

ILLINOIS POLLUTION CONTROL BOARD
November 17, 2011

IN THE MATTER OF:)
)
PETITION OF CABOT CORPORATION) AS 12-1
FOR AN ADJUSTED STANDARD FROM) (Adjusted Standard – Land)
35 ILL. ADM. CODE PART 738.)
SUBPART B)

ORDER OF THE BOARD (by C.K. Zalewski):

This matter comes before the Board upon the September 16, 2011 petition to modify conditions of an existing adjusted standard filed by Cabot Corporation (Cabot) for its inorganic chemical manufacturing facility, located in Tuscola, Douglas County (Tuscola facility).

Section 28.1 of the Act (415 ILCS 5/28.1 (2008)) and 35 Ill. Adm. Code 104.408 require publication of a 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, on October 4, 2011, Cabot timely filed the certificate of publication required by Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2010)) and Section 104.408(a) of the Board’s procedural rules (35 Ill. Adm. Code 104.408(a)).

The petition was accompanied by motions to incorporate materials filed in the record of a prior adjusted standard, and requests stay of this proceeding until ruling by the United States Environmental Protection Agency (USEPA) on a similar request. The Illinois Environmental Protection Agency (IEPA) has not filed a response to these motions. Under the Board’s procedural rules, if no response is filed by a party in a case within 14 days of the filing of a motion, “the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board . . . in its disposition of the motion. 35 Ill. Adm. Code 101.500 (d).

In summary, the Board grants the motion to incorporate documents, having verified that that a hard copy has been retained in the Clerk’s Office files. The Board accepts the petition as sufficient. The Board will await receipt of the IEPA’s recommendation prior to reaching a decision on the merits of the petition. The Board also grants Cabot’s unopposed motion for stay of the proceedings. As the Board did in response to Cabot’s similar request in AS 07-6, the Board grants a six month stay, renewable upon motion to a hearing officer which the Board will appoint to manage the case.

THE PETITION

Cabot manufactures fumed silica dioxide in its Tuscola facility. Resulting process wastes include acidic wastewater, unsalable by-product hydrochloric acid, spent acetone, and leachate. Cabot’s currently-applicable adjusted standard, issued in AS 07-6, is from the Board’s

restrictions on underground injection of hazardous wastes codified at 35 Ill. Adm. Code 738.Subpart B. Petition of the Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B, AS 07-6 (Oct. 7, 2010).¹

Cabot has previously petitioned for, and received, similar relief from federal UIC rules adopted by the United States Environmental Protection Agency (USEPA) concerning underground injection of prohibited wastes at 40 CFR 148.Subpart C. Such federal relief is called a “no migration exemption” from federal rules, rather than an “adjusted standard” as in Illinois. On June 1, 2010 (75 Fed. Reg. 30392), USEPA granted Cabot a federal exemption, subject to conditions, similar to the adjusted standard relief Cabot requests from the Board.

The AS 07-6 adjusted standard allows Cabot to dispose of hazardous wastes into two underground injection control (UIC) wells at the Tuscola facility (Wells # #2 and #3) through December 31, 2027. Cabot now seeks to the limits on two parameters in Condition 4.E in the following ways: (1) Cabot seeks to modify the pH parameter for injected waste from 7 to 9; and (2) Cabot seeks to modify the maximum temperature parameter for injected waste from 95°F to 120°F.

In this AS 12-1 petition, Cabot reports that, on September 9, 2011, it has petitioned the USEPA for a modification of the exemption it granted Cabot on June 1, 2010. As described in more detail in its separate motion for stay discussed below, Cabot requests that the Board, the IEPA and the USEPA work together to minimize procedural redundancies in the modification process.

