

ILLINOIS POLLUTION CONTROL BOARD
March 18, 1999

IN THE MATTER OF:)
)
PETITION OF WOOD RIVER REFINING)
CO., A DIVISION OF EQUILON) AS 98-6
ENTERPRISES LLC, f/k/a SHELL WOOD) (Adjusted Standard - RCRA)
RIVER REFINING CO., FOR AN)
ADJUSTED STANDARD FROM 35 ILL.)
ADM. CODE 725.213 AND 725.321)

JAMES T. HARRINGTON AND CHARLES W. WESSELHOFT, ROSS & HARDIES,
APPEARED ON BEHALF OF THE PETITIONER; and

CHRISTOPHER P. PERZAN, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

Before the Board is a petition for an adjusted standard filed by Wood River Refining Co. (WRRC).¹ WRRC seeks an adjusted standard under 35 Ill. Adm. Code 725.213 so it may continue operating a wastewater pond (Pond #2) that formerly was a hazardous waste surface impoundment. Pond #2 no longer receives hazardous waste. The Board finds that WRRC has met the requirements for an adjusted standard under Section 725.213, and grants the petition.

BACKGROUND

WRRC owns and operates a petroleum refinery in Roxana, Madison County, Illinois. Originally opened in 1918, WRRC's facility is the largest petroleum refinery in the state and supplies approximately 12% of the refined petroleum consumed in the state. Pet. at 3. On average, the refinery discharges 7.9 million gallons per day of treated process, sanitary, and storm waters from a wastewater treatment plant through Outfall #001 into the Mississippi River. The wastewater treatment system consists of primary and secondary treatment facilities. Primary treatment facilities perform neutralization, oil/water separation, dissolved air flotation and equalization. Secondary treatment facilities consist of an activated sludge biological treatment system, an aeration basin (Pond #2), and clarifiers. Pet. at 4.

¹ When it originally filed its petition, petitioner was known as Shell Wood River Refining Co. While this matter was pending, petitioner's name changed through corporate restructuring. In an order dated November 23, 1998, the hearing officer granted an oral motion made by petitioner at the hearing on November 19, 1998, to amend the caption to reflect the change in petitioner's corporate name.

Pond #2 occupies 1.5 acres, is approximately 12 feet deep, and has a total holding capacity of 4.6 million gallons. It is lined with a three-inch layer of asphalt. Pet. at 5. Under the Toxicity Characteristic Leaching Procedure (TCLP), applicable as of September 1990, the wastewater discharged into Pond #2 was considered hazardous based on its concentrations of benzene. Resp. at 1. Pond #2 was therefore considered a hazardous waste surface impoundment. Tr. at 10. On March 22, 1991, WRRC's predecessor corporation submitted Resource Conservation and Recovery Act (RCRA) Part A and Part B applications for Pond #2 and one other pond as a Class Three modification to the existing RCRA Part B permit. Pet. at 5. Since then, Pond #2 has operated under interim status regulations. Pond #2 continued in hazardous waste service until the end of March 1995, when a tank-based biological system was placed into operation. Tr. at 10; Pet. at 5. Pond #2 was then converted to nonhazardous treatment. Pet. at 6. WRRC needs to keep the pond in service because the treatment the pond provides is needed to comply with WRRC's National Pollution Discharge Elimination System (NPDES) permit. Pet. at 9.

Although the Illinois Environmental Protection Agency (Agency) and WRRC differ in their analyses, both agree that Pond #2, a former hazardous waste management unit, is subject to closure. Resp. at 2. Section 725.213 provides, however, that a former hazardous waste management unit may receive non-hazardous waste if the owner or operator meets certain requirements. These requirements are evaluated under the Board's adjusted standard procedures.

PROCEDURAL HISTORY

WRRC commenced this proceeding by filing a petition for an adjusted standard on March 16, 1998. In accordance with 35 Ill. Adm. Code 106.711, notice of WRRC's petition was published in the *Alton Telegraph* on March 23, 1998. On April 6, 1998, the Board received a request for a hearing from Doris A. Dhue and Forrest L. Dhue. The Agency filed a response to the petition on June 1, 1998.² In its response, the Agency recommended that the petition be granted, subject to certain conditions.

A hearing was held in Edwardsville, Illinois, on November 19, 1998. In addition to WRRC and the Agency, several members of the public, including the Dhues, appeared and made comments on the record. WRRC and the Agency filed posthearing comments; WRRC was granted leave to file a response to the Agency's comments.

² Under 35 Ill. Adm. Code 106.714(a), the Agency's recommendation was due within 30 days of the filing of the petition; however, the hearing officer extended this date at the request of the Agency.

