

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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AUG 30 2007

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PETITION OF JOHNS MANVILLE)
FOR AN ADJUSTED STANDARD FROM)
35 ILL.ADM. CODE §§ 811.310,)
811.311, 811.318, 811.320, and 814)

AS 04-04
(Adjusted Standard-Land)

NOTICE OF FILING

The undersigned, an attorney, hereby provides notice (see service list in Certificate of Service) that he has today caused copies of the following Brief of Petitioner Johns Manville in Support of Adjusted Standard Petition and Certificate of Service to be filed with:

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

JOHNS MANVILLE,
Petitioner,

By: Edward P. Kenney
One of Its Attorneys

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**BRIEF OF PETITIONER JOHNS MANVILLE IN SUPPORT OF ADJUSTED
STANDARD PETITION**

Comes now Petitioner Johns Manville, (“JM”), by its attorneys, and hereby files its Brief in Support of Adjusted Standard Petition, pursuant to discussions at the Hearing on July 19, 2007 and the Hearing Officer’s Order dated August 9, 2007, in the above-captioned matter. JM respectfully requests that the Illinois Pollution Control Board (“the Board”) grant the Adjusted Standard requested by JM in its Amended Petition filed with the Board on September 30, 2004. JM would like to clarify that its Proposed Adjusted Standard language for 35 Ill.Adm. Code § § 811.318 (b)(3) and 811.320(c)(1) as included in the Amended Petition each referenced “Figure 8”, which was included with the Amended Petition. At the request of Alisa Liu, the Board’s technical representative, JM submitted a Revised Figure 8 clarifying that the Zone of Attenuation went entirely around JM’s On-Site Landfill that is the subject of this proceeding. The Adjusted Standard that JM is requesting the Board to approve would reference the Revised Figure 8 submitted to the Board on July 24, 2007.

I.
**THE BOARD'S ADMINISTRATIVE RECORD CONTAINS AMPLE
JUSTIFICATION FOR THE BOARD TO GRANT THE REQUESTED
ADJUSTED STANDARDS**

By way of background, the requested adjusted standard is for JM's On-Site Landfill, which consists of two fill areas at JM's Waukegan, Illinois facility in Lake County, Illinois. The adjusted standards are for the landfill gas monitoring and collection and groundwater monitoring requirements that, pursuant to 35 Ill. Adm. Code Parts 811, and 814, would otherwise apply to Fill Areas 1 and 2 of JM's On-Site Disposal Area on the eastern portion of JM's Waukegan facility. These fill areas occupy approximately thirteen acres of JM's more than 300 acre facility (Hearing Transcript ("Trans."), pp. 11-13). They contain solid, non-hazardous waste, and have not been in active operation for approximately ten years.

Johns Manville previously submitted documentation to the Board supporting its Amended Adjusted Standard Petition with that Petition. (Amended Petition, September 30, 2004). In the interests of administrative efficiency as well as environmental protection, JM worked with the Illinois Environmental Protection Agency ("IEPA") in order to satisfy any concerns that Agency might have with respect to the proposed Adjusted Standard. JM conducted an extensive amount of field work to investigate groundwater quality and the potential for landfill gas generation and migration in the areas surrounding the On-Site Landfill Fill Areas 1 and 2, and submitted technical reports and draft testimony to IEPA. In response, on May 22, 2007, IEPA submitted a Motion for Leave to file, and Response to the Adjusted Standard Petition recommending that the Board grant the proposed Adjusted Standard.

For the information and convenience of the Board, JM submitted Written Testimony and the supporting technical and historical material in support of its Petition on June 29, 2007. This Written Testimony was admitted into evidence as Petitioner's Group Exhibit A at the Board's Hearing on July 19, 2007, after being identified by Mr. William Bow (Trans. pp. 9-10). This Exhibit contains all of the technical and legal justification necessary for the Board to grant JM's Petition, and little point would be served by repeating it in detail in this Brief.

In short, JM has demonstrated that the requirements contained in Section 28.1(c) of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/28.1(c) and the Pollution Control Board's regulations at 35 Ill. Adm. Code §§ 104.400 et seq. have been satisfied. JM has submitted evidence showing that factors involving the On-Site Landfill that is the subject of this petition are substantially and significantly different from the factors relied upon by the Board in adopting the regulations of general applicability. JM submitted information showing that, due to the nature of the wastes, the amount of landfill gas generated in its fill areas was substantially and significantly less than that generated in the chemical and putrescible and municipal solid waste landfills considered by the Board in adopting the regulations (See Petitioner's Group Exhibit A, Exhibits 6 and 7, Trans. pp. 23-27). Similarly, the leachate generated in the On-Site Landfill was substantially and significantly different than in landfills that the Board considered in adopting the regulations governing chemical and putrescible and municipal solid waste landfills. (Petitioner's Group Exhibit A, Exhibits 7 and 11, Trans. pp. 34-40).

