

ILLINOIS POLLUTION CONTROL BOARD
July 8, 1998

IN THE MATTER OF:)
)
PETITION OF CITY OF SALEM FOR AN) AS 98-2
ADJUSTED STANDARD FROM 35 ILL.) (Adjusted Standard - Land)
ADM. CODE PART 814, SUBPART D.)

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

Before the Board is a petition for an adjusted standard filed by the city of Salem, Illinois (Salem). Salem operates its "Existing Landfill #2" in Marion County, Illinois. Pursuant to Board regulations at 35 Ill. Adm. Code 814.Subpart D and permits issued by the Illinois Environmental Protection Agency (Agency), Salem's landfill was required to close by September 18, 1997. Salem petitioned for this adjusted standard so it may continue to operate the southern unit of its landfill until either September 18, 1998, or the date when a new (northern) unit of the landfill under construction is completed, whichever is sooner.

The Board finds that Salem has not satisfied the statutory requirements necessary for the Board to grant Salem the adjusted standard it seeks. Accordingly, for reasons more fully set forth below, the Board denies the petition.

PROCEDURAL HISTORY

Salem filed its original petition for an adjusted standard with the Board on September 12, 1997. The Agency filed its response to the original petition on May 18, 1998,¹ recommending that the adjusted standard be granted with certain conditions. On June 3, 1998, Salem filed an amended petition, in which it adopted most of the conditions suggested by the Agency. Also on June 3, Salem filed a "Revised Groundwater Non-Degradation Demonstration" (Demonstration) which it had filed previously with the Agency. The Agency and Salem had agreed that this document should be filed with the Board and made part of the record in this proceeding. Amended Petition at 4. On July 6, 1998, the Agency filed its response to the amended petition, recommending that the adjusted standard be granted but with all the previously recommended conditions, including two not adopted by Salem in its amended petition.

Salem waived a hearing in its amended petition. Amended Petition at 9. On September 17, 1997, notice of Salem's original petition was published in the *Salem Times-Commoner*, a newspaper of general circulation in the area around the landfill. The notice informed interested persons that any person could request a hearing within 21 days after

¹ 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 several times to facilitate negotiations between Salem and the Agency.

publication. No hearing was requested. On June 5, notice of Salem's amended petition was published in the *Salem Times-Commoner*, again informing interested persons that a hearing could be requested within 21 days. Again, no hearing was requested. Consequently, no hearing was held.

STATUTORY AND REGULATORY FRAMEWORK

Section 28.1(a) of the Act (415 ILCS 5/28.1(a) (1996)) provides that the Board may grant adjusted standards from rules of general applicability. To obtain an adjusted standard, a petitioner must show that four criteria are met. The criteria are listed in Section 28.1(c) of the Act (415 ILCS 5/28.1(c) (1996)), which provides:

- c. If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:
 1. factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;
 2. the existence of those factors justifies an adjusted standard;
 3. the requested adjusted 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
 4. the adjusted standard is consistent with any applicable federal law.

The regulations relevant to Salem's adjusted standard petition are those applicable to non-hazardous waste landfills. They do not specify a level of justification required to qualify for an adjusted standard. Therefore, the foregoing statutory criteria are applicable in this case.

In 1990 the Board promulgated modified design and operating standards applicable to new and existing non-hazardous waste landfills. In the Matter of: Development, Operation and Reporting Requirements for Non-Hazardous Waste Landfills (August 17, 1990), R88-7. The regulation pertinent in this matter is the requirement that certain landfills in existence as of the effective date of the regulations (September 18, 1990) either close or comply with progressively more stringent operating and closure requirements. If the landfill chose to not

comply with the more stringent requirements, closure must have begun within two years, *i.e.*, by September 18, 1992. However, if the landfill chose to comply with the more stringent operating and closure requirements, there were two options. Landfills that intended to remain open after September 18, 1997 were 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.² The second option was to remain open after September 1992 and close no later than September 18, 1997. In that case, the landfills were required to meet less stringent design and operating requirements and are commonly known as Subpart D landfills, in recognition the applicable closure requirements found at 35 Ill. Adm. Code 814.Subpart D.³

NATURE OF THE FACILITY⁴

Salem's "Existing Landfill #2" is a municipal solid waste and non-hazardous special waste landfill located in Salem, Illinois. The city's Public Works Director serves as the landfill's certified operator. The landfill consists of a southern unit of approximately 11 acres (subject to Subpart D, as explained below) and a northern (undeveloped) unit of approximately 10-11 acres (subject to Subpart C, as explained below.) Salem owns and operates the landfill as part of the ongoing municipal services provided to its residents and the community. Salem also provides residential waste collection as part of the city's municipal services. The landfill is run by the city's Sanitation Department. Operations are funded through a combination of property taxes, payments or assessments from residents, and tipping fees.