Amendment of Petition

In its posthearing comments, WRRC stated that it “amend[ed] its petition” to include a request for an adjusted standard under 35 Ill. Adm. Code 724.213, as well as 725.213. WRRC Comments at 6. Section 725.213 concerns only interim status RCRA units; separate regulations under Part 724 govern permitted RCRA facilities. WRRC’s RCRA permit application is pending before the Agency. When and if the permit is issued, Part 724 will govern and absent an adjusted standard under Section 724.213, Pond #2 will have to be closed. The applicability of Section 725.213 and an adjusted standard from the same ceases once the Part B permit is issued.

The Board cannot accept this amendment. 35 Ill. Adm. Code 106.715 provides that “[t]he petitioner may amend its petition prior to the close of the hearing if a hearing is held or prior to the Board’s decision if a hearing is not held.” WRRC’s amendment, submitted after the hearing, is therefore untimely. We note that members of the public requested the hearing in this matter when it was publicly noticed, and several participated at the hearing. Furthermore, there are no special circumstances here that would justify departing from our procedural rules.

WRRC and the Agency have cited two Board opinions in support of amendment: In re Petition of Olin Corp. (February 27, 1992), AS 90-8, and In re Petition of Amoco Oil Co. (March 11, 1992), AS 91-4. Both cases are distinguishable, and neither provides an exception to Section 106.715.

Olin was the first case in which the Board was asked to grant an adjusted standard under Sections 724.213 and 725.213. The Board took the opportunity to discuss the interrelation of the two sections, and noted that the measure of the sufficiency of the contingent corrective measures plan is identical in both 35 Ill. Adm. Code 724 and 725; therefore, requiring separate adjusted standard petitions would be, in part, repetitious and uneconomical. Olin, AS 90-8, slip op. at 7. In Olin, however, the adjusted standard petition sought relief under both sections; there was no need for an amendment to add a request for additional relief. While the statements in Olin may be correct, Olin does not create an exception to the Board’s otherwise applicable procedural rules.

In Amoco, the petitioner sought relief from provisions of Part 725, but asked that the Board alternatively grant relief under Part 724 if it determined that to be the appropriate course. The Board determined that the appropriate course was to grant relief under both parts. In Amoco, however, (a) the request for alternative relief was included in the petition, so there was no issue of amendment of the petition, and (b) there was no hearing, so even if the Board’s grant of relief under both sections was considered based on an amendment of the petition the action would not have violated Section 106.715. Thus Amoco is also distinguishable from the present case.

In sum, the Board cannot entertain the amendment proposed by WRRC. To keep Pond #2 in operation after a permit is issued, WRRC will have to separately petition for and obtain

an adjusted standard under Section 724.213. As noted by WRRC, Section 724.213 is substantially identical to Section 725.213, so the evidence supporting an adjusted standard under the latter section should also support an adjusted standard under the former.

STATUTORY AND REGULATORY FRAMEWORK

Section 725.213 allows a hazardous waste surface impoundment which does not meet certain liner and leachate collection system requirements (such as WRRC's Pond #2) to receive non-hazardous waste, but only if the owner or operator receives an adjusted standard in accordance with Section 725.213(e). Section 28.1(a) of the Environmental Protection Act (415 ILCS 5/28.1(a) (1996)) authorizes the Board to grant adjusted standards from rules of general applicability. Section 28.1(b) authorizes the Board, in adopting a rule of general applicability, to specify the level of justification required of a petitioner for an adjusted standard from that rule.³ Because Section 725.213 specifies a level of justification applicable to adjusted standards under that section, the Board evaluates WRRC's petition based on the criteria found in Section 725.213(e), which provides in relevant part:

- 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.
 - 1) The petition for adjusted standard must include:
 - A) A plan for removing hazardous wastes; and
 - B) A contingent corrective measure plan.
 - 2) The removal plan must provide for:
 - A) Removing all hazardous liquids; and
 - B) Removing all hazardous sludges to the extent practicable without impairing the integrity of the liner or liners, if any; and

³ Section 28.1(c) sets forth criteria a petitioner must establish to receive an adjusted standard where the regulation of general applicability does not specify a level of justification. Because the regulation involved in this proceeding does specify a level of justification, we do not apply Section 28.1(c).

- C) Removal of hazardous wastes no later than 90 days after the final receipt of hazardous wastes. The Board will allow a longer time, if the owner or operator demonstrates:
 - i) That the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete; and
 - ii) That an extension will not pose a threat to human health and the environment.

- 3) The contingent corrective measures plan:
 - A) Must meet the requirements of a corrective action plan under Section 724.199, based on the assumption that a release has been detected from the unit.
 - B) May be a portion of a corrective action plan previously submitted under Section 724.199.
 - C) May provide for continued receipt of non-hazardous wastes at the unit following a release only if the owner or operator demonstrates that continued receipt of wastes will not impede corrective action.
 - D) Must provide for implementation within one year after a release, or within one year after the grant of the adjusted standard, whichever is later.

