

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2013

IN THE MATTER OF:)
)
PETITION OF BRICKYARD DISPOSAL &) AS 13-4
RECYCLING, INC. FOR ADJUSTED) (Adjusted Standard – Land)
STANDARD FROM SOLID WASTE)
REGULATIONS)

ORDER OF THE BOARD (by C.K. Zalewski):

On May 31, 2013, Brickyard Disposal & Recycling, Inc. (Brickyard), located at 601 Brickyard Road, Danville, Vermilion County, filed a petition for an adjusted standard (Pet.) pursuant to Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2010)). Brickyard seeks relief from the landfill groundwater compliance boundary specified under 35 Ill. Adm. Code 814.402(b)(3).

In this order, after briefly discussing the petition, the Board finds that Brickyard has satisfied the requirement of newspaper notice for adjusted standard petitions under the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2010)) and accepts the petition. The Board then identifies informational deficiencies in Brickyard’s petition and directs Brickyard to file an amended petition to cure them.

Brickyard consists of two separate waste units, Brickyard I and Brickyard II, separated by a haul road. Brickyard II is still in operation, but the petition concerns Brickyard I, which is described by Brickyard as an “existing landfill” under the Board’s landfill regulations.” Pet. at 2. According to the petition, Brickyard I initiated closure in 1997. *Id.* The petition is in furtherance of Brickyard’s effort to obtain final closure and post-closure care certification approvals from the Illinois Environmental Protection Agency (Agency). In its petition, Brickyard states,

[d]uring the landfill’s operation, railroad ties and other construction debris . . . 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. *Id.* at 2.

Section 28.1 of the Act (415 ILCS 5/28.1 (2010)) and 35 Ill. Adm. Code 104.408 require publication of a notice of an adjusted standard proceeding in a newspaper of general circulation in the area affected by Brickyard’s activity. The notice must be published within 14 days of filing a petition for an adjusted standard with the Board. *See* 35 Ill. Adm. Code 104.408(a). Brickyard timely filed a certificate of publication with the Board on June 13, 2013. The notice of petition was published in the *Commercial-News* on June 4, 2013.

The Board finds that the notice is proper, and that the Board therefore has jurisdiction to hear the petition. *See, e.g., In re Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005). In addition, the Board finds that the petition has generally addressed the requirements of the Board's rules at 35 Ill. Adm. Code 104.406. However, the Board finds that the petition lacks sufficient detail with regard to some factors of Sections 104.406 and 814.402(b)(3) of the Board regulations.

Therefore, the Board accepts the petition but directs Brickyard to submit an amended petition addressing the following issues:

1. Provide a specific reference to and a description of all standard(s) from which an adjusted standard is sought and the effective dates of the standards. *See* 35 Ill. Adm. Code 104.406(a); Pet. Exh. A.
2. Provide the number of persons employed by Brickyard's facility. *See* 35 Ill. Adm. Code 104.406(d).
3. Describe the relevant pollution control equipment already in use, such as the gas extraction and leachate collection, conveyance and storage systems as well as the offsite treatment facility. *See* 35 Ill. Adm. Code 104.406(d).
4. Describe the qualitative and quantitative nature of the emissions, discharges or releases currently generated by Brickyard's activity, including landfill gas and leachate and how those emissions, discharges or releases are managed. *See* 35 Ill. Adm. Code 104.406(d).

The Proposed Board Order (Pet. Exh. A) only grants relief from 35 Ill. Adm. Code 811.318(b)(3) and 811.318(b)(5) without proposing specific alternate requirements for these regulatory provisions. Accordingly, pursuant to 35 Ill. Adm. Code 104.406(f), the Board requests that Brickyard:

