

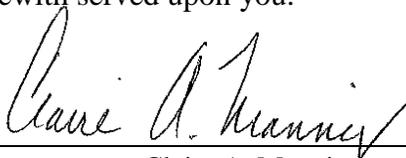
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF)	
)	
)	
PETITION OF BRICKYARD DISPOSAL)	
& RECYCLING, INC.)	AS 13 - 04
PURSUANT TO 35 Ill. Adm. Code)	(Adjusted Standard - Land)
814.402(b)(3))	
)	

NOTICE OF FILING

To: ALL PARTIES ON THE ATTACHED SERVICE LIST

Please take notice that today we have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board a PETITIONER'S RESPONSE TO IEPA RECOMMENDATION, copies of which are herewith served upon you.



 Claire A. Manning

Dated: December 5, 2013

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CERTIFICATE OF SERVICE

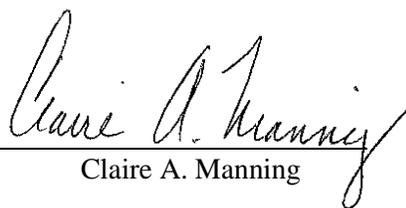
I, the undersigned, certify that on this 5th day of December, 2013, I have served electronically the attached Notice of Filing and the Petitioner's Response to IEPA Recommendation, upon the following persons:

John Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
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and by first class mail, postage affixed upon:

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PETITIONER'S RESPONSE TO IEPA RECOMMENDATION

NOW COMES Brickyard Disposal & Recycling, Inc. ("Brickyard" or "Petitioner"), by its attorneys Brown Hay & Stephens, LLP and, in support of its Petition for an Adjusted Standard in the above-captioned matter ("Petition"), hereby responds to the Recommendation filed on November 26, 2013, by the Illinois Environmental Protection Agency ("IEPA" and "IEPA Recommendation").

As noted in the Petition, Brickyard and the IEPA have engaged in extensive exchange of information and discussion, both pre-filing and post-filing, including sharing with IEPA the Technical Report document attached to the Petition and Amended Petition (unless context specifically requires otherwise, hereinafter referred to as "Petition"). The Petition itself resulted from a meeting with the IEPA, where all participants agreed that the approach set forth in the Petition was appropriate and needed in order to achieve permitting for an effective groundwater monitoring network. The dialogue between the representatives of Brickyard and the representatives of the IEPA has accordingly informed the Petition and presumably serves as the basis for the IEPA Recommendation that the Board grant the requested Adjusted Standard.

Petitioner recognizes that the IEPA Recommendation is an unqualified and unconditional one; this Response is filed solely as a means to clarify and/or eliminate any outstanding issues so that the Board might be in a position to expeditiously approve this uncontested request.

First, the relief Petitioner seeks is limited to the unique facts of this case: historical deposition of extraneous materials¹ outside the permitted boundary of an inactive landfill which is regulated pursuant to Part 815, Subpart D. Clearly, the Board's regulations of general applicability do not contemplate that extraneous materials exist outside the permitted landfill footprint.

Second, in order to achieve final closure, further IEPA permitting is required – specifically, permitting of a final groundwater monitoring network. Without this adjusted standard, the parties understand that the rules of general applicability here would require that the final compliance monitoring wells be placed over the contiguous fill area. This is because Section 811.318(b) requires that the final wells be placed “as close to the potential source of discharge as possible” and Section 814.402(b) appears to define compliance boundary as “any point *on the edge of the unit* at or below the ground surface”. In its recommendation, IEPA notes that technical personnel in the Bureau of Land have reviewed the technical information submitted by Petitioner in this proceeding and, on the basis of that review, IEPA notes that “no

¹ In its recommendation, the IEPA explains that the Petitioners use of the phraseology “extraneous fill material” does not comport with any definition of waste found in the Act. See IEPA Recommendation, at ¶50. The IEPA then sets forth several statutory definitions which might more appropriately fit the characterization of this historically deposited material: specifically, waste and/or construction or demolition debris and/or clean construction or demolition debris. See IEPA Recommendation, at ¶51- ¶52. Petitioner does not here refute that assessment, but points out that the Petitioner employed the phrase “extraneous fill material” purposefully, as a way of generically referring to the material – instead of attempting to classify the specific statutory type of deposited material in the context of this Petition. The Petitioner has described the material as best as possible in the Petition, without any intention to misrepresent. Given the IEPA's unqualified recommendation to grant, the IEPA obviously agrees with Petitioner that a specific statutory characterization of the material is not necessary to the Board's analysis of the Petitioners' request that the Board identify (and adjust) the compliance boundary pursuant to Section 814.402(b)(3). The key here is that the parties understand that the material was historically deposited outside the permitted area of the landfill but contiguous thereto and, for the purpose of this Petition, the area is not a part of the permitted landfill, nor is it a lateral expansion of Brickyard I, or its waste footprint. See IEPA Recommendation, at ¶54.

