

ILLINOIS POLLUTION CONTROL BOARD

November 1, 2007

IN THE MATTER OF:)
)
 PETITION FOR ADJUSTED STANDARD) AS 08-3
 FROM 35 ILL. ADM. CODE 620.420 FOR) (Adjusted Standard - Groundwater)
 NOBEL RISLEY’S LANDFILL NO. 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 at 35 Ill. Adm. Code 620.420. The Landfill requests an increase in the limit from 200 milligrams per liter (mg/L) to 600 mg/L, in order to allow the Illinois Environmental Protection Agency (Agency) to issue a closure certificate for the Landfill.

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".

The Agency has not yet filed its recommendation on the petition for an adjusted standard (Recommendation). See 35 Ill. Adm. Code 104.416. The Recommendation is due to be filed November 19, 2007, pursuant to the Board’s order of October 4, 2007. In that same order, the Board stated that it had not yet accepted the Landfill’s petition, and made no finding as to whether the petition satisfies the content requirements of Section 104.406 (35 Ill. Adm. Code 104.406).

In this order, the Board first determines whether the Landfill has satisfied the statutory notice requirements for adjusted standard petitions. See 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408, 104.410. The Board then identifies information deficiencies in the Landfill’s petition and directs the Landfill to address specific deficiencies by filing an amended petition on or before December 3, 2007.

NOTICE

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1(d)(1) (2006)) and Section 104.408(a) of the Board’s procedural rules (35 Ill. Adm. Code 104.408(a)) require the adjusted standard petitioner to publish notice of filing the petition. Those authorities require advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. The notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. 415 ILCS 5/28.1 (2006); 35 Ill. Adm. Code 104.408(b). Publication must take place within 14 days after the petition is filed. See, e.g., In re Petition of SCA Tissue North American, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301

and 218.302(c), AS 05-1 (Jan. 6, 2005) (dismissing petition for adjusted standard for lack of jurisdiction when publication of notice occurred after 14-day period). Within 30 days after filing the petition, the petitioner must file a certificate of publication with the Board. 35 Ill. Adm. Code 104.410.

On September 12, 2007, the Landfill filed a certificate of publication documenting that the required notice of the petition was provided in the *Benton Evening News* on September 8, 2007. The Board finds that the Landfill has met the notice requirements of the Act and the Board's procedural rules. See 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408, 104.410.

INFORMATIONAL DEFICIENCIES

Generally, the Board cannot grant an adjusted standard unless, "upon adequate proof by the petitioner," the Board determines that petitioner has satisfied the four factors in Section 28.1(c) of the Act. 415 ILCS 5/28.1(c) (2006); see also 35 Ill. Adm. Code 104.426 (a). The Board has completed its initial review of the Landfill's petition. While the petition satisfies informational requirements of 35 Ill. Adm. Code 104.426(a) for the most part, additional information or clarification concerning the standard from which relief is sought, landfill closure requirements, proposed adjusted standard language, and restriction against use of affected groundwater would be helpful to the Board in making its decision. More specifically, the Board requests additional information on the following points:

1. Concerning Section 104.406(a) of the Board's regulations (35 Ill. Adm. Code 104.406(a)), the standard from which adjustment is sought, the Board requests the following additional information:

While the petition identifies the standard from which an adjustment is sought as the Class II groundwater quality standard for chloride at 35 Ill. Adm. Code 620.420(a)(2), the Technical Justification states that groundwater at the landfill meets the criteria to be classified as Class I. See Tech. Just. (11-07-06) at 5. Although both Class I and Class II chloride standards are the same (200 mg/L), the Landfill must clarify whether it requests a grant of relief from the Class I or Class II chloride standard set forth at 35 Ill. Adm. Code 620.410 and 620.420, respectively. The Landfill must also provide supporting information to justify the appropriate classification of groundwater beneath the landfill site in accordance with 35 Ill. Adm. Code 620, Subpart B.

2. Concerning Section 104.406(d) of the Board's regulations (35 Ill. Adm. Code 104.406(d)) and the facility's description, the Board requests the following additional information:
 - While the Landfill maintains that all closure requirements have been met, the petition does not include a copy of the landfill permit showing the specific closure requirements for the Landfill. The petitioner must submit a copy of the landfill permit showing the closure requirements, including

those pertaining to groundwater monitoring. Further, where applicable, the Landfill must identify specific sections of the adjusted standard technical justification that address the closure requirements included in the permit.