- 4) Release. A release is a statistically significant increase . . . in hazardous constituents over background levels, detected in accordance with the requirements in Subpart F.

* * *

- 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.

ANALYSIS

WRRC is entitled to an adjusted standard to keep Pond #2 in service for the purpose of receiving non-hazardous waste if its removal plan and contingent corrective measures plan meet the requirements of Section 725.213(e). See Section 725.213(e)(8)(B). We therefore evaluate WRRC's removal and contingent corrective measures plans for compliance with the requirements of Section 725.213(e).

Removal Plan

Essentially, the removal plan must provide for the removal of all hazardous liquids and all hazardous sludges from the pond. Section 725.213(e)(2). WRRC's petition does not require any specific actions under the removal plan, because the petitioner has already demonstrated that there are no hazardous wastes to be removed. WRRC states that upon installation of the first stage biological treatment unit during the first quarter 1995, the flow coming into the pond ceased to be hazardous and any hazardous liquid left over from the once-hazardous influent was treated to reduce the benzene concentration to nonhazardous levels by the aggressive biological treatment that formerly occurred in Pond #2. Pet. at 9. Further, WRRC notes that its sampling indicates that the sludge in Pond #2 is not hazardous, *i.e.*, the concentration of benzene in the sludge is less than 0.5 mg/L. Pet. Exh. 4, Attachment 3. Since only hazardous wastes must be removed under the plan that Section 725.213(e)(2) requires, no further removal of liquid or sludge from the pond is necessary.

In its response, the Agency agreed with WRRC concerning the removal plan for Pond #2 since the plan requirements are satisfied through documentation of the absence of hazardous liquids, sludges or wastes. Resp. at 3. However, the Agency raised concern regarding an unlined inlet ditch appurtenant to Pond #2 that conveys the treated effluent from the first stage biological unit to the pond. WRRC considers the ditch a part of the pond and not a separate waste management unit. Tr. at 31. The Agency stated that it was concerned with the possibility of hazardous sludges remaining in the inlet ditch, since the petition did not include any sludge sampling data for the ditch. Resp. at 4. To address the Agency's concern, WRRC implemented a sampling program in October 1998 to test sludges and underlying clay in the inlet ditch. Tr. at 28. The tests indicated no hazardous waste in the ditch. *Id.*; Pet. Exh. 4, Attachment 3.

In its posthearing comments, the Agency argues that the data submitted by WRRC may not be sufficiently representative for the Board to find that no hazardous waste remains in the ditch, but the Agency nevertheless still recommends granting the adjusted standard (with certain conditions). In addition, the Agency notes that although WRRC tested the sludge in the ditch and the clay underlying the ditch, there is no information about possible contamination of soil due to lateral migration of liquid hazardous waste through the soil overlying the clay layer. Under Section 725.213(e)(2), however, the removal plan is only required to provide for removal of hazardous liquids and hazardous sludges. Soil contaminated due to lateral migration of waste falls into neither of these categories. WRRC's removal plan is thus not required to address such contamination. We note that the Agency can address any potential soil contamination in the permitting process.

Regarding the inlet ditch sampling, the Board finds that the data submitted by WRRC is comparable to the data submitted regarding sludge in pond #2 and is sufficient for the Board to conclude that no removal of sludge is required. The Board concludes that the removal plan meets the requirements of Section 725.213(e).

Contingent Corrective Measures Plan

As its contingent corrective measures plan, WRRC submits the current groundwater monitoring plan developed under interim status requirements (Pet. Attachment 9) and the corrective measures plan developed in accordance with the requirements of WRRC's RCRA Part B permit (Pet. Attachment 5 at G-8 to G-10). WRRC commits to continue the monitoring program for the duration of the adjusted standard. The Agency believes these measures are sufficient to meet the contingent corrective measures plan requirements of Section 725.213. The Board agrees and finds that WRRC's contingent corrective measures plan is sufficient to support the grant of an adjusted standard.

The Board notes that the documents relied upon by WRRC were prepared a number of years ago. The Board has included a provision in the adjusted standard to provide for updating of these documents if necessary.

Conditions on Adjusted Standard

In several instances, WRRC has agreed to inclusion of terms beyond the minimum requirements of Section 725.213(e)(8)(C). The Board has retained these conditions in the adjusted standard as conditions 4 and 5, along with a requirement in condition 3 that the adjusted standard terminates if WRRC does not implement the contingent corrective measures plan. Condition 4 requires WRRC to sample influent to the pond monthly; the Board has added provisions requiring WRRC to retain sampling results for a period of three years, and to inform the Agency if an exceedence is detected.

