

ILLINOIS POLLUTION CONTROL BOARD
September 18, 2014

IN THE MATTER OF:)
)
PETITION OF BRICKYARD DISPOSAL &) AS 14-3
RECYCLING, INC. FOR ADJUSTED) (Adjusted Standard – Land)
STANDARD FROM SOLID WASTE)
REGULATIONS)

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

On June 27, 2014, Brickyard Disposal & Recycling, Inc. (Brickyard or Petitioner), located at 601 Brickyard Road, Danville, Vermilion County, filed a petition for an adjusted standard (Pet.) pursuant to Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2012)). Brickyard seeks relief from the landfill groundwater compliance provisions of Sections 811.318(b)(3), 811.320(c), and 814.402(b)(3) of the Board’s solid waste disposal regulations. 35 Ill. Adm. Code 811.318(b)(3), 811.320(c), 814.402(b)(3).

In this order, after briefly discussing Brickyard’s facility and the petition, the Board finds that Brickyard has satisfied the requirement of newspaper notice for adjusted standard petitions under the Act (415 ILCS 5/28.1(d)(1) (2012)) and accepts the petition. The Board then identifies informational deficiencies in Brickyard’s petition and directs Brickyard to file an amended petition to cure the deficiencies.

BACKGROUND

Brickyard consists of two separate waste units, Brickyard I and Brickyard II, separated by a haul road. Brickyard II is still in operation, but the petition concerns Brickyard I, which is described by Brickyard as an “existing landfill’ under the Board’s landfill regulations.” Pet. at 1-2. According to the petition, Brickyard I initiated closure in 1997. *Id.* at 2. The petition is in furtherance of Brickyard’s effort to obtain approval of final closure and post-closure care certification from the Illinois Environmental Protection Agency (Agency). *Id.* In its petition, Brickyard states,

[d]uring the landfill’s operation, railroad ties and other construction debris . . . were deposited and/or utilized in an area contiguous to the landfill, and now provide stability and support for Brickyard I, so that any environmentally responsible final closure will require incorporation of this fill area. To adequately address monitoring of Brickyard I and the fill area, an adjustment to the groundwater compliance boundary and related regulatory provisions is required. *Id.*

NOTICE

Section 28.1(d)(1) of the Act (415 ILCS 5/28.1(d)(1) (2012)) and 35 Ill. Adm. Code 104.408 require publication of a notice of the filing of an adjusted standard petition in a newspaper of general circulation in the area affected by Brickyard'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). Brickyard timely filed a certificate of publication with the Board on July 7, 2014. *See* 35 Ill. Adm. Code 104.410. The notice of petition was published in the *Commercial-News* on June 28, 2014.

The Board finds that the notice is proper, and that the Board therefore has jurisdiction to hear the petition. *See, e.g., In re Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005). The Board accepts the petition.

INFORMATIONAL DEFICIENCIES

The Board finds that the petition has generally addressed the content requirements of the Board's rules at 35 Ill. Adm. Code 104.406. However, the Board finds that the petition lacks sufficient detail with regard to some factors of Section 104.406 and Parts 810 and 814 of the Board regulations. Therefore, the Board directs Brickyard to address the following issues in an amended petition:

35 Ill. Adm. Code 810.103 Definitions provides:

“Aquifer” means saturated (with groundwater) soils and geologic materials which are sufficiently permeable to readily yield economically useful quantities of water to wells, springs, or streams under ordinary hydraulic gradients and whose boundaries can be identified and mapped from hydrogeologic data. (Section 3 of the Illinois Groundwater Protection Act [415 ILCS 55/3]). 35 Ill. Adm. Code 810.103.

“Uppermost aquifer” means the first geologic formation above or below the bottom elevation of a constructed liner or wastes, where no liner is present, that is an aquifer, and includes any lower aquifer that is hydraulically connected with this aquifer within the facility's permit area. *Id.*

“Zone of attenuation” means the three dimensional region formed by excluding the volume occupied by the waste placement from the smaller of the volumes resulting from vertical planes drawn to the bottom of the *uppermost aquifer* at the property boundary or 100 feet from the edge of one or more adjacent units. *Id.* (emphasis added).

