

ILLINOIS POLLUTION CONTROL BOARD
May 21, 2009

IN THE MATTER OF:)
)
PETITION OF WESTWOOD LANDS, INC.) AS 09-3
FOR AN ADJUSTED STANDARD FROM) (Adjusted Standard – Land)
PORTIONS OF 35 ILL. ADM. CODE 807.104)
AND 35 ILL. ADM. CODE 810.103 OR, IN)
THE ALTERNATIVE, A FINDING OF)
INAPPLICABILITY)

ORDER OF THE BOARD (by G.L. Blankenship):

On March 31, 2009, Westwood Lands, Inc. (Westwood) filed a petition for an adjusted standard (Pet.). Westwood seeks a determination that steelmaking slag fines used in its production process do not constitute “waste” and that its facility therefore does not require permits under the Board’s solid waste regulations. *See* 35 Ill. Adm. Code 807, 810. In the alternative, if Board does not agree that the slag fines are not a “waste,” Westwood seeks an adjusted standard from specified portions of Section 807.104 and 810.103 of the Board’s solid waste regulations. *See* 35 Ill. Adm. Code 807.104 (Definitions), 810.103 (Definitions). A motion for expedited consideration (Mot.) accompanied Westwood’s petition.

Westwood owns a facility located at 4 Caine Drive, Madison, Madison County. Pet. at 1. Westwood’s facility will process slag fines from steelmaking into two usable products for sale. *Id.* at 2. The first product, a coarse fraction of the metallic fines, is to be sold in bulk form. *Id.* at 2, 7. The second product, a fine fraction of the metallic fines, can be sold in bulk or processed into briquettes. *Id.* 2, 7-8. The process would also produce a non-metallic fraction that would be transported off-site to a landfill. *Id.* at 8. Westwood currently has a contract to purchase steelmaking slag fines from U.S. Steel’s Granite City facility. *Id.* at 1; *see also id.* at 8 n.2 (noting other potential sources of steelmaking slag fines).

Westwood states that, when it applied for a permit to construct and operate air pollution control equipment for its facility, the Illinois Environmental Protection Agency (Agency or IEPA) found that the application was incomplete in part because Westwood had not obtained local approval of the site under Section 39.2 of the Act. Pet. at 2; *see* 415 ILCS 5/39.2 (2006); Pet., Exh B at 3 (Agency Notice of Incompleteness). Westwood states that the Agency informed it that the slag fines are “waste” and trigger application of authorities regulating pollution control facilities. Pet. at 2; *see id.*, Exh. B at 3, citing 415 ILCS 5/3.330(b), 39.2 (2006).

Westwood first requests that the Board find that the steelmaking slag fines it uses to make its product is not “waste” and that Westwood does not require waste permits. Pet. at 1; *see* 35 Ill. Adm. Code 807, 810. However, if the Board determines that the slag fines are a solid waste, then Westwood requests an adjusted standard from the definitions of “facility,” “solid waste,” “solid waste management,” “waste,” and “unit” at Section 807.104. Pet. at 6. Westwood states that “[i]f the Board grants an adjusted standard from those definitions of Section 807.104,

the remaining provisions of Part 807 will not be applicable to petitioner's facility as it will not handle "waste" and will not be a solid waste management site." *Id.* Westwood also requests an adjusted standard from the definitions of "facility," "landfill," and "solid waste" at Section 810.103. *Id.*; *see* 35 Ill. Adm. Code 810.103. Westwood argues that "[t]he slag fines should not be treated as a "solid waste," and thus Westwood's facility is not a "landfill." *Id.*

The Agency has not yet filed its recommendation on Westwood's petition for an adjusted standard. *See* 35 Ill. Adm. Code 104.416. Westwood states that it "waives hearing on this petition." Pet. at 11; *see* 35 Ill. Adm. Code 104.406(j).

In this order, the Board first determines whether Westwood 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 Westwood's petition and directs Westwood to address specific deficiencies by filing an amended petition as directed below. The Board then addresses Westwood's motion for expedited consideration.

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 petitioner to publish notice of filing the petition for an adjusted standard. These 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 of publication. 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Publication must take place within 14 days after the petition is filed. 415 ILCS 5.28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(a); *see also* In the Matter of: Petition of SCA Tissue North America, L.L.L. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c), AS 05-1 (Jan. 6, 2005) (dismissing petition 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 April 20, 2009, Westwood filed a proof of publication documenting that the required notice of the petition was published in the *Belleville News-Democrat* on April 14, 2009. The Board finds that Westwood 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.

