

ILLINOIS POLLUTION CONTROL BOARD

May 17, 2012

IN THE MATTER OF:)
)
PETITION OF MIDWAY RACS, LLC FOR) AS 12-3
ADJUSTED STANDARD FROM 35 ILL.) (Adjusted Standard – Air)
ADM. CODE 218.586)

ORDER OF THE BOARD (by D. Glosser):

On April 11, 2012, Midway RACS, LLC (Midway) filed a petition for an adjusted standard. The petition seeks an adjusted standard from the Stage II Vapor Recovery requirements in 35 Ill. Adm. Code 218.586. On May 15, 2012, Midway filed proof that notice of the adjusted standard was published in the *Sun Times* on April 18, 2012. Today, the Board directs the petitioner to file an amended adjusted standard petition addressing the procedural and informational deficiencies, discussed below.

Midway seeks relief from the provisions at 35 Ill. Adm. Code 218.586 that require the installation of a Stage II vapor recovery system at its new gasoline dispensing facility for rental cars at Midway Airport. In lieu of installing a Stage II vapor recovery system at the dispensing facility, Midway would ensure its entire fleet of rental cars is equipped with onboard refueling vapor recovery (ORVR) required by federal regulation of newer model cars and light duty trucks.

Midway is in the process of constructing a new Consolidated Rental Car Facility including a common-use fueling system. Construction on the facility began in October 2011, and the fueling system will begin construction in May 2012 with completion expected by September 2012. The petition states that 100 percent of the Midway rental car fleet is equipped with ORVR¹. According to USEPA, Stage II vapor recovery systems at dispensing facilities are incompatible with ORVR, causing the emission reduction of the two systems used together to be less than the emission reduction achieved by either system alone. USEPA states that this incompatibility can result in a 1 to 10 percent decrease in control efficiency. Pet. at 8. This occurs because the Stage II and ORVR systems compete to capture displaced gasoline vapors during the fueling process, essentially rendering each less effective. 76 FR 41735 (July 15, 2011).

Midway RAC states that USEPA has issued guidance to the states concerning the removal of Stage II gasoline vapor recovery systems where States demonstrate to the USEPA that “widespread” use of onboard refueling vapor recovery (ORVR) has occurred in specific portions of the motor vehicle fleet, including refueling of rental cars at rental car facilities. Pet.

¹ USEPA first began phase-in of ORVR for 40% of model year 1998 passenger cars. For model year 2000 passenger cars, the ORVR requirement was increased to 100%. Phase-in continued on virtually all other new vehicle types (light trucks, etc.) sold since model year 2006. 76 FR 41733 (July 15, 2011).

at 9. More recently, USEPA has proposed rules for determining whether an ORVR system is in widespread use for purposes of controlling motor vehicle refueling emissions throughout the motor vehicle fleet. 76 FR 41735 (July 15, 2011). USEPA states, “In these specific cases where all or nearly all of the vehicles being refueled are ORVR-equipped, the [US]EPA could conservatively conclude that widespread use of ORVR had occurred in these fleets. We indicated that we could approve a SIP [State Implementation Plan] revision removing Stage II requirements from these facilities with a demonstrative that 95 percent of the fleet being refueled is equipped with ORVR.” 76 FR 41737 (July 15, 2011).

DISCUSSION

The Board finds that Midway has not addressed all the information required by the Act and Board regulations. In the discussion, the Board addresses the deficiencies of Midway’s petition. Procedural requirements make it necessary for Midway to be represented by an attorney if Midway is not an individual. The petition content requirements are given in 35 Ill. Code 104.406 and must be included in any petition filed by Midway as an individual or by its attorney.

Appearances

Section 1 of the Corporation Practice of Law Prohibition Act (705 ILCS 220/1 (2010)), Section 1 of the Attorney Act (705 ILCS 205/1 (2010)), and Section 101.400(a)(2)(ii) of the Board’s procedural rules (35 Ill. Adm. Code 101.400(a)(2)) require “[w]hen appearing before the Board, any person other than individuals must appear through an attorney-at-law licensed and registered to practice law.” If Midway is not an individual, Midway must appear before the Board through an attorney or this petition will be subject to dismissal. *See In the Matter of: Petition of Recycle Technologies, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 720.131(c), AS 97-9 (July 10, 1997).*

Petition Content Requirements

For the Board to grant individual adjusted standards, the petitioner must provide adequate proof pursuant to Section 28.1(c) of the Act (415 ILCS 5/28.1 (2010)) and 35 Ill. Adm. Code 104.Subpart D. Midway has failed to provide certain information. The petition fails to adequately provide the information in the Act and Board’s rules. The Board directs Midway to address the following informational requirements in an amended adjusted standard petition.

Section 28.1(c) of the Act provides:

If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:

- (1) factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
- (2) the existence of those factors justifies an adjusted standard;
- (3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and
- (4) the adjusted standard is consistent with any applicable federal law.

Section 104.406(c) requires:

The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements [415 ILCS 5/28.1] (See Section 104.426). 35 Ill. Adm. Code 104.406(c).

Section 104.406(h) requires:

A statement which explains how the petitioner seeks to justify, pursuant to the applicable level of justification, the proposed adjusted standard. 35 Ill. Adm. Code 104.406(h).

Section 104.426 provides that: “[t]he burden of proof in an adjusted standard proceeding is on the petitioner. A petitioner must justify an adjusted standard consistent with Section 27(a) of the Act.” Section 104.426 then recites the provisions of Section 28.1(c) of the (415 ILCS 5/28.1(c)). 35 Ill. Adm. Code 104.426.

The petition at page 4-6 merely quotes the entirety of Sections 27 and 28.1 of the Act (415 ILCS 5/27 and 28.1 (2010)). The petition does not, however, specifically address the Section 28.1(c) factors except 28.1(c)(4). An amended petition must be filed addressing these deficiencies. Furthermore, the petition must include supporting documentation, references to websites are not sufficient.

CONCLUSION

The Board finds that the petition for adjusted standard does not meet the requirements of the Act and Board regulations. Midway is directed to file an amended petition by June 15, 2012 or this matter may be dismissed.

MEMBER ZALEWSKI AND CHAIRMAN HOLBROOK ABSTAINED

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 17, 2012, by a vote of 3-0.

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

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board