendering a decision regarding a petition for Adjusted Standard. (See: Section 27(a) of the EPAAct (415 ILCS 5/27(a)))

**CONSISTENCY WITH FEDERAL LAW**  
**[35 Ill. Adm. Code 104.406(i)]**

46. The issuance of relief requested, since allowed for under both the terms of the EPAAct and applicable regulation would mean that the Board's action, approving the Petition, would be consistent with federal implementation of the corresponding federal rules as they relate to solid waste disposal units under Subtitle D.

**WAIVER OF HEARING**  
**[35 Ill. Adm. Code 104.406(j)]**

47. The Illinois EPA does not request a hearing on this matter.

## V. RECOMMENDATION

A review of the Petition for relief was made by Illinois EPA's Bureau of Land technical staff. The Illinois EPA concludes that, based upon the forgoing, the Board should **GRANT** Petitioner's petition for Adjusted Standard in AS 13-04. The Illinois EPA further recommends that the Board should also consider that any Order on this matter contain a requirement that the Petitioner shall modify its current permit, Permit No. 1994-491-LFM, in order to reflect that it will perform additional modeling to determine the appropriate location for monitoring wells as well as providing for a deadline to implement the details relative to a cap over the extraneous fill area as proposed within Petitioner's pleading.

Respectfully submitted,

**ENVIRONMENTAL PROTECTION AGENCY  
OF THE STATE OF ILLINOIS**

By  Kyle Nash Davis, Esquire

DATED: 15 JULY 2013  
**Illinois Environmental Protection Agency**  
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On-line: [www.epa.state.il.us](http://www.epa.state.il.us)

KND: F:\BrickyardI-AdjStd\AdjustedStandardRecommendationDraft

**CERTIFICATE OF SERVICE**

I, the undersigned non-attorney, state that I served a copy of the above-described document to counsel of record via U.S. Mail at 1021 North Grand Ave. East, Springfield, IL 62794, at or before 5:00 p.m. on July 15, 2013.

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CLERK'S OFFICE

JUL 17 2013

**Illinois Pollution Control Board**

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STATE OF ILLINOIS  
Pollution Control Board

  
Clerical signature