ILLINOIS POLLUTION CONTROL BOARD
February 1, 2001

IN THE MATTER OF:	)	
	)	
PETITION OF HERITAGE	)	AS 00-15
ENVIRONMENTAL SERVICES, LLC. FOR	)	(Adjusted Standard - Water)
AN ADJUSTED STANDARD FROM 35 ILL.	)	
ADM. CODE 702.126(d)(1)	)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On May 17, 2000, Heritage Environmental Services, LLC. (Heritage Environmental) filed a request for an adjusted standard from the Board's Resource Conservation and Recovery Act (RCRA) rules at 35 Ill. Adm. Code 702.126(d)(1). On May 26, 2000, the Illinois Environmental Protection Agency (Agency) filed a response in opposition to granting the adjusted standard. On May 26, 2000, the Board received a reply from Heritage Environmental.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5.1 *et seq*. (1998)). The Board is charged to "determine, define and implement the environmental control standards applicable in the State of Illinois" (415 ILCS 5/5(b) (1998)) and to "grant . . . an adjusted standard for persons who can justify such an adjustment" (415 ILCS 5/28.1 (1998)).

A hearing in this matter was held on September 5, 2000, before Board Hearing Officer John Knittle. On October 4, 2000, Heritage Environmental filed its posthearing brief, and on November 2, 2000, the Agency filed its posthearing brief. Heritage Environmental filed a reply on November 8, 2000.[1] The Board finds that Heritage Environmental has met the requirements for an adjusted standard from 35 Ill. Adm. Code 702.126(d)(1) and accordingly grants the adjusted standard.

STATUTORY AND REGULATORY BACKGROUND

Heritage Environmental is seeking an adjusted standard from 35 Ill. Adm. Code 702.126(d)(1) which requires each owner and operator of a RCRA facility to sign permit applications using specified certification language (see 35 Ill. Adm. Code 702.121). Section 702.126(d)(1) is a part of the Board's RCRA Subtitle C program and was adopted as an identical-in-substance rulemaking. Section 702.126(d)(1) is identical-in-substance to 40 CFR § 270.11(d)(1), which was promulgated on September 1, 1983. Section 702.126(d)(1) provides:

[1] The petition for an adjusted standard will be cited as "Pet. at __", and the Agency's response will be cited as "Resp. at __". The brief of Heritage Environmental will be cited as "PBr. at __", the Agency's brief will be cited as "AgBr. at __", and the reply brief will be cited as "Reply at ___". The transcript from the hearing will be cited as "Tr. at __".

d) Certification.

1) Any person signing a document under subsection (a) or (b) of this Section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons that manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

* * *

The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act (415 ILCS 5/28.1 (1998)) and the Board's procedural rules at 35 Ill. Adm. Code 104. Section 28.1 of the Act requires that the adjusted standard procedure be consistent with Section 27(a). Under Section 27(a) of the Act, the Board is required to take the following factors into consideration: the existing physical conditions, the character of the area involved, including the character of the surrounding land uses, zoning classifications, the nature of the receiving body of water, and the technical reasonability and economic reasonableness of measuring or reducing a particular type of pollution. 415 ILCS 5/27(a) (1998).

Since the Board's RCRA rules at 35 Ill. Adm. Code 702.126 (d)(1) do not specify a level of justification from an adjusted standard, the petitioner must justify the adjusted standard in accordance with the requirements of Section 28.1 (c)(1) through (c)(4) of the Act (415 ILCS 5/28.1(c) (1998)). Section 28.1(c)(1) through (c)(4) provide:

1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;

2. the existence of those factors justifies an adjusted standard;

3. the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4. the adjusted standard is consistent with any applicable federal law.

BACKGROUND

Heritage Environmental operates a hazardous and non-hazardous treatment and storage facility located at 15330 Canal Bank Road, Lemont, Cook County, Illinois. Pet. at 1. The facility processes both hazardous and non-hazardous special wastes for blending and disposal treatment. Pet. at 7. The operation conducted at the facility is the blending of ignitable hazardous wastes into a supplemental fuel mixture for utilization by industrial kilns, boilers and furnaces. *Id*. The facility also accepts wastes which are bulked and shipped elsewhere for treatment/disposal, used oil management, aerosol can product recovery, elementary neutralization, and container storage processing. *Id*.

