

ILLINOIS POLLUTION CONTROL BOARD

February 19, 1998

IN THE MATTER OF: )  
 )  
PETITION OF WASTE PROFESSIONALS, ) AS 97-10  
INC., d/b/a PEKIN LANDFILL, for an ) (Adjusted Standard - Land)  
ADJUSTED STANDARD FROM 35 ILL. )  
ADM. CODE 814.SUBPART D )

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a petition for adjusted standard filed by Waste Professionals, Inc., d/b/a Pekin Landfill (Waste Professionals). Waste Professionals operates a landfill known as the Pekin Landfill located in Tazewell County, Illinois. Pursuant to Board regulations at 35 Ill. Adm. Code 814.Subpart D, and permits issued pursuant to Board regulations, the Pekin Landfill was scheduled to close effective September 18, 1997. Waste Professionals seeks the instant adjusted standard to allow it to continue to operate one of the trenches at the Pekin Landfill for up to fourteen months after September 18, 1997.<sup>1</sup>

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*(1996)). The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois" (Act at Section 5(b)) and to "grant . . . an adjusted standard for persons who can justify such an adjustment" (Act at Section 28.1(a)). More generally, the Board's responsibility in this matter is based on the checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Agency is responsible for carrying out the principal administrative duties.

The Act also provides that "the Agency shall participate in [adjusted standard] proceedings". (415 ILCS 28.1(d)(3).) The Agency has filed a response to the Waste Professionals petition, in which it recommends that the requested adjusted standard be granted.

Based upon the record before it and upon review of the factors involved in considering adjusted standard petitions, the Board finds that Waste Professionals has demonstrated that grant of an adjusted standard is warranted. Accordingly, for reasons more fully set forth below, the Board will grant Waste Professionals the requested adjusted standard.

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<sup>1</sup> In an allied action, the Board by order of September 18, 1997, granted Waste Professionals a variance that allowed the trench in question to remain open until February 20, 1998. Waste Professionals, Inc., d/b/a Pekin Landfill v. Illinois Environmental Protection Agency (September 18, 1997), PCB 97-228. The variance was granted to allow Waste Professionals to submit additional information in support of the instant adjusted standard.

## PROCEDURAL HISTORY

The petition in this matter was initially filed with the Board on June 9, 1997. By filing of August 4, 1997, Waste Professionals notified the Board that it had entered discussions with the Agency regarding possible amendments to the petition, and requested that the Board defer any decision in this matter pending filing of an amended petition.

The amended petition was filed on September 8, 1997. The amended petition requests the same relief as in the initial petition, but adds various information by way of "clarification".

At the same time that it filed its amended petition in this matter, Waste Professionals filed a petition for variance in which it sought short-term relief from the closure requirement pending additional discussions with the Agency regarding groundwater modeling. By order of September 18, 1997, the Board granted the variance. Among the variance's provisions is that Waste Professionals was required to file with the Agency by September 30, 1997, results of groundwater contaminant transport (GCT) modeling. The modeling was intended to be used, in pertinent part, by the Agency as the basis for its recommendation in this instant adjusted standard proceeding. Waste Professionals timely filed the GCT results with the Agency.

The Agency filed its recommendation on January 22, 1998. The Agency recommends that the adjusted standard be granted.

Waste Professionals has waived hearing. No hearing has been held.

## STATUTORY AND REGULATORY FRAMEWORK

In determining whether an adjusted standard is to be granted, Section 28.1 of the Act (415 ILCS 5/28.1 (1996)) requires the Board to determine whether a petitioner has presented adequate proof that: factors relating to the petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulations 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 federal law. 415 ILCS 5/28.1(c) (1996). 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) (1996).

In 1990 the Board promulgated modified design and operating standards applicable to new and existing non-hazardous waste landfills.<sup>2</sup> Among the pertinent provisions of these regulations is a requirement that certain landfills in existence as of the September 18, 1990, effective date of the regulations either close or comply with progressively more stringent

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<sup>2</sup> See In the Matter of: Development, Operation and Reporting Requirements for Non-Hazardous Waste Landfills (August 17, 1990), R88-7.

operating and closure requirements. The progression of more stringent requirements is marked by two benchmark dates, one on September 18, 1992 (two years after the effective date) and the second on September 18, 1997 (seven years after the effective date).

