

ILLINOIS POLLUTION CONTROL BOARD
February 6, 1997

AMERICAN RIVER)	
TRANSPORTATION COMPANY,)	
)	
Petitioner,)	
)	
v.)	AS 97-1
)	(Adjusted Standard-
ILLINOIS ENVIRONMENTAL)	Land)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

On August 5, 1996, American River Transportation Company (ARTCO) filed a request for an adjusted standard from the Board's regulations which require that special waste haulers obtain a permit and that special waste be manifested prior to transportation and disposal. (35 Ill. Adm. Code 809.201, 809.301, 809.302, 809.501.) ARTCO seeks an adjusted standard for its facility in LaSalle, located in LaSalle County, Illinois. ARTCO wishes to haul special waste generated by barge washing at its facility to a disposal point without first obtaining a permit and preparing a manifest. This request for an adjusted standard seeks relief similar to that granted in a prior variance. (American River Transportation Company v. IEPA (August 24, 1995), PCB 95-147.)

On September 6, 1996, the Illinois Environmental Protection Agency (Agency) filed its recommendation advocating that the adjusted standard be granted with limited conditions. ARTCO filed a response to the Agency recommendation on September 10, 1996, indicating that ARTCO is willing to accept the conditions recommended by the Agency. ARTCO waived hearing and no hearing on this matter was held.

Based upon the record before it and upon review of the factors involved in the consideration of adjusted standards, the Board finds that the petitioner has demonstrated that grant of an adjusted standard is warranted. Accordingly, for reasons more fully set forth below, the Board hereby grants ARTCO an adjusted standard from Sections 809.201, 809.301, 809.302, and 809.501.

BACKGROUND

ARTCO is a wholly-owned subsidiary of Archer Daniels Midland Company (ADM), an international agri-processing company with its corporate headquarters

located in Decatur, Illinois. (Pet. at 1.) ADM was incorporated in 1923, and originated as a processor of linseed oil. (Pet. at 1.) It has grown to be one of the world's largest food companies. (Pet. at 1.)

ARTCO's facility is located on the Illinois & Michigan (I & M) canal, a short distance upstream of its confluence with the Illinois River. (Pet. at 5.) Its facility lies at the center of what is informally known as the LaSalle Harbor, which extends for approximately 2.9 miles on the I & M Canal and the Illinois River and which encompasses 7 docks. (Pet. at 5.) Surrounding land uses are predominantly industrial and commercial. The nearest residential areas are several blocks to the north of ARTCO's facility and approximately three or four blocks from the Illinois River. (Pet. at 5-6.) A limited amount of recreational boating and fishing occurs in this area; however, there are no recreational boat access points to the river in that area, nor are there any swimming areas. (Pet. at 6.)

In 1971, ADM incorporated a wholly-owned subsidiary, ARTCO, to own and acquire inland water transportation businesses, principally to transport agricultural commodities and products. (Pet. at 1.) Today, ARTCO is a major force in the inland water carrier business, owning 26 boats and 1,800 barges, including the largest covered barge fleet in the United States. (Pet. at 1.) ARTCO employs over 800 people, many of whom are located in the State of Illinois. (Pet. at 1.) It has 12 locations across the United States and operates 6 facilities on rivers within or bordering Illinois. (Pet. at 1.) ARTCO's principal administrative offices are located in Decatur, Illinois. (Pet. at 1.) The business' principal activities include moving barges up and down the Mississippi and Ohio Rivers for ADM as well as others, and providing the following services: fleetling (parking of barges on the river), switching (moving barges in and out of the fleet and dock areas), building tows (preparing barges to be moved by a line boat down the river) and barge cleaning and maintenance. (Pet. at 5.)

