

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**JUL 08 2004**

**STATE OF ILLINOIS**  
**Pollution Control Board**

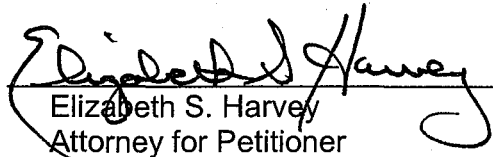
IN THE MATTER OF:	)	
	)	
PETITION OF JO'LYN CORPORATION	)	
and FALCON WASTE AND RECYCLING	)	AS 04-02
for an ADJUSTED STANDARD from	)	(Adjusted Standard – Land)
35 ILL.ADM.CODE PART 807 or,	)	
in the alternative, A FINDING OF	)	
INAPPLICABILITY.	)	

**NOTICE OF FILING**

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 8<sup>th</sup> day of July 2004, the following was filed with the Illinois Pollution Control Board: **Amended Petition for Adjusted Standard**, which is attached and herewith served upon you.

JO'LYN CORPORATION and  
FALCON WASTE AND RECYCLING

By:   
Elizabeth S. Harvey  
Attorney for Petitioner

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Firm I.D. No. 29558

**CERTIFICATE OF SERVICE**

I, the undersigned non-attorney, state that I served a copy of the above-described document to counsel of record in the above-captioned matter via U.S. Mail at One IBM Plaza, Chicago, IL 60611 on or before 5:00 p.m. on July 8, 2004.

  
Jeanette M. Podlin

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

## **SERVICE LIST**

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 08 2004**

**STATE OF ILLINOIS**  
**Pollution Control Board**

IN THE MATTER OF: )  
)  
PETITION OF JO'LYN CORPORATION )  
and FALCON WASTE AND RECYCLING )  
for an ADJUSTED STANDARD from )  
portions of 35 Ill.Adm.Code 807.103 and )  
35 Ill.Adm.Code 810.103, or )  
in the alternative, A FINDING OF )  
INAPPLICABILITY. )

AS 04-02  
(Adjusted Standard – Land)

**AMENDED PETITION FOR ADJUSTED STANDARD**

Petitioners Jo'Lyn Corporation ("Jo'Lyn") and Falcon Waste Disposal ("Falcon") (collectively, "petitioners") hereby submit their amended petition for adjusted standard.

Background

On April 21, 2004, petitioners filed their petition for adjusted standard, or in the alternative, a finding of inapplicability. Petitioners seek a determination that the raw material used in their production process is not a "waste," and that therefore they do not need waste permits pursuant to the Board's regulations. In the alternative, if the Board disagrees that the material used is not a waste, petitioners seek an adjusted standard from portions of the Board's waste regulations. On May 20, 2004, the Board issued an order directing petitioners to provide additional information in support of the petition. This amended petition addresses the informational issues identified by the Board in its order, and is intended to be read in conjunction with petitioners' April 21, 2004 petition. (The sections below coincide with the numbered paragraphs of the Board's order.)

Petitioners continue to believe, as demonstrated in the adjusted standard petition, that the material used in the production process is not a "waste." (See Petition for Adjusted Standard, pp. 3-7.) The Agency determined, in 1993, that the same

material used by petitioners, generated by the same company (IKO Chicago) from which petitioners purchase their material, is not a waste. (See Petition for Adjusted Standard, Exhibit D.) Additionally, the material does not fit the regulatory definition of "waste," and thus cannot be regulated as such. In the alternative, petitioners have sought an adjusted standard. Petitioners supply this additional information at the request of the Board, to support that alternative request, without prejudice to petitioners' demonstration that the material is not a "waste."

Paragraph one.

The Board asks for the specific sections of Part 807 from which an adjusted standard is sought, and whether Parts 810 through 817 are applicable to petitioners' operations. Petitioners sought an adjusted standard from all of Part 807, as that part contains permitting and other requirements for solid waste management facilities. Because it is petitioners' position that the GBSM should not be treated as a "waste," petitioners hereby identify the definitions of "facility," "solid waste," "solid waste management," "waste," and "unit" contained in Section 807.104, as the specific section from which an adjusted standard is sought. The GBSM should not be treated as a "waste," and thus the facility is not a solid waste management site. If the Board grants an adjusted standard from those definitions of Section 807.104, the remaining provisions of Part 807 will not be applicable to petitioners' facility, as it will not handle "waste," and will not be a solid waste management site.