In 1991 the prior owners of Pekin Landfill elected to proceed on a path that would require the landfill to close under the seven-year time frame. Landfills complying with this option are commonly known as Subpart D landfills, in recognition the applicable closure requirements found at 35 Ill. Adm. Code 814.Subpart D.<sup>3</sup> Operation of the landfill has been in accordance with the Subpart D timeframe, including application for and issuance of a significant modification (“sig-mod”) permit<sup>4</sup> to Waste Professionals in compliance with requirements of 35 Ill. Adm. Code 814.104. Petition at 4. The sig-mod permit is the permit currently in effect.

Landfills that intend to remain open after September 18, 1997, are required to meet the most stringent design and operating requirements. These requirements are found at 35 Ill. Adm. Code 814.Subpart C, and hence landfills subject to these requirements are commonly known as Subpart C landfills.<sup>5</sup>

#### NATURE OF THE FACILITY

Pekin Landfill is a 46.8 acre landfill located along Towerline Road in Elm Grove Township, Tazewell County, Illinois, approximately three miles south of the City of Pekin. Petition Exh. A and B. The facility is zoned agriculture. Petition at 3.

Pekin Landfill has been in continuous operation since permitted in 1970 (permit # 1970-45-OP). Petition at 3. The landfill has most recently been permitted to accept general municipal solid waste, non-hazardous special waste, and municipal solid waste and construction and demolition debris. The majority of the wastes disposed of at the landfill are generated within Tazewell County and contiguous counties. Petition at 3.

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<sup>3</sup> Subpart D is titled “Standards for Existing Units Accepting Chemical or Putrescible Wastes That Must Initiate Closure Within Seven Years.” Subpart D consists of just two sections, Sections 814.401 and 814.402. Section 814.401 sets out the scope and applicability of Subpart D, and Section 814.402 prescribes the operation and closure standards that apply to Subpart D landfills.

<sup>4</sup> The sig-mod permit is attached as Exhibit A to Waste Professionals Amended Petition filed September 8, 1997.

<sup>5</sup> Subpart C is titled “Standards for Existing Units Accepting Chemical or Putrescible Wastes That May Remain Open For More Than Seven Years.” Subpart C consists of just two sections, Sections 814.301 and 814.302. Section 814.301 sets out the scope and applicability of Subpart C, and Section 814.302 prescribes the operation and closure standards that apply to Subpart C landfills

The only currently operated unit in the Pekin Landfill is a 1.9 acre lateral expansion area known as the Southwest Trench; all other disposal units within the landfill are filled and either are closed or are undergoing closure. Petition at 7-8. Waste Professionals contends that failure of the Southeast Trench to be filled prior to the regulatory closure date of September 18, 1997, is due to the loss of a customer in 1992 who had previously accounted for approximately 45% of the Pekin Landfill's gate receipts. Petition at 8-9. The result has been not only a loss in revenue, but an inability to reach permitted final contours of the landfill. Petition at 9-10.

The Southeast Trench contains several features not found in the landfill as a whole, including a leachate collection system and a composite liner composed of a geomembrane and a three-foot compacted clay layer with permeability of less than  $1 \times 10^{-7}$  cm/sec. Petition at 6-7, 11. Both leachate collections systems and liners are required for landfills that remain open past the September 18, 1997 date, as specified at 35 Ill. Adm. Code 814.Subpart C. The Southeast Trench accordingly meets this requirement, although the landfill as a whole does not.

In addition, Waste Professionals has conducted a groundwater impact assessment for the Southeast Trench. Groundwater impact assessment is an additional feature required of Subpart C landfills. The particular assessment conducted on the Southeast Trench consisted of a demonstration via groundwater contaminant transport modeling that the concentrations of all the constituents of the leachate at the edge of or outside the zone of attenuation do not exceed the applicable groundwater quality standards of 35 Ill. Adm. Code 811.320 for a period of 32 years<sup>6</sup> after closure of the trench. See condition #3 in Waste Professionals, Inc., d/b/a Pekin Landfill v. Illinois Environmental Protection Agency (September 18, 1997), PCB 97-228, Slip op. At 7.

Waste Professionals contends that with these features, plus other lesser features incorporated into the design of the Southeast Trench, the Southeast Trench is in substantial compliance with the requirements of 35 Ill. Adm. Code 814.Subpart C. Pet. At 14; Amended Pet. at 5-6.

