

ILLINOIS POLLUTION CONTROL BOARD  
August 11, 1994

LONE STAR INDUSTRIES, INC., )  
 )  
Petitioner, )  
 )  
v. ) PCB 92-134  
 ) (Variance)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on petitioner's May 18, 1994 motion for relief from final order pursuant to 35 Ill. Adm. Code 101.301(b)(1). Lone Star Industries, Inc. (Lone Star) is requesting that the Board modify its May 20, 1993 opinion and order in this matter, which granted Lone Star a variance from certain landfill regulations but with conditions. Lone Star is requesting that the Board modify one of these conditions and make an affirmative declaration that the requirement of 35 Ill. Adm. Code 811.320(d) does not apply to its facility. On June 7, 1994, the Illinois Environmental Protection Agency (Agency) filed its response to this motion and on June 15, 1994, Lone Star filed a reply to the Agency's response.<sup>1</sup>

BACKGROUND

The facts of the underlying variance issuance can be found in the Board's May 20, 1993 opinion and order and are incorporated by reference in this matter. Based on the record before the Board at the time of the variance request, the Board found that Lone Star had presented adequate proof that immediate compliance with 35 Ill. Adm. Code Subtitle G sections 814.302(a), 811.313, 814.302(b)(1), 811.103(b), 811.314, 811.320(d), 811.317, 815.202(a), 815.203(b), 812.316 and 811.110(d) would impose an arbitrary or unreasonable hardship on Lone Star. The Board granted the requested variance subject to certain conditions.

Lone Star is requesting that the Board modify its order pertaining to Condition D which states:

- D. For the first quarter of sampling only. Lone Star shall conduct a broad volatile organic scan on samples of leachate removed from leachate wells NW-1, NW-2 and

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<sup>1</sup>The motion for relief will be referred to as "Mot. at."

NW-3. Any parameter detected in this scan shall be added to the routine quarterly groundwater sampling list as well as any transformation or degradation products that could be derived from these constituents.

Specifically, Lone Star requests that Condition D be replaced with the following provision to require monitoring for organics in accordance with 35 Ill. Adm. Code 811.319(a).:

Any organic compounds found at concentrations in excess of any Class I groundwater standard in at least two samples from the same well will be included in the quarterly monitoring parameter list for all 16 wells.

Lone Star believes that Condition D "entails an unwarranted cost burden that may not have been intended by the Board." (Mot. at 2.) Lone Star has performed the required monitoring and has only detected a total of four (4) volatile organic chemicals (VOCs). Only one (1) detected VOC, toluene, has a Class I groundwater quality standard (GQS). The GQS for toluene is 1000 ug/l and the reported level of toluene was 8 ug/l and 14 ug/l. The other three (3) VOCs detected, acetone, 1,1-dichloroethane, and 2-butanone, do not have established GQS. Lone Star states that Condition D would require the quarterly monitoring of these VOCs and their degradation products, would cause an economic burden without reason. (Mot. at 5.) Lone Star argues that there is no justification for the requirement because the measured concentrations are below the concentrations allowed by 35 Ill. Adm. Code 811.317(b) and 811.318(c) at the edge of the zone of attenuation. (Mot. at 5.)<sup>2</sup>

In addition, Lone Star requests that the Board make the determination that paragraph 5 of the May 20, 1993 order, the requirement of setting background concentrations pursuant to 35

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<sup>2</sup>The Lone Star argues that there is no justification for the requirement for monitoring (as required in the condition D) because the measured concentrations are below the concentrations allowed by 35 Ill. Adm. Code 811.317(b) and 811.318(c) at the edge of the zone of attenuation. It would appear that Lone Star is in error in drawing this conclusion. Section 811.317(b) and 811.318(c) requires prediction of the concentration by Groundwater Contaminant Transport (GCT) model. Lone Star has not calculated any such numbers and therefore the measured concentrations cannot be compared to concentrations allowed in the subsections 811.317(b) and 811.318(c). However, the detected levels of toluene are well below the GQS for that constituent.

