

ILLINOIS POLLUTION CONTROL BOARD
May 19, 2002

IN THE MATTER OF:)
)
PETITION OF SCHAEFER ENTERPRISES) AS 05-6
OF WOLF LAKE, INC. FOR AN ADJUSTED) (Adjusted Standard - Land)
STANDARD FROM TIRE STORAGE)
RULES AT 35 ILL. ADM. CODE)
848.202(B)(5) AND 848.404)

ORDER OF THE BOARD (by T.E. Johnson):

Today the Board dismisses March 24, 2005 petition for an adjusted standard filed by Schaefer Enterprises of Wolf Lake, Inc. (Schaefer) because of several deficiencies in the petition. Schaefer seeks an adjusted standard from the requirements at 35 Ill. Adm. Code 848.202 and 848.404 of the Board's used tire regulations for its used tire facility located in Wolf Lake, Union County. Generally, these regulations require that owners of used or waste tires cover the used tire storage, maintain minimum aisle spacing and provide financial assurance for the inventory. *See* 35 Ill. Adm. Code 848.202 and 848.404. Schaefer waived hearing in the petition. The Illinois Environmental Protection Agency (Agency) has not filed a recommendation in this matter.

Schaefer buys and sells salvage equipment, and often sells inexpensive spare tires. Many tires are stored on their rims or the original equipment until Schaefer learns how the tires will be resold. Pet. at 3. Other tires are stacked pyramid style. Pet. at 6. Under Section 848.202, used tires must be altered, reprocessed, converted, covered or otherwise prevented from accumulating water within 14 days of arriving at the facility. Schaefer contends that in order to satisfy this requirement, they would have to construct a building to cover the tires at a cost of \$80,000 with annual expenses of \$6000. Under the proposed adjusted standard relief, Schaefer would instead implement a program of monthly inspections and pesticide use to control mosquito infestation.

The petition is deficient in several ways. First, the Board's procedural rules require that "[i]f filed singly, the petitioner shall also serve the petition upon the Agency. . ." 35 Ill. Adm. Code 104.402. Here, there is no proof of service accompanying the petition (35 Ill. Adm. Code 101.304(d)) and Schaefer did not submit any additional documentation indicating that the Agency was served.

Second, the Act provides that if the rule of general applicability does not specify a level of justification required of a petition to qualify for an adjusted standard, the Board may grant an adjusted standard upon adequate proof of the factors listed in Section 28.1(c) of the Act. *See* 415 ILCS 5/28.1(c) (2002). 35 Ill. Adm. Code 848 does not specify a level of justification, and Schaefer did not provide adequate proof of the factors in Section 28.1(c)(1) of the Act (415 ILCS 5/28.1(c)(1) (2002)). Specifically, Schaefer did not adequately show how the factors relating to its facility are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation, how the existence of the facts under Section 28.1(c)(1) justify

the adjusted standard, or that the requested standard will not result in environmental or health effects substantially more adverse than the effects considered by the Board in adopting the rule of general applicability.

Third, a petition for an adjusted standard must contain “[a] reference to and description of standard from which an adjusted standard is sought and the effective date . . .” 35 Ill. Adm. Code 104.406(a). Schaefer’s petition indicates that an adjusted standard is requested from 35 Ill. Adm. Code 848.202(b)(5), but the proposed adjusted standard language does not include 35 Ill. Adm. Code 848.202(b)(5).

Fourth, a petition for an adjusted standard must contain a description of the nature of the petitioner’s activity which is the subject of the proposed adjusted standard, including the location of and area affected by the petitioner’s activity, the number of persons employed by the petitioner’s facility, the age of that facility, the relevant pollution control equipment already in use, and the qualitative and quantitative nature of emissions, discharges or releases currently generated by the petitioner’s activity. *See* 35 Ill. Adm. Code 104.406(d). The petition does not identify the street address of the tire storage facility, the location of nearby water bodies and ditches, or the nearest street intersection. In addition, the overall acreage of the area where tires are stored is not identified, nor is a map of the facility indicating storage or staging areas provided. The petition also fails to show where tires are separated from the wheel rims, does not describe the area affected by the proposed adjusted standard, the surrounding land uses, whether the facility stores more than 250 used tires at any time, or whether the tire business was certified before January 1, 1992.

Fifth, a petition must contain a description of the efforts which would be necessary if the petitioner were to comply with the regulation of general applicability such as corresponding costs for each alternative, overall capital costs, and annualized capital and operating costs for all compliance alternatives. *See* 35 Ill. Adm. Code 104.406(e). The petition fails to describe the proposed storage facility in terms of size, materials of construction, and floodplain provisions, and does not provide a cost breakdown for the estimated capital and annual operating expenses. The petition does not clarify the difficulty in constructing a suitable covered storage facility for the largest tires, discuss whether tires that remain on the rims or equipment pose the same potential breeding grounds as open tires, or address how the size and cost requirements of a storage facility would change if Schaefer were to only build a covered facility for open tires, not for tires that remain on the rims or equipment.

Sixth, a petition for an adjusted standard must contain a narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented. 35 Ill. Adm. Code 104.406(f). The petition is generally insufficient regarding this requirement and needs further specificity including, for example, information financial assurance exemptions contained at 35 Ill. Adm. Code 848.400(c).

Seventh, a petition must contain the quantitative and qualitative impact of the petitioner's activity on the environment with and without the adjusted standard including cross-media impacts and nature of emissions, discharges or releases. *See* 35 Ill. Adm. Code 104.406(g). The

petition is lacking in that it does not address the feasibility and cost of providing a shelter without walls to improve maneuverability, or one equipped with sprinklers or strategically placed hoses and water hook-ups, does not indicate what pesticides (and material safety data sheets) would be used and the method of application, does not indicate in the mosquito control plan if monthly inspections are to be year-round, does not describe how monthly inspection intervals are adequate to ensure mosquito development is not successful, and does not indicate the feasibility and cost of increasing the inspection frequency to once every 14 days.

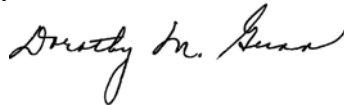
Finally, the Board rules provide that “[w]ithin 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice.” 35 Ill. Adm. Code 104.410. Further, publication of notice of filing within 14 days after filing is jurisdictional. *See In re Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard From: 35 Ill. Adm. Code 218.301 and 218.302(c)*, AS 05-1 (Jan. 6, 2005); *In re Horsehead Resource and Development Company, Inc., for an Adjusted Standard under 35 Ill. Adm. Code 720.131(c)*, AS 00-1 (Aug. 5, 1999); *In re Heritage Environmental Services, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 702.126(d)(1)*, AS 00-14 (June 8, 2000). Schaefer did not file proof of publication with the Board. As a result, the Board has no basis to conclude that it has statutory authority to hear the petition.

For these reasons, the Board dismisses Schaefer’s petition for an adjusted standard and closes the docket. Schaefer may refile at a later date curing the deficiencies listed in this order.

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) (2002); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on May 19, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board