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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MAR 24 2005

IN THE MATTER OF:)
)
PETITION OF SCHAEFER ENTERPRISES)
 OF WOLF LAKE, INC.)
)
FOR ADJUSTED STANDARD FROM)
 35 ILL. ADM. CODE SECTION)
 848.202(b)(5).)

STATE OF ILLINOIS
Pollution Control Board

AS 2005-006
(Adjusted Standard)

NOTICE OF FILING

TO: Pollution Control Board
Attention: Clerk
100 West Randolph Street
James R. Thompson Center
Suite 11-500
Chicago, IL 60601-3218

YOU ARE HEREBY NOTIFIED that on the 22 day of March, 2005, I have forwarded to Dorothy M. Gunn, Clerk, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, IL 60601, an original and nine copies of Petition for an Adjustment to Tire Processing Requirement of 35 Ill. Adm. Code Section 848.202(b)(5) in the above-entitled cause. A copy of said Petition for an Adjustment to Tire Processing Requirement of 35 Ill. Adm. Code Section 848.202(b)(5) is attached hereto and provided herewith.

GOLDENBERG, MILLER, HELLER
& ANTOGNOLI, P.C.

By: Debra J. Meadows
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PRINTED ON RECYCLED PAPER

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**PETITION FOR AN ADJUSTMENT TO
TIRE PROCESSING REQUIREMENT
OF 35 ILL.ADM. CODE SECTION 848.202(b) (5)**

COMES NOW the Petitioner, Schaefer Enterprises of Wolf Lake, Inc., by and through its attorneys Debra J. Meadows and Goldenberg, Miller, Heller & Antognoli, P.C., and petitions the Illinois Pollution Control Board (the Board), pursuant to Section 28.1 of the Illinois Environmental Protection Act, 415 ILCS 5/28.1, and the Board's procedural rules (35 Ill. Adm. Code 101 et seq.), and for its Petition for Adjusted Standard from 35 Ill. Adm. Code 848.202(b)(5)¹.

A. Standard From Which Adjusted Standard is Sought.

Schaefer requests an adjusted standard from the Board's 14-day dry storage limitation for used and waste tires found at 35 Ill. Adm. Code 848.202(b)(5), which provides as follows:

Section 848.202 Requirements . . .

¹35 Ill. Adm. Code 848.202(b)(5) was amended at 16 Ill. Reg. 3114, effective February 14, 1992.

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(b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

(5) Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. All used and waste tires received at the site before June 1, 1989, shall be altered, reprocessed, converted, covered or otherwise prevented from accumulating water by January 1, 1992.

B. Statement of Applicability

The regulation of general applicability at issue was not promulgated to implement, in whole or in part, the requirements of the Clean Water Act (33 U.S.C. 1251 et seq. (1988)), Safe Drinking Water Act (42 U.S.C. 300(f) et seq. (1988)), Clean Air Act (42 U.S.C. 7401 et seq. (1988)), or the state programs concerning the Resource Conservation and Recovery Act (RCRA), Underground Injection Control (UIC), or the National Pollutant Discharge Elimination System (NPDES).

C. Level of Justification and other Information or Requirements Necessary for An Adjusted Standard.

The regulation of general applicability does not specify a level of justification or other requirements. The level of justification specified in Section 28.1(c) of the Illinois Environmental Protection Act states that the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that (1) the factors relating to the petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner; (2) the existence of those factors justifies an adjusted standard; (3) the requested standard will not result in environmental or health effects substantially

and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and (4) the adjusted standard is consistent with any applicable federal law.

D. Description of Petitioner's Activity.

Schaefer Enterprises of Wolf Lake, Inc. (Schaefer Enterprises) is located in Union County, Illinois and has been engaged in the business of buying and selling salvage equipment and used and reconditioned parts for thirty-eight (38) years. The business is owned and operated by the Schaefer Family Corporation. Schaefer Enterprises currently employs forty three (43) full-time employees and, during the last calendar year, served approximately ten thousand (10,000) customers. Schaefer's customers are dealers and end-users of primarily construction and logging equipment.

As a salvage business, Schaefer Enterprise's customers often purchase inexpensive spare tires for various purposes regarding the transportation and/or repair of machinery and construction equipment. As a result, the business stores many tires on their rims due to their weight and bulk. It is difficult for employees to handle the tires after they or the equipment on which they are mounted have been burned, submerged under water, or corroded by the elements. Consequently, employees handle the tires as little as possible until they learn how the tires will be sold.