Petitioners further seek an adjusted standard from the definitions of "facility," "landfill," and "solid waste" contained in Section 810.103 of the Board's rules. Petitioners' reasoning is the same as its request for an adjusted standard from the

enumerated definitions in Section 807.104. The GBSM should not be treated as a “solid waste,” and thus petitioners’ facility is not a “landfill.” If the Board grants an adjusted standard from the identified definitions of Section 810.103, the provisions of Parts 811 through 817 are not applicable to petitioners’ facility.

The Board also inquired about the applicability of 35 Ill.Adm.Code 720.130 and 720.131. These sections allow the Board to make solid waste determinations that certain types of reclaimed and recycled materials are not solid wastes.<sup>1</sup> Petitioners have not specifically pursued such a determination under Sections 720.130 and 720.131, because those determinations are valid only for one year, and must be renewed each year by filing a new application. (35 Ill.Adm.Code 720.131(a).) For a small business such as petitioners, pursuing a new determination every year is cost-prohibitive, and results in continuing uncertainty about whether the business will be allowed to continue in the next year. More importantly, petitioners have demonstrated that they should be granted an adjusted standard from the definitions of Parts 807 and 810, as outlined above. An adjusted standard from those definitions will provide petitioners with a permanent solution.

Paragraph two.

The facility is located at 1200 North Rose Farm Road, Woodstock, McHenry County, Illinois.

Paragraph three.

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<sup>1</sup> In making those determinations, the Board uses the adjusted standard procedures. 35 Ill.Adm.Code 720.133.

The area used in petitioners' processing of the GBSM is approximately the size of a football field. The facility has four employees. There are two employees involved in the processing of the material. Additionally, petitioners employ two drivers to haul the material from IKO Chicago to petitioners' facility.

Petitioners first purchased a small amount of GBSM in late 2000. (See paragraph nine, below.) That small amount was stored at another site (2 Kennedy Road, Harvard, Illinois) over the winter of 2000-2001. Petitioners' current facility opened on February 1, 2001, and is therefore approximately three years old. The only necessary pollution control equipment is the muffler on the horizontal grinder used to process the material.

Paragraph four.

The Board asks whether, if the GBSM is a "waste," it is a "special waste" and thus be subject to the special waste hauling requirements of Part 809 of the Board's rules. GBSM is not a special waste. Under the former special waste rules, the Agency declassified IKO Chicago's "roofing product manufacturing waste" as a special waste. "Roofing product manufacturing waste" was defined as an accumulation of nonhazardous paper, asphalt, mineral, and glass material, kept separate from the shingles sold to the end user. (See the Agency's January 14, 1994 letter, attached as Exhibit H<sup>2</sup>.) It is important to note that, while GBSM could be included within that definition of "roofing product manufacturing waste," GBSM is merely a subset of that "waste." GBSM does not contain glass or other "contaminants."

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<sup>2</sup> Exhibit H is the first exhibit to this amended petition. Exhibits A through G are attached to the original petition for adjusted standard.

When the Board amended its special waste rules in 1999, it included a provision that all Agency declassifications would remain effective for two years. (35 Ill. Adm. Code 808.101.) Thus, the Agency's declassification of the "roofing product manufacturing waste" (which includes GBSM) remained effective until July 1, 2001.

Under the current "special waste" statutory and regulatory scheme, the GBSM is eligible for self-certification by the generator (for example, IKO Chicago) that its industrial process waste is not "special waste," pursuant to Section 22.48 of the Act. (415 ILCS 5/22.48.) The GBSM, even if considered industrial process waste, does not fit into any of the categories (i.e., liquid waste, contains asbestos or PCBs, delisted hazardous waste, decharacterized hazardous waste or a waste resulting from shredding recyclable metals) which would prohibit the generator from self-certifying the waste as non-special waste. Petitioners will utilize only GBSM which has a certification from the supplier that the GBSM is not special waste. The GBSM is not a special waste, and thus is not subject to the special waste hauling requirements.<sup>3</sup>

Paragraph five.