INFORMATION DEFICIENCIES

The Board finds that Westwood has not provided all of the information required by the Act and the Board's regulations for an adjusted standard petition. *See* 415 ILCS 5/28.1(c); 35 Ill. Adm. Code 104.406. Westwood notes that "[t]he regulations of general applicability (Parts 807 and 810) do not specify a level of justification or other requirements for an adjusted standard." Pet. at 7. In the absence of a specified level of justification, the Board cannot grant an adjusted standard unless, "upon adequate proof by the petitioner," it determines that Westwood has

satisfied the factors at Section 28.1(c) of the Act. *See* 415 ILCS 5/28.1(c) (2006); 35 Ill. Adm. Code 104.426. Below, the Board identifies those information deficiencies and directs Westwood to cure them by filing an amended petition as directed below.

Under Section 104.406(a) of the Board's regulations (35 Ill. Adm. Code 104.406(a)), the Board requests the following additional information:

1. Please cite the effective date of the standards from which an adjusted standard is sought.
2. Do the steelmaking slag fines fall into any of the categories listed on the left-hand side of 35 Ill. Adm. Code 721.Appendix Z (Table to Section 721.102)?
3. Are the steelmaking slag fines considered a "by-product" as defined in 721.101(c)(3)?
 - (a) Would you please indicate whether the "steelmaking slag fines" are a "by-product exhibiting a characteristic of hazardous waste" under 35 Ill. Adm. Code 721.Appendix Z?
 - (b) Have the steelmaking slag fines been tested for characteristics of hazardous waste?
 - (c) Does Westwood's screening protocol for incoming steelmaking slag fines involve testing representative batches for hazardous waste characteristics?
4. Would you please indicate whether the "steelmaking slag fines" are a listed hazardous waste, such as K177, under 35 IAC 721.132(a): "[s]lag from the production of antimony oxide that is speculatively accumulated or disposed of, including slag from production of intermediates (*e.g.*, antimony metal or crude antimony oxide)"?
5. Please indicate whether the "steelmaking slag fines" fall under the any of the exclusions in 35 Ill. Adm. Code 721, such as the following. Under Section 721.103(e)(2),

[t]he following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit on or more of the characteristics of hazardous waste:

* * *

- (c) Nonwastewater residues, such as slag, resulting from high temperature metal recovery (HTMR) processing of K061, K062, or F006 waste in the units identified in this subsection (e)(2) that are disposed of in non-hazardous waste units, provided that these residues meet the generic exclusion levels identified in the tables in this subsection (e)(2)(C) for all constituents and the residues exhibit no characteristics of hazardous waste. The types of units

identified are rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations, or the following types of industrial furnaces (as defined in 35 Ill. Adm. Code 720.110): blast furnaces; smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces); and other furnaces designated by the Agency pursuant to that definition. 35 Ill. Adm. Code 721.103(e)(2)(c).

In addition, under Section 721.104(B), the following solid wastes are not hazardous wastes:

* * *

Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided in 35 Ill. Adm. Code 726.212 for facilities that burn or process hazardous waste. 35 Ill. Adm. Code 721.104(b)(4).

* * *

Iron blast furnace slag. 35 Ill. Adm. Code 721.104(b)(7)(B)(xiii).

* * *

Basic oxygen furnace and open hearth furnace slag from carbon steel production. 35 Ill. Adm. Code 721.104(b)(7)(B)(xviii).

* * *

Slag from primary zinc production. 35 Ill. Adm. Code 721.104(b)(7)(B)(xx).

6. Do the steelmaking slag fines constitute an Illinois Special Waste?

Under Section 104.406(d) of the Board's regulations (35 Ill. Adm. Code 104.406(d)), the Board requests the following additional information:

7. The petition states that Westwood's contract with U.S. Steel "allows Westwood to reject any fines which do not comply with the parameters necessary for Westwood's process." Pet. at 7.

(a) Would you please elaborate on the parameters Westwood evaluates to determine acceptance?

(b) Would you please provide specifics on the parameters and limits used to determine acceptance?

(c) Do any of the parameters include the suite of hazardous waste characteristics for toxicity?

8. The petition states that “[t]he coarse fractions are segregated and then sold in bulk form.” Pet. at 7.

(a) Would you please elaborate on what is the end market for the bulk form of the coarse fractions?