Schaefer Enterprises is registered with the Illinois Environmental Protection Agency (EPA) as a tire site with a maximum of 450 used or waste tires present at any one time. In this Petition, Schaefer Enterprises hereby requests that the Board grant an adjustment from the dry storage

requirement imposed by Section 848.202(b)(5). Instead, Schaefer Enterprises requests that it be allowed to treat its tires with a larvicide approved by the EPA, pursuant to Section 848.205.²

E. Efforts Necessary to Comply.

Due to the long inventory cycle in the salvage business and long-term useful life of construction equipment, Schaefer often stores inventory for long periods of time. For this reason, compliance with Section 848.202(b)(5) leaves the Petitioner with only one alternative: constructing a facility large enough to store all tires, which are larger than average, in its possession. The business is located in a flood plain. The estimated overall capital costs would exceed \$80,000, and the annualized capital and operating costs would total about \$6,000. The cost of constructing the facility is increased by required compliance with regulations governing construction in flood plains. These costs make it impracticable for Petitioner to undertake such construction.

Instead of requiring that Schaefer maintain dry storage for all tires held for over fourteen (14) days, the same effect would be reached by treatment of said tires with EPA-approved larvicide. Such larvicides are non-hazardous and have negligible environmental impact.

F. Proposed Adjusted Standard.

The Petitioner proposes the following adjusted standard for inclusion in the Board's order in this matter:

Schaefer Enterprises of Wolf Lake, Inc. Used Repair Parts and Tire Storage Site.

²35 Ill. Adm. Code 848.205 was amended at 16 Ill. Reg. 3114, effective February 14, 1992.

For a site owned and operated by Schaefer Enterprises of Wolf Lake, Inc. located at Highway 3, P.O. Box 136, Wolf Lake, IL 62998, the scope of exemption and alternate management standards applied to that facility are as follows:

- a) Scope of Exemption.
 - 1) Schaefer Enterprises of Wolf Lake, Inc. may exclude from the cost estimate under Section 848.404 the cost of removing all tires purchased for repair and resale at the site.

- b) Alternative Management Standards. As part of the contingency plan requirements of Section 848.203, Schaefer Enterprises of Wolf Lake, Inc. shall:
 - 1) Within 90 days after the effective date of these regulations develop and implement a tire storage plan to minimize the threat of fire and mosquito breeding. Such a plan shall include, but is not to be limited to, tire storage arrangements and mosquito inspection and control.
 - 2) Request and submit to the Agency a statement from the Illinois Department of Public Health that the program developed under subsection (c)(1) is adequate to control mosquito larvae and pupae; except that, if the Department has not sent a statement within 45 days after receipt of the request, such statement need not be submitted and the Agency shall make such a determination. Schaefer Enterprises of Wolf Lake, Inc. has the burden of demonstrating that the threat of mosquito breeding has been minimized. Requests for such statements of determination shall be sent to:

Division of Environmental Health
Office of Health Protection
Illinois Department of Public Health
525 W. Jefferson Street
Springfield, Illinois 62761

This standard would exempt Schaefer Enterprises of Wolf Lake, Inc. from the 14 day tire storage limitation and aisle spacing requirements for those tires of a size and intended use which was not envisioned in formulating the requirements of this Part and for which the management standards

are not amenable. Instead, Schaefer Enterprises of Wolf Lake, Inc. would follow approved alternate management standards.

G. Impact on the Environment.

Petitioner submits that no difference exists between the quantitative and qualitative impact of Petitioner's activity on the environment if petitioner were to comply with the regulation of general applicability as compared to that under the proposed adjusted standard. If such a difference exists, it is negligible.

If petitioner were to somehow comply with the 14 day tire storage limitation of 35 Ill. Adm. Code 848.206(b) (and petitioner maintains that is infeasible), all tires on petitioner's property would necessarily be brought under cover. Covered as such they would be dry and pose little threat of mosquito infestation. However, Schaefer Enterprises cannot cover the tires without incurring unreasonably high expenses. If the petitioner attempted to cover the tires with tarpaulins in order to keep them dry this would be ineffectual. These tarps would allow rain water to seep inside and the moisture would cause mosquito larvae to hatch. Schaefer Enterprises therefore decided to examine other ways to comply with the regulations.

