

ILLINOIS POLLUTION CONTROL BOARD  
March 17, 1994

IN THE MATTER OF: )  
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IN THE MATTER OF: PETITION OF )  
ILLINOIS WOOD ENERGY PARTNERS, ) AS 94-1  
L.P. FOR AN ADJUSTED STANDARD ) (Adjusted Standard)  
FROM 35 Ill. ADM. CODE 807 OR, )  
IN THE ALTERNATIVE, A FINDING )  
OF INAPPLICABILITY )

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on the petition for adjusted standard filed by Illinois Wood Energy Partners, L.P. (Wood Energy) on February 8, 1994 pursuant to Part 106 of the Board's rules (35 Ill. Adm. Code 106) and Section 28.1 of the Environmental Protection Act (Act) (415 ILCS 5/28.1). A certificate filed February 22, 1994 indicates that a notice of filing appeared in the Chicago Heights Star on February 13, 1994 and in the Daily Southtown on February 12, 1994. Although paragraph 26 of the petition waives a public hearing, on February 17, 22, 24, and 28 and March 3, 1994 the Board received citizens' requests for hearing. The Agency filed its response to the petition on March 7, 1994.

Wood Energy intends to construct a facility that will collect "waste wood" from various sources and burn it to generate steam for producing electric power. It contends that the wood used will not be a "solid waste" or "waste", as defined under Section 3.53 of the Act and Section 807.104 of the Board's solid waste rules. Section 21(d) of the Act and Sections 807.201 through 807.203 of the Board's solid waste regulations require a permit for development and operation of a solid waste management facility. The Agency states in a letter dated September 15, 1993 that the type of wood proposed to be used by Wood Energy does not meet the definition of a solid waste. On October 8, 1993, the Agency granted the petitioners a New Source Performance Standard construction permit under the air pollution control regulations to construct the facility. The issuance of that permit is not before us in this matter.

Wood Energy is seeking an adjusted standard from certain regulations applicable to solid waste management facilities or, in the alternative, a declaration that certain requirements do not apply to their proposed operations. The requirements from which Wood Energy seeks relief impose permit obligations. The petition is incomplete by its own declaration; see paragraph 51, where Wood Energy states, in significant part, as follows:

Because the Board may find that the Part 807 Regulations are inapplicable to Wood Fuel . . ., Petitioner defers providing information concerning the legal basis for the proposed adjusted standard until such time [as] the Board determines appropriate.

Normally, an incomplete petition for adjusted standard relief results in a Board order that the petitioner cure the defects or face involuntary dismissal. Due to the unique posture of this proceeding, however, the Board will proceed to the determination of whether 35 Ill. Adm. Code Part 807 applies to Wood Energy and whether the adjusted standard proceeding can grant the type of relief sought given Section 21(d) of the Act.

Since the Board received public requests for hearing within the time prescribed by Section 28.1 of the Act, and because we find that a hearing would be advisable, this matter will be set for a hearing. At this hearing, the issues shall be limited to the need for an adjusted standard from the permitting requirements of Part 807, given the Agency's determination that the type of wood materials to be burned by Wood Energy does not meet the definition of "solid waste" under the Board's regulations; and whether such relief is available given the statutory requirement for a permit contained in Section 21(d) of the Act. The burden of proving these issues shall be on the petitioner. The appropriateness and scope of the adjusted standard sought by Wood Energy will not be at issue at this hearing. Prior to a hearing on those issues, if one becomes necessary, the Board will require Wood Energy to amend its petition to fulfill the requirements of 35 Ill. Adm. Code Part 106.

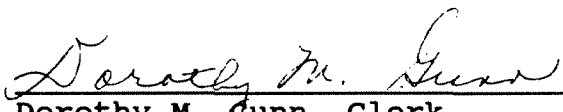
At this hearing, the hearing officer shall limit the presentation of testimony and exhibits to the following preliminary issues:

1. Whether the wood materials to be burned by Wood Energy for energy production are "solid waste" or "waste", as defined under the Act and Board regulations;
2. Whether, as a result of the facility's operations, any portion of the wood materials received by the proposed facility will become "solid waste" or "waste", as defined under the Act and Board regulations;
3. In the event of a finding that the material constitutes "waste" or "solid waste," whether the adjusted standard process set forth in Section 28.1 of the Act is available to grant the relief requested by Wood Energy given the statutory permit requirement set forth in Section 21(d) of the Act.

As a final matter, as stated above, we received several citizen letters requesting a hearing in this matter and voicing concerns over this facility's petition for an adjusted standard. We remind all parties interested in this proceeding that the sole issue currently before the Board in this proceeding is whether or not the wood material intended to be utilized by Wood Energy should be regulated as "waste" or "solid waste" and whether relief is available given Section 21(d) of the Act.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 17<sup>th</sup> day of March, 1994, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board