

ILLINOIS POLLUTION CONTROL BOARD

October 4, 2007

IN THE MATTER OF: )  
 )  
PETITION FOR ADJUSTED STANDARD ) AS 08-3  
FROM 35 ILL. ADM. CODE 620.420 FOR ) (Adjusted Standard - Land)  
NOBEL RISLEY'S LANDFILL #2 )

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

On September 5, 2007, the Board received a petition for adjusted standard from Nobel Risley's Landfill #2 (Landfill). Nobel Risley's Landfill #2 is located in rural Franklin County near the town of Benton. The adjusted standard concerns the Class II groundwater standards for chloride, and the Landfill requests an increase in the limit from 200 milligrams per liter (mg/l) to 600 mg/l.

The petition asserts that Rend Lake is the public water supply for the area, and no private wells are downgradient of the Landfill. The receiving body for the Landfill area's groundwater is the Big Muddy River. Hearing is waived "unless an objection is filed or a member of the public requests one".

**PENDING MOTIONS**

Two motions were filed along with the petition. The first is a motion for leave to file only a total of four copies of the 1,250-page Technical Justification, prepared by the consulting firm Leggette, Brashears, & Graham, supporting the petition's conclusions. Petitioner also requested expedited decision so that the Landfill can get a certificate of completion of post-closure care. Petitioner stated that it expects the Illinois Environmental Protection Agency (Agency) to file a Recommendation in support of the petition. Petitioner asserts that the Agency has been working with the consultant's report since November 2006.

The Agency has not filed a response to either motion. But, on September 27, 2007, the Agency did file a motion (Ag. Mot.) for a 45-day extension of the time in which it must file the Recommendation to the Board as required by Section 10.416(a) (35 Ill. Adm. Code 104.416(a)). The Recommendation, by the rule's terms, is due within 45 days of the petition's filing, *i.e.* by October 20, 2007, or in this instance, October 22, 2007, the first business day following the 45th day after the filing of the petition. *See* 35 Ill. Adm. Code 101.300(a).

The Agency motion states that a filing extension is necessary because the Agency did not receive the adjusted standard filing on September 5, 2007, as did the Board. The Agency states it first received e-mail files purporting to be the petition on September 11, but that it could not open these files, which appeared to be corrupt. While the Agency received paper copies of the petition and its accompanying motions on September 13, 2007, the Agency did not receive a copy of the 1,250-page Technical Justification. The Agency states that it cannot verify whether the documents filed with the Board on September 5, 2007 are the same in form or substance as those petitioner filed with the Agency in November and July 2006. The Agency contends that

“[i]f relief is not granted, the [Agency] will suffer prejudice since over three weeks of time will have elapsed without proper service of the filed documents”. Ag. Mot. at 3. The motion, dated September 25, 2007, does not state that the Agency had received the document in question as of the time of the petition’s writing.

### **DISCUSSION**

While the Board typically does not grant motions until the expiration of the response period, the Board is ruling on the Agency motion to avoid undue delay or material prejudice as provided for in 35 Ill. Adm. Code 101.500(d). The Board extends the time for the filing of the Agency Recommendation for 45 days from the date of this order, making the Recommendation now due on or before November 19, 2007, the first business day following the 45th day after the date of this order.

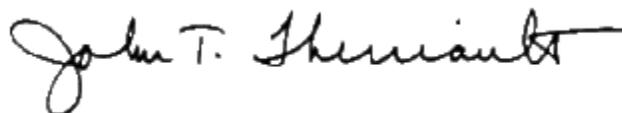
The Board notes that it has not yet accepted this petition, and makes no finding today as to whether the petition satisfies the content requirements of Section 104.406 (35 Ill. Adm. Code 104.406). The Board will, however, grant petitioner’s motion to file only four copies of the Technical Justification document.

Lastly, the Board denies the motion for expedited consideration. Requests for expedited review are governed by Section 101.512 of the Board's rules, and must contain, *inter alia*, a complete statement of the facts and reasons for the request. *See* 35 Ill. Adm. Code 101.512. In acting on a motion for expedited review, the Board considers, at a minimum, all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b). In addition, the Board will only grant a motion for expedited review consistent with available resources. *See* 35 Ill. Adm. Code 101.512(c).

The Landfill’s motion fails to address most of the factors outlined in the rule, and is denied on this ground. As also noted in the rule, expedited review is granted consistent with decision deadlines and available resources. The Board currently has numerous open rulemaking dockets that demand immediate attention, as well as pressing cases that will keep the Board busy for several months. Due to attrition, Board staffing is at its lowest levels in some years. Even if the Board were to accept that the Landfill’s claims amount to “material prejudice”, the Board’s limited resources in light of its current and future decision deadlines render the granting of a motion for expedited review unlikely in all but the most dire circumstances.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 4, 2007, by a vote of 4-0.



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John Therriault, Assistant Clerk

Illinois Pollution Control Board