(b) Would you please identify any contracts Westwood has with current or potential buyers or end users?

9. The petition states that “[i]t is also important to note that IEPA allows steel slag fines to be used as a soil amendment. In fact, IEPA has approved the use of slag fines from U.S. Steel’s Granite City Works – the same source of Westwood’s slag fines – as a soil amendment at abandoned mines. (See Exhibit F.)” Pet. at 11. Exhibit F is a letter from IEPA regarding a proposal “to place steel slag fines over the top of the mine refuse to help neutralize the surface refuse and eliminate the acidic water seeps and runoff.” Pet., Exh. F.

(a) Is the potential end market for Westwood’s coarse fraction bulk form as a soil amendment at abandoned mines?

(b) Does Westwood have plans to work with the Illinois Department of Natural Resources, Office of Mines and Minerals, Division of Abandoned Mine Land Reclamation? If so, would you please comment on the number and availability of soil amendment projects where Westwood’s bulk product could be used?

(c) If Westwood plans to use the steelmaking slag fines for land reclamation purposes, does Westwood intend to make a demonstration that such use “will not cause an exceedence of the applicable groundwater quality standards specified at 35 Ill. Adm. Code 620.” See 35 Ill. Adm. Code 817.101(e).

10. The petition states that the metallic particles from the medium, fine, and very fine fractions “are combined with hydrated lime and molasses to create a briquette. The resulting briquette is an end product of Westwood’s process, and is then sold. The advantage of the briquette created by Westwood is that it is easy to handle, and allows for use in a wide spectrum of furnace designs.” Pet. at 7-8.

(a) Would you please elaborate on the end market for the briquettes?

(b) Would you please identify any contracts Westwood has with current or potential buyers or end users?

11. The petition explains that the remaining fraction of non-metallic calcium magnesium silicate is blended with water before transportation to a landfill for disposal. Pet. at 8. The petition indicates this remaining fraction is a “small amount.”

- (a) Would you please quantify the approximate percentage by weight or volume attributable to the calcium magnesium silicate from the incoming steelmaking slag fines?
- (b) Would you please elaborate on whether this waste is a listed or characteristic hazardous waste, or Illinois Special Waste?
- (c) Would you also please comment on whether the waste will be disposed of in Illinois?

12. The Petition notes that “[i]t is also possible that the [non-metallic calcium magnesium] silicate can be approved for use as landfill cover.” Pet. at 8 n.3.

- (a) Would you please elaborate on what would be required to do this?
- (b) Would a TCLP test or paint filter test be required to use the silicate as landfill cover?
- (c) Would the landfill cover be a sellable product or would it simply be approved for land application at landfills at no cost to Westwood Lands?

13. Please define the area affected, the number of employees, the age of the facility, and any pollution control equipment used.

14. Exhibit D of the petition is a letter from the Mayor of the City of Madison. The letter refers to the proposed facility as being “adjacent to the existing rail spurs and acreage on which the slag may be stored. . . .” The Mayor also notes that “the transfer of material from the trucks used for haulage to the plant will take place inside the facility and thus prevent the release of fugitive dust that may be generated.” Pet., Exh. D.

- (a) Would you please elaborate on where and how the steelmaking slag fines would be stored, both prior to and after processing.
- (b) If they are stored in the open air, does the Petitioner have plans to obtain permits for storm water runoff?
- (c) Does storm water runoff require some kind of pretreatment?
- (d) Does the City of Madison have restrictions on the height of the storage piles?

Under Section 104.406(f) of the Board’s regulations (35 Ill. Adm. Code 104.406(f)), the Board requests the following additional information:

15. The Petition states that “Westwood’s raw material, the slag fines purchased from U.S. Steel, is not a ‘waste.’” Pet. at 2. The proposed conditions of the petition do not

limit Westwood's raw material to the slag fines purchased from U.S. Steel. *See id.* at 9-10. The petition states that "there are other sources of steelmaking slag fines that are potential sources of Westwood's raw material." *Id.* at 7 n.2. Would you please elaborate on the testing Westwood would require or perform to determine whether the steelmaking slag fines from other sources are acceptable?

16. Westwood's proposed adjusted standard language includes the following provision: "Westwood retains control of the quality of steelmaking slag fines, including the right to reject any steelmaking slag fines that do not comply with Westwood's standards for fines." Pet. at 10.

