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JUN 03 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
RCRA SUBTITLE D UPDATE, USEPA)
REGULATIONS (January 1, 2003 through)
June 30, 2003))
_____)

R04-5
(Identical in Substance
Rulemaking - Land)

PC3

IN THE MATTER OF:)
)
RCRA SUBTITLE D UPDATE, USEPA)
REGULATIONS (July 1, 2003 through)
December 31, 2003))

R04-~~5~~15
(Identical in Substance
Rulemaking - Land)

PUBLIC COMMENT

MARION RIDGE LANDFILL, by and through its attorney, Claire A. Manning,
respectfully submits its comment in the above-titled proceeding to the Illinois Pollution Control
Board ("Board").

I. Background

Marion Ridge Landfill is a landfill that has been sited for development in Williamson
County. See *Concerned Citizens of Williamson County and Rev. Paul Crane and Rose Rowell v.*
Bill Kibler Development Corp. PCB 96-60 (February 15, 1996). Subsequent to that siting
approval, Marion Ridge Landfill has had a development permit pending with the Illinois
Environmental Agency. Marion Ridge Landfill has cooperated with the Agency on all
regulatory and technical issues raised during the lengthy period of permit review and has spent
considerable time and technical and financial resources on ensuring the public health and
environmental safety of the proposed landfill. Accordingly, Marion Ridge Landfill fully expects
that the development permit will finally be issued on or before July 24, 2004.

Because the proposed landfill is located within the location parameters set forth in the recent Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181, effective April 5, 2000, amended 49 U.S.C. 44718(d) ("Ford Act"), Marion Ridge makes the following public comment, seeking Board clarification and amendment of the Board note, and the applicable definition of "putrescible."

II. Proposed Board Note Reflecting USEPA Note Giving Public Notice of Location Standards Set Forth In the Wendell Holmes Ford Act – 35 Ill. Adm. Code 811.302

First, Marion Ridge Landfill is fully aware of the applicability of the Ford Act and has every expectation that while the Agency, in issuing the permit, may condition the permit upon compliance with all applicable laws and regulations (including the Ford Act), it will not deny the permit on the basis of the location standards set forth in that Act. Second, Marion Ridge Landfill has every expectation that it can meet the provisions of the Ford Act, by assuring the federal agency responsible for its administration, the Federal Aviation Administration (FAA), that the landfill will be operated in such a way that it will not pose an attractant or hazard to birds; thus, it expects to fully meet the policy parameters which underlie the Ford Act and looks forward to presenting its case to FAA.

Heretofore, the Agency has taken the position, correctly, that the location standards set forth in the Ford Act cannot be used a basis of a denial of the permit, because the Ford Act location standards are not a part of the environmental regulations that the Agency regulates. Certainly, in determining not to "adopt" the Ford Act location standards, and instead providing a simple informational note referencing other applicable federal regulations (See *Federal Register*/Vol. 68, No. 189, October 15, 2003), the United States Environmental Protection Agency (USEPA) also recognized that the regulatory responsibility of enforcing the standards

therein lies with the FAA (and corresponding state and local transportation entities) and not the USEPA. As the Board noted in its March 18 order in this matter, the actual "adoption" of these standards in federal environmental rules was the source of much controversy during the federal rulemaking and, accordingly, the USEPA ultimately determined not to promulgate any substantive standard, but instead determined to simply refer to the reader to the applicability of these other federal standards.