Section 814.402(b)(3)(A) of the Board's landfill standards requires that the Board consider the “hydrogeologic characteristics of the unit and surrounding land, including natural attenuation and dilution characteristics of *the aquifer*.” 35 Ill. Adm. Code 814.402(b)(3)(A)

(emphasis added). Sections 814.402(b)(3)(C) and (F) of those standards pertain to “groundwater underlying the facility.” 35 Ill. Adm. Code 814.402(b)(3)(C), (F). In the following instances, Brickyard’s Adjusted Standard Petition Technical Support Document (TSD) refers to a “water bearing zone” and “groundwater,” but not an “aquifer”:

The majority of the monitor wells identified below are screened across the coal seam/mine void, or the spoil/bedrock interface where surface mining has occurred. However, seven of the 33 (R106, R123, R132, G33S, T101, T103, and T104) wells are screened below the coal or spoil/bedrock interface in the shale deposit identified as the Middle Shale, and one well (R103) is screened in the Glacial Sand upgradient to Unit 1. TSD at 3.

Groundwater subject to monitoring for Unit 1 occurs in the coal seam, mine voids, or on top of the shale underlying the mine spoil. *Id.* at 7.

The water-bearing zone beneath Unit 1 varies...The subject water-bearing zone consists of coal in unmined areas, voids where coal was underground mined, and spoil where the coal was surface mined. *Id.* at 12.

In the event of a release from Unit 1, changes in groundwater quality should be discernible in wells screened in the identified pathway or water-bearing zone. *Id.* at 33.

Brickyard’s Proposed Board Order defines “zone of attenuation” as “the three dimensional region formed by excluding the volume occupied by the waste placement from the volume resulting from vertical plane drawn to the bottom of the *uppermost aquifer* as shown in the attached Figure 1.” Pet. Exh. A at 1 (emphasis added).

Therefore, the Board directs Brickyard to:

1. Explain if the “water-bearing zone” identified in Brickyard’s TSD is an “aquifer” as defined in Section 810.103 of the Board’s solid waste regulations.
2. Clarify if the “water-bearing zone” identified in Brickyard’s TSD is the “uppermost aquifer” as defined in Section 810.103 of the Board’s solid waste regulations.
3. If the “water-bearing zone” is different than the “uppermost aquifer,” address how wells screened in the water-bearing zone, in addition to the uppermost aquifer, could be used to discern changes in groundwater quality in the event of a release from Unit 1. *See* TSD at 33.
4. Integrate the specifics for the bottom of the uppermost aquifer as well as the proposed lateral extent in Figure 1, dated June 2014, to describe the proposed zone of attenuation and compliance boundary. Pet. Fig. 1. If

Figure 1 of the petition no longer accurately represents Brickyard's requested relief, provide an updated Proposed Compliance Boundary and Zone of Attenuation figure along with the requested aquifer information.

Brickyard's TSD states that the cover over extraneous materials, as well as the groundwater monitoring program, would be considered an institutional control pursuant to Section 104.406(f) of the Board's regulations. TSD at 35; 35 Ill. Adm. Code 104.406(f). Section 742.200 of the Board's TACO regulations defines an "institutional control" as "a legal mechanism for imposing a restriction on land use, as described in Subpart J." 35 Ill. Adm. Code 742.200. Further, Section 742.1000(c) of those regulations lists the instruments that may be institutional controls. 35 Ill. Adm. Code 742.1000(c).

Petitioner proposed that the Board impose a condition relating to completion of placement of additional cover as identified in the Cover Plan, but no reference was made to a means to ensure the cover stays in place as an institutional control in the proposed conditions. Pet. Exh. A.

Further, the requirements for a Final Cover System in Section 811.314 of the Board's landfill standards may not apply since the Petitioner notes that the "extraneous materials" are located outside the permitted boundary of the landfill. Pet. at 2, 5, 7; *see* 35 Ill. Adm. Code 811.314. Therefore, it appears there is no specific regulatory requirement ensuring that the cover stays in place over the "extraneous materials" absent a condition in the adjusted standard.

