

ILLINOIS POLLUTION CONTROL BOARD

October 5, 2000

IN THE MATTER OF:)
)
 PETITION OF TOSCOPETRO) AS 97-3
 CORPORATION (formerly EQUILON/SHELL) (Adjusted Standard - RCRA)
 WOOD RIVER REFINING COMPANY) FOR)
 AN ADJUSTED STANDARD FROM 35 ILL.)
 ADM. CODE 725.213 AND 725.321)
)

ORDER OF THE BOARD (by M. McFawn):

On August 28, 2000, Toscopetro Corporation (Toscopetro), a wholly-owned subsidiary of Tosco Corporation, and Equilon Enterprises, LLC (collectively referred to as movants), filed a Joint Motion to Reopen Docket and Substitute Petitioner.¹ Movants request that the Board reopen and substitute Toscopetro Corporation for Shell Wood River Refining Company as the petitioner and holder of this adjusted standard that the Board originally granted in In re Petition of Shell Wood River refining Company for Adjusted Standard from 35 Ill. Adm. Code 725.213 and 725.321 (May 15, 1997), AS 97-3. That order granted an adjusted standard from 35 Ill. Adm. Code 725.321 that allowed Shell Wood River Refining Company (Shell WRRC) to continue operating Pond #1 for treating nonhazardous waste without closure. Movants have waived hearing regarding this motion. The Board will grant this motion and will substitute Toscopetro Corporation as the holder of this adjusted standard.

Up until June 1, 2000, Equilon Enterprises, LLC,² owned and operated the Wood River Refinery (Refinery) in Roxana, Illinois. On June 1, 2000, Toscopetro assumed ownership and operation of the Refinery. Toscopetro has notified the Illinois Environmental Protection Agency (Agency) and requested the transfer of all environmental permits that apply to the Refinery.

On September 7, 2000, the Agency filed a Response to Joint Motion to Reopen Docket and Substitute Petitioner. In its response, the Agency does not object to the relief requested by Movants, on the condition that Toscopetro abide by the terms of the adjusted standard and use Pond #1 in the same manner that justified the relief granted originally in this adjusted standard.

REGULATORY FRAMEWORK

¹ On the same day Movants filed their Joint Motion to Reopen Docket and Substitute Petitioner in the instant case, they also filed a Joint Motion to Reopen Docket and Substitute Petitioner in In re Petition of Wood River Refining Company, a Division of Equilon Enterprises, L.L.C., f/k/a Shell Wood River Refining Company for an Adjusted Standard from Ill. Adm. Code 725.213 and 725.321, AS 98-6, addressing a similar issue for Pond #2 at the Refinery.

² When it originally filed its petition for AS 97-3, petitioner was known as Shell Wood River Refining Company. Subsequent to the Board's May 15, 1997 order in this matter, petitioner underwent corporate restructuring, and changed its name to Wood River Refining Company, a Division of Equilon Enterprises, L.L.C..

As indicated by the caption in this matter, two regulations are relevant in this adjusted standard. First, Section 725.321, Design and Operating Requirements, sets forth the requirements for operating a hazardous waste surface impoundment. Second, adjusted standard relief from this section is governed by Section 725.213, Closure; Time Allowed for Closure. In pertinent part it provides:

- e) Surface impoundments. In addition to the requirements of subsection (d) above, an owner or operator of a hazardous waste surface impoundment which is not in compliance with the liner and leachate collection system requirements in Section 725.321(a) shall receive non-hazardous wastes only as authorized by an adjusted standard pursuant to this subsection. (Emphasis added.)

* * *

- 8) Adjusted standard procedures. The following procedures must be used in granting, modifying or terminating an adjusted standard pursuant to this section.
 - A) Except as otherwise provided, the owner or operator shall follow the procedures of 35 Ill. Adm. Code 106. Subpart G to petition the Board for an adjusted standard.
 - B) Initial justification. The Board will grant an adjusted standard pursuant to subsection (e)(1), above, if the owner or operator demonstrates that the removal plan and contingent corrective measures plans meet the requirements of subsections (e)(2) and (3), above.
 - C) The Board will include the following conditions in granting an adjusted standard pursuant to subsection (e)(1), above:
 - i) A plan for removing hazardous wastes.
 - ii) A requirement that the owner or operator remove hazardous wastes in accordance with the plan.
 - iii) A contingent corrective measures plan.
 - iv) A requirement that, in the event of a release, the owner or operator shall, within 35 days, file with the Board a petition for adjusted standard; implement the corrective measures plan; and, file semi-annual reports with the Agency.

- v) A condition that the adjusted standard will terminate if the owner or operator fails to: implement the removal plan; or, timely file a required petition for adjusted standard.
- vi) A requirement that, in the event the adjusted standard is terminated, the owner or operator shall commence closure of the unit in accordance with the requirements of the closure plan and this Part.