- The Landfill must describe the design and construction of the landfill, including the type of liner, collection system, and caps used.
- The Landfill must provide general information concerning the facility, including its age and number of employees.
- The Landfill must specify whether there are any emissions from the landfill, such as leachate or gas emissions. The Landfill must state whether any pollution control equipment is in place for landfill management, such as for leachate or gas control, and whether operation and maintenance of such equipment will be terminated upon certification of closure.

3. Under Section 104.406(f) of the Board's regulations (35 Ill. Adm. Code 104.406(f)) and the narrative adjusted standard description, the Board requests the following additional information:

- As also requested above, the Landfill must clarify the appropriate groundwater quality standard (Class I or Class II) from which relief is sought. Further, the Landfill must specify whether the proposed 600 mg/L chloride limit applies to dissolved chloride or total chloride.
- The Landfill must clarify the proposed adjusted standard language to clearly delineate the vertical and horizontal boundaries within which the adjusted groundwater quality standard would apply by identifying the affected water bearing unit and supplying the legal description of the landfill property.
- The Landfill must explain the rationale for proposing an adjusted chloride groundwater quality standard of 600 mg/L instead of a lower level that reflects the statistically valid range of chloride levels observed at the down gradient monitoring well G103. A review of the quarterly groundwater monitoring data from October 1999 to May 2004 along with the more recent monitoring results from May 2007 for G103 indicates that except for the chloride level of 516 mg/L measured on February 6, 2002, the chloride levels ranged from 221 mg/L to 350 mg/L. Further, petitioner's consultant Leggette, Brashears and Graham, Inc., in its February 2, 2006 response to Agency comments, identifies the dissolved chloride level of 516 mg/L in well G103 as an "outlier" based on the statistical analysis of the data. Tech Just. (11-7-2006) App. A, Table 1.

4. Under Section 104.406(h) of the Board's regulations (35 Ill. Adm. Code 104.406(h)) and justification for the relief sought, the Board requests the following information:

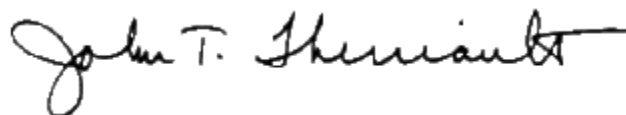
While the petition states that groundwater beneath the landfill and down gradient of the landfill does not presently serve as a source of drinking water, there is no provision to include an institutional control prohibiting the use of groundwater beneath the site for potable use. The Board has required Environmental Land Use Controls (ELUCs) prohibiting the use of groundwater for potable purposes in similar adjusted standards. *See, e.g. Petition by Hayden Wrecking Corporation for an Adjusted Standard from 35 Ill. Adm. Code 620.410(a), AS 04-3, slip op. at 20 (Jan. 6, 2005) and Petition of the Village of Bensenville for an Adjusted Standard from 35 Ill. Adm. Code 620.410 Regarding Chloride, AS 05-2, slip op at 17 (Oct. 20, 2005).* The Landfill must clarify whether it has already recorded an ELUC specific to the site to prohibit the use of groundwater at the site for potable purposes. If not, the Landfill must address whether any adjusted standard requires an institutional control or Environmental Land Use Control.

The Board again notes that the Landfill has waived hearing in this proceeding unless the Agency or an interested person requests one, so that petition deficiencies cannot be addressed at hearing. Accordingly, the Board directs the Landfill to address these informational deficiencies by filing an amended petition on or before December 3, 2007. Even if the Landfill has already provided the Agency with some or all of the requested information since the September 5, 2007 filing of the petition, that information must be filed with the Board to allow the Board to fulfill its statutory obligations. If an amended petition curing the noted deficiencies is not timely filed, this matter may be subject to dismissal.

As stated above, the Agency Recommendation is due to be filed November 19, 2007 under the Board's October 4, 2007 order. If the Landfill needs additional time to file an amended petition, or the Agency needs additional time to file its Recommendation, the Board directs the parties to apply to the hearing officer for any extension of time, and grants the hearing officer authority to extend the deadlines set in the Board orders issued today and October 4, 2007.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 1, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk

Illinois Pollution Control Board