The only air emissions at the facility are minimal emissions from the muffler on the grinder.<sup>4</sup> The grinding process itself uses a light mist of water, so there is no dust from the grinding.

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<sup>3</sup> The definition of "special waste" in Part 809 specifically exempts industrial process wastes certified by its generator under Section 22.48 of the Act. (35 Ill. Adm. Code 809.103.) Thus, because the GBSM does not fit the regulatory or statutory definition of "special waste," the special waste hauling requirements of Part 809 are not applicable.

<sup>4</sup> Petitioners note that they applied for an air permit at the direction of the Agency, and did so after being told that no land permit was necessary. See Petition for Adjusted Standard, pp. 2-3.

Paragraph six.

As noted in the adjusted standard petition, petitioners currently purchase GBSM only from IKO Chicago, Inc., which is the entity to which the Agency's 1993 solid waste determination was addressed.<sup>5</sup> Thus, the only GBSM currently used by petitioners is the GBSM which was the subject of the Agency's solid waste determination. Petitioners would, of course, like to expand their business at the conclusion of this process by seeking to contract with other shingle manufacturers in Illinois. However, petitioners have not yet pursued contracts with other manufacturers while petitioners seek resolution of this matter. Any GBSM pursued from other manufacturers would be used only if it met the definition of GBSM (see paragraph 7), so as to ensure the integrity of the process and to guard against "unsuitable applications resulting in subsequent waste problems."

Petitioners have created two test sections to demonstrate the product performance of Eclipse Dust Control (the market name for the GBSM as applied by petitioners' process). In August 2001 petitioners spread their first test section: it has maintained durability, even though the installation specifications have been improved since the August 2001 pavement was installed. The test section has bonded to the gravel base and formed a solid road base. In addition to the expected elimination of dust on the road surface, petitioners and the owner of the property were pleased to learn that the product also virtually eliminates noise: it is as if the trucks using the surface travel on carpet. The August 2001 test section has now held up through three winters, even with plowing, and shows no deterioration. There is no cracking or rutting

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<sup>5</sup> That GBSM is generated at IKO Chicago's Bedford Park, Illinois facility, as approved in the Agency's solid waste determination.



of the surface. (Please see letter from the property owner of the test section, attached as Exhibit I.)

Petitioners' second test section was applied as a driveway in September 2002. The material was applied to current installation specifications (see paragraph eight, below, for current installation specifications), but the GBSM was ground to a smaller size (1/2 inch pieces) than currently used (3 to 5 inch pieces). There is a slight hairline cracking of the surface (which was the reason for increasing the size of the ground pieces), but the material has maintained over two winters. (See picture attached as Exhibit J.)

These two test sections continue to perform today. The test sections have also demonstrated additional benefits beyond the expected dust and mud reduction. The test pavements have dramatically reduced the noise from vehicles traveling over the pavement. Additionally, the material is not as stiff as blacktop or concrete, so it bends and molds under traffic. While heavy trucks can crack the edges of concrete and blacktop, Eclipse Dust Control does not crack due to the resiliency of the product. When watching a truck drive over a surface, one can literally see that the Eclipse Dust Control gives under the truck wheels, and then returns to its original position, leaving no ruts. Finally, some customers have commented on the different look of Eclipse Dust Control. While it appears similar to blacktop, it has its own look. Some parties are interested in Eclipse Dust Control precisely for its different look.

In short, the material and installation specifications, and the excellent results on petitioners' test sections, demonstrate that the GBSM is suitable for use in Eclipse Dust Control applications.

Paragraph seven.