ARTCO acquired the marine operations in LaSalle, Illinois, in December 1991 from Tabor Grain Company (Tabor), a grain company acquired by ADM in 1975. (Pet. at 4.) Tabor owned and operated a grain elevator and dry bulk storage facility in LaSalle, and in connection with that business, also operated a large switching and fleetling business. (Pet. at 4.) Upon acquiring the Tabor facility in 1991, ARTCO determined that it could operate on the Illinois River more efficiently by taking its line boats no farther north than LaSalle. (Pet. at 4.) This change in operations required the acquisition of fleetling spaces in the LaSalle area. (Pet. at 4.) As a result of the acquisition in December, 1991, ARTCO took control of the LaSalle marine operations, which included fleetling space and two boats for moving barges in and out of the fleet. (Pet. at 4-5.) The services provided by ARTCO at the LaSalle facility include fleetling, switching, building tows and barge cleaning and maintenance. (Pet. at 5.) Except for cleaning and maintenance, these services are essentially the same services offered by Tabor when it controlled the operations. (Pet. at 5.) Tabor loads Illinois grain for shipment to ports down river, typically on the Gulf of Mexico, in preparation for

export, and receives shipments of fertilizers, coal and salt for storage for independent entities. (Pet. at 5.)

Since 1991, ARTCO has moved the loaded barges out of the fleet to the Tabor dock for unloading. (Pet. at 5.) The empty barges are cleaned by ARTCO if the particular barge lessor or owner so requests. (Pet. at 5.) ARTCO then moves empty barges from the fleet to the Tabor dock to be loaded with grain for outbound shipment. (Pet. at 5.) These barges are typically cleaned prior to arrival at the LaSalle facility, although on occasion, grain barges will require cleaning prior to loading. (Pet. at 5.)

ARTCO previously cleaned barges on the Illinois River by sweeping them clean, pumping river water into them to remove the residual materials, and discharging the rinse water back into the river. (Pet. at 6.) The employees swept out the barge to empty it all of recoverable product, and then sprayed the barge with river water to remove any residual product which remained after sweeping. (Pet. at 6.) The spraying operation would take up to one hour and used approximately 5,000 gallons of water.

On April 29, 1994, ARTCO changed its practices such that the barge cleaning now takes place adjacent to a barge positioned to receive the rinse water near the loading/unloading area. (Pet. at 5.) The rinse water is no longer discharged into the Illinois River. (Pet. at 5.) With greater reliance upon sweeping and the use of a vacuuming system, both the amount of rinse water and commodity residuals have been significantly reduced. (Pet. at 5.) Periodically, the receiving barge takes the accumulated rinse water one-half mile downstream and discharges it to a sewer tributary to the Peru Sanitary District's (District) wastewater treatment plant. (Pet. at 5.) The District's discharge is on the Illinois River at approximately River Mile 222.4. (Pet. at 5.)

Up to 800 barges carrying grain, coal, salt or fertilizer are loaded or unloaded at the LaSalle facility each year. (Pet. at 6.) Approximately 200 of those barges are cleaned each year, including approximately 90 that carried salt, 70 that carried fertilizer, 20 that carried coal, and 20 that carried grain. (Pet. at 6.) ADM tested the barge rinse waters produced from the cleaning of barges. (Pet. at 7.) Rinse waters from grain loads produce elevated levels of suspended solids and BOD. (Pet. at 7.) Coal loads produce elevated levels of suspended solids. (Pet. at 7.) Salt loads have elevated levels of TDS and chlorides. (Pet. at 7.) Fertilizer loads result in elevated levels of ammonia. (Pet. at 7.)

STATUTORY AND REGULATORY FRAMEWORK

The Board's responsibility in this matter arises from the Environmental Protection Act (Act). (415 ILCS 5/1 et seq. (1994).) In determining whether an adjusted standard is to be granted, Section 28.1 of the Act requires the Board to determine whether the petitioner has presented adequate proof of the following: that factors relating to the petitioner are substantially and significantly different from the

factors relied upon by the Board in adopting the general regulation applicable to that petition; the existence of those factors justifies an adjusted standard; 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 the adjusted standard is consistent with any applicable federal law. (415 ILCS 5/28.1(c).) In granting an adjusted standard, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act. (415 ILCS 5/28 .1(a).)

ARTCO is requesting an adjusted standard from the Board's special waste hauling regulations as those regulations relate to manifesting of special waste for transport and disposal. Specifically, ARTCO seeks an adjusted standard to allow it to transport stored barge rinse water from its LaSalle facility to a manhole controlled by the District for treatment at the District's wastewater treatment plant without the need to manifest those rinse waters, and without the need for ARTCO to obtain a special waste hauling permit. The particular provisions from which relief is sought are outlined below.

