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MAY 24 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

IN THE MATTER OF:

Adjusted Standard Petition of)
Hayden Wrecking Corporation,) AS 04-003
from 35 Ill. Adm. Code 620.410(a).) (Adjusted Standard)

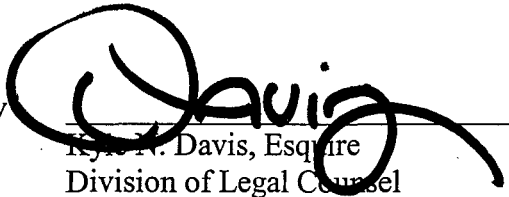
ENTRY OF APPEARANCE

NOW COMES the undersigned, as counsel for and on the behalf of the Environmental Protection Agency of the State of Illinois, and hereby enters his Appearance in the above captioned matter.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

By



Ryan N. Davis, Esquire
Division of Legal Counsel

Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

Dated: May 21, 2004

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AS 04-003
(Adjusted Standard)

NOTICE

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Greensfelder, Hemker & Gale., P.C.
Attn: Ms. Anna Chesser Smith, Esq.
2000 Equitable Building
10 S. Broadway
St. Louis, MO 63102

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Kyle Nash Davis
Assistant Counsel

Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

Dated: May 21, 2004

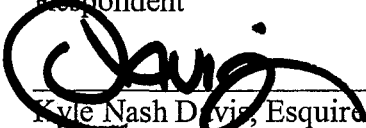
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May, 21, 2004, I served true and correct copies of a RECOMMENDATION OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Greensfelder, Hemker & Gale., P.C.
Attn: Ms. Anna Chesser Smith, Esq
2000 Equitable Building
10 S. Broadway
St. Louis, MO 63102

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Kyle Nash Davis, Esquire
Assistant Counsel

Division of Legal Counsel
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P.O. Box 19276
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**BEFORE THE POLLUTION CONTROL BOARD
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IN THE MATTER OF:)
)
Adjusted Standard Petition of) **AS 04-003**
Hayden Wrecking Corporation,) **(Adjusted Standard)**
from 35 Ill. Adm. Code 620.410(a).)

RECOMMENDATION TO PETITION FOR ADJUSTED STANDARD

NOW COMES the **ENVIRONMENTAL PROTECTION AGENCY** of the State of **Illinois** ("Illinois EPA"), by its counsel, Kyle N. Davis, and, pursuant to 35 Ill. Adm. Code 104.416 (2002), hereby submits this **Recommendation** to Petition For Adjusted Standard ("Petition") filed by the Petitioner, **HAYDEN WRECKING CORPORATION** ("Hayden/Petitioner"). In reply to the Petition, as explained below, the Illinois EPA recommends that the **ILLINOIS POLLUTION CONTROL BOARD** ("Board") **GRANT** the Petition and the requested Adjusted Standard from the requirements of 35 Ill. Adm. Code 620.410(a), subject to certain conditions and states as follows:

I. INTRODUCTION

The purpose of the Petition filed by Hayden is to seek an Adjusted Standard from certain groundwater quality standards, which are applicable to Petitioner's permitted landfills located at the intersection of Illinois Route 203 and Interstate 55/70 in Madison, St. Clair County, Illinois. The Recommendation of the Illinois EPA will address the requirements of 35 Ill. Adm. Code 104.406(a) - (j) in order.

II. STANDARD FROM WHICH Adjusted Standard IS SOUGHT.
35 ILL. ADM. CODE 104.406(a)

Within its Petition, Hayden seeks an Adjusted Standard from 35 Ill. Adm. Code 620.410(a), specifically relating to contamination of inorganic chemical constituents within groundwater at the site, which exceed the codified limitations set forth therein. The Illinois EPA highlights that Hayden's Petition seeks relief from standards relating to concentrations of arsenic, iron, lead and manganese, only, which contaminants exist currently within groundwater at the facility, and for which analysis of sampling revealed that exceedances of the applicable limitations would be continuing.

III. STATEMENT OF APPLICABILITY/IMPLEMENTATION OF FEDERAL REQUIREMENTS OR STATE PROGRAMS CONCERNING SUCH.
35 ILL. ADM. CODE 104.406(b)

The Illinois EPA does not take substantive issue with the representations made by Hayden at page 4 of the Petition as such concern the applicability and implementation of the regulation at issue.

IV. LEVEL OF JUSTIFICATION.
35 ILL. ADM. CODE 104.406(c)

The Illinois EPA does not take substantive issue with the representations made by Hayden at page 5 of the Petition, as such concern the appropriate level of justification to be considered by the Board.

V. DESCRIPTION OF HAYDEN'S ACTIVITY.
35 ILL. ADM. CODE 104.406(d)

The Petition describes Hayden's Madison, St. Clair County, Illinois facility and its activities. To the extent information about Hayden's facility and its activities is known by the

Illinois EPA, the Illinois EPA generally agrees with the statements of the Petitioner. However, the Illinois EPA must gather information relative to Section 104.406(d) from other parts of the Petition. The Hayden facility is located at the intersection of Illinois Route 203 and Interstate 55/70 in Madison, St. Clair County, Illinois. In general, Hayden owned and operated a construction and demolition debris landfill. This facility is located in an area that is primarily industrial/business in nature. Two locations on this site were used for waste disposal. The Illinois EPA issued several permits for this site. Initially, in 1972 the Illinois EPA issued an Operating Permit (No: 1972-7) to Hayden for the disposal of "...brick, mortar, wood, and metal only..." Thereafter, the Illinois EPA issued a Development Permit (No: 1975-36-DE) approving the development of a landfill for "... homogeneous, non-putrescible waste" To the Illinois EPA's knowledge, and as expressly offered by Petitioner at page 2 of the Petition, Hayden has not accepted waste at the facility since 1992. Currently, the facility is graded and the site serves as a parking lot for a local business (Gateway Motorsports Corporation). (See: Petition at 8)