- (a) Please address the need to include in the adjusted standard conditions specifying the parameters of acceptable slag fines.
- (b) Please address the conditions under which Westwood would reject a load.
- (c) Please address the need for a provision that each load be tested for hazardous waste toxicity characteristics.
- (d) Please address the need to include a condition in the adjusted standard language regarding slag fines that are initially accepted and later found to exhibit a characteristic of hazardous waste or contain asbestos, PCB, or a listed hazardous waste.
- (e) Please address the costs for achieving the adjusted standard, including testing.

Under Section 104.406(g) of the Board's regulations (35 Ill. Adm. Code 104.406(g)), the Board requests the following additional information:

17. The petition states that "...IEPA allows steel slag fines to be used as a soil amendment. . . . Thus, it is clear that the slag fines do not present an environmental threat." Pet. at 11.

- (a) Would you please comment on any testing that was done on the steel slag fines that were proposed for use at the mine reclamation projects referenced in Exhibit F, *i.e.*, "Florida Little Dog" in Gillespie and "Consol 7" in Staunton?
- (b) Besides any initial testing that was done, were there ongoing testing requirements of the incoming slag or at the mine reclamation site itself?
- (c) In its unredacted portions, the Sales Agreement refers to various categories of steelmaking slag fines available from U.S. Steel's Granite City Works: desulfurization slag fines, steel slag fines, and Ladle Metallurgy Facility slag. What type of steelmaking slag fines were used in the mine reclamation projects referenced in Exh. F?

(d) Under what conditions did IEPA approve of the use of slag fines from U.S. Steel's Granite City Works as soil amendment at abandoned mines?

18. Of the various categories of steelmaking slag fines available from U.S. Steel Granite City Works ("Desulfurization Slag Fines", "Steel Slag Fines", and "Ladle Metallurgy Facility (LMF) Slag"), what type does Westwood plan to use under the adjusted standard or finding of inapplicability? Unredacted language at paragraph 3.2 of Exhibit A (Steelmaking Slag Fines Sales Agreement) states that "Westwood commits to purchase and remove all current generation and segregated Desulfurization Slag fines. . . ." Pet., Exh. A at 2. In addition, unredacted language at paragraph 3.3 of Exhibit A states that "Westwood commits to purchase and remove all current generation and segregated metallic Steel Slag Fines. . . ." Pet., Exh. A at 2. Are these the only types of slag fines Westwood intends to purchase?

19. In unredacted paragraphs 4.1 – 4.4 and 20.3, Exhibit A (Steelmaking Slag Fines Sales Agreement) includes the following statements in:

QUALITY:

Par 4.1: "Westwood acknowledges that it is aware that most of the inventoried Steelmaking Slag Fines at Granite City was produced prior to U. S. Steel's ownership of Granite City and that the Steelmaking Slag fines may contain blast furnace slag, open hearth slag, and/or other byproducts of the steelmaking process."

Par 4.2: "U.S. Steel shall make no warranty on the quality of the Steelmaking Slag Fines to be purchased."

Par 4.3: "Prior to its purchase and in coordination with U.S. Steel, Westwood may obtain reasonably representative portions of the inventoried Steelmaking Slag Fines offered for sale hereunder for testing purposes."

Par. 4.4: "In the event of a significant change in operating conditions at Granite City Works, Westwood and U.S. Steel shall meet to discuss any resulting changes to the quality of material. . . ."

* * *

ENVIRONMENTAL COMPLIANCE:

Par. 20.3: "In the event that Westwood in the performance of the work on Granite City property encounters material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other listed hazardous waste; Westwood shall immediately report such condition to U.S. Steel in writing." Pet., Exh. A at 3-4, 14.

(a) Would you please describe the methods and testing Westwood would use to ensure the quality of the steelmaking fines obtained for Westwood's proposed applications?

- (b) Would you please describe the methods and testing Westwood would use to ensure that the steelmaking fines obtained are not listed hazardous waste or do not exhibit characteristics of hazardous waste?
- (c) Would you please describe the methods Westwood would use to determine if asbestos, PCBs, or other listed hazardous wastes are present in the steelmaking slag fines?