At the hearing, several members of the public expressed concerns with potential threats to water supplies in the event of a release, including migration of contaminants from an unlined inlet ditch appurtenant to Pond #2. In its posthearing comments, the Agency asked the Board to include a condition to the adjusted standard requiring WRRC to line the inlet ditch.

The Agency argues that this condition is appropriate and permissible under the provision of Section 28.1(a), that “[i]n granting . . . adjusted standards, the Board may impose such conditions as may be necessary to accomplish the purpose of this Act.” In its reply to the Agency’s comments, WRRC argues that the issue should be dealt with in the permitting process.

The Board concludes that the issue of whether the inlet ditch should be lined is more appropriately dealt with in the permitting process than in this adjusted standard. Under Section 725.213 the Board’s inquiry is limited to the sufficiency of the removal and contingent corrective measures plans. This proceeding was not intended to include evaluation of operations, nor is such an evaluation necessary in this proceeding; the permitting process provides an ample mechanism by which the Agency can ensure that groundwater is adequately protected. We note, furthermore, that the Agency’s witness indicated that the Agency would evaluate the necessity of a liner for the ditch as part of the permitting process. Tr. at 80. The Board therefore will not condition the adjusted standard on the installation of a liner in the inlet ditch.

The Agency has also requested a condition requiring WRRC to discharge wastewater directly into Pond #2 in the event the staged biological treatment unit goes off-line. This condition, like lining the ditch, is concerned with operations, and is more appropriately addressed in the permitting process. The Board has therefore not included this condition in the adjusted standard.

Finally, the Agency has asked that the adjusted standard include the following statement: “In no event shall [WRRC] allow the introduction of hazardous wastewaters into any portion of or appurtenance to Pond 2 which is unlined.” WRRC has objected to this language. The Agency has acknowledged that this proposed language merely restates obligations to which WRRC is already subject. Tr. at 82-83. The Board concludes that this language is unnecessary and has not included it in the adjusted standard. We stress that in no way should this omission be interpreted to relieve WRRC from any duty to which it is otherwise subject under the Act or hazardous waste regulations.

CONCLUSION

The Board concludes that WRRC has met the requirements for an adjusted standard under Section 725.213(e). The Board’s order below generally follows the terms of the draft adjusted standard submitted by WRRC as Attachment A to its posthearing comments, with some modifications. WRRC’s pledge to continue groundwater monitoring for the duration of the adjusted standard is now specifically included as a condition of the adjusted standard. In accordance with Section 725.213(e)(8)(C)(iii), the Board has included a provision specifically incorporating the contingent corrective measures plan as part of the adjusted standard. We have also modified the language to more closely track the requirements of Section 725.213(e)(8)(C).

ORDER

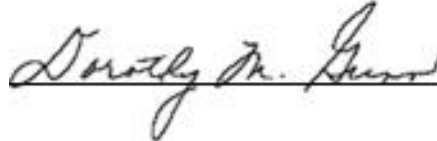
Wood River Refining Company, a division of Equilon Enterprises, L.L.C., located near Roxana, Illinois, in Madison County, is hereby granted an adjusted standard under 35 Ill. Adm. Code 725.213(e) for its Treatment Pond #2 (which includes the inlet ditch as an appurtenance) under which Pond #2 may operate as a second-stage biological treatment unit (including nitrification) for treating nonhazardous wastewater, without closure. For the purposes of this adjusted standard, the contingent corrective measures plan consists of the applicable provisions of Attachments 5 and 9 to the petition (including any amendments to those documents approved by the Agency). This adjusted standard is subject to the following conditions:

1. Wood River Refining Company must continue the groundwater monitoring program described in Attachment 9 to the petition for the duration of this adjusted standard.
2. In the event of a release from the pond, Wood River Refining Company must:
 - a. File a petition for an adjusted standard with the Board within 35 days;
 - b. Implement the corrective measures plan; and
 - c. File semi-annual reports with the Agency.
3. If Wood River Refining Company fails to timely file a required adjusted standard petition with the Board and/or fails to implement the contingent corrective measures plan, this adjusted standard will terminate and Wood River Refining Company must commence closure of Pond #2 in accordance with the closure plan and 35 Ill. Adm. Code 725.
4. Wood River Refining Company must test the influent to Pond #2 for benzene using the Toxicity Characteristic Leaching Procedure on a monthly basis. Wood River Refining Company must keep test result records for a minimum of three years, and provide the same to the Agency upon request. If testing indicates the presence of benzene at a concentration exceeding the limit set in 35 Ill. Adm. Code 721.124, Wood River Refining Company must notify the Agency within 24 hours.
5. In the event the Staged Biological Treatment tank system becomes inoperable or malfunctions, Wood River Refining Company must take all appropriate measures to prevent introduction of hazardous wastewaters into Pond #2.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) 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 opinion and order was adopted on the 18th day of March 1999 by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board