The petition considers groundwater monitoring as an institutional control. TSD at 35. While Brickyard I is already subject to groundwater monitoring under Section 814.402 of the Board's landfill standards, the Petitioner may terminate groundwater monitoring under Section 811.319 of those standards if certain requirements are met. *See* 35 Ill. Adm. Code 811.319. Therefore, the Petitioner must address the issue of whether groundwater monitoring will continue beyond the time period required under Section 811.319 as part of a proposed institutional control.

Based on the above information, the Board directs Brickyard to:

5. Identify which institutional control(s) Petitioner will use to ensure the cover system will stay in place over the "extraneous materials."
6. Specify whether groundwater monitoring will continue beyond the time period required under Section 811.319 of the Board's landfill standards and what institutional control(s) will be used to ensure this continued monitoring.
7. Propose a condition to the adjusted standard that would encompass the recording, if necessary, of any institutional control(s) with Vermilion County.

8. Describe how the institutional control(s) will be transferred upon conveyance of the site.
9. Identify the costs associated with the maintenance of institutional control(s) beyond the postclosure care.

Section 814.402(b)(3)(H) of the Board's landfill standards provides, "[i]n no case shall the zone of compliance extend beyond the facility property line or beyond the annual high water mark of any navigable surface water." 35 Ill. Adm. Code 814.402(b)(3)(H). In the TSD, Petitioner explains that an "annual high water mark will vary year to year, which is why an average annual high (maximum) elevation is derived." TSD at 27. Petitioner also acknowledges that, "the proposed compliance boundary does extend beyond the 100-year flood elevation in the northeast corner," as do the 50-, 25-, and 10-year flood elevations. *Id.*

The Board directs Brickyard to:

10. Address how the "average annual high water mark" as proposed in the petition is consistent with the requirements of 35 Ill. Adm. Code 814.402(b)(3)(H).

The Board acknowledges that Brickyard has waived its right to a public hearing in this matter and that no request for a hearing was received from the Agency or the public. *See* 35 Ill. Adm. Code 104.406(j), 104.420(a). The Board reserves the right to set this case for hearing upon review of Brickyard's amended petition. *See* 35 Ill. Adm. Code 104.422(a)(3). Further, on August 12, 2014, the Agency filed a recommendation that Brickyard's petition be denied. *See* 35 Ill. Adm. Code 104.416. In its recommendation, the Agency points out shortcomings and inconsistencies of the petition. However, Brickyard filed a response to the Agency's recommendation (Resp.) on August 27, 2014, which, according to Brickyard, addresses the Agency's concerns. Resp. at 1; *see* 35 Ill. Adm. Code 104.416(d).

AMENDED PETITION

The Board directs Brickyard to address the Board's questions above in an amended petition. In addition, the Board requests that the Agency supplement its recommendation, if necessary, to reflect Brickyard's amended petition. The Agency may do so within 45 days after the filing of Brickyard's amended petition. *See* 35 Ill. Adm. Code 104.416(a). The amended petition and any amended recommendation "need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear." 35 Ill. Adm. Code 104.418(d).

In the interest of taking timely action in this matter, the Board orders that Brickyard file its amended petition by October 20, 2014, which is the first business day following the 30th day after the date of this order. Failure to timely file the amended petition will subject this matter to dismissal. Brickyard may request additional time, if necessary, from the assigned hearing officer. This order makes no determination on the merits of Brickyard's petition. Lastly, the Board notes that if Brickyard amends the petition "such that the amendment is a substantive

change to the requested relief in that it requests additional or alternative relief,” Brickyard “must re-notice the amended petition pursuant to Section 104.408” (35 Ill. Adm. Code 104.408). 35 Ill. Adm. Code 104.418(a).

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 18, 2014 by a vote of 4-0.

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

John T. Therriault, Clerk
Illinois Pollution Control Board