Petitioners propose the following amended adjusted standard language:

Jo'Lyn Corporation and Falcon Waste and Recycling are hereby granted an adjusted standard from the following definitions of 35 Ill.Adm.Code 807.104: "facility," "solid waste," "solid waste management," "waste," and "unit." Jo'Lyn Corporation and Falcon Waste and Recycling are further granted an adjusted standard from the following definitions of 35 Ill.Adm.Code 810.103: "facility," "landfill," and "solid waste." These enumerated definitions do not apply to operations conducted by Jo'Lyn and/or Falcon at the facility in McHenry County, Illinois, so long as:

1. Jo'Lyn and Falcon continue to use only clean granulate bituminous shingle material ("GBSM") acquired from a manufacturer of roofing products or other source of clean GBSM.
2. For purposes of this adjusted standard, GBSM is defined as "clean and consistent post-production material generated at the end of the manufacturing of roofing shingles, such as tabs or punchouts, and miscolored or damaged shingles. GBSM excludes post-consumer material or shingle tear-offs."
3. Jo'Lyn and Falcon continue to grind the GBSM into uniform pieces, either course ground or fine ground.
4. Jo'Lyn and Falcon use the GBSM chips to form paving surfaces.
5. Jo'Lyn and Falcon operate the facility in compliance with other provisions of the Environmental Protection Act.

Paragraph eight.

The Board's order seeks additional information regarding product performance. First, the Board asked for information supporting that applying GBSM at a two inch thickness is as effective as the 5 to 6 inch thickness specified in the Agency's 1993 solid waste determination. Petitioners do indeed apply the shingle chips at a 4 to 6 inch thickness, prior to compacting. The installation specifications for the product, Eclipse Dust Control, are as follows:

- a. The site is evaluated, and low areas are filled with grade 9 stone (approximately  $\frac{3}{4}$  inch driveway stone) to bring the surface to a level base. A slight arch is maintained for proper drainage.
- b. The ground GBSM (ground to a 3 to 5 inch size) is applied to the surface, at the thickness of 4 to 6 inches. The application is done with either a latent box (black top spreader) or a bobcat with a blade attachment.
- c. The GBSM is then compacted to a finished 2-3 inch thickness. Compaction is done using a 10-ton vibratory roller.

Thus, the application of Eclipse Dust Control is done to the same specifications as approved by the Agency in 1993. However, to ensure the cohesiveness and durability of the product as applied, petitioners go one step further, and compact the product to a finished 2 to 3 inch thickness. As petitioners' test results show (see paragraph six, above), the finished, compact paving product is durable and useful.

Second, the Board asks for performance information supporting the use of the product for parking lots, driveways, farm lanes, animal feed areas, bike and walking paths, and other surfaces. As the Board noted, the Agency's determination, finding that GBSM is not a waste, focused on the application of GBSM to "unpaved, muddy, soft or dusty roadways." Petitioners note that the uses enumerated in the petition for adjusted standard (parking lots, driveways, farm lanes, animal feed areas, bike and walking paths, and other surfaces) are essentially the same as the Agency's approved use of "unpaved, muddy, soft or dusty roadways." All of those uses involve the paving of previously unpaved areas, to reduce dust and provide a consistent and even surface. Thus, product performance information for parking lots, driveways, farm lanes, animal

feed areas, bike and walking paths, and other surfaces, is essentially the same as for roadways. In fact, in some cases (for example, bike and walking paths), any concern about the durability of the surface should be less than any concern about the paving of “unpaved, muddy, soft or dusty roadways” (as already approved by the Agency in 1993), since the weight on bike and walking paths is less than the weight imposed on roadways. Petitioners are confident that application of the product on surfaces very similar to the already-approved roadways is effective.

Paragraph nine.