The petitioner had placed rock salt in the tires to eliminate breeding of mosquitoes but upon being advised by the EPA that this was not an approved practice this practice was stopped. Schaefer Enterprises works to minimize the amount of water accumulating in the tires by stacking the larger tires on the bottom in a "pyramid" effect. This minimizes the amount of water caught in the tires and also effectively blocks dirt and/or organic matter from blowing into the tires.

Schaefer Enterprises believes that if it were to cover the tires with a tarpaulin to keep them dry this would be ineffectual. It is believed that water would accumulate on top of the tarpaulin and rainwater would also seep inside allowing moisture for hatching of mosquito larvae.

Schaefer Enterprises cannot construct a suitable closed end building for its largest tires. A building large enough and strong enough to house these tires would be prohibitively expensive to build. The estimated over all capital costs for constructing such a building would exceed \$80,000.00. Such a cost is not justified when the alternative to cover is merely to treat the tire with an approved pesticide.

Moreover, moving the tires indoors may have an unexpected cost. Bringing these tires indoors would make it more difficult to fight a fire should one occur. Maneuvering inside of a building to fight fires is dangerous. The possibility of being trapped by tight spaces, and the lack of access for hoses and equipment would make it very dangerous.

An approved pesticide would be used on the day of the receipt of the tire to prevent mosquito's infestation. In addition, the owner/operator would inspect the tires monthly to ascertain whether mosquito larvae are present. If so, the tires would again be treated or sprayed in compliance with the regulations. The threat of mosquitos infestation would be minimized. This does not constitute the continuous or ongoing use of pesticides as the application would only take place after inspection revealed a problem. It should also be noted that a threat for mosquitos lasts only during a few months of the year when temperatures are high enough for incubation. An expensive building for storage would give no advantage during spring and winter months.

Petitioner submits that under the proposed adjusted standard the threat to the environment is no greater than under the regulation of general applicability.

H. Justification of the Proposed Standard.

As discussed above in paragraph E, the use of pesticide pursuant to 35 Ill. Adm. Code 848.205 will ensure that the requested standard will meet the needs created by the Board in adopting the rule of general applicability.

Ceasing Petitioner's business in the area of salvaging used and damaged tires would in fact be contrary to the Illinois Environmental Protection Act's purpose of ensuring the collection and beneficial use of used tires. 415 ILCS 5/53(b)(1).

Title XIV, Used Tires, of the Environmental Protection Act was enacted to prevent the accumulation of used and waste tires, unmanaged used and waste tire sites, and the resulting threat to the public health posed by providing a habitat for a disease-spreading mosquitoes and other organisms. 415 ILCS 5/53(1)(2-4). Petitioner is a long-standing, respected business organization which is regularly monitored by the Illinois Environmental Protection Agency. It is in no way the type of "dumping site" the Act seeks to prevent. In its use of approved pesticide pursuant to 35 Ill. Adm. Code 848.205, the concern of infestation is nullified. Granting Petitioner an adjusted standard will not defeat the purpose of Title XIV. In fact, the same finding states that one purpose of the Act is to ensure that used and waste tires are collected and put to beneficial use or properly disposed. Petitioner will further this purpose.

I. Consistency with Federal Law.

This request for an adjusted standard will not conflict with Federal law as stated at Title 40, Protection of the Environment, of the Code of Federal Regulations.

J. Waiver of a Hearing on Petition.

Petitioner hereby waives its right to hearing on this Petition.

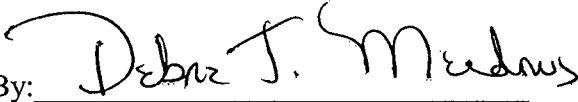
K. Legal Authorities.

1. 35 Ill. Adm. Code 848.202(b)(5).
2. 415 ILCS 5/28.1.
3. 415 ILCS 5/53.
4. 35 Ill. Adm. Code 848.205.

III. CONCLUSION

WHEREFORE, the Petitioner prays that the Pollution Control Board grant the adjustment to the dry storage requirement for tire storage as set forth above.

GOLDENBERG, MILLER, HELLER &
ANTOGNOLI P.C.

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