MOTION TO INCORPORATE MATERIALS FROM AS 07-6

Along with the petition, Cabot filed a motion to incorporate certain lengthy exhibits from the AS 07-6 proceeding, as permitted under 35 Ill. Adm. Code § 101.306(a):

- | | |
|-----------|---|
| Exhibit C | "2007 Petition for Renewal of Exemption from the Land Disposal Restrictions" Cabot filed with U.S. EPA on March 8, 2007 (the "2007 USEPA Petition") and |
| Exhibit D | the Quality Assurance Quality Control Plan ("Plan") Cabot filed with the 2007 US EPA Petition. |

Cabot notes that the 2007 US EPA Petition and the Plan together consist of five binders of information, much of which consists of over-sized documents and color illustrations. Cabot requests leave to incorporate this information in this proceeding as it is relevant to the current petition.

¹ Cabot has had previous adjusted standards for underground injection of wastes at this site. *See* Petition of the Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B, AS 96-3 (March 7, 1996); see also Petition of the Cabot Corporation for an Adjusted Standard from 35 Ill. Adm. Code 738.Subpart B, AS 92-8 (September 7, 1995).

Given space limitations, the Clerk of the Board must routinely purge files, and all motions for incorporation cannot be granted. But, the Board has verified that the Clerk's office has not transmitted the AS7-6 file for microfiling, and that a single hard copy of each of these binders is currently available for use by the Board and inspection by the public. The motion to incorporate these materials from AS 07-6 into AS 12-1 is granted. The Clerk is directed to implement this incorporation as necessary.

PETITION SUFFICIENCY

The Board finds that the notice and petition meet the requirements of Section 28.1 of the Act (415 ILCS 5/28.1 (2010)) and 35 Ill. Adm. Code 104.408. The Board accordingly accepts this matter. The Board will await receipt of the IEPA's recommendation under 35 Ill. Adm. Code 104.416 prior to reaching a decision on the merits of the petition. But, the timing of the filing of the Agency's recommendation is extended, consistent with the Board's ruling on the motion for stay below.

MOTION TO STAY DECISION IN AS12-1 PENDING USEPA DECISION ON SEPTEMBER 1, 2011 REQUEST

Cabot filed a motion to stay (Mot. Stay) decision in this proceeding pending USEPA action on its similar federal request. Cabot states that on September 9, 2011, Cabot submitted a letter to the USEPA regarding the modification it seeks. This letter, titled "Modification of Exemption from Hazardous Waste Disposal Injection Restriction," seeks a modification of Condition 5 of the Facility's "no-migration exemption" from the federal hazardous waste disposal injection regulations (set forth at 40 C.F.R. Part 148). Cabot believes that its USEPA Petition demonstrates that the requested modification (to allow injection of waste into Well Nos. 2 and 3 at a pH of 9 and maximum temperature of 120°), will be protective of human health and the environment for as long as the waste remains hazardous.

In support of its motion, Cabot reminds that the Illinois state underground injection control regulations are identical-in-substance to their federal counterparts; thus, the justification for modification under the state and federal regulations is the same. *See* 415 ILCS 5/7.2 and 13(c) (2010)). Cabot reminds that it made, and the Board previously granted, a similar motion in AS 07-6. Cabot therefore argues that

staying the Board's decision on Cabot's September 16, 2011 Petition until USEPA takes action on the [September 9,] 2011 USEPA Petition will assist the Board in making the appropriate determination and ensure that the Board does not apply more stringent law to Cabot than is warranted under the circumstances. Mot. Stay at 1-2.

The Board reminds, as it did in AS 07-6, that the Board has authority to rule upon Cabot's petition in advance of any ruling by USEPA. AS 07-6, slip op. at 2 (Aug. 9, 2007). But, the Board can certainly defer action on this request until USEPA has ruled on Cabot's federal application as it did in AS 07-6. *Id.*

As in AS 07-6, the Board will grant an initial six-month stay, until May 10, 2012. The Board similarly grants the IEPA an extension of time to file in which to file its Recommendation for 45 days following the ending of the stay, until June 24, 2012. As it also did in AS 07-6, the Board will assign a hearing officer to manage this case through the stay period, and to hold any public hearing that may later be requested. The parties may request extensions of the stay and time for filing of the Recommendation by request to the hearing officer. Such requests must be accompanied by a status report indicating when any USEPA action is expected, or alternatively what disposition USEPA has made of Cabot's application.

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 17, 2011, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board