Ill. Adm. Code 811.320(d), does not apply to its site.<sup>3</sup> Lone Star argues that due to the "unique geology and hydrogeology of its landfill and the immediately surrounding area" the concept of developing background concentrations as required in Section 811.320(d) "...is inappropriate for its site and serves no useful purpose." (Mot. at 7.) Lone Star states that it cannot develop the background concentration because the procedures spelled out in Section 811.320(d) cannot be followed due to its site geology. (Mot. at 9.) Secondly, Lone Star states that the thick layers of impermeable limestone and shale cause precipitation that migrated through the landfill to move horizontally until discharged away from the usable groundwater resource to surface water. (Mot at 9.) Finally, Lone Star states that since Sections 811-815 were promulgated by the Board before the development of GQS, that the GQS provide the appropriate standards that apply to its site outside the zone of attenuation. (Mot. at 9-10.)

#### DISCUSSION

In its response filed on June 7, 1994, the Agency agrees with Lone Star that the quarterly monitoring for the four detected volatile organic compounds, namely acetone, 1,1-dichloroethane, 2-butanone and toluene and their degradation products, would cause a substantial economic burden. The Agency suggests that Condition D be modified to require Lone Star to monitor all sixteen (16) of the wells in question once every two (2) years. The Agency states that the offered language by Lone Star is acceptable. However, the Agency requests that an additional provision be included to clearly signify that Lone Star is still subject to the confirmation of monitored increase procedures and the assessment monitoring requirements if an increase is confirmed. (35 Ill. Adm. Code 811.319(a)(4)(B) and 35 Ill. Adm. Code 811.319(b).) Lone Star's Reply filed with the Board on June 15, 1994 did not address the Agency's request for this additional provision.

The Board agrees that Condition D can be modified as stated by Lone Star to lessen the expense while still being protective of the environment and human health. However, we believe that the additional provision requested by the Agency should be included in the modified Condition D. The Board will replace

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<sup>3</sup> Paragraph 5 of the May 20, 1993 order reads as follows:

5. Section 811.320(d)- Requirement for setting background concentrations for groundwater extended to May 20, 1995 or 120 days after final Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable, whichever is earlier.

Condition D of the May 20, 1993 in this order as follows:

Any organic compounds found at concentrations in excess of any Class I groundwater standard in at least two samples from the same well will be included in the quarterly monitoring parameter list for all 16 wells. In addition, the requirements of 35 Ill. Adm. Code 811.319(a)(4)(B) and 811.319(b) apply to these monitoring wells.

The Agency argues that the second request for modification made by Lone Star, that the Board find 35 Ill. Adm. Code 811.320 inapplicable to its site, is premature and better suited for an adjusted standard proceeding or site-specific regulation. The Agency's main contention is that there is not yet sufficient information to determine if the requirements of 35 Ill. Adm. Code 811.320(d) are "impossible and pointless."

Lone Star request is for permanent relief from the requirements of 35 Ill. Adm. Code 811.320 via a motion to modify the Board's variance order of May 20, 1993. The Board agrees with the Agency that the request for permanent relief is inappropriate in this context. The very nature of the relief pursuant to a variance proceeding set forth in Section 35 of the Act is temporary. The Board accordingly denies this portion of the motion to modify. However, the Board is not making a finding on the merits of the request. Lone Star may petition the Board for the requested relief pursuant to an adjusted standard or a site-specific rule proceeding.

#### CONCLUSION

The Board finds that Lone Star has presented justification for the Board to modify its order dated May 20, 1993 as to Condition D of the that order. However, we find that the request for permanent relief from 35 Ill. Adm. Code 811.320(d) is inappropriate in this proceeding. For the convenience of the parties, the text of the May 20, 1993 order as modified today is set forth in its entirety below.