Salem collects or generates approximately 8,000 cubic yards of waste annually from its residential waste collection program. Residential waste collected from the city has historically made up approximately 15% of the total waste disposed at the landfill. Until 1995, the landfill also accepted business and industrial waste which provided major financial support for the landfill's operations. In 1995, Salem imposed air space conservation measures to insure that landfill capacity would be available for the residential collection program pending issuance of a significant modification permit (SMP). This appears to have involved suspending waste receipts from industries and businesses. Salem states that it resumed receiving waste from these customers in mid-July, 1997 after receiving its SMP on June 2, 1997. Consequently,

² 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.

³ 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.

⁴ Facts set forth in this section are drawn from Salem's petition, pp. 4-10 and Exh. A.

there is capacity remaining in the landfill to accommodate municipal waste from the city until the northern unit is completed.

Salem filed its first SMP application with the Agency on September 16, 1994. According to the Agency, Salem notified it that the existing landfill (one unit at the time) would be complying with the Subpart C regulations. This application was deemed incomplete by the Agency and a subsequent application filed on May 15, 1995, was kept pending per Salem's request. After a series of additional filings, Salem changed its option, filing an addendum to the pending permit application on December 20, 1995, wherein it proposed closing part of the landfill as a separate Subpart D unit and making the undeveloped and expanded portion of the landfill a Subpart C unit.⁵ This change meant that the existing portion of the landfill (known as the southern unit) would be required to close no later than September 18, 1997.

After many more rounds of information requests and submissions, the Agency issued the SMP to Salem on June 2, 1997. Salem is now in the process of developing the northern (Subpart C) unit of the landfill. When operational, the northern unit of the landfill will serve the city's waste disposal needs currently served by the southern unit. According to Salem, developing the northern unit of the landfill is projected to take approximately one year, which would mean the landfill would be operational sometime in the latter part of 1998.

ANALYSIS

Are Petitioner's Factors Substantially and Significantly Different Factors?

Salem identifies two factors which it contends are significantly different and were not considered when the regulations of general applicability (Subpart D) were adopted: (1) the length of time required to obtain its SMP to develop the northern unit of the landfill, and (2) the adverse effects of landfill closure in southern Illinois (an area with few landfills). Pet. at 9, 20. Based upon the following analysis, the Board finds neither of these two factors presented by Salem to be "substantially and significantly different" than those factors considered when the rules in Subpart D were adopted.

Concerning the first factor, the Agency responded to Salem's claim that the length of the permitting differentiates it significantly from what the Board considered in adopting the rules of general applicability. The Agency "rejects any implication that the State is responsible for the 33-month period during which Salem's sig-mod permit application was under review[.]" The Agency points out that it has ninety days to act upon permit applications or the permit is deemed issued by operation of law. (See Section 39(a) of the Act (415 ILCS 5/39(a) (1996)). Response at 2. Salem responded that no such inference was intended. Amended Pet. at 3. The Agency did not respond the other factor cited by Salem.

⁵ This information is found in the recommendation filed by the Agency in connection with the variance petition filed by Salem on July 2, 1998, and decided concurrently, Salem v. IEPA, PCB 98-1 (July 8, 1998).

We agree with the Agency that the length of time it took for Salem to obtain its sig-mod permit does not distinguish it from the factors considered by the Board when it adopted the seven year timeframe for closing or upgrading those landfills that do not satisfy the Subpart C requirements. By adopting that phased in approach, the Board factored in that alternative disposal methods and/or locations would be needed to replace the landfills which closed. This seven year scheme was included in the initial rulemaking proposal developed to revise the rules for non-hazardous landfills, In the Matter of: Permit Requirement for Owners and Operators of Class I and Class II Landfills and for Generators and Haulers of Special Waste, R84-17. That rulemaking was the predecessor to the R88-7 rulemaking within which the seven year transition period was ultimately adopted. Throughout the course of those two rulemakings, no one contested that timeframe as applied to municipal landfills.

To further ensure that the transition would be accomplished within this timeframe, the Board adopted a rule which required the existing landfills to decide and notify the Agency within the first six months of the transition period, *i.e.*, by March 18, 1991, whether they would close by 1992, close as a Subpart D landfill no later than September 18, 1997, or upgrade to Subpart C standards and remain open indefinitely. The Board also anticipated that the SMP permitting process might in many instances be lengthy. Therefore, the Board allowed SMP applications to be filed anytime, but required that they be filed no later than September 18, 1994, which is three years before closure must be initiated. Once Salem decided to close the southern unit as a Subpart D landfill, it knew it was subject to these time constraints and that closure at the southern unit must be initiated no later than September 18, 1997.

