

ILLINOIS POLLUTION CONTROL BOARD
April 19, 2001

IN THE MATTER OF:)
)
PETITION OF PROGRESSIVE) AS 01-7
ENVIRONMENTAL SERVICES, INC.) (Adjusted Standard - NPDES)
(d/b/a ANTIFREEZE RECYCLING) FOR)
AN ADJUSTED STANDARD FROM)
35 ILL. ADM. CODE 721.131(c))

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On March 15, 2001, Progressive Environmental Services, Inc. (PESI) filed with the Board a petition for an adjusted standard pursuant to Section 28.1 of the Environmental Protection Act (Act). 415 ILCS 5/28.1 (1998). PESI also requested in a cover letter to the petition that the Board either waives any hearing in this matter or provides PESI with an expedited hearing.

PESI requests that the Board grant an adjusted standard from 35 Ill. Adm. Code 720.131(c),¹ by determining that the reclaimed filtered antifreeze from the petitioner's preliminary bag filtration process at a customer's site is a commodity-like material. Pet. at 1.² PESI petitions the Board to find that its filtered antifreeze is not a solid waste under 35 Ill. Adm. Code 720.131(c), so that its operation will not be subject to Board regulations concerning the manifest requirements, transportation, and management of the initially filtered antifreeze. PESI alleged that Board regulations would otherwise require it to special waste permits to transport and manage the antifreeze at its central processing facility, and to manifest and report all shipments of antifreeze from its customers' facilities to its central processing facility. Pet. at 3.

NOTICE AND HEARING

Section 28.1 of the Act (415 ILCS 5/28.1 (1998)) and 35 Ill. Adm. Code 104.408 require publication of notice of an adjusted standard proceeding in a newspaper of general circulation in the area affected by the petitioner's activity. The notice must be published within 14 days of filing a petition for an adjusted standard with the Board. See 35 Ill. Adm. Code 104.408(a). As required by 35 Ill. Adm. Code 104.410, PESI filed a certificate of publication with the Board on April 4, 2001, indicating that notice of the petition was published in the *Jersey County Star* on March 15, 2001, and March 29, 2001.

¹ The Board notes the petition contains a recurring typographical error throughout the petition, citing to 35 Ill. Adm. Code 720.313(c) and 721.131(c) rather than to 35 Ill. Adm. Code 720.131(c). The Board interprets the reference to be to Section 720.131(c), and will review the petition accordingly.

² The Board will refer to the PESI petition for an adjusted standard in this matter as "Pet. at ____."

The Board finds that the notice meets the requirements of Section 28.1 of the Act (415 ILCS 5/28.1 (1998)) and 35 Ill. Adm. Code 104.408 and 104.410.

PROOF AND INFORMATIONAL SUFFICIENCY

Although the notice is proper, the Board finds that the petitioner has not adequately provided certain proof required by Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (1998)), and information sufficiency requirements in Board regulations at 35 Ill. Adm. Code 104.406, 104.426 and 720.131(c). Specifically, the petition is insufficient for the following reasons:

1. The petition fails to provide information concerning the extent to which an end market for the reclaimed material is guaranteed. See 35 Ill. Adm. Code 720.131(c)(4). PESI provides information about the general use of recycled antifreeze by an established client base. PESI alleged in its petition that its current on-site antifreeze recycling business has been in operation since 1997, and that it has an established list of over 100 clients. Pet. at 2. PESI also alleges that “GM, Ford and most other original equipment manufacturers approve the use of recycled antifreeze.” Pet. at 2. PESI attached to the petition two unnamed documents that stated General Motors and Ford support the use of recycled engine coolant. Pet. at 6-7. Petitioner alleges that the St. Louis area supports 3 other antifreeze recycling companies, and that it is a leading provider of high-quality antifreeze as a result of using the reverse osmosis conditioning process. Pet. at 3.

Although PESI shows that its clients purchase recycled antifreeze, it does not specify the number of clients that are willing to buy the higher quality recycled antifreeze, resulting from the reverse osmosis process. The Board directs PESI to produce a show of interest from current or potential clients for the higher-quality antifreeze that is processed through reverse osmosis, rather than the antifreeze that is solely recycled through on-site filtration.

The Board also directs PESI to quantify the difference in price from on-site filtered antifreeze and the antifreeze conditioned off-site through the reverse osmosis process. PESI alleges that filtered antifreeze is worth \$1.80 per gallon in the St. Louis metro area. Pet. at 2. PESI does not indicate how the reverse osmosis processing would increase the cost of the new product, and whether the St. Louis metro area market would support any rise in price.