What is even more substantially and significantly different about the JM On-Site Landfill than those considered by the Board in adopting the regulations is the fact that the

On-Site Landfill is surrounded by a landfill containing asbestos containing wastes that was constructed under oversight by the United States Environmental Protection Agency (USEPA) and the IEPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, Superfund)(See Petitioner Group Exhibit A, Exhibit 3, Trans. pp. 11-13). By letter dated December 5, 2006, USEPA indicated that placing groundwater monitoring wells on the side slopes of the closed asbestos landfill would not be acceptable. (Petitioner's Group Exhibit A, Exhibit 10). JM introduced testimony that installation of gas monitoring/collection structures and groundwater monitoring wells would present a risk of cover failure (Trans. pp. 27, 33-36). JM further demonstrated that these factors justified the proposed adjusted standard, in accordance with Section 28.1(c)(2) of the Act, that the proposed adjusted standard would not result in adverse environmental or health effects substantially or significantly more adverse than the effects considered by the Board in adopting the rules of general applicability, and that the proposed standard was consistent with applicable federal law. (Petitioner's Group Exhibit A, Testimony of William Bow, pp. 14-22), (Trans. pp. 53-56).

II.

THE BOARD NEED NOT DETERMINE THAT JM'S WASTE WAS INERT TO GRANT THE ADJUSTED STANDARD

In order to avoid any possible confusion, JM clarifies that it is not arguing that its On-Site Landfill meets the requirements for inert waste landfills contained in 35 Ill. Adm. Code Part 811, Subpart B. The Board's regulations provide that if a landfill has nothing but inert waste, as demonstrated by periodic leachate testing, there is no need for landfill gas monitoring or collection, or groundwater monitoring. Rather than demonstrating that its waste is inert, and thereby avoiding gas monitoring collection, and groundwater

monitoring requirements, JM has demonstrated that is On-Site Landfill is sufficiently similar to the factors that the Board considered in adopting the inert waste landfill requirements and sufficiently different from the factors that the Board considered in adopting the requirements for chemical and putrescible and municipal solid waste landfills to justify the adjusted standard. JM has proposed a gas monitoring program that provides for less frequent monitoring than required by the regulations because field data has demonstrated that the nature of the waste is such that landfill gas is not being generated in anywhere near the same quantities as would be found at a chemical and putrescible or municipal solid waste landfill (Trans. p. 26). Similarly, the differences in the groundwater monitoring requirements are justified by the differences in the nature of the leachate that is generated by the materials in the landfill. Placement of gas collection and groundwater monitoring wells is justified by the need to prevent compromising the cap on the asbestos landfills that were constructed and are maintained under the Superfund program. (Trans. pp. 26-42).

For the above reasons, JM is not arguing, and the Board need not determine, that the On-Site Landfill meets all conditions necessary for an Inert Waste Landfill. If such were the case, there would be no need for an adjusted standard. The information presented by JM referring to the waste as inert refers to its properties with respect to gas and leachate generation and is intended to contrast this material with the types of wastes more typically handled at chemical and putrescible and municipal solid waste landfills, which has a much greater tendency to generate landfill gas and leachate.

III.
NO SUBSTANTIVE PUBLIC COMMENTS HAVE BEEN SUBMITTED

While the Board can grant an adjusted standard petition even in the face of significant public opposition as long as the statutory requirements are met, in this case, there were no members of the public who attended the public hearing. A review of the file in this case indicates just one public comment, submitted in November 2004, in which Jeffrey C. Camplin described the sensitive nature of the areas surrounding the JM plant and urged the Board not to grant the adjusted standards until the State and Federal courts ruled on the then pending State Consent Order and the Federal Amended Consent Decree. JM has introduced evidence that the Federal First Amended Consent Decree and the State Consent Order have each been approved by the respective Court (See Petitioner's Group Exhibit A, Exhibit 4, Trans. pp. 20-23, Exhibit C). No public comments submitted after the hearing are included in the record.

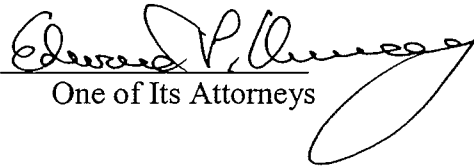
IV.
CONCLUSION

For the reasons set forth above and in the Administrative Record, JM respectfully requests that the Board grant the adjusted standards requested in the September 30, 2004 amended petition (with revised Exhibit 8 as filed with the Board on July 24, 2007).

Respectfully Submitted,

JOHNS MANVILLE,

Petitioner,

By: 
One of Its Attorneys

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CERTIFICATE OF SERVICE

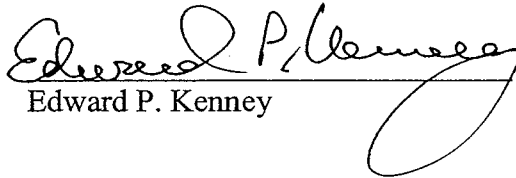
The undersigned, an attorney, hereby certifies that he caused copies of the foregoing Notice of Filing and Brief of Petitioner Johns Manville in Support of Adjusted Standard Petition by placing the same in the United States Mail, first class postage prepaid, this 30th day of August 2007, addressed to:

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