VI. COMPLIANCE ALTERNATIVES.
35 ILL. ADM. CODE 104.406(e)

The Petition fails to provide a description of the efforts which would be necessary, along with the compliance alternatives and corresponding costs which would be incurred, if Hayden were to comply with the regulation of general applicability. At page 8 of the Petition, Hayden offers only that "... any remediation efforts by Hayden would be both prohibitively expensive and continual without prospect of completion ..." due to the fact that groundwater from the upgradient, offsite source that will continue to migrate contaminants onto Hayden's groundwater.

Technically, the Illinois EPA agrees with the Petitioner's conclusion that groundwater is migrating towards the Hayden property, and, more importantly that such migrating groundwater is contaminated with the constituents for which relief is requested prior to reaching the Hayden facility. Yet, as filed, the Petition lacks information relating to: (1) option(s) for compliance; (2) information regarding the cost (overall capital, annualized capital and operating) of compliance and for the alternatives identified; as well as (3) discussion relative to each. As such, the Illinois EPA is unable to provide a complete review.

VII. PROPOSED ADJUSTED STANDARD.
35 ILL. ADM. CODE 104.406(f)

Hayden does not propose specific language for the Board's consideration, opting to provide alternate limits, in milligrams per liter ("mg/l"), for arsenic, iron, lead and manganese. The Petitioner proposes, at Exhibit F of the Petition, that the limits be set at .082 mg/l for arsenic, 735 mg/l for iron, .220 mg/l for lead, and 24.2 mg/l for manganese. These standards appear to derived from and reflect the highest concentrations levels for each contaminant documented within analysis for the groundwater sampling taken at this facility during the calendar years 1999 through 2001. (See: Exhibit C, Table 1; See Also Exhibit G and Exhibit I table)

Several points should be raised as to the proposed Adjusted Standard. In the Petition, Hayden states only that it request that the limitations for arsenic, lead, iron and manganese be adjusted. This is unacceptable to the Illinois EPA, in that the limitation set are deemed appropriate in this specific case for this expressly identified facility. Thus, it should be made a condition of the Adjusted Standard that the limitations proposed are for Hayden facility only. Such a condition will allow the State of Illinois to review the possible source of the

contamination in the future, once identified. Furthermore, it should be noted that the Petition fails to address the costs corresponding to achieving the proposed Adjusted Standard. (See: Petition at 7 par. 22 stating that compliance is "economically impractical")

VIII. IMPACT ON THE ENVIRONMENT.
35 ILL. ADM. CODE 104.406(g)

The Illinois EPA does not take issue with the representations made by Hayden at page 9 of the Petition concerning the quantitative and qualitative impact on the environment if Hayden were to comply with the regulation of general applicability as compared with the proposed Adjusted Standard. The Illinois EPA stresses that insofar as Hayden is seeking an Adjusted Standard from regulations which deal with off-site contamination migrating to its property, the requirement of compliance with the standard regulations is understandable. Yet, Hayden has failed to discuss the impact of its activity on the environment should it comply with the regulation of general applicability versus the environmental impact should it comply with the proposed Adjusted Standard.

IX. JUSTIFICATION FOR PROPOSED ADJUSTED STANDARD.
35 ILL. ADM. CODE 104.406(h)

The Illinois EPA does not take issue with the substantive representations made by Hayden at pages 9 through 11 of the Petition as to its statement of justification.

X. CONSISTENCY WITH FEDERAL LAW.
35 ILL. ADM. CODE 104.406(i)

The Illinois EPA does not take issue with the substantive representations made by Hayden at pages 11 and 12 of the Petition as to its statement of justification.

XI. REQUEST OR WAIVER OF HEARING.

35 ILL. ADM. CODE 104.406(j)

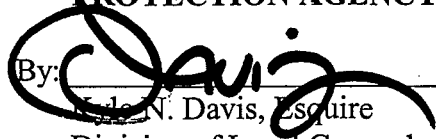
Hayden has waived its right to a hearing in this matter. (See: Petition at 12) Should the Board nonetheless determine a hearing is necessary, the Illinois EPA will participate.

XII. RECOMMENDATION AND RATIONALE.

Certain requirements and/or information of an Adjusted Standard petition, pursuant to 35 Ill. Adm. Code 104.406(a) - (j), are omitted from Hayden's filing. Those omissions aside, Hayden has otherwise adequately presented the Board with a sufficient Petition to substantiate its request for an Adjusted Standard. However, for the reasons stated above, the Illinois EPA believes that certain conditions should be included if the Board adopts the proposed Adjusted Standard. Those conditions are: 1) clarification of the specific regulations which are addressed by the Petition and Adjusted Standard; and 2) correction of the applicability of the revised standards to exclusively the Hayden's permitted facility. If these conditions are included in the proposed Adjusted Standard presented to the Board, the Illinois EPA recommends the Board grant the petition for Adjusted Standard.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

By: 
Helen N. Davis, Esquire
Division of Legal Counsel

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: May, 21, 2004
KND/HaydenAS.wpd