Marion Ridge Landfill appreciates that the Board's note is drawn from identical language as the USEPA note and accordingly, like the federal note, provides a simple informational notice to the public that other federal location standards may be applicable. In order to ensure that there is no confusion, however, Marion Ridge Landfill respectfully requests that the Board clarify, in its opinion adopting this note, that the note is not intended to give the Agency any new authority or responsibility to regulate concerning the standards set forth in the Ford Act. Such clarification is provided by the USEPA in its federal register notice:

"...these landfill siting restrictions are directly applicable to any person constructing or establishing a new landfill as those terms are defined in the statute and interpreted by the FAA, the agency charged with administering the Ford Act. Therefore, it is not necessary for EPA to incorporate these provisions into the MSWLF criteria. Today's amendment to include a reference to section 503 of the Ford Act in a note to 40 CFR 25810, which is the section of the criteria that sets forth the location restrictions for airport safety under RCRA, Subtitle D, is solely for the convenience of the public." *Federal Register*/ Vol. 68, No. 199 at page 59334 (October 15, 2003)

Also, as the proposed note is drafted, the Ford Act notification is contained in a pre-existing note which explains that the genesis of 35 Ill. Adm. Code 811.302 (f) was 40 CFR 258.10, federal environmental regulations administered by the USEPA. To add the Ford Act informational note to this same note presents unnecessary confusion.

III. Clarification of the Applicability of Distinct Definitions of "Putrecible".

Again so as to cause no confusion regarding the appropriate standards and definitions Illinois landfills must meet regarding Illinois environmental regulations, as distinct from federal aviation safety regulations, Marion Ridge Landfill respectfully suggests that the Board provide clarification, in the rule itself, that, for purposes of application of the standards set forth in the Ford Act, the definition of "putrecible" set forth in 35 Ill. Adm. Code 810.103 is not applicable. Rather, the definition established by the FAA is the applicable definition.

That definition is much different than the definition found at 35 Ill. Adm. Code 810.103, as the FAA definition is concerned with aviation safety, not the regulation of specific types of landfills. Specifically, the FAA defines "putrecible waste" as

"solid waste which contains organic matter capable of being decomposed by micro-organism and of such a character and proportion as to be capable of attracting or providing food for birds." See Aviation Circular 150/5200-34, Appendix 1

As it is the FAA definition that is key to an exception to the location standards under the Ford Act, in order to avoid any confusion that might result from the Board's single rulemaking (which provides a reference to the Ford Act at the same time it technically amends the definition of "putrecible"), Marion Ridge Landfill respectfully requests that the Board consider adding a note after the definition of "putrecible." This note should clearly indicate that for purposes of application of standards under the Ford Act, the FAA definition of putrecible applies.

Thus, Marion Ridge Landfill suggests that the Board consider splitting this note into two separate sections (since they refer to two distinct regulatory constructs) and also adding language concerning the distinct "putrecible" definitions. For the Board's convenience, Marion Ridge Landfill provides the following suggested amendment to the Board note, which addresses the

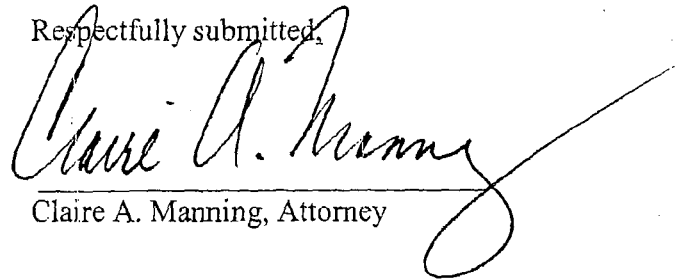
concerns set forth above and which is consistent with the federal language set forth in its "adoption" of this note.

BOARD NOTE: Subsection (f) of this Section is derived from 40 CFR 258.10(1992)(2003), as amended at 68 Fed. Reg. 59333 (October 15, 2003).

SECOND BOARD NOTE: A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the federal Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act) (49 U.S.C. 44718(d)). Section 503 prohibits the "construction or establishment" of a new MSWLF after April 5, 2000 within six miles of certain smaller public airports **absent federal approval**. The Federal Aviation Administration, (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34, dated August 26, 2000. **The terms defined therein, including the definition of "putrescible," are the terms that apply to location standards under the Ford Act. This note is adopted solely for the convenience of the public and should not be considered as the promulgation of new location standards under the Illinois Environmental Protection Act.**

Marion Ridge Landfill thanks the Board for its consideration and for the opportunity to present this public comment.

Respectfully submitted,



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