#### JUSTIFICATION

Waste Professionals contends that allowing completion of filling of the Southeast Trench "would have few environmental costs or health, welfare and social costs." Pet. at 12. This conclusion is based both on monitoring information specific to the Pekin Landfill and the substantial compliance of the Southeast Trench with the requirements of 35 Ill. Adm. Code 814.Subpart C,

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<sup>6</sup> The 32-year period is approximately equivalent to the additional time that Waste Professionals seeks to remain open, plus the applicable 30-year post-closure care period. Agency Rec. at 3.

Waste Professionals also calls the Board's attention to the nature of the sig-mod permit under which Waste Professionals currently operates the Pekin Landfill. Amended Petition at 4. This permit is a forty-page document that includes a range of provisions intended to provide environmental protection. Among these are requirements for groundwater monitoring and data analysis. Waste Professionals also notes that the sig-mod operating permit "requires interwell and intrawell trend analysis of groundwater monitoring data, and includes numerous, detailed, special conditions relating to construction quality assurance, operations, acceptance of special waste, recordkeeping, surface water control, leachate management and monitoring, [and] landfill gas management and monitoring." Amended Petition at 4.

The Agency for its part notes that it:

. . . is satisfied that the adjusted standard request in the amended petition will not adversely impact the environment. This position is based upon the additional information supplied in the amended petition, as well as the information concerning a modified groundwater impact assessment pursuant to 35 Ill. Adm. Code 811.317, which was submitted to Illinois EPA. . . Based on this information, Illinois EPA finds that the proposed adjusted standard should not have an adverse impact on groundwater in comparison to compliance with the closure deadline of September 18, 1997. . .

Agency Response to Amended Petition, p. 3.

The Agency further adds that Waste Professionals has demonstrated to the Agency's satisfaction that the proposed adjusted standard would not have an adverse impact on the environment in comparison to compliance with the applicable closure deadline of in 35 Ill. Adm. Code 814.401(a). Agency Response to Amended Petition, p. 4.

Waste Professionals asserts that the adjusted standard could be granted consistent with federal law. Petition at 15. The Agency contends that the adjusted standard being sought does not implicate any provisions of federal law. Agency Response to Amended Petition, p. 4.

### CONCLUSION

Based on its review of the record in this matter, the Board finds that grant of the requested adjusted standard is warranted. This conclusion is based on the statutory factors involved in the Board's consideration of adjusted standards as these apply to the case at hand. In the latter regard, the Board gives particular weight to the short-term that the adjusted standard will be in effect, the advanced environmental protection technology present in the Southeast Trench, and the strong environmental controls that will be in place during the operating, closure, and post-closure care period as specified in the sig-mod permit.

The language that the Board today adopts for the adjusted standard differs in some details from that proposed by Waste Professionals. The principal departures consist of simplification of some of the language.

In addition, two of the provisions proposed by Waste Professionals are not adopted. These are the request that the adjusted standard be adopted as a new section in 35 Ill. Adm. Code, and the condition concerning groundwater modeling. As the Board noted in its order of September 18, 1997,<sup>7</sup> it is not possible to adopt a regulation in an adjusted standard proceeding. New sections can be added to the Board's regulations only through the rulemaking process as provided at Title VII of the Environmental Protection Act.

Waste Professionals also requested in both the original and amended petitions that the adjusted standard contain a condition regarding submission to the Agency by September 30, 1997 of groundwater modeling results. This condition is not included in the instant adjusted standard because it was included in the companion variance and has already been complied with by Waste Professionals.

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

#### ORDER

Petitioner, Waste Professionals, Inc., is hereby granted an adjusted standard, under which it may continue to conduct waste disposal operations in the Southeast Trench of the Pekin Landfill after September 18, 1997, subject to the following conditions:

- (1) Terms of the existing operating permit, No. 1994-449-LFM, apply during this extended period of operation.
- (2) Waste Professionals, Inc., must begin closure of the Southeast Trench no later than November 18, 1998. Thereafter, the Southeast Trench may accept waste for disposal or for use in closure and post-closure care only as authorized in closure and post-closure care plans.

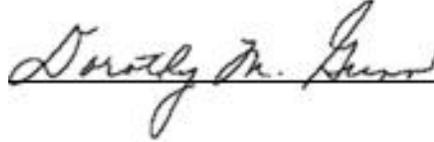
IT IS SO ORDERED.

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 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

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<sup>7</sup> In the Matter of: Petition of Waste Professionals, Inc., d/b/a Pekin Landfill, for Adjusted Standard from 35 Ill. Adm. Code 814, Subpart D (September 18, 1997), AS 97-10.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 19th day of February 1998, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board