The Board further directs PESI to indicate whether PESI will accept used antifreeze from customers who contract with PESI to dispose of used antifreeze without accepting the recycled antifreeze after further reconditioning. If PESI is willing to do so, explain how PESI intends to market the recycled antifreeze from these customers.

2. PESI did not adequately address how reclaimed material is handled to minimize loss of product, pursuant to 35 Ill. Adm. Code 720.131(c)(5). PESI alleged that “[o]nly the impurities removed from the used antifreeze are lost during the reclamation process.” Pet. at 2. It estimated in its petition that “over 99% of the ethylene glycol content of used

antifreeze is reclaimed.” Pet. at 2. However, petitioner does not describe spill prevention measures taken by PESI during loading, transport, processing and unloading. The Board directs PESI to provide such information.

3. PESI did not provide information regarding whether the concrete floor under the conditioning operation has any floor drains. PESI, in its cover letter to the petition, alleges that its request for an adjusted standard is analogous to one made by Recycle Technologies (*In re Recycle Technologies, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c)* (September 18, 1997), AS 97-9). In the adjusted standard concerning Recycle Technologies, the Illinois Environmental Protection Agency (Agency) required their operation to be conducted on a concrete floor without drains. *In re Recycling Technologies, Inc.* (October 16, 1997), AS 97-9, Agency’s Response to Amended Petition at 6. The Board directs PESI to provide information on any floor drains on the concrete floor that may receive discharges from the indoor operation. If such drains exist, the Board directs PESI to identify to where these floor drains discharge (as in sanitary sewer, storm sewer, combined sewer, the ground, holding tank, or other location).
4. PESI did not provide an analysis of antifreeze that is processed though bag filtration at customers’ sites and transported to the PESI facility for reverse osmosis. PESI alleged that it receives antifreeze from over 100 clients. Pet. at 2. Although PESI provided sample analysis of the residual solids (precipitate) from the reverse osmosis process, it did not provide information on the initially filtered antifreeze that is transported from the customers’ facilities. Pet. at 8-12. The chemical and physical characteristics of the used antifreeze that PESI reclaims in its operation are dependent on the equipment in which the antifreeze was used, and how the antifreeze was stored at the customer’s site. See *In re Recycling Technologies, Inc.* (October 16, 1997), AS 97-9, Agency’s Response to Amended Petition at 6-7.

The Board directs PESI to provide confirmation through chemical analysis that the antifreeze initially filtered at its customers’ facilities does not meet the hazardous waste characteristics under the Act and Board regulations. The type of contaminants found in antifreeze may include benzene from cross-contamination, lead, and tetrachloroethylene from vehicle radiators.

The Board also directs PESI to provide assurance that its customers store antifreeze in clean, designated containers, and do not combine the antifreeze with other materials before PESI picks up the antifreeze to be processed at its central facility.

5. Petitioner omitted the effective date of June 27, 1995, when providing a reference to and giving a description of the standard from which an adjusted standard is sought, as required by 35 Ill. Adm. Code 104.406(a). The Board directs PESI to amend its petition accordingly.

6. PESI did not include sufficient information concerning the affected area and the nature of emissions, discharges, and releases from its operation, pursuant to 35 Ill. Adm. Code 104.406(d). An adjusted standard would relax requirements for PESI to transport and handle the antifreeze in this matter, which could lead to a higher risk of spillage.
 - a. PESI does not define the affected area of its operation, as required by 35 Ill. Adm. Code 104.406(d). The Board directs PESI to describe the areas affected by its antifreeze reclamation operation, including information on the areas of its customers' facilities, the truck routes from such facilities to the PESI central facility, and the area of PESI's central processing site that might be affected.
 - b. PESI does not completely address the nature of emissions, discharges, and releases in the processing of the antifreeze. PESI alleges that residual solids (precipitate) are disposed of in a solid waste landfill. However, PESI did not provide disposal information concerning the bag filters used at customers' sites, filter cake, or rejected concentrate from the reverse osmosis system at its central processing facility. The Board directs PESI to provide information on the following issues:
 - (1) The type of contaminants the bag filters are intended to remove at customers' facilities;
 - (2) Whether the bag filters remove petroleum products such as oils and gasoline;
 - (3) The manner which PESI disposes the bag filters;
 - (4) Any results from testing to determine whether the bags and filter cake should be disposed of as special or hazardous wastes;
 - (5) The manner, if any, that PESI disposes of a concentrated waste stream from the reverse osmosis filtration, apart from the solids residuals from the flocculation/precipitation process; and
 - (6) The manner in which PESI disposes of any cleaning solution that is used to clean the reverse osmosis filters.
7. PESI did not provide information on the cost of complying with the general regulation of applicability, 35 Ill. Adm. Code 720.131(c). For example, such costs of compliance would include any special waste hauling permit fees, permit fees for special waste management, manifest documents, and additional labor to complete paperwork. The Board directs PESI to estimate the costs involved if the Board did not grant an adjusted standard in this matter, and PESI were to be required to obtain special waste permits, keep records, obtain financial instruments for closure, and incur other such expenses.