DISCUSSION

As stated at the outset of Section 725.213(e), any person seeking to keep a hazardous waste management unit or facility in service for the purpose of receiving nonhazardous waste while the unit or facility does not meet the requirements of Section 725.321 must obtain an adjusted standard pursuant to Section 725.213(e). Specifically, the procedures for obtaining such an adjusted standard are found at Section 725.213(e)(8). Section 28.1(b) of the Environmental Protection Act, 415 ILCS 5/28.1(b)(1998), provides that the level of justification necessary for granting an adjusted standard may be specified within just such a Board rule.

As a preliminary matter in the original adjusted standard opinion, the Board found that the level of justification required is that set forth in Section 725.213(e)(8)(B). *In re* Petition of Shell Wood River, AS 97-3, slip op. at 5. The Board then evaluated the original petition in accordance with these criteria. Thereafter, the Board found Shell WRRC's justification for the continued operation of Pond #1 at the Refinery as part of the wastewater treatment system for post-treatment retention of nonhazardous waste without meeting the requirements of 35 Ill. Adm. Code 725.321 warranted a grant of an adjusted standard. *Id.* at 8.

Toscopetro now assures the Board that the relevant factors required to justify the adjusted standards have remained unchanged and will not be affected by Toscopetro's acquisition of the Refinery. Pet. Mot., par. 7. Furthermore, Toscopetro states that:

Since taking over ownership and operation of the Refinery on June 1, 2000, Tosco has continued to operate Pond #1 at the Refinery in the same manner as its predecessor, Equilon. Further, Tosco intends to continue to operate Pond #1 at the Refinery in accordance with all applicable environmental statutes, regulations, and permits, including the Adjusted Standard
Pet. Mot., par. 5.

The Affidavit of Rick Strouse, Manager of Environmental Health & Safety at the Refinery, attests to this last statement.

CONCLUSION

The Board finds that Toscopetro has adequately demonstrated that it can be substituted as the current holder of this adjusted standard. That finding is premised upon Toscopetro's

representation that the relevant factors which justified the original adjusted standard in this matter have not changed, along with Toscopetro's assurance that it has and will continue to operate Pond #1 in accordance with the previously granted adjusted standard, and the Board's opinion in *In re Petition of Shell Wood River* (May 15, 1997), AS 97-3. Accordingly, the Board will substitute the name of Toscopetro Corporation for Shell Wood River Refining Company in its May 15, 1997 order.

ORDER

The Board hereby amends its May 15, 1997 order in this matter, and pursuant to 35 Ill. Adm. Code 725.213 (e), grants Toscopetro Corporation an adjusted standard from 35 Ill. Adm. Code 725.321 for the Refinery, so that Toscopetro Corporation may operate Pond #1 as part of the Refinery's wastewater treatment system for post-treatment retention of nonhazardous waste without meeting the requirements of 35 Ill. Adm. Code 725.321. The Board's grant of an adjusted standard is subject to the same conditions imposed when the original adjusted standard was granted to Shell Wood River Refining Company. These conditions are:

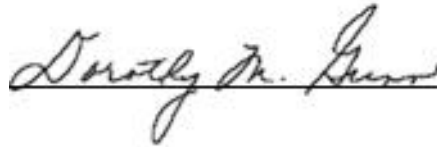
- 1) This adjusted standard applies to Toscopetro Corporation's Refinery located near Roxana, Illinois, in Madison County for its Treatment Pond #1;
- 2) The adjusted standard acknowledges and requires:
 - a) A corrective action plan as set forth in the Resource Conservation Recovery Act (RCRA) Part B permit submitted for the Refinery by Shell Wood River Refining Company;
 - b) In the event of a release, Toscopetro Corporation shall: within 35 days, file with the Board a petition for adjusted standard; implement the corrective measures plan included in the RCRA Part B permit for the Refinery; and file semi-annual reports with the Agency;
 - c) The adjusted standard granted by today's action will terminate if Toscopetro Corporation fails to: implement the removal plan; timely file a required petition for adjusted standard; or for any reason for terminating the adjusted standard found at 35 Ill. Adm. Code 213(e)(7)(a); and
 - d) In the event the adjusted standard granted by today's action is terminated, Toscopetro Corporation shall commence closure of the unit in accordance with the requirements of the closure plan and 35 Ill. Adm. Code 725; and
- 3) For one year following the issuance of this adjusted standard or for 12 discrete diversion events, whichever is longer, Toscopetro Corporation shall sample the diversion influent to Pond #1 for each diversion event, analyze for benzene using EPA Method 1311/8020 (TCLP), and record the results. In the event that the TCLP limit for benzene (0.5 mg/L) has not been

exceeded during the initial sampling period, sampling shall no longer be required. If the TCLP limit for benzene is exceeded during the initial sampling period, the sampling period shall be extended for a total of one year. For the purposes of this condition "discrete diversion events" is defined to be continuous discharges into Pond #1, regardless of duration.

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 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 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of October 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board