The barge rinse waters are "equipment cleanings" as listed in the definition of "industrial process waste" of the Act at Section 3.17. (415 ILCS 5/3.17; 35 Ill. Adm. Code 809.103.) Therefore, by definition, rinse waters are a special waste. Special wastes consist of hazardous wastes, industrial process wastes and pollution control wastes which have not been declassified. (415 ILCS 5/3.45; 35 Ill. Adm. Code 808.110.)

Section 809.201 entitled "Special Waste Hauling Permits - General" provides:

No person shall haul or otherwise transport any special waste generated within Illinois or any special waste to be disposed of, stored or treated within Illinois without a current, valid waste hauling permit issued by the Agency in accordance with the requirements of this Subpart unless the hauler is exempt from the special waste hauling permit requirements under this Subpart.

(35 Ill. Adm. Code 809.201.)

Section 809.301 entitled "Requirements for Delivery of Special Waste to Haulers" provides:

No person shall deliver any special waste generated within Illinois or for disposal, storage or treatment within Illinois unless that person concurrently delivers a manifest completed in accordance with Subpart E of this Part to a special waste hauler who holds a current, valid special waste hauling permit issued by the Agency under Subpart B of this Part.

(35 Ill. Adm. Code 809.301.)

Section 809.302 entitled “Requirements for Acceptance of Special Waste from Haulers” provides:

- a) No person shall accept any special waste for disposal, storage or treatment within Illinois from a special waste hauler unless the special waste hauler has a valid special waste hauling permit issued by the Agency under Subpart B of this Part and concurrently presents to the receiver of the special waste, or his agent, a completed, signed manifest as required by Subpart E of this Part, which manifest designates the receiver’s facility as the destination for the special waste.
- b) No person shall deliver special waste in Illinois for disposal, storage or treatment unless the person who accepts the waste has a current, valid operating permit issued by the Agency and the necessary supplemental permits required by 35 Ill. Adm. Code 807, as well as all other applicable permits as required by the Act and Board regulations.

(35 Ill. Adm. Code 809.302.)

Section 809.501 entitled “Manifests, Records, Access to Records, Reporting Requirements and Forms” provides in pertinent part:

- a) Any person who delivers special waste to a permitted special waste hauler shall complete a manifest to accompany the special waste from delivery to the destination of the special waste. The manifest which shall be provided or prescribed by the Agency shall, as a minimum, contain the name of the generator of the special waste; when and where generated; name of the person from whom delivery is accepted and the name of the site from which delivered; the name of the special waste hauler; the date of delivery; the final disposal, storage or treatment site; and the name, classification and quantity of the special waste delivered to the hauler. The Agency may provide or prescribe a different form of manifest for Class A special wastes than for Class B special wastes.

(35 Ill. Adm. Code 809.501(a).)

ARTCO’S PROPOSED ADJUSTED STANDARD

As is required by its variance in PCB 95-147, ARTCO has investigated compliance options ever since it ceased discharging rinse waters into the Illinois River. ARTCO determined that there were a number of potential compliance options available, including: ceasing the generation of rinse waters; constructing an on-site

treatment facility; arranging for the rinse waters to be picked up by truck and taken to an appropriate treatment facility; transporting the rinse waters by barge to an appropriate treatment facility; and constructing a sewer line for a direct discharge to a wastewater treatment facility.

ARTCO maintains that its preferred and most cost effective alternative is to continue its current practice of barging the wastewaters to the District's wastewater treatment facility. ARTCO argues that its current practices have not caused any adverse environmental impact, and that both ARTCO and the District have been satisfied with those practices.

ARTCO proposes the adoption of the following adjusted language:

The American River Transportation Company (ARTCO) is hereby granted an adjusted standard from the special waste hauling regulations as set forth at 35 Ill. Adm. Code 809.201, 809.301, 809.302, and 809.501. Pursuant to this grant, 35 Ill. Adm. Code 809.201, 809.301, 809.302, and 809.501 shall not apply to the handling of barge rinse water at ARTCO's LaSalle, Illinois facility.