Heritage Environmental is the sole owner of the facility. Pet. at 1. However, the Metropolitan Water Reclamation District (District) is the owner of the real property upon which the Heritage Environmental facility is located and leases the property to Heritage Environmental. Pet. at 2. The facility currently operates under RCRA Part A and RCRA Part B permits. Pet. at 3. The RCRA Part B permit was revised by the Agency on its own accord with "approval" by Heritage Environmental on November 27, 1995. Pet. at 4. The revised permit contained conditions that Heritage Environmental disagreed with and a permit appeal was filed. See Heritage Environmental Services, Inc. v. IEPA PCB 96-146 (appeal dismissed on April 6, 2000). As a result of negotiations to settle that permit appeal, Heritage Environmental agreed to file a permit modification of the RCRA Part B permit. Pet. at 4. The permit modification was to be accompanied by a certification pursuant to 35 Ill. Adm. Code 702.126(d)(1). Pet. at 4.

The District "cannot execute the certification and attest, under penalty of law, that the application was prepared under the District's direction or supervision." Pet. at 5. The Agency indicated that it could not accept any other certification language. Pet. at 5. Therefore, Heritage Environmental filed this adjusted standard.

At hearing in this matter Carlton Lowe, an attorney employed by the District, testified on behalf of the District. Tr. at 13-14. One of Lowe's duties is to manage the leasing of District property to third parties. Tr. at 17. Lowe testified that it is the District's "understanding" that Heritage Environmental treats and stores hazardous materials at the facility. Tr. at 18-19. Lowe further testified that the District "takes the position that it has a responsibility to the public to manage its land efficiently and consistently" and the District takes "pride" in being aggressive and aware of what is going on at its properties including this facility. Tr. at 24. Finally, Lowe testified that the District would be willing to certify using the language proposed in the adjusted standard. Tr. at 40-41.

ADJUSTED STANDARD PETITION

Heritage Environmental believes that based on the factors in Section 28.1 of the Act, Heritage Environmental is entitled to an adjusted standard. Pet. at 6-7. Heritage Environmental is seeking an adjusted standard from the Board's rules that would require the District, as the landowner, to sign the certification set forth in Section 702.126(d)(1). Heritage Environmental is seeking an adjusted standard to allow the District to sign an alternative

certification. Specifically, Heritage Environmental is seeking an adjusted standard that would have the District sign the following:

> I certify that I understand that this application was prepared by a professional engineer licensed in the State of Illinois and is being submitted for the purpose of obtaining a permit to operate a hazardous waste management facility on the property as described. As owner of the property, I have confirmed with the operator that the facility is in compliance with all environmental laws and regulations applicable to the facility. To the best of my knowledge and belief the information submitted is true, accurate, and complete.

Section 28.1(c)(1)

More specifically, Heritage Environmental maintains that the factors relating to Heritage Environmental are substantially and significantly different from the factors relied upon by the Board when adopting Section 702.126(d)(1). The factors that are different are that the District is a governmental entity and merely a landlord with respect to the facility. Pet. at 8. The District does not oversee the management or operations of the facility and does not "possess the expertise in the operations and permitting requirements of a RCRA facility" necessary to sign the certification in Section 702.126(d)(1). *Id*.

Heritage Environmental also refers the Board to a Federal District Court, Ninth Circuit case which examined the USEPA's policy reasons for requiring an absentee owner to sign a certification under federal rule 40 CFR § 270.11(d)(1). In Systech Environmental Corporation v. USEPA, 55 F.3d 1466 (9th Cir. 1995), the court outlined the policy rationale behind the adoption of a requirement that an absentee owner sign a certification. The USEPA wanted to ensure that the owner of a RCRA facility was aware of the nature and extent of hazardous activity taking place on the property and make the owner aware that USEPA considers the owner jointly and severally responsible for compliance with the permit conditions. Pet. at 9. In Systech, the court allowed the property owner to sign a certification which was different than the one in 40 CFR § 270.11(d)(1). The court found that the alternative certification was sufficient to ensure that the owner was aware of the activities taking place on the property and that the owner was jointly and severally responsible for compliance.