5. Clarify the proposed placement of monitoring wells in relation to the proposed compliance boundary and the edge of the unit if an adjusted standard from 35 Ill. Adm. Code 811.318(b)(3) is requested. *See* 35 Ill. Adm. Code 104.406(f).
6. Clarify if Brickyard is seeking relief from the monitoring well location requirements of 35 Ill. Adm. Code 811.318(b)(5). If temporary well T110 is not appropriate for monitoring groundwater at the edge of the zone of attenuation, propose an alternate location for a down-gradient monitoring well at the edge of the zone of attenuation. *See* 35 Ill. Adm. Code 104.406(f).
7. Clarify if Brickyard is seeking relief from the statistical requirements of 35 Ill. Adm. Code 811.318(b)(5) found in 35 Ill. Adm. Code 811.320(e). If such relief is necessary, propose an alternate requirement for statistical

analysis of groundwater monitoring data to demonstrate compliance with the applicable groundwater standards. *See* 35 Ill. Adm. Code 104.406(f), 811.320(e), 814.402(a)(8), 811.319(a)(1)(B), 811.319(a)(1)(C)(i), 811.319(a)(4)(B)(i), 811.319(b)(5)(G), and 811.320(d).

8. Clarify whether Brickyard is also seeking relief from the provision of 35 Ill. Adm. Code 811.318(b)(5) that sets forth the requirement for determining a violation of the groundwater quality standards at the compliance boundary. If relief from this provision is sought, propose an alternate requirement for demonstrating compliance with the applicable groundwater quality standard at the compliance boundary. *See* 35 Ill. Adm. Code 104.406(f).
9. If requesting an adjusted standard from 35 Ill. Adm. Code 811.320(c), explain how this subsection is applicable and the reasoning for the request along with a proposed alternate requirement to reflect Brickyard's intent. *See* 35 Ill. Adm. Code 104.406(f), 814.402(a)(8), Pet. Exh. A.
10. Revise the proposed conditions of the adjusted standard to reflect that the Board, not the Agency, may adjust the compliance boundary, consistent with the provisions of 35 Ill. Adm. Code 814.402(b)(3). *See* 35 Ill. Adm. Code 104.406(f), Pet. Exh. A.
11. Provide clarification on Brickyard's request for a "*temporary* Applicable Groundwater Quality Standard." Pet. Exh. A. (emphasis added). If Brickyard is seeking an adjusted standard from the 35 Ill. Adm. Code 302 numeric water quality standards that are applicable pursuant to 35 Ill. Adm. Code 814.402(b)(3), propose specific alternate groundwater quality standards and provide information in accordance with Section 28.1 of the Act (415 ILCS 5/28.1 (2010)) and the procedures of 35 Ill. Adm. Code 104.Subpart D. *See* 35 Ill. Adm. Code 104.406(f), 811.320(a), 811.320(b), 814.402(a)(8), and 814.402(b)(3).
12. If requesting an adjusted standard from the definition of "compliance boundary" at 35 Ill. Adm. Code 814.402(b)(3), state such a request and include language for an alternate definition consistent with the "zone of compliance" that may be provided by the Board consistent with 35 Ill. Adm. Code 814.402(b)(3)(H) and 814.402(b)(3)(I). *See* 35 Ill. Adm. Code 104.406(f).
13. If requesting an adjusted standard from the definition of "zone of attenuation" set forth in 35 Ill. Adm. Code 810.103, expressly state the request and propose language for an alternate definition consistent with the zone of attenuation that may be provided by the Board in 814.402(b)(3)(H) and 814.402(b)(3)(I). Integrate the specifics for the bottom of the uppermost aquifer as well as the lateral extent into the

depiction or description of the proposed zone of attenuation and compliance boundary. *See* 35 Ill. Adm. Code 104.406(f).

14. Describe what institutional controls are proposed “to contain the extraneous materials in the existing location.” Pet. at 13, *see* 35 Ill. Adm. Code 104.406(f).
15. Propose a condition of the adjusted standard that would encompass the institutional controls referenced in the petition. *See* 35 Ill. Adm. Code 104.406(f).
16. Propose a condition of the adjusted standard regarding Brickyard’s commitment to proceed with the extraneous materials cover plan and the date by which it must be completed. *See* 35 Ill. Adm. Code 104.406(f).
17. Address the costs associated with the institutional controls and extraneous materials cover plan. *See* 35 Ill. Adm. Code 104.406(f).
18. Provide quantitative information on the existing groundwater quality within the proposed zone of attenuation as well as the background concentrations approved by the Agency thus far. *See* 35 Ill. Adm. Code 104.406(h).

