

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 2009

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). On December 18, 2008, the Board found that the petition contained two deficiencies that required the Board to decline to accept the petition and the petition was dismissed. On January 12, 2009, petitioner filed a motion asking the Board to reconsider the December 18, 2008 order. For the reasons discussed below the Board grants the motion and will accept the petition. However, the Board directs petitioner and the Illinois Environmental Protection Agency to address certain issues delineated below.

**BACKGROUND**

In the December 18, 2008 order the Board found two deficiencies. The first deficiency was 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 found that proof of newspaper publication had not been filed and found that the Board lacked jurisdiction to hear the requested adjusted standard petition for that reason.

A second deficiency was that an attorney did not file the petition and had 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). The Board noted that although the Board generally allows for an amended petition when a non-attorney signs a filing, the jurisdictional deficiency warrants dismissal of the petition.

**MOTION TO RECONSIDER**

In the motion to reconsider, petitioner asserts that a certificate of publication was timely filed with the Board. Mot. at 1. Specifically, petitioner indicates that the notice was published in the *Southtown Star* on November 18, 2008 and the Board erroneously failed to docket the

certificate. *Id.* The petitioner also filed an amended petition with the motion to reconsider which was filed by petitioner's attorneys. *Id.* Petitioner asks that the Board reinstate this matter and consider the amended petition.

### **DISCUSSION**

In ruling on a motion for reconsideration, the Board will consider factors including new evidence or a change in the law, to conclude that the Board's decision was in error. 35 Ill. Adm. Code 101.902. In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), we observed that "the intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law." Korogluyan v. Chicago Title & Trust Co., 213 Ill. App. 3d 622, 627, 572 N.E.2d 1154, 1158 (1st Dist. 1992). Petitioner has pointed to new evidence, *i.e.* that the certificate of publication was filed with the Board. Therefore, the Board will grant the motion to reconsider.

A search of the Board's files resulted in the Board finding the certificate of publication which had been misfiled and not docketed. The Board notes that the certificate of publication indicates that notice of the adjusted standard was published on November 18, 2008, within 14 days after the filing of the petition. Therefore, the Board's dismissal on December 18, 2008, for lack of jurisdiction was in error. In addition, the filing of an amended petition by petitioner's attorneys cures the second deficiency. The Board reinstates the petition and accepts the amended petition filed by the petitioner's attorneys.

The Board has an additional concern regarding the requested relief. The Board has clear authority to grant adjusted standards to rules of general applicability under Section 28.1 of the Act (415 ILCS 5/28.1 (2006)); however, the Board cannot adjust statutory requirements. *See* 415 ILCS 5/28.1(a) (2006). In this case, petitioner requests adjustment of a standard adopted in the Board's rules that also appears to be a statutory requirement. *See e.g.* 415 ILCS 5/58.2 and 58.7 (2006). The Board directs the petitioner and the Illinois Environmental Protection Agency to address this issue in briefs to be filed with the Board. The hearing officer is directed to establish a briefing schedule with the parties.

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 February 5, 2009, by a vote of 5-0.



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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board

