

ILLINOIS POLLUTION CONTROL BOARD
January 20, 2005

IN THE MATTER OF:)
)
PETITION OF THE VILLAGE OF) AS 05-2
BENSENVILLE FOR AN ADJUSTED) (Adjusted Standard – Water)
STANDARD FROM 35 ILL. ADM. CODE)
620.410 REGARDING CHLORIDE AND)
LEAD)

ORDER OF THE BOARD (by A.S. Moore):

On January 3, 2005, the Village of Bensenville (Bensenville) filed a petition for an adjusted standard from the Board’s groundwater quality standards. Specifically, Bensenville seeks relief from the Class I or potable resource groundwater quality standards at 35 Ill. Adm. Code 620.410(a) for chloride and lead. Bensenville seeks this relief for its closed landfill site, which is located in Bensenville, DuPage County, and which, according to the petition, accepted demolition debris and foundry sands, among other materials. The landfill site is currently used as a public golf course. Bensenville represents that it requires this adjusted standard to be able to receive certification from the Illinois Environmental Protection Agency (Agency) that post-closure care monitoring at the landfill is complete. According to Bensenville, the Agency’s certification is also needed so that the Village can finish work on the public golf course.

Bensenville states that the landfill covers 53 acres and is situated at the northwest corner of Grand Avenue and County Line Road. Petition (Pet.) at 1, 3. According to the petition, the landfill was closed in 1989 and Bensenville, with a grant provided by the Agency, acquired the landfill in 1997. *Id.* at 1, 4. The petition states that, before becoming a landfill, the site was used as a borrow pit for materials to construct Interstate 294, which is located to the east of the landfill. *Id.* at 3-4. Bensenville states that the landfill operated from 1973 to 1987, accepting demolition debris, concrete rubble, foundry sands, landscaping materials, and on-site generated ash from a permitted air curtain destructor used for burning landscaping debris. *Id.* at 4. The petition further states that “[a]t no time was the Site authorized to accept either hazardous or general domestic wastes.” *Id.*

According to the petition, the Agency has taken the position that it cannot certify that post-closure care of the landfill is complete because of chloride and lead exceedences of the Board’s Class I groundwater quality standards. Pet. at 2. Bensenville describes these inorganic chemical exceedences as “the current presence of elevated concentrations of dissolved chloride and some periodic, historical elevated concentrations of lead.” *Id.* These elevated levels, Bensenville maintains, are “anthropogenic but not related to landfill impacts,” instead resulting from off-site sources, likely road salt for the chloride concentrations. *Id.* at 2, 24.

Bensenville seeks to relax the landfill site’s Class I groundwater quality standards for chloride from the current 200,000 ug/L to 728,963 ug/L and for lead from the current 7.5 ug/L to 47.8 ug/L. Pet. at 22. Under the proposed adjusted standard, these less stringent standards

would apply to “groundwater within the lower water bearing unit down to the top of the Silurian dolomite bedrock beneath the former Village of Bensenville Landfill Site.” *Id.* Bensenville is served by a municipal drinking water supply that obtains water from Lake Michigan. *Id.* at 3. The petition also states that Bensenville has an ordinance restricting private well use. *Id.* at 12-13, Exhibit 4.

The Agency has not yet filed its recommendation on the adjusted standard petition. Bensenville has waived its opportunity for a hearing (Pet. at 24) and asks the Board to consider this case in an expedited manner.

In this order, the Board first determines whether Bensenville has satisfied the statutory notice requirement for adjusted standard petitions, which is a prerequisite to the Board having jurisdiction over this proceeding. Next, the Board rules on two Bensenville motions: a motion for expedited review; and a motion to file a reduced number of copies of the petition. The Board then identifies several informational deficiencies in Bensenville’s petition and directs Bensenville to file an amended petition to cure them.

NOTICE

Section 28.1(d)(1) of the Environmental Protection Act (Act) (415 ILCS 5/28.1 (2002)) and Section 104.408(a) of the Board’s procedural rules (35 Ill. Adm. Code 104.408(a) (quoting the Act)) require the adjusted standard petitioner to publish notice of the petition’s filing by advertisement in a newspaper of general circulation in the area likely to be affected by the proposed adjusted standard. Under those provisions, publication must take place within 14 days after the petition is filed. Failure to publish within 14 days deprives the Board of statutory authority to hear the petition. *See, e.g., 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) (dismissing adjusted standard petition for lack of jurisdiction when publication of notice took place after the 14-day period).

The newspaper notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. *See* 415 ILCS 5/28.1(d)(1) (2002); 35 Ill. Adm. Code 104.408(b). Within 30 days after filing the petition, petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

On January 13, 2005, Bensenville filed a certificate of publication, documenting that the required notice of the petition was provided in the *Daily Herald* on January 7, 2005. The Board finds that Bensenville has met the notice requirements of the Act and the Board’s procedural rules.

MOTION FOR EXPEDITED REVIEW

Bensenville has moved the Board to expedite its review of this adjusted standard petition. Bensenville states that the Agency has determined that it cannot certify completion of post-closure care at the landfill absent this adjusted standard. Motion (Mot.) to Expedite (Exp.) at 1.

According to Bensenville, it has been seeking this certification from the Agency since Bensenville took over the closed landfill in 1997. Bensenville represents that it has performed numerous groundwater studies during this time. *Id.*

In its motion for expedited review, Bensenville states that it met with the Agency in May 2004 regarding this relief and shortly thereafter submitted a draft adjusted standard petition to the Agency. Mot. to Exp. at 1. The Agency responded with “numerous useful comments which Bensenville has incorporated into the Petition.” *Id.* at 1-2. It is Bensenville’s “expectation that the [Agency] will recommend that this relief be granted.” *Id.* at 2.