condition exists for Petitioners to submit [an] ‘approvable’ significant modification permit application proposing the finalized groundwater monitoring network.” IEPA Recommendation, at ¶63. Thus the parties here agree that: (a) the responsible regulatory approach is to place the monitoring wells beyond the area of the extraneous fill material, to properly monitor *any* potential releases; and (b) the rules of general applicability do not allow for such without adjustment of the compliance boundary.

Third, the Board has specifically provided for an adjusted standard procedure that would allow for a modification or adjustment of an otherwise applicable compliance boundary. See Section 814.402(b)(3). The factors justifying a grant of such modification are set forth in Section 814.402(b)(3), at (A) – (I).² The Petition, with supporting technical documentation, fully analyzes these specific regulatory factors. In fully and unconditionally recommending a grant of the requested Petition, the IEPA does not suggest that Petitioner’s analysis is insufficient in any way that would require the Board to deny the requested relief. Instead, after a review of the Petition by IEPA’s technical staff, the IEPA concluded that the Board should GRANT the requested relief.

Fourth, the environment will be better protected with the grant of this variance, as it will “allow Petitioner and Respondent to assess in more detail any environmental impacts that are occurring or may occur”. IEPA Recommendation, at ¶57. Further, the Petitioner has agreed to provide sufficient cover on the extraneous fill area, in order to minimize and eliminate any environmental impact from the fill area. In further response to the question the Board had

² The Petitioner submits that these factors, not those derived from Section 28.1(c) of the Act, apply since Section 28.1(c) is triggered only when “the rule of general applicability does not specific a level of justification”. In that latter event, several statutory factors (incorporated into the Board’s procedural rules) are applicable. See 415 ILCS 28.1(c) (1)-(4) and 35 Ill. Adm. Code 104.406. Nonetheless, Petitioner has addressed these more general adjusted standard factors as best as possible in the context of this petition. The IEPA does not suggest that the Petitioner’s analysis of these factors is insufficient in any way that would require the Board to deny the requested relief.

related to containment of this area (or “institutional controls”) Petitioner offers that Petitioner fully intends to deed restrict the entire Brickyard property, including the fill area, in perpetuity.

Fifth, the IEPA has suggested a modification of the proposed Board Order, by the addition of a new paragraph 5:

Within 12 months of the date of this Order, Brickyard shall complete installation of the final groundwater monitoring well network following the permitting process through a significant modification permit application.

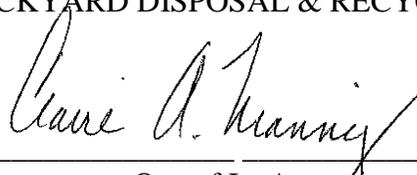
Petitioner recognizes that the proposed timeframe requires timely permitting, which is not solely within the Petitioner’s control. However, Petitioner appreciates that IEPA desires Petitioner to be in a position to submit an “approvable” permit application and a Board grant of this variance will put Petitioner in that position. Accordingly, and in the interests of expedient resolution of this matter, the Petitioner will accept the proffered language.

CONCLUSION

The Petitioner has met its burden of justifying relief pursuant to Section 814.402(b) of the Act – relief that simply allows for a rationale groundwater monitoring network, within the context of these unique facts. The IEPA Recommendation fully supports the requested relief and recommends that the Board GRANT the Petitioner’s request.

Respectfully, Petitioner requests that, if at all possible, the Board provide a decision on this matter at its final meeting of 2013, as Petitioner’s business planning anticipated spring construction of the soil cover referenced herein, which would require construction schedules to be secured prior to the end of 2013. Moreover, Petitioner hopes for a speedy resolution of this noncontroversial request so that the necessary permitting can be timely obtained and appropriate monitoring can begin.

BRICKYARD DISPOSAL & RECYCLING, INC.

By: 
One of Its Attorneys

Dated: December 5, 2013

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