Section 28.1(c)(2)

Heritage Environmental argues that the District cannot comply with the certification requirements and therefore Heritage Environmental's ability to operate the facility is "potentially compromised." Pet. at 12. Heritage Environmental reiterates its arguments that the District cannot sign the certification in Section 702.126(d)(1) because the District does not possess the level of knowledge or expertise needed and because the District is merely the landlord. The certification in Section 702.126(d)(1) would require the District to certify under penalty of law that the permit application was "prepared under [the District's] direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted." Pet. at 13, citing Section 702.126(d)(1). The

District has no involvement in the operations of Heritage Environmental and therefore, according to Heritage Environmental the District cannot make such a certification. Pet. at 13. Heritage Environmental maintains that because all of the factors enumerated in Section 28.1(c) can be demonstrated by Heritage Environmental, the adjusted standard is justified. Pet. at 12.

Section 28.1(c)(3)

Heritage Environmental asserts that the environmental or health effects of the requested adjusted standard are not more adverse than if the adjusted standard was not granted. Pet. at 10. In fact, Heritage Environmental maintains that there will be no effect upon the environment if the adjusted standard is granted because the facility's actual operations will not be affected. *Id*. Heritage Environmental points out that the requested adjusted standard would still require the District to execute a certification; however, the language of the certification would be different. *Id*.

Section 28.1(c)(4)

Heritage Environmental maintains that the Ninth Circuit addressed the validity of the certification requirement when faced with the "exact factual situation" in Systech as Heritage Environmental now faces. Pet. at 11-12. In Systech, the court allowed the absentee landowner to submit an alternative certification. Pet. at 11-12. Heritage Environmental asserts that based on the Systech decision, the requested adjusted standard is consistent with federal law. Pet. at 12.

AGENCY'S RESPONSE TO THE PETITION

The Agency filed a response to the petition prior to hearing and indicated that it opposes the granting of an adjusted standard to Heritage Environmental. Resp. at 2. The Agency sets out four arguments in opposition to the granting of the adjusted standard. First, the Agency asserts that the District should be the party seeking the adjusted standard not Heritage Environmental. Resp. at 1-2. Second, the Agency alleges that the factors relating to Heritage Environmental are not substantially and significantly different than the factors relied upon in adopting Section 702.126(d)(1). Resp. at 2-4. Third, the Agency argues that the language proposed will be inconsistent with federal law. Resp. at 4-5. Fourth, the Agency maintains that "approval of the proposed alternative language may result in environmental and health effects substantially and significantly more adverse than if the adjusted standard is not granted." Resp. at 5. The Board will discuss each of the Agency's arguments in turn.

The District Should Be the Party Seeking the Adjusted Standard Not Heritage Environmental

The Agency points out that Heritage Environmental is seeking a modification of Heritage Environmental's RCRA Part B permit and the District, as the owner of the property, has refused to sign the certification as required by the regulations. Resp. at 2. The Agency asserts that Heritage Environmental is seeking relief from a requirement that the District sign a certification, and while Heritage Environmental may benefit from the granting of the adjusted standard, the District should be requesting the relief. *Id*. The Agency argues that because the

District is not seeking the relief, there is no guarantee that the District will sign the alternative certification. *Id*.

The Factors Relating to Heritage Environmental are Not Substantially and Significantly Different Than The Factors Relied Upon in Adopting Section 702.126(d)(1)

The Agency maintains that the factors considered by both USEPA and the Board when adopting the language contained in Section 702.126(d)(1) are "nearly identical to the factors present in this case." Resp. at 3. The Agency argues that USEPA recognized that it is not uncommon for an operator of a hazardous facility to lease land from a landowner. *Id*. Because USEPA takes the position that an owner is jointly and severally responsible for carrying out the provisions of the RCRA regulations, it is necessary to insure the owner is knowledgeable about the activities at the site. *Id*. The Agency asserts that the aforementioned factors are "nearly identical" to the factors surrounding Heritage Environmental and the District. *Id*.

The Language Proposed Will Be Inconsistent With Federal Law

The Agency argues that Section 22.4 of the Act (415 ILCS 5/22.4 (1998)) requires the Board to adopt rules which are identical-in-substance to the federal regulations and "at least as stringent as the federal RCRA regulations." Resp. at 4. Because the alternative language proposed by Heritage Environmental is "considerably less stringent" than the language in Section 702.126(d)(1), the language would be inconsistent with federal law according to the Agency. Resp. at 4. Specifically, the Agency claims the language is less stringent because the duty of the owner is reduced to "simply asking the operator whether it is in compliance" with the laws and regulations applicable to the facility. *Id*. Further, the Agency asserts that the language fails to encompass an owner's awareness of the penalties for submitting false information. *Id*.

