

ILLINOIS POLLUTION CONTROL BOARD

October 7, 2004

IN THE MATTER OF:)
)
PETITION OF JO'LYN CORPORATION and) AS 04-2
FALCON WASTE AND RECYCLING INC.) (Adjusted Standard - Land)
FOR AN ADJUSTED STANDARD FROM 35)
ILL. ADM. CODE 807.103 AND 35 ILL.)
ADM. CODE 810.103, OR IN THE)
ALTERNATIVE, A FINDING OF)
INAPPLICABILITY)

ORDER OF THE BOARD (by N.J. Melas):

Jo'Lyn Corporation (Jo'Lyn) and Falcon Waste and Recycling, Inc. (Falcon Waste) recycle asphalt shingles into a road-base alternative, called Eclipse Dust Control (EDC), and seek a determination by the Board that the material they use is not a solid waste under the meaning of the Environmental Protection Act (Act). In the alternative, Jo'Lyn and Falcon Waste request relief from the Board's solid waste regulations as those limits pertain to their operation. Today the Board denies the petitioners' motions for expedited review, but accepts the amended petition and directs the parties to hearing on the petition.

On April 21, 2004, the petitioners filed this petition for a Board determination or an adjusted standard from 35 Ill. Adm. Code 807.103 and 810.103. The petitioners operate a facility located in Woodstock, McHenry County. In the petition, the petitioners waived hearing and requested expedited review of this matter. On May 20, 2004, the Board found that the petition lacked necessary information and did not accept the petition. On July 8, 2004, the petitioners filed an amended petition, and supplemented the amended petition on July 14, 2004. On August 24, 2004, The Illinois Environmental Protection Agency (Agency) filed a recommendation (Rec.) that the Board deny the petitioners' petition as amended. On September 3, 2004, Jo'Lyn and Falcon Waste filed a response to the Agency's recommendation along with a renewed motion for expedited review.

The Board encourages innovative operations that practice recycling, waste reduction, and reuse. Yet the Board must also be concerned with the environmentally safe processing and application of recycled materials. Any recycler requesting relief from a Board regulation, such as Jo'Lyn and Falcon Waste, must demonstrate that the production, use, and application of their product is environmentally safe. Similarly, a request for inapplicability of Board regulations requires equally supportive analyses.

Based on the record before it, the Board in its discretion finds that a hearing would be advisable. 35 Ill. Adm. Code 104.422(a)(3); 415 ILCS 5/28.1(d)(2) (2002). The petition, amended petition, and supplement to the petition do not fully address Agency and Board concerns. At hearing the petitioners may further address concerns raised by the Agency in its recommendation. Among the identified concerns not yet fully addressed by the petitioners, the

Agency specifically requests information about the location of the staging area at the facility, the measuring area, and grinding and storage areas. A site map, equipment list, written operating procedures, testing and measurement procedures for placement and compaction, and timeframes for storage were also requested. Rec. at 9. The Agency inquired whether the petitioners would perform physical or chemical testing to insure the consistency of the material, granulated bituminous shingle material (GBSM). Additionally, the Agency is looking for a comparison of any toxic contents of Eclipse Dust Control with materials currently used in traditional paving applications. Rec. at 10. Further, the Agency notes that petitioners have not provided test results of the GBSM toxic substances content. Nor do the petitioners make a demonstration as to the health risks of exposure to humans and livestock. Rec. at 10.

Finally, the Board notes there is no information in this record as to the composition of GBSM. The petitioners rely on a 1993 solid waste determination made by the Agency in support their request for a finding that the Board's solid waste regulations do not apply to the GBSM they use at the Woodstock facility; *i.e.* that GBSM is not a solid waste. In a letter dated May 18, 1993, the Agency found that the GBSM generated by IKO Chicago, a producer of asphalt shingles, is not a solid waste when used for specific applications defined in the letter. Pet. Exh. D. The letter indicates that the Agency based its determination on sampling results and analyses. However, this information is not in this record. Before the Board can make any finding of inapplicability, the Board must have similar current information as to the components of GBSM, as well as how and where petitioners plan to store GBSM at the Woodstock facility.

Additionally, the Board encourages petitioners to provide further information in the following areas prior to hearing.

1. Characterization of GBSM from IKO Chicago and other potential suppliers, including:
 - pH
 - Percent material passing through a #200 micron screen
 - Volatiles (35 Ill. Adm. Code 732.Appendix B, Additional Parameters)
 - Base/Neutrals (35 Ill. Adm. Code 732.Appendix B, Additional Parameters)
 - Polynuclear Aromatics (35 Ill. Adm. Code 732.Appendix B, Additional Parameters)
 - Metals (35 Ill. Adm. Code 732.Appendix B, Additional Parameters)
2. Comparison of above results to characteristics of hazardous waste at 35 Ill. Adm. Code 721 Subpart C.
3. Comparison of above results to 35 Ill. Adm. Code 742 TACO Tier 1 Soil Remediation Objectives for Residential and Industrial/Commercial Properties for ingestion, inhalation, and groundwater contamination. (35 Ill. Adm. Code 742 Appendix B)

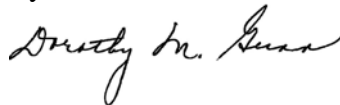
4. Description of how the GBSM forms a cohesive surface through compaction and sun exposure.
5. Discussion as to whether fines or loose GBSM are present in newer applications after the complete compaction and sun exposure.
6. Description of the expected EDC surface as it wears and weathers beyond its useful life and if it yields fines or loose material.
7. Range of expected useful life of EDC surface in years for various applications.
8. Discussion of the fate of the EDC applied product beyond its useful life: whether it becomes a new waste to be removed, whether it can be incorporated into a fresh application of EDC, whether it can serve as a sub base for another paving material, whether it can be removed and used as a component of recycled asphalt pavement (RAP), or other.
9. Discussion of EDC used on feedlots and exposure of livestock to ingestion of fines or particles.
10. Discussion relating to whether petitioners intend to use GBSM in asphalt hot mix.

If the petitioners choose not to proceed to hearing, the petitioners may move to dismiss this matter. Any dismissal will not preclude refileing at a later time.

In summary, the Board accepts the petitioners' petition, as amended, denies the petitioners' motions for expedited review, and directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 7, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board