This adjusted standard is subject to the following conditions:

1. The rinse water is transported and discharged only to the Peru Sanitary District so long as the Peru Sanitary District shall possess and maintain all necessary permits, except as authorized by the terms of this adjusted standard, in order to accept this waste;
2. The Petitioner shall maintain logs of the transportation and discharge of the rinse waters documenting the dates and amounts discharged to the Peru Sanitary District. Petitioner shall submit on an annual basis reports to the Agency showing the quantity of rinse waters discharged. Such reports shall be addressed to Planning and Reporting Section, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, 2200 Churchill Road, Springfield, IL 63794 (This address is subject to change by the Agency);
3. Petitioner shall maintain its permit to connect and discharge the rinse water to the Peru Sanitary District pursuant to 35 Ill. Adm. Code Part 309 and all other necessary permits, except as authorized by the terms of the adjusted standard;
4. Petitioner shall comply with all terms and conditions of its connection and discharge permits for the rinse waters; and
5. Petitioner shall allow representatives of the Agency upon presentation of credentials access to its operations at reasonable times for the purposes of

conducting inspections of its facility and examination of records required under the conditions of this adjusted standard.

In short, the adjusted standard will allow ARTCO to continue to discharge barge rinse waters to the District without the requirement of following special waste hauling regulations. ARTCO estimates that the cost of disposing its rinse waters to the District will average \$510 per year. The proposed conditions reflect the conditions of ARTCO's variance (PCB 95-147) to the extent that they are applicable to the adjusted standard.

JUSTIFICATION AND AGENCY RESPONSE

In support of its petition for an adjusted standard, ARTCO argues that it successfully meets the aforementioned criteria set forth in 35 Ill. Adm. Code 106.705(h). First, ARTCO contends that substantially different factors at its LaSalle facility do warrant an adjusted standard. (Pet. at 13-14.) ARTCO argues that the purposes of the special waste hauling rules are not furthered through their application to its LaSalle facility. (Pet. at 13-14.) ARTCO asserts that the primary tenet of the special waste hauling rules is to ensure that, once the generator of the waste delivers it to a hauler, the hauler will deliver it to the intended disposal site. (Pet. at 14.) ARTCO maintains that conforming to these procedures is unnecessary, because it will use its own barges to transport the barge cleaning waters, thereby assuring that the barge cleaning waters will be taken to the appropriate disposal site. (Pet. at 14.) Further, ARTCO states that it operates its barge fleet in accordance with Coast Guard rules, thus confirming that the rinse waters are properly treated. (Pet. at 14.) Because ARTCO is both the generator and hauler, it believes that the manifest procedures enacted to ensure improper disposals do not occur are unnecessary given these circumstances. (Pet. at 14.) ARTCO suggests that the recordkeeping and reporting procedures proposed in its petition for an adjusted standard will provide the information that would otherwise be available from the manifests. (Pet. at 14.) The Agency agrees with ARTCO's contentions and supports granting it an adjusted standard in this circumstance. (Agency Resp. at 3-4.) Specifically, the Agency opined that the recordkeeping requirements proposed by ARTCO should adequately ensure that the wastewaters are properly accounted for and disposed. (Agency Resp. at 4.)

Second, ARTCO maintains there is adequate justification for the adjusted standard in this instance. ARTCO explored several compliance options, including the following: ceasing the generation of rinse waters; constructing an on-site treatment facility; arranging for the wastewaters to be picked up by truck and taken to a treatment facility; transporting the rinsewaters by barge to a facility; and constructing a sewer line for direct discharge to a wastewater treatment facility. (Pet. at 8.) ARTCO concluded that these proposed compliance alternatives were costly and did not necessarily offer greater environmental benefits than its existing scheme with the District. (Pet. at 8-11.) The Agency agrees with ARTCO and believes that the level of justification has been met under the narrow circumstances in this case. (Agency Resp.

at 3-4.) Further, the Agency feels that the other alternatives could only be accomplished at substantially higher cost with only marginal environmental benefits. (Agency Resp. at 4.)