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

#### ORDER

Lone Star Industries (Lone Star) is hereby granted a variance for its cement manufacturing facility located in Oglesby, Illinois from the following provisions for the following periods:

1. Sections 814.302(a) and 811.313 - Minimum of one foot cover within 60 days of waste placement extended to

December 31, 1992.

2. Section 814.302(b)(1)- Installation of a leachate management system extended to December 31, 1994.
3. Section 811.301(b) - Diversion of runoff from undisturbed areas extended to December 31, 1992.
4. Section 811.314 - Installation of a final cover system that meets all stated design standards extended to May 20, 1995 or one year after final Board action on an adjusted standard petition or rule change, or determination by the Board that the proposed final cover system meets the requirements of the existing rule, whichever is earlier.
5. Section 811.320(d) - Requirement for setting background concentrations for groundwater extended to May 20, 1995 or 120 days after final Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable, whichever is earlier.
6. Sections 811.317, 815.202(a), 815.203(b) and 812.316- Completion of groundwater impact assessment and submittal as part of Initial Facility Report extended to December 31, 1994.
7. Sections 815.202(a), 815.203(b) and 811.110(d)- Completion and submittal of a written Closure Plan as part of an Initial Facility Report extended to May 20, 1995 or 120 days after final Board action on an adjusted standard petition or rule change modifying the applicable requirements for the final cover system, whichever is earlier.
8. Section 811.309(c)(4)- Basins will be constructed with liners to control seepage to groundwater extended to May 20, 1995 or 180 days after Board action on an adjusted standard petition or rule change, or determination by the Board that the requirement is non-applicable, whichever is earlier.

The variance is granted subject to the following conditions:

- A. The minimum one foot of cover shall conform to the requirement specified in 35 Ill. Adm. Code 807.305(b).
- B. The pit shall be completely de-watered by March 31, 1994 and shall be so maintained throughout the term of this variance. Lone Star shall apply for and receive a permit by December 31, 1993, from

the Agency's Bureau of Water, Permit Section, to discharge waste waters collected from the western pit to a treatment facility, if needed to completely de-water the pit by March 31, 1994. Additionally, the treatment facility shall apply for and receive a supplemental permit from the Agency's Bureau of Land, Permit Section.

- C. Sodium and the Field Parameters listed below shall be added to the quarterly groundwater sampling list.
- Bottom of well elevation (feet reference mean sea level) to be reported annually.
  - Depth to water (feet below surface).
  - Depth to water (feet from measuring point).
  - Elevation of groundwater surface (feet reference mean sea level).
- D. Any organic compounds found at concentrations in excess of any Class I groundwater standard in at least two samples from the same well will be included in the quarterly monitoring parameter list for all 16 wells. In addition, the requirements of 35 Ill. Adm. Code 811.319(a)(4)(B) and 811.319(b) apply to these monitoring wells.
- E. Within forty-five (45) days of the date of the Board's order, Lone Star shall submit the following Certification of Acceptance to:

Illinois Environmental Protection Agency  
 James G. Richardson  
 Division of Legal Council  
 2200 Churchill Road  
 P.O. Box 19276  
 Springfield, IL 62794-9276

The 45-day period will be held in abeyance during any period that this matter is being appealed. Failure to execute and forward this certificate within 45 days shall render the variance null and void. The form of the Certificate shall be as follows:

#### CERTIFICATION

I, (We), \_\_\_\_\_, having read and fully understanding the order in PCB 92-134, dated May 20, 1993 as modified August 11, 1994, hereby accept that order and agree to be bound by all of its terms and conditions.

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Petitioner

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Authorized Agent

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Title

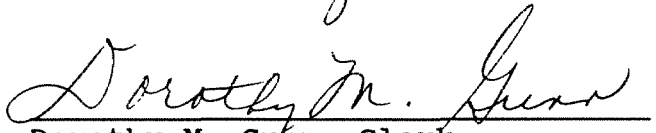
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Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above supplemental opinion and order was adopted on the 17<sup>th</sup> day of August, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board