8. PESI did not adequately discuss the difference between the quantitative and qualitative impact of its activity on the environment with and without an adjusted standard, pursuant to 35 Ill. Adm. Code 104.406(g). If PESI did not receive an adjusted standard for its antifreeze operation in this matter, the filtered antifreeze on its customers' sites would be considered a solid waste, pursuant to 35 Ill. Adm. Code 720.131(c), and might be classified as a "special waste" under 35 Ill. Adm. Code 808.

PESI does not include any information concerning what requirements it would have to fulfill to obtain special waste hauling permits, pursuant to 35 Ill. Adm. Code 809, and how its proposed operation already addresses such requirements to ensure an environmentally safe operation. PESI also does not include information concerning what requirements it would have to fulfill to obtain a permit for operating a special waste management facility, pursuant to 35 Ill. Adm. Code 703 or 807, and how its proposed operation already addresses the relevant requirements.

The Board directs PESI to provide adequate proof of its allegation that "[t]here are no obvious qualitative or quantitative differences in the impacts to the environment between adherence to the regulation of general applicability, and the proposed adjusted standard." Pet. at 3. In demonstrating a comparable level of care, PESI must include at least the following:

- a. A description of spill response and cleanup procedures;
 - b. Assurances from truck owners that vehicles and tanks will be kept clean and properly maintained, and that piping, valves, and other such items will be properly constructed and maintained to prevent leaks and spills;
 - c. Whether truck drivers receive adequate training for handling used and reclaimed antifreeze;
 - d. Customer assurances that the used antifreeze will be stored in clean, designated containers and not mixed with other materials before it is secured by PESI;
 - e. Whether floor drains in the PESI central processing facility lead to storm sewers or ground drainage; and
 - f. A chemical analysis of representative samples of initially filtered antifreeze, which shows whether the antifreeze at its customers' sites meets the characteristics of hazardous waste.
9. Although PESI provides information in its petition that is relevant to section 104.426(a)(1)-(4) of the Board's regulations (35 Ill. Adm. Code 104.426), concerning the petitioner's burden of proof, it does not directly address this section. The Board

directs PESI to provide such information in this order, pursuant to 35 Ill. Adm. Code 104.406(g).

MOTION TO EXPEDITE HEARING

PESI requested an expedited hearing to meet an alleged March 27, 2001 deadline imposed by the Agency. PESI does not provide any information concerning the deadline for the Board to decide this issue. The Board directs PESI to describe the nature of the deadline, how it relates to the instant case, and why it requests an expedited hearing. The Board also notes that PESI requested a waiver of the hearing. This issue may be rendered moot if no one requests a hearing in this matter, pursuant to 35 Ill. Adm. Code 104.420.

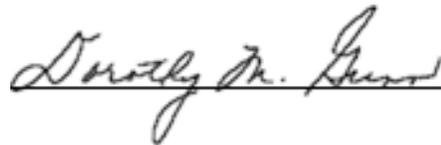
CONCLUSION

The Board therefore directs petitioner to address in an amended petition the information requirements of 28.1 of the Act (415 ILCS 5/28.1 (1998)), and Sections 104.406, 104.426, and 720.131(c) of the Board's regulations (35 Ill. Adm. Code 104.406, 104.426, 720.131(c)). The Board also directs PESI to provide more information concerning its request for an expedited hearing. The amended petition must be filed with the Board by May 21, 2001, or it will be dismissed.

If the petitioner files the amended petition, as required by this order, by May 21, 2001, the Board will accept this matter for hearing. The Agency shall file a response to the amended petition within 30 days after it is filed with the Board. See 35 Ill. Adm. Code 104.416.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of April 2001 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board