Third, ARTCO argues that its current disposal practices (in accordance with its variance) have not caused any adverse environmental impact, and would not cause any impact if the requested adjusted standard were granted. (Pet. at 15.) In support of its variance order, ARTCO notes that the Board on page 11 concluded that:

The granting of the requested relief should have no adverse impact upon the environment. ... The Agency states that "because this variance only addresses the Petitioner's activities since it ceased discharging the rinse waters to the Illinois River," there is no environmental impact. (American River Transportation Company v. IEPA (August 24, 1995), PCB 95-147.) (Pet. at 15.)

The Agency believes that granting ARTCO an adjusted standard in this circumstance should not have any substantial impact on the environment. (Agency Resp. at 3.) The conditions contained within the adjusted standard proposed by ARTCO should ensure proper delivery of the wastewaters to the District. (Agency Resp. at 4.)

Fourth, ARTCO argues that the requested adjusted standard is consistent with federal law. It asserts that the adjusted standard would not violate any provisions of the Solid Waste Disposal Act, 42 U.S.C. Sections 6901 to 6992(k), or its implementing regulations or any other federal law, including the Clean Air Act, 33 U.S.C. Sections 1251 to 1387, since there is no federal regulation governing special waste hauling. (Pet. at 15.) Similarly, the Agency is not aware of any federal law which would be breached by the grant of the relief requested by ARTCO. (Agency Resp. at 4.) Thus, the Agency believes that the relief requested is consistent with federal law. (Agency Resp. at 4.)

CONCLUSION

The Board finds that ARTCO has demonstrated that an adjusted standard from 35 Ill. Adm. Code 809.201, 809.301, 809.302, and 809.501, the rules of general applicability, is appropriate in order for ARTCO to discharge its wastewaters that result from its barge cleaning operations. As is required by the Act, ARTCO has met the conditions necessary for grant of an adjusted standard. ARTCO has successfully established that its circumstances are significantly different than those circumstances considered by the Board upon adoption of the general standard. As was proven during the course of the PCB 95-147 variance, since ARTCO is the generator and hauler of these wastes generated by its own activity, ARTCO's existing arrangement for delivery of its barge wastewaters to the District for treatment will not have an adverse environmental impact. Moreover, the requested adjusted standard is consistent with all applicable federal regulations. In addition, the Agency's response affirms that an

adjusted standard is warranted. Therefore, the Board grants ARTCO the requested adjusted standard from 35 Ill. Adm. Code 809.201, 809.301, 809.302 and 809.501 with the conditions similar to those recommended by the Agency.

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

ORDER

1. Pursuant to Section 28.1(b) of the Act, the American River Transportation Company (ARTCO) is hereby granted an adjusted standard from the special waste hauling regulations as set forth at 35 Ill. Adm. Code 809.201, 809.301, 809.302, and 809.501. Pursuant to this grant, 35 Ill. Adm. Code 809.201, 809.301, 809.302, and 809.501 shall not apply to the handling of barge rinse water at ARTCO's LaSalle, Illinois facility.
2. This adjusted standard is subject to the following conditions:
 - A. ARTCO's rinse water may be transported and discharged to the Peru Sanitary District only so long as the District shall possess and maintain all necessary permits to accept ARTCO's waste;
 - B. ARTCO shall maintain logs of the transportation and discharge of the rinse waters documenting the dates and amounts discharged to the District. ARTCO shall submit annually, on or before February 15, reports to the Agency showing the quantity of rinse waters discharged. Such reports shall be addressed to Planning and Reporting Section, Division of Land Pollution Control, Illinois Environmental Protection Agency, P.O. Box 19276, 2200 Churchill Road, Springfield, IL 63794;
 - C. ARTCO shall maintain all permits pursuant to 35 Ill. Adm. Code Part 309 to connect and discharge the rinse water to the District, except as otherwise authorized by the terms of this adjusted standard;
 - D. ARTCO shall comply with all terms and conditions of its connection and discharge permits for the rinse waters; and
 - E. ARTCO shall allow access to its operations to representatives of the Agency upon presentation of credentials at reasonable times for the purposes of conducting inspections of its facility and examination of records required under the conditions of this adjusted standard.

IT IS SO ORDERED.

Board Member K. Hennessey abstained.

Section 41 of the Environmental Protection Act (415 ILCS 5/41(1994)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. 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 opinion and order was adopted on the _____ day of _____, 1997, by a vote of _____.

_____,
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board