As to Heritage Environmental's reliance on Systech, the Agency asserts that the court did not feel that the alternative language in that case, by itself was adequate because the language did not require any due diligence inquiry on the part of the owner. Resp. at 5. The Agency asserts that the Heritage Environmental's proposed language is not even as stringent as the language offered in Systech. *Id*. The Agency also argues that the Board need not follow the Systech case as it is "not controlling in Illinois." *Id*.

Approval May Result in Adverse Environmental and Health Effects

Essentially, the Agency argues that if the adjusted standard certification language is granted to the District, other landowners may petition for adjusted certification language also. The Agency asserts that this could lead to "diminished due diligence inquiries by landowners regarding activities of their tenants" (Resp. at 6) leading to deleterious environmental and health effects. Resp. at 5-6.

ARGUMENTS

After hearing, both Heritage Environmental and the Agency filed briefs in support of their positions. In sum, Heritage Environmental argues that the factors in Section 28.1(c) of the Act support granting the adjusted standard. The Agency disagrees and opposes the granting of the adjusted standard. The following discussion will summarize the arguments in each of the briefs.

Heritage Environmental Arguments

Heritage Environmental reiterates that it has established that the factors relating to Heritage Environmental are substantially and significantly different than those relied upon in adopting Section 702.126(d)(1). Heritage Environmental also maintains that the requested adjusted standard is consistent with federal law and will not result in environmental or health effects substantially and significantly more adverse than if the adjusted standard were not granted. PBr. at 2.

More specifically, Heritage Environmental argues that the District is a governmental entity which is authorized to operate within the limits of its corporate charter. PBr. at 3, citing Tr. at 16. The authorization allows the District to lease property to private entities but it does not allow the District to direct or supervise the preparation of any documents that relate to a private operation unrelated to the District's corporate purpose. PBr. at 3, citing Tr. at 42-43, 76. Heritage Environmental asserts that because of these factors, the District cannot sign the certification as written in Section 702.126(d)(1). PBr. at 3.

Heritage Environmental claims that neither the USEPA nor the Board ever contemplated the factors relative to Heritage Environmental and the District. PBr. at 3. Heritage Environmental further claims that USPEA contemplated a landlord who may not be aware of its joint and several liability or the nature of the operations of the RCRA facility at issue. *Id*. However, here, the District is fully aware of the nature of the operations and the District's joint and several liability. *Id*. Therefore, Heritage Environmental maintains that the factors relating to Heritage Environmental are substantially and significantly different than those relied upon in adopting Section 702.126(d)(1).

Heritage Environmental asserts that the existence of the factors justify an adjusted standard because Heritage Environmental is an owner and operator of a RCRA facility which is situated on land owned by a governmental entity that does not have the authority to execute the certification in Section 702.126(d)(1). PBr. at 4. Further, Heritage Environmental argues that the "public policy" behind the relief sought lends further justification to the adjusted standard. *Id*. The "public policy" Heritage Environmental refers to is that it is in the public interest for the facility to continue to operate because it provides the marketplace with an alternative for the management of hazardous waste. *Id*. Further, if Heritage Environmental cannot get approval for its RCRA Part B permit, the facility would have to close and 70 employees would lose their jobs. *Id*.

Heritage Environmental argues that there are no more adverse health or environmental effects if the adjusted standard is granted. PBr. at 5. Heritage Environmental points out that

the District has signed alternative language in the past which was accepted by the Agency and such alternative language does not alter the day-to-day operations and policies relating to compliance at the facility. *Id*. Heritage Environmental asserts that it has operated in "material compliance" with all applicable laws and regulations under an alternative certification for over a decade and if the adjusted standard is granted the daily operation controls and compliance practice will not be altered. *Id*. Therefore, Heritage Environmental argues that the environmental or health effects of the requested adjusted standard are not more adverse than if the adjusted standard was not granted.

Finally, Heritage Environmental reiterates its position that the requested adjusted standard is consistent with applicable federal law. In support, Heritage Environmental again points to the Systech decision and argues that the proposed adjusted standard language is consistent with that opinion and includes sufficient diligence on the part of the District to ensure continuing compliance by Heritage Environmental. PBr. at 6. Further, Heritage Environmental points to the testimony of the District that it is aware of the nature of Heritage Environmental' operations and its joint and several RCRA liability. *Id*. Therefore, Heritage Environmental asserts the adjusted standard is consistent with federal law.

