

ILLINOIS POLLUTION CONTROL BOARD
December 18, 2008

IN THE MATTER OF:)
)
PETITION OF MAXIMUM INVESTMENTS,) AS 09-2
LLC FOR AN ADJUSTED STANDARD) (Adjusted Standard – Land)
FROM 35 ILL. ADM. CODE 740.210(a)(3))
FOR STONEY CREEK LANDFILL IN)
PALOS HILLS, ILLINOIS)

ORDER OF THE BOARD (by G.T. Girard):

On November 7, 2008, Maximum Investments, LLC (petitioner) filed a request for an adjusted standard from 35 Ill. Adm. Code 740.210(a)(3). The Board finds that the petition has two deficiencies that are detailed below. Because of these deficiencies, the Board will not accept the petition and the petition is hereby dismissed.

The first deficiency is a jurisdictional issue. Pursuant to Section 28.1(d)(1) of the Environmental Protection Act (Act), “petitioner shall submit to the Board proof that, within 14 days after filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected.” 415 ILCS 5/28.1(d)(1) (2006). The Board’s procedural rules require that within 30 days of the filing of the petition the petitioner must file a certificate of publication. The Board has not received proof of newspaper publication in this proceeding within 30 days of the filing date, November 7, 2008. The Board has consistently found that publication of newspaper notice of filing is jurisdictional. See In re SCA Tissue North America, L.L.C. for an Adjusted Standard from: 35 Ill. Adm. Code 218.301 and 218.302(c) AS 05-1 (Jan. 6, 2005); In re Horsehead Resource and Development Company, Inc., for an Adjusted Standard under 35 Ill. Adm. Code 720.131(c), AS 00-1(Aug. 5, 1999); In re Heritage Environmental Services, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 702.126(d)(1), AS 00-14 (June 8, 2000). Therefore, absent proof of timely publication, the Board lacks jurisdiction to hear the requested adjusted standard petition.

A second deficiency is that an attorney did not file the petition and has not entered an appearance. Though an individual may represent himself or herself, any person other than an individual must appear through an attorney in a Board adjudicatory proceeding, such as an adjusted standard action. See 35 Ill. Adm. Code 101.100(a)(2); In re Recycle Technologies, Inc. for Adjusted Standard under 35 Ill. Adm. Code 720.131(c), AS 97-9 (Sept. 3, 1998). Although the Board generally allows for an amended petition when a non-attorney signs a filing, the jurisdictional deficiency warrants dismissal of the petition.

The Board finds that the petition is deficient for two reasons . First, the Board does not have jurisdiction to hear the petition because the petitioner failed to provide proof of publication of the petition as required by Section 28.1(d) of the Act. 415 ILCS 5/28.1(d) (2006). Second, an attorney did not file the petition and an attorney has not filed an appearance, contrary to the

Board's procedural rules. 35 Ill. Adm. Code 101.100(a)(2). Because of these deficiencies, the Board dismisses the adjusted standard petition for lack of jurisdiction to hear the petition.

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 December 18, 2008, by a vote of 5-0.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board