

ILLINOIS POLLUTION CONTROL BOARD
May 20, 2004

IN THE MATTER OF:)
)
PETITION OF JO'LYN CORPORATION and) AS 04-2
FALCON WASTE AND RECYCLING FOR) (Adjusted Standard - Land)
AN ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 807)

ORDER OF THE BOARD (by N.J. Melas):

On April 21, 2004, petitioners Jo'Lyn Corporation (Jo'Lyn) and Falcon Waste and Recycling (Falcon Waste) (collectively, petitioners) petitioned the Board for an adjusted standard from 35 Ill. Adm. Code 807, the Board's solid waste regulations, or in the alternative, a finding of inapplicability of those rules. The petition was accompanied by a motion for entry of decision by August 15, 2004.

Falcon Waste is a division of Jo'Lyn and both petitioners operate a facility that processes granulate bituminous shingle material (GBSM) into a paving product called Eclipse Dust Control. The petitioners' facility is located at 1200 Rose Farm Road, Woodstock, McHenry County. Petitioners seek a determination that the raw material used in their production process is not a "waste" as it is defined in the Environmental Protection Act (Act), and that therefore, they do not need waste permits under Part 807 of the Board's rules. Alternatively, the petitioners seek an adjusted standard from Part 807. As discussed below, the Board directs petitioners to provide more information, pursuant to Section 28.1 of the Act and Section 104.406 of the Board's rules, in an amended petition.

The petition states that Jo'Lyn and Falcon Waste recycle asphalt shingles, or GBSM, into Eclipse Dust Control. Jo'Lyn states that the GBSM it uses is not post-consumer material, so it uniform in composition and does not contain inconsistent materials, nails, or potential asbestos. The recycled product is ground GBSM that is placed over an area to be paved and compacted to provide dust control. Pet. at 2.

Section 28.1 of the Act (415 ILCS 5/28.1 (2002)) 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 the petitioner'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). As required by 35 Ill. Adm. Code 104.410, the petitioners timely filed a certificate of publication with the Board, on May 5, 2004, indicating that notice of the petition was published in the *Northwest Herald* on April 30, 2004.

Although the notice is proper, the Board finds that the petition has not adequately addressed certain proof required by Section 28.1(c) of the Act and certain information sufficiency requirements required by the Board's rules at 35 Ill. Adm. Code 104.406. Specifically the petition fails to provide:

1. The specific subsections of Part 807 from which petitioners request an adjusted standard. The petitioners request an adjusted standard from the entire Part 807 of the Board's solid waste requirements. 35 Ill. Adm. Code 104.406(a), (e). The petition does not indicate which specific subsections of Part 807 apply to the petitioners' operation.

Parts 810 through 817 of the Board's rules have superseded requirements specifically applicable to solid waste landfills, and the petition does not indicate whether these parts of the Board's regulations apply to the petitioners' operation. Additionally, the petition does not address the applicability of 35 Ill. Adm. Code 720.130 and 131 for Board solid waste determinations.

2. The complete street address of the facility; whether the facility is located at 1200 North or South Rose Farm Road. 35 Ill. Adm. Code 104.406(d).
3. The area affected by the petitioners' activity, the number of employees, the age of the facility, and any pollution control equipment used. 35 Ill. Adm. Code 104.406(d).
4. Whether, if GBSM is determined a "waste," it would qualify as a "special waste," and be subject to special waste hauling requirements under Section 809 of the Board's rules. 35 Ill. Adm. Code 809; 35 Ill. Adm. Code 104.406(d).
5. A description of the air emissions at the facility as a result of the petitioners' production process. The petitioners state they have applied for an air permit (Pet. at 2). 35 Ill. Adm. Code 104.406(d).
6. Whether the petitioners' process incorporates the same types of GBSM and potential uses that are described in the Agency's May 18, 1993 solid waste determination. 35 Ill. Adm. Code 104.406(f).

The Agency's determination letter describes specific paving applications and states: "Any material not used as described above is subject to the regulations as they apply." Pet. at Exh. D. The Agency's determination letter also defines the raw material as GBSM material "generated by the Bedford Park facility." The petitioners state they will purchase raw material from other manufacturers, for example, IKO Chicago, Inc. Pet. at 2, 8; Pet. Exh. A. The petition does not provide an analysis of GBSM from other manufacturers, installation specifications for applications other than identified in the Agency's determination letter, product quality test results, or performance of existing applications. Such information is relevant to whether the waste is consistent and will not be used in unsuitable applications resulting in subsequent waste problems.

7. How the petitioners will define GBSM in the proposed adjusted standard wording so that only materials such as those described in the petition will be used. 35 Ill. Adm. Code 104.406(f). For example, the petition defines the GBSM that Jo'Lyn uses as: "clean and consistent post-production material generated at the end of

the manufacturing of roofing shingles, such as ‘tabs’ or punch-outs, and miscolored or damaged shingles. GBSM is not post-consumer material or shingle ‘tear-offs,’ such as inconsistent materials, nails, and potential asbestos content.” Pet. at 2. However, the proposed adjusted standard language does not define GBSM.

8. Product performance information supporting that applying shingle chips at a 2-inch thickness is as effective as a 5-6 inch thickness to ensure a cohesive, durable roadbed. The Agency’s solid waste determination specifies that shingle chips “shall be applied at sufficient thickness (5-6”) to ensure a cohesive, durable roadbed” (Pet. Exh. D), whereas the installation quotes from Falcon Waste and Recycling specify a 2-inch thickness for installations. Pet. Exh. E; 35 Ill. Adm. Code 104.406(f).

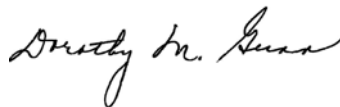
Additionally, the petition lacks product performance information supporting that the product can be used on parking lots, driveways, farmlands, animal feed areas, bike and walking paths and other surfaces. Pet. at 2. The Agency’s determination specifically limits application to “unpaved, muddy, soft, or dusty roadways.” Pet. Exh. D.

9. The quantity of GBSM purchased and stored annually and the quantity of GBSM processed and sold annually for use in dust control projects. Accumulation of large amounts of either raw materials or finished product at the facility could qualitatively and quantitatively impact the environment if petitioners are granted an adjusted standard from the Board’s solid waste disposal rules and financial assurance requirements. 35 Ill. Adm. Code 104.406(g).

While the petitioners have requested expedited review of this petition, the Board cannot accept the petition or grant expedited review until the petitioners provide additional information. The Board therefore directs petitioners to address the information requirements of Section 28.1 of the Act and Section 104.406 of the Board’s rules in an amended petition. In light of the petitioners’ request for expedited review and the petitioners’ request for a determination of applicability of the Board’s Part 807 rules, the Board directs the Agency to file its recommendation regarding the amended petition within 30 days after it is filed with the Board. See 35 Ill. Adm. Code 104.416(a).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 20, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board