

ILLINOIS POLLUTION CONTROL BOARD
September 5, 2013

IN THE MATTER OF:)
)
PETITION OF ROYAL FIBERGLASS)
POOLS, INC. FOR AN ADJUSTED)
STANDARD FROM 35 ILL. ADM. CODE) AS 09-4
215.301) (Adjusted Standard)

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by D. Glosser):

On April 3, 2009, Royal Fiberglass Pools, Inc. (Royal) filed a petition for an adjusted standard from 35 Ill. Adm. Code 215.301 of the Board’s air pollution regulations, commonly known as the “8 lb/hr Rule.” Royal filed an amended petition on July 17, 2009. Royal sought relief from the 8 lb/hr Rule as the rule applies to the emissions of volatile organic material (VOM) from Royal’s fiberglass swimming pool manufacturing facility located at 312 Duncan Lane, Dix, Jefferson County. On February 18, 2010, the Board found that Royal has provided sufficient justification for an adjusted standard from the 8 lb/hr Rule and granted the relief subject to conditions outlined in the order.

On May 24, 2013, Royal and Latham Pools Products, Inc., d/b/a Viking Pools (Viking Pools) filed a joint motion asking that the Board reopen the docket and substitute Viking Pools for Royal in the adjusted standard (Mot.). After seeking an extension of time to file its response, granted by the hearing officer, on August 19, 2013, the Illinois Environmental Protection Agency (IEPA) timely filed a response in support of the motion.

Viking Pools states that since it acquired the facility on July 1, 2012, the facility has operated consistent with the terms of the adjusted standard. Mot. at 2. Certain components of the swimming pool manufacturing emission units were reconfigured after acquisition; however, the change did not increase the facilities’ potential to emit. *Id.* Viking Pools offers that the facility has operated in compliance with federal rules and the facility-wide emissions of VOM have not exceeded 156.70 pound per hour or 29.76 tons per year. *Id.* Also, Viking Pools anticipates that substantially all employees will remain employed at the facility. *Id.* Viking Pools argues that only the ownership of the facility has changed; and none of the factors presented to the Board in the adjusted standard proceeding have changed or are likely to change. *Id.* Therefore, Viking Pools asks the Board to substitute it as the holder of the adjusted standard.

Viking Pools notes that the Board has granted motions to reopen dockets in the past to substitute a new party as holder of the adjusted standard. Mot. at 3, citing, *In re* Petition of Cromwell-Phoenix Inc. for an Adjusted Standard from 35 Ill. Adm. 218.204(c), AS 3-5 (Nov. 20, 2003); *In re*: Petition of the Ensign-Bickford Co. for an Adjusted Standard from 35 Ill. Adm. Code 237.102, AS 00-5 (June 5, 2003); *In re*: Petition of Commonwealth Edison Co. for an Adjusted Standard from 35 Ill. Adm. Code 302.211, AS 96-10 (Mar. 16, 2000).

The IEPA spoke with petitioners and on July 18, 2013, inspected the facility. IEPA has “satisfied itself with the operations” and does not object to the motion to substitute.

DISCUSSION

The Board has the authority to grant adjusted standards to parties who can justify such an adjustment. 415 ILCS 5/28.1(a) (2012). For regulations of general applicability, which do not specify a level of justification for an adjusted standard, the petitioner must provide adequate proof to demonstrate that the factors of Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (2012)) are met. The 8 lb/hr Rule (35 Ill. Adm. Code 215.301) is such a rule. Section 28.1(c) of the Act provides:

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. 415 ILCS 5/28.1(c) (2012).

Royal sought relief from the Board’s rule limiting VOM emissions to 8 lb/hr (8lb/hr Rule) in the form of an adjusted standard and the Board found that granting Royal the relief was appropriate. Viking Pools has indicated that it will continue to operate the facility in accordance with the adjusted standard. The Board finds that the relevant factors required by Section 28.1 of the Act (415 ILCS 5/28.1 (2012)), and met by Royal, have not changed. The Board previously found that the existence of the factors justified the adjusted standard, and that the adjusted standard is consistent with federal law.

In the past, the Board has granted a joint motion to substitute the name of the holder of a previously granted adjusted standard. *See In re Petition of Crownline Boats, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 215.301*, AS 4-1 (Oct. 7, 2010); *Cromwell-Phoenix*, AS 3-5 (Nov. 20, 2003); *Ensign-Bickford Co.*, AS 00-5 (June 5, 2003); *Commonwealth Edison Co.*, AS 96-10 (Mar. 16, 2000). Royal has transferred its interest to Viking Pools and Viking Pools has committed to follow the adjusted standard. Therefore, the Board grants the motion to substitute.

CONCLUSION

The Board reopens the docket and substitutes Latham Pools Products, Inc., d/b/a Viking Pools for Royal Fiberglass Pools, Inc. as the recipient of the adjusted standard in the Board’s February 18, 2010 opinion and order. The adjusted standard order as amended today, is set below in its entirety and is effective immediately.

This supplemental opinion constitutes the Board's supplemental findings of fact and conclusions of law.

ORDER

1. The Board amends its February 18, 2010 order in this matter and grants Latham Pools Products, Inc., d/b/a Viking Pools (Viking Pools) an adjusted standard from 35 Ill. Adm. Code 215.301 (8 lb/hr Rule), effective September 5, 2013. The adjusted standard applies to the emissions of volatile organic material (VOM) into the atmosphere from Viking Pools' swimming pool manufacturing facility at 312 Duncan Lane, Dix, Jefferson County.
2. 35 Ill. Adm. Code 215.301 of the Board's air pollution regulations, commonly known as the "8 lb/hr Rule" does not apply. Viking Pools remains subject to the following:
 - a. Viking Pools must continue to investigate swimming pool production methods that generate fewer VOM emissions and materials that have a reduced VOM content. Where practicable, Viking Pools must substitute current materials with lower VOM content materials as long as such substitution does not result in a net increase in VOM emissions.
 - b. Viking Pools must perform any reasonable test of new technologically or economically reasonable production methods or materials applicable to the open-mold swimming pool manufacturing industry, which may reduce VOM emissions at Viking Pools' facility that the Illinois Environmental Protection Agency (IEPA) specifically requests in writing that they do.
 - c. After performance of such tests, Viking Pools must prepare and submit an annual report summarizing the activities and results of these investigatory efforts in (a) and (b) above. The report must be submitted to the IEPA, Bureau of Air, Compliance and Enforcement Section.
 - d. Viking Pools must operate in full compliance with the Clean Air Act, its Clean Air Act Permit Program permit, the National Emission Standard for Hazardous Air Pollutants for Reinforced Plastic Composite Manufacturing Facilities, set forth at 40 CFR §63 Subpart WWWW, as may be amended in the future and as required by Section 9.1(a) of the Act, the Illinois Environmental Protection Act, and any other applicable regulation.
 - e. The relief granted in this proceeding shall be limited to the swimming pool manufacturing emission units (spray booths) existing as of August 20, 2009, at Viking Pools' Dix facility.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 5, 2013, 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 flourish extending to the right.

John Therriault, Clerk
Illinois Pollution Control Board