Agency Arguments

The Agency reiterates its arguments that the relief requested is inappropriate because the District should be the party seeking the adjusted standard and that the relief requested is inconsistent with federal law. The Agency also reiterates that Heritage Environmental has not demonstrated that the factors relating to Heritage Environmental are not substantially and significantly different that the factors relied upon in adopting Section 702.126(d)(1). The Agency also puts forth a new argument that the Board cannot grant an adjusted standard from an identical-in-substance rule.

In support of its argument that the Board cannot grant an adjusted standard to an identical-in-substance rule, the Agency cites to *In re* Petition of Amoco Oil Company for an Adjusted Standard from 35 Ill. Adm. Code 721.132 (December 18, 1997), AS 96-6. The Agency asserts that the Board stated in Amoco that "any adjustment from the rule would render it inconsistent with federal law, and the adjustment would not be permitted under the Act." AgBr. at 2. The Agency maintains that Heritage Environmental has requested an adjusted standard which deviates significantly from the regulatory language and that relief is not permitted under the Act. *Id*.

To support its assertion that the factors relating to Heritage Environmental and the District are not substantially and significantly different from those relied upon in adopting Section 702.126(d)(1), the Agency turns to the Board's definition of "person" at 35 Ill. Adm. Code 702.110. AgBr. at 3. The Agency points out that the definition of "persons" includes corporations and political subdivisions. *Id*. Because the language of Section 702.126(d)(1) requires any "person signing a permit application" to sign the certification, the Agency argues that the Board contemplated that a governmental body such as the District would need to sign the certification. *Id*. The Agency also states that the District "has admitted that it has signed

the certification application as submitted" to the Agency "for permits it is required to obtain." AgBr. at 3, citing Tr. at 45-46.

The Agency also argues that the Metropolitan Water Reclamation District Act (70 ILCS 2605 *et seq*. (1998)) does allow the District to retain the authority necessary to sign the certification in Section 702.126(d)(1). AgBr. at 4. The Agency points to language in that Act which allows a lease by the District to "retain such interests . . . as considered in the best interests of the sanitary district." *Id*. The Agency asserts that given the language of Section 702.126(d)(1), "it would seem to be in the best interest" of the District to retains supervisory authority. *Id*.

Finally the Agency reiterates that it believes the requested adjusted standard is inconsistent with federal law. AgBr. at 5. The Agency argues that Heritage Environmental's reliance on Systech is misplaced as five years have passed since that decision was entered, "no other courts have followed it and the USEPA has not amended its rules to conform to the opinion." *Id*. The Agency also believes that based on Amoco, the language is not consistent with federal law. *Id*.

DISCUSSION

The Board must first address the Agency's argument that the Board cannot grant an adjusted standard from an identical-in-substance rule. The Board will follow that discussion with an analysis of the Section 28.1(c) factors.

Does the Board Have the Authority to Grant an Adjusted Standard to an Identical-In-Substance Rule?

The Agency argues that the Board cannot grant an adjusted standard to an identical-in-substance rule and cites to Amoco to support its position. The Agency has clearly misstated the law. Section 28.1 allows the Board "grant . . . an adjusted standard for persons who can justify such an adjustment." The plain language of the statue is clear. And the Board has granted adjusted standards under RCRA regulations before. See *In re* Petition of Envirite Corporation for an Adjusted Standard (December 19, 1994), AS 94-10; *In re* Petition Toscopetro Corporation (formally Equilon/Shell Wood River Refining Company) for an Adjusted Standard from 35 Ill. Adm. Code 725.213 and 725.321 (May 15, 1997), AS 97-3; and *In re* Petition of Big River Zinc Corporation for an Adjusted Standard under 35 Ill. Adm. Code 720.131 (April 15, 1999), AS 99-3.

Further, the case cited by the Agency, Amoco, represents an area of RCRA authorization which specifically allows the use of the adjusted standard proceedings. 35 Ill. Adm. Code 720.122(n). The Board denied the adjusted standard sought by the petitioner because the petitioner failed to comply with the specified requirements of the Board's rules on how to qualify for the adjusted standard. In this proceeding, there are no requirements in the rule for the granting of an adjusted standard; instead, Heritage Environmental must meet the requirements of Section 28.1 of the Act.

Section 28.1(c)(1)

The Board finds that the factors surrounding Heritage Environmental and the District are substantially and significantly different than those considered when adopting Section 702.126(d)(1). Although the Board agrees with the Agency that "persons" does include government entities, the facts in this proceeding were not what were considered. In this case, the District believes that it cannot sign the certification language, as it does not directly supervise the application process. The District has declined to sign the certification in Section 702.126(d)(1) because the District does not have substantial involvement in Heritage Environmental operations. The District is willing to sign an alternative certification which more accurately reflects its participation at the site.