The Board seeks information regarding the quantity of GBSM purchased, stored, processed and sold annually. IKO Chicago (petitioners’ current source of GBSM) generates approximately 8300 tons of GBSM per year. However, to date, petitioner have never purchased or hauled more than 2900 tons in a single year. Petitioners have bought and hauled 5756.25 tons of GBSM from IKO Chicago over the years 2000 through 2003.<sup>6</sup> The breakdown of petitioners’ annual purchases from IKO is:

2000	92.46 tons
2001	2168.38 tons
2002	2825.52 tons
2003	<u>669.89 tons</u>
Total	5756.25 tons

Of that total, petitioners have used approximately 400 tons in their test applications (see paragraph six above), leaving a current supply of 5356.25 tons. However, stockpiling of this amount of GBSM would not occur under “normal” working conditions after approval: the GBSM is currently stored while petitioners seek approval

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<sup>6</sup> Petitioners did not purchase GBSM in 2004, as they sought to obtain approval for their process from first the Agency, and now the Board.

of the process. Essentially all of the existing supply is currently sold to customers, with installation of the product delayed awaiting environmental approvals. Petitioners have contracts with the following customers, committing to purchase GBSM:<sup>7</sup>

Hartland Township	500 tons
Algonquin Township	500 tons
Richmond Township	500 tons
Spring Lake Sand and Gravel	2080 tons
Various Home Owners	<u>1116 tons</u>
Total Committed	4696 tons

Additionally, petitioners had an agreement with Ben Indurante for the purchase of 2288 tons. However, Mr. Indurante was forced to cancel his order while petitioners' operations are on hold awaiting the environmental approval of the process, since he needed the dust control immediately. Thus, petitioners have demonstrated that they can sell the material quickly, resulting in very little, if any, material stored at the facility.

The production rate (grinding time) is approximately 40 tons per hour. During an eight-hour working day, petitioners are capable of processing 320 tons of material, which equates to 1600 tons per week, and 6400 tons per month. Assuming processing over a five month period (May through September), petitioners are capable of processing 32,000 tons of GBSM. This capability far exceeds the supply of GBSM available from IKO Chicago (8300 tons per year).<sup>8</sup>

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<sup>7</sup> These commitments were obtained in a very short period of time: approximately two weeks of sales activity. As noted, petitioners' operations are currently "on hold," so petitioners have not pursued sales opportunities. However, petitioners continue to receive inquiries about the product, and will pursue those opportunities and more as soon as they receive the necessary approvals.

<sup>8</sup> As noted in the petition for adjusted standard, while petitioners currently contract only with IKO Chicago, there are other shingle manufacturers in Illinois who are also potential sources of GBSM. Petitioners have not yet pursued contracts with these other manufacturers while they seek resolution of this matter. Petitioners would, of course, be limited to use of GBSM which meets the definition contained in the proposed adjusted standard. See paragraph seven. Additionally, the production rates provided are for

Because the application process must be performed in the summer, petitioners do cease activity for several months over the winter. Petitioners could theoretically have a supply of 1500 to 5000 tons of unprocessed material at their facility over that short "shut down" period. That supply would be quickly processed and used as soon as the weather allowed in the spring, so any storage is temporary. Petitioners would not store processed material over the winter months, because the material is best used within two weeks of grinding.<sup>9</sup>

Even with the limited purchases and production that petitioners have been able to do to date (while pursuing environmental approvals), petitioners have demonstrated that they have the capability of purchasing, selling, and processing the GBSM in a short period of time. The GBSM material is a clean and consistent pre-consumer material, and contains no asbestos, fiberglass, nails, wood or other "contaminants" which could adversely impact the environment over the relatively short period of storage of the product.

### CONCLUSION

As demonstrated in petitioners' petition for adjusted standard, the GBSM is not a "waste." Thus, petitioners' process is not subject to the Board's solid waste rules, and no adjusted standard is necessary. However, in the alternative and without conceding, if the Board finds that the GBSM is subject to the waste rules, petitioners seek an adjusted standard from those rules. Compliance with the rules is economically unreasonable, and provides no environmental or health benefit.

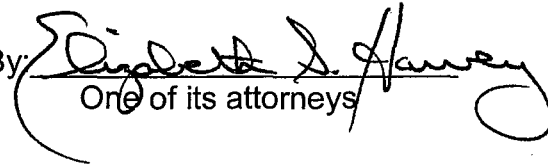
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one grinder. If supply and demand warranted, petitioners could add additional grinders, to increase their production capacity and to further minimize the time the GBSM is on site.