Bensenville asks the Board to expedite its review of this petition “in order to finally complete the process of obtaining certification of its post-closure care.” Mot. to Exp. at 2. According to Bensenville, until Agency certification is obtained, Bensenville must continue to sample groundwater quarterly at an annual cost of \$40,000, and Bensenville cannot complete work on the public golf course, into which the landfill site has been converted. *Id.* at 1-2. Bensenville concludes that it “seeks to be responsive to its taxpayers by reducing expenditures that are no longer necessary” based on the information submitted with its petition. *Id.* at 2.

The Board grants Bensenville’s motion for expedited review, consistent with the Board’s resources. *See* 35 Ill. Adm. Code 101.512(c). As noted above, Bensenville has waived its opportunity to have a hearing in this proceeding. Whether the Board will nevertheless order a hearing depends upon several factors, including Bensenville’s response to the informational deficiencies identified in this order and the Board’s assessment of the Agency’s recommendation. Of course, if a member of the public timely requests a hearing, the Board will hold one. *See* 415 ILCS 5/28.1(d)(2) (2002); 35 Ill. Adm. Code 104.420(a).

MOTION TO FILE REDUCED NUMBER OF COPIES

Bensenville asks that the Board allow it to file an original and *three* copies of its adjusted standard petition, rather than an original and nine copies as is generally required under the Board’s procedural rules (*see* 35 Ill. Adm. Code 101.302(h)). Mot. to Reduce at 1. Bensenville states that its petition is especially voluminous, including a Groundwater Summary Report of over 745 pages. *Id.* According to Bensenville, “[t]his level of detail was required since Bensenville waived its hearing and thus needed to submit its complete factual record.” *Id.* Bensenville maintains that submitting six additional copies would be an unnecessary expense. *Id.* The Board grants the motion.

INFORMATIONAL DEFICIENCIES

The Board finds that Bensenville has not provided all of the information required by the Board’s procedural rules for the contents of an adjusted standard petition. *See* 35 Ill. Adm. Code 104.406. Below, the Board identifies, and directs Bensenville to cure, those informational deficiencies.

1. Describe any pollution control equipment in place for landfill management, such as for leachate or gas. *See* 35 Ill. Adm. Code 104.406(d).

2. Describe any emissions from the landfill, such as leachate or gas. *See* 35 Ill. Adm. Code 104.406(d).
3. Describe the design and construction of the landfill (*e.g.*, type of liner, collection system, caps). *See* 35 Ill. Adm. Code 104.406(d).
4. In the petition's Exhibit 3 entitled "Contour Maps Showing Area Chloride Levels":
 - a. Identify the locations of Interstate 294 and O'Hare Airport;
 - b. Indicate the units of measurement (*e.g.* mg/L); and
 - c. Indicate the relationship between the "shallow dolomite aquifer" depicted in the contour maps and the "lower water bearing unit" referred to in the petition's proposed adjusted standard language. *See* 35 Ill. Adm. Code 104.406(g).
5. Explain the bases for Bensenville's conclusion that elevated lead levels in groundwater are not at all attributable to the landfill. *See* 35 Ill. Adm. Code 104.406(g). The Board notes, for example, that total lead levels in the landfill's leachate are significantly higher than the Class I lead standard (Pet., Exhibit 1, Volume II, Appendix 3, Attachment 5).
6. To help ensure that groundwater beneath the landfill is not put to potable use (*e.g.*, in the event Bensenville's private well restriction ordinance is rescinded or amended), address whether the adjusted standard should include the recording of an Environmental Land Use Control (ELUC) or other institutional control. *See* 35 Ill. Adm. Code 104.406(f), (h).

Before this proceeding can continue, Bensenville must remedy these informational deficiencies by filing an amended petition. The Board recognizes that some or all of the requested information may have been provided to the Agency over time, but these items need to be developed in the record of this proceeding. The amended petition "need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear." 35 Ill. Adm. Code 104.418(d). Mindful of the Board's grant of Bensenville's motion for expedited review, the Board allows Bensenville until February 18, 2005, to file the amended petition. Failure to timely file the amended petition will subject this matter to dismissal. If Bensenville requires additional time to file the amended petition, it may file a motion for an extension, but must do so by the February 18, 2005 filing deadline.

As noted above, the Agency's recommendation has not yet been filed. Under the Board's procedural rules, the recommendation is generally not due until 45 days after the filing of the petition or amended petition, unless ordered otherwise. *See* 35 Ill. Adm. Code 104.416(a).

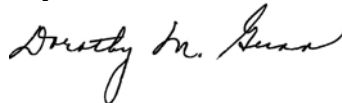
Bensenville served its January 3, 2004 petition on the Agency, and the incremental changes expected in the amended petition should be relatively modest by volume. Under these circumstances and in the interest of administrative economy, the Board directs the Agency to file its recommendation within 30 days after being served with Bensenville's amended petition. Bensenville, in turn, will have 14 days after being served with the Agency's recommendation to file a response. *See* 35 Ill. Adm. Code 104.416(d).

CONCLUSION

The Board finds that Bensenville has satisfied the jurisdictional requirement of providing newspaper notice of its petition for an adjusted standard from the Board's Class I chloride and lead groundwater standards. The Board also grants Bensenville's motions for expedited review and for filing a reduced number of petition copies. However, as described above, the Board finds that Bensenville has not provided all of the necessary information in its petition and directs Bensenville to file an amended petition to cure these shortcomings.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on January 20, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board