The Agency elicited testimony that the District has signed the Section 702.126(d)(1) certification for permits the District must obtain. However, when reading that testimony, it is clear that when the District has signed such certification, the facts were quite different than in this case. Tr. at 45-46.

Section 28.1(c)(2)

The Board finds that the existence of the different factors justifies an adjusted standard. First, the Board does believe that Heritage Environmental is the proper party seeking the adjusted standard. Heritage Environmental is the person seeking the permit, not the District. It is Heritage Environmental's permit which the District must certify. Therefore, the Board finds that Heritage Environmental is the proper party. As to the concern raised by the Agency that the terms and conditions of an adjusted standard would be unenforceable against the District, the Board is not persuaded. The requested adjusted standard would only allow an alternative certification. The District would still be liable under the Act and the Board regulations for the activities at the site. The adjusted standard would merely give alternative language to certify its knowledge of the permit process and activities at the site.

Section 28.1(c)(3)

The Board finds that the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered when adopting Section 702.126(d)(1). As stated above, the adjusted standard does not change the obligations and responsibilities of the District. Rather, the language offers an alternative certification which more accurately reflects the District's involvement at the facility. Furthermore, the District's participation in this adjusted standard process demonstrates that it is aware of the nature of Heritage Environmental's business, and the District's joint and several liability as owner of the site.

Section 28.1(c)(4)

The Board finds that the adjusted standard is consistent with federal law. The policy behind the adoption of the federal language upon which Section 702.126(d)(1) is based was that the operator notify the owner of the nature and extent of hazardous waste activity occurring on

the owner's property, and that the owner be made aware that USEPA considers the owner jointly and severally responsible for compliance with regulations and permit requirements. Systech, 55 F.3d 1466, 1469, citing 47 Fed. Reg. 32,038, 32,039 (July 31, 1982). Thus, alternative language that meets those policies is consistent with federal law.

The Board is persuaded by the analysis of the court in Systech. The court found the USEPA's determination that the federal certification must be used verbatim "arbitrary and irrational insofar as it requires an absentee owner of land on which another processes hazardous waste to certify that the RCRA permit application was processed under his [the owner's] direction and supervision." Systech, 55 F.3d 1466. The Board agrees and finds that the language offered by Heritage Environmental in its adjusted standard request is sufficient and consistent with federal law.

CONCLUSION

The Board finds that Heritage Environmental has demonstrated that the factors in Section 28.1(c) support the granting of an adjusted standard to Heritage Environmental. The Board finds that the factors surrounding Heritage Environmental are substantially and significantly different than those considered when adoption Section 702.126(d)(1) and that the existence of those factors support an adjusted standard. The Board further finds that the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered when adopting Section 702.126(d)(1). Finally, the Board finds that the requested adjusted standard is consistent with federal law and the Board grants the requested adjusted standard.

This opinion constitutes the Board findings of fact and conclusions of law in this matter.

ORDER

The Board hereby adopts the following adjusted standard, pursuant to the authority of Section 28.1 of the Environmental Protection Act:

1. The adjusted standard applies to Heritage Environmental Services, LLC. (Heritage Environmental) and its facility at 15330 Canal Bank Road, Lemont, Cook County, Illinois.

2. The Metropolitan Water Reclamation District (District), as owner of the property at 15330 Canal Bank Road, Lemont, Cook County, Illinois, upon which Heritage Environmental's facility is located, shall use the following language when signing permit applications prepared for the facility at 15330 Canal Bank Road, Lemont, Cook County, Illinois:

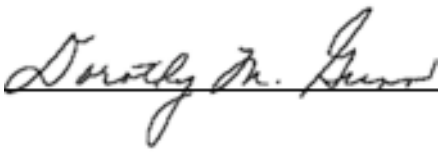
   I certify that I understand that this application was prepared by a professional engineer licensed in the State of Illinois and is being submitted for the purpose of obtaining a permit to operate a hazardous waste management facility on the property as described. As owner of the property, I have confirmed with the

operator that the facility is in compliance with all environmental laws and regulations applicable to the facility. To the best of my knowledge and belief the information submitted is true, accurate, and complete.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 1st day of February 2001 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board