MOTION FOR EXPEDITED CONSIDERATION

Summary of Motion

In its motion for expedited consideration, Westwood states that it has purchased its processing facility and required equipment, which “are ready to operate upon obtaining the necessary environmental permits.” Mot. at 1. Westwood argues that, if the Board determines that the steelmaking slag fines that are the raw material for its process are not a “waste,” then “the facility does not need local siting approval or waste permits.” *Id.* Westwood further argues that, as the alternative to that request for relief, it “seeks and adjusted standard from specific portions of the waste regulations.” *Id.*

Westwood claims that, in spite of having made a substantial investment in its facility and equipment, it “cannot operate until this petition for adjusted standard is resolved.” Mot. at 1-2. Westwood argues that delay of this nature causes it financial hardship. *Id.* Westwood further argues that, as a result of this delay, U.S. Steel is stockpiling steelmaking slag fines. *Id.* at 2. Westwood states that, when it receives regulatory relief, “it can begin operating and transforming the fines into a useful product.” *Id.* Noting that it waived hearing on its petition, “Westwood seeks expedited consideration of, and decision on, its petition.” *Id.*

Board Discussion

A motion for expedited review, among other elements, “must contain a complete statement of the facts and reasons for the request. 35 Ill. Adm. Code 101.512(a). “In acting on a motion for expedited review, the Board will, at a minimum, consider all statutory requirements and whether 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 and decision deadlines. *See* 35 Ill. Adm. Code 101.512(c).

As a matter of its various resources and decision deadlines, the Board cannot expedite consideration of every case or rulemaking proposal. In denying a recent motion for expedited review filed by the City of Galva, the Board stated that its “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.” In the Matter of: City of Galva Site-Specific Water Quality Standard for Boron Discharges to Edwards River and Mud Creek: 35 Ill. Adm. Code 303.447 and 303.448, R9-11, slip op. at 3 (Feb. 5, 2009). The Board recently granted two Agency motions to expedite consideration of two proposed rules, in which the Agency described the risk of United States Environmental Protection Agency (USEPA) sanctions if the State failed to remedy deficiencies in the State Implementation Plan for ozone attainment. In each of these

two rulemaking proceedings, the Board found that “USEPA’s implementation deadline and the risk of federal NO_x sanctions constitute ‘dire circumstances.’” Section 27 Proposed Rules for Nitrogen Oxide (NO_x) Emissions From Stationary Reciprocating Internal Combustion Engines and Turbines: Amendments to 35 Ill. Adm. Code Parts 211 and 217, R07-19, slip op. at 4 (Apr. 2, 2009); In the Matter of: Nitrogen Oxides Emissions from Various Source Categories, Amendments to 35 Ill. Adm. Code Parts 211 and 217, R08-19, slip op. at 4 (Apr. 2, 2009).

As noted above, expedited review is granted consistent with the Board’s decision deadlines and available resources. *See* 35 Ill. Adm. Code 101.512(c). The Board currently has open a number rulemaking dockets requiring immediate attention, as well as pressing cases of other types. As a result of attrition, Board has fewer staff than it has had in many years. These limited resources, particularly in light of current and future decision deadlines, make it unlikely that the Board will grant a motion for expedited review in all but the most dire circumstances.

The Board does not discount Westwood’s assertion that the time required for seeking environmental permits involves some costs. The Board also does not discount Westwood’s assertion that raw materials remain stockpiled at their source and that the requested relief may allow Westwood to begin processing those materials. For the purpose of considering this motion, the Board accepts as true Westwood’s claim that operation of its facility would provide economic and environmental benefits. However, this does not necessarily constitute “material prejudice” sufficient to allow the Board to grant Westwood’s request as made. Accordingly, the motion for expedited review is denied.

CONCLUSION

The Board first finds that Westwood has met the notice requirements of the Act and the Board’s procedural rules.

Next, the Board finds that Westwood has not provided all of the information required for an adjusted standard petition. The Board states that, unless Westwood offers adequate proof in an amended petition, the Board cannot determine that the required statutory factors have been satisfied and cannot grant the petition for an adjusted standard. *See* 415 ILCS 5/28.1(c) (2006). Westwood has waived hearing in this proceeding. Accordingly, the Board directs Westwood to address these information deficiencies by filing an amended petition within 30 days of the date of this order.

Also, the Board denies Westwood’s motion for expedited review.

As noted above, the Agency has not yet filed its recommendation. Under the Board’s procedural rules, that recommendation is not generally due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. 35 Ill. Adm. Code 104.416(a). Also under those procedural rules, Westwood may file a response to the recommendation within 14 days after the date of service of the recommendation. 35 Ill. Adm. Code 104.416(d).

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 May 21, 2009, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board