<sup>9</sup> The material can still be used more than two weeks after grinding and still be effective. Using the material within two weeks is optimal, however.

Respectfully submitted,

JO'LYN CORPORATION and  
FALCON WASTE AND RECYCLING

By:   
One of its attorneys

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ENVIRONMENTAL PROTECTION AGENCY

May A. Cade, Director  
217/524-3300

2200 Churchill Road, Springfield, IL 62794-9274

REC'D JAN 21 1994

January 14, 1994

IKO Chicago, Inc.  
Attn: Reynold R. Hagel  
6600 South Central Avenue  
Bedford Park, Illinois 60638

Re: 0310125096 -- Cook County  
IKO Chicago, Inc.  
Log No. D-253  
Special Waste Determination: Roofing Product Manufacturing Waste  
Permit File

Dear Mr. Hagel:

The Agency has evaluated your request for declassification of a special waste stream for Roofing Product Manufacturing Waste generated at the above referenced facility. That request is dated November 5, 1993 and was received by the Agency on November 16, 1993. Based upon the Agency's evaluation of Log No. D-253 the waste described therein has been deemed declassified pursuant to 35 Ill. Adm. Code 808.245(d). Furthermore, the waste shall not be considered a special handling waste (Class B special waste) as defined in 35 Ill. Adm. Code 808.110.

Pursuant to 35 Ill. Adm. Code 808.523, the following conditions are applicable to this waste stream classification determination:

1. WASTE STREAM DESCRIPTION:

Roofing Product Manufacturing Waste: An accumulation of non-hazardous paper, asphalt, mineral and glass matter which are separated from shingles that are packaged for distribution to the end user.

2. WASTE STREAM IDENTIFICATION NUMBER:

Log No. D-253

3. WASTE STREAM CLASSIFICATION:

Solid Waste: Pursuant to 35 Ill. Adm. Code 808.245(d), the special (non-RCRA) waste as described in Log No. D-253 is declassified and shall no longer be considered a special waste for regulatory purposes.

4. LIMITATIONS ON THE MANAGEMENT OF THE WASTE:

The declassified special waste must be disposed at a lawfully permitted site authorized to accept solid waste. This declassification shall not apply when the waste is generated, transported or disposed in a manner other than that described in Log No. D-253.

Printed on Recycled Paper

EXHIBIT  
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5. QUALITY ASSURANCE PLAN:


The quality assurance plan submitted under Log No. D-253 pursuant to 25  
111 Adm. Code 608.402(a)(8) is hereby approved.

6. EXPIRATION DATE:

There is no specific expiration date for this special waste stream  
classification. However, this classification is subject to review and  
modification by the Agency as deemed necessary to fulfill the intent and  
purpose of the Environmental Protection Act, and all applicable rules and  
regulations.

If you have questions concerning this special waste declassification, please  
contact Doug Van Natta at 217/524-3295.

Very truly yours,

  
Lawrence H. Eastep, P.E., Manager  
Permit Section  
Division of Land Pollution Control  
Bureau of Land  
Resources  
LHE:DCV:bat/0035W/30-31





## H & H Mini Unit Storage

10 Kennedy Drive  
Harvard, Illinois 60033  
PH: 815-943-6629  
FAX: 815-943-7035

Jo-Lyn Corporation  
Don Powles  
P.O. Box 638  
Harvard, IL 60033

Dear Don,

This letter is to inform your company of our satisfaction with our driveway and parking lots performance over the last three years. Until then the dust was almost unbearable and the mud, very annoying. As you know the driveway is traveled by both autos and heavy duty truck use. Considering the abuse and virtually no maintenance, we consider the paving alternative "Eclipse Dust Control" to be a superior product and would recommend its use to others with dust and mud problems.

Sincerely,

Y. Roy "Charlie" Hunt II  
Vice President  
Harvard Crane and Construction Co., Inc.

EXHIBIT

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**EXHIBIT**  
J