Salem has not identified any factor that makes it significantly or substantially different from what the Board considered in the R88-7 rulemaking. Salem has only demonstrated that obtaining the SMP necessary for the southern unit to remain open until September 18, 1997 took longer than it anticipated. According to the list set forth in the SMP ultimately issued, Salem submitted the SMP application on September 16, 1994, just two days prior to the last possible date for it to be filed. That application was deemed incomplete in October, 1994. A second application was filed in May, 1995, with additional information submitted seven times, up to and including the addendum filed December 20, 1995 (discussed above) wherein Salem clarified that the southern unit would be closed as a Subpart D unit.⁶ Thereafter, Salem submitted five more documents containing additional information, the last submitted on January 27, 1997. Pet. Ex. A at 1-2. This list well documents a lengthy permitting process.

Salem did not provide any explanation about why this permitting process was so lengthy. Salem only explained that the SMP was issued too late for it to develop the northern unit before September 18, 1997. Yet, the portion of the SMP relevant to this petition is that involving the southern unit. The availability and cost of replacing the closed Subpart D landfills was a factor considered by the Board in the R88-7 rulemaking. Whether the northern unit was available to replace the southern unit on September 18, 1997, is not relevant. The

⁶ *Id.*

rulemaking anticipated that all waste going to landfills subject to that closure date would have to be redirected. Again, for that very reason the transition period provided was seven years long.

The Board notes that it has considered other petitions for adjusted standards requesting an extension of the September 18, 1997, closure date. In addition to Salem's petition, the Board has considered petitions from Carus Chemical Company, AS 98-1 (September 18, 1997) and Waste Professionals, Inc., d/b/a Pekin Landfill, AS 97-10 (February 19, 1998). Among other reasons, the Board granted those petitions because each petitioner demonstrated that the Subpart D units in question were in substantial compliance with the Subpart C requirements. Unlike Salem, their respective needs for an extension were not premised on the length of the SMP process.

As its second justification, Salem argued that the Board did not consider the amount of landfill space available in southern Illinois when it adopted the relevant regulations. The R88-7 rulemaking was a statewide regulation. The Board considered the effect of the regulations and specifically the permit application dates and closure dates for Subpart D landfills when it adopted the same. The purpose of phasing out existing landfills on a two year and seven year basis was to provide time for retrofitting existing landfills and providing new landfill space. However, at the time the landfill rules were adopted, the Board had no knowledge whether all landfills would close in two years, all would upgrade to Subpart C requirements, or some middle course would be taken. Thus, remaining landfill capacity in some part of the state at some time in the future cannot be considered a significant factor in development of the landfill regulations.

Do Petitioner's Factors Justify the Adjusted Standard?

Even if the factors cited by Salem are different than those considered when the rules under Subpart D were adopted, they do not justify an adjusted standard for Salem. In a companion case, PCB 98-1 (a variance petition seeking essentially the same relief as this adjusted standard petition), the Board has found that the delay in issuance of Salem's SMP was due more to Salem's failure to timely submit the necessary applications and information to the Agency, than time necessary for review of that information. Thus, the problem facing Salem now is of its own making. Furthermore, landfill capacity (or lack thereof) in southern Illinois will not be significantly affected by the disposition of this adjusted standard petition, because (as the petition states on page 8) Salem's landfill has the least remaining capacity of any municipal solid waste landfill in the region, and any impact from closure of the southern unit of Salem's landfill will be offset in the long run by development of the northern unit.

Are the Environmental or Health Effects Substantial or Significant?

The Agency is "satisfied that the adjusted standard requested in the Petition should not adversely impact the environment," based on the relatively small volume of waste to be accepted and the Demonstration submitted by Salem. Res. at 4, 5. The Demonstration includes a contingency plan to minimize the potential impact on groundwater. The Agency

qualifies its position by requesting a number of conditions on the adjusted standard to facilitate implementation of the contingency plan.

Is the Adjusted Standard Consistent with Federal Law?

There are no issues of federal law raised by this adjusted standard petition.

CONCLUSION

The Board finds that Salem has not established that factors relating to it are substantially and significantly different from those factors considered by the Board in R88-7. Furthermore, if such factors exist they do not justify the grant of an adjusted standard. Consequently Salem has not met its burden under Section 28.1(c)(1) or (2) of the Act. The petition is therefore denied.

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

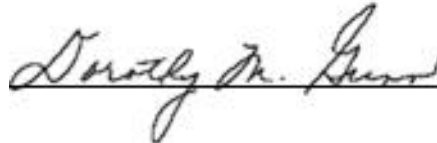
ORDER

Salem's petition for an adjusted standard from 35 Ill. Adm. Code Subpart D, most specifically Section 814.401(a), for the southern unit of its Existing Landfill #2 is denied.

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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 8th day of July 1998, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board