Section 814.402(b)(3)(H) of the Board regulations provides, “[i]n 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.” 35 Ill. Adm. Code 814.402(b)(3)(H).

19. Address whether the “*average* annual high water mark” as proposed in the petition or the *maximum* annual high water mark of all years recorded is consistent with the requirements of 35 Ill. Adm. Code 814.402(b)(3)(H).
20. Instead of an average or maximum, provide comments on using an annual high water mark statistically associated with a recurrence interval of 10, 25, 50 or 100 years (i.e. 10%, 4%, 2% or 1% probability).
21. Indicate the values for the annual high water mark for the 10-, 25-, 50- and 100-year recurrence intervals and whether the proposed zone of attenuation would extend beyond these values.

Section 814.402(b)(3)(I) provides, “[n]otwithstanding the limitations of subsection 814.402(b)(3)(H), in no case shall the zone of compliance at an existing [Municipal Solid Waste Landfill] unit extend beyond 150 meters from the edge of the unit.” *See* 35 Ill. Adm. Code 814.402(b)(3)(I). Figure 7 of the TSD depicts the “proposed compliance boundary” with a red dashed line. Based on the scale of Figure 7, the contour of the red dashed line appears to extend beyond 150 meters in three places: the southwest corner of the unit between N 50000 and N

49500; the southwest corner between E 2000 and E 3000; and the east corner between N 50000 and N 50500 near the E 5000 line. Therefore, the Board requests that Brickyard:

22. Present a revised figure showing a proposed compliance boundary within 150 meters from the edge of the unit and within the facility property line. Please ensure that the thickness of the line used to depict the proposed compliance boundary is also within 150 meters from the edge of the unit and the facility property line.
23. Revise Figure 9 of the petition to more clearly depict the property boundary.
24. Provide justification for the adjusted compliance boundary along sections of the unit's perimeter where the extraneous material is not present.
25. Propose specific, revised adjusted standard language reflecting all of the standards from which Brickyard seeks relief along with a list of conditions pertaining to the alternate requirements Brickyard proposes to meet.

The Board acknowledges that Brickyard has waived its right to a public hearing in this matter and that no request for a hearing was received from the Agency or the public. The Board reserves the right to set this case for hearing upon review of Brickyard's amended petition. Further, the Board is in receipt of the Agency's recommendation, filed on July 17, 2013, that Brickyard be granted the adjusted standard. *See* 35 Ill. Adm. Code 104.416. In its recommendation, the Agency points out some shortcomings of the petition. However, the Board has found some inconsistencies between the Agency's recommendation and Brickyard's petition filed with the Board. For example, at page 17 of the Agency's recommendation, the Agency includes the text of Brickyard's Exhibit A. That text differs from the text of Exhibit A as filed with the Board. Brickyard did not file a response to the Agency's recommendation. *See* 35 Ill. Adm. Code 104.416(d).

Therefore, without expressly including the Agency's remarks in this order, the Board directs Brickyard to address the Agency's concerns along with the questions above in the amended petition. In addition, the Board requests that the Agency supplement its recommendation, if necessary, to reflect the documents filed with the Board. The Agency may do so within 45 days after Brickyard files its amended petition, pursuant to 35 Ill. Adm. Code 104.416. The amended petition and any amended recommendation "need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear." 35 Ill. Adm. Code 104.418(d).

In the interest of taking timely action in this matter, the Board orders that Brickyard file its amended petition by September 9, 2013, which is the first business day following the 30th day after the date of this order. Failure to timely file the amended petition will subject this matter to dismissal. Brickyard may request additional time, if necessary, from the assigned hearing officer. This order makes no determination on the merits of Brickyard's petition. Lastly, the Board notes that if Brickyard amends the petition "such that the amendment is a substantive

change to the requested relief in that it requests additional or alternative relief,” Brickyard “must re-notice the amended petition pursuant to Section 104.408” (35 Ill. Adm. Code 101.408). 35 Ill. Adm. Code 104.418(a).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013 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 at the end.

John T. Therriault, Clerk
Illinois Pollution Control Board