

ILLINOIS POLLUTION CONTROL BOARD
July 7, 1995

IN THE MATTER OF:)
)
PETITION OF CONVERSION SYSTEMS,) AS 93-4
INC., FOR ADJUSTED STANDARD FROM) (Adjusted Standard-Land)
35 ILL. ADM. CODE 811 (LINER))

CONCURRING OPINION (by J. Theodore Meyer and J. Yi):

We concur for reasons of administrative fairness since a majority of the Board previously decided that the relief being sought by Conversion Systems, Inc. (CSI) was appropriate pursuant to Section 28.1 of the Act. (415 ILCS 5/28.1 (1994).) However, for the reasons stated below, we would have joined the dissent in that previous decision which allowed this matter to proceed as an adjusted standard.¹

Petitioner, CSI, sells a product known as Poz-O-Tec® (Poz-O-Tec) which, when used properly, converts a mixture of flue desulfurization gas sludge and coal combustion ash into a monolithic mass. CSI is promoting this product as a technologically advanced alternative to the earthen/geomembrane landfill liner currently used by most Illinois landfills. The adopted adjusted standard provides that the purchasers are required to perform data collection and subsequent testing in order to demonstrate the effectiveness of the Poz-O-Tec process to the Illinois Environmental Protection Agency (Agency). The adjusted standard in this case gives the purchasers of the Poz-O-Tec process relief from 35 Ill. Adm. Code Sections 811.105, 811.306-309, 811.313, 811.314, and 811.321. These regulations establish certain requirements in the operation of a solid waste landfill.

The adjusted standard provision, Section 28.1(c) of the Act, was added January 1, 1989. (415 ILCS 5/28.1 (1994).) The provision was the product of negotiations between the administration, state environmental agencies, the regulated community and environmental groups and was promulgated to expedite the Board's rulemaking processes and regulatory relief mechanisms. Section 28.1(c) of the Act was intended as an alternative to (but not an exclusive replacement for) the site-specific rulemaking process which, at that time, was subject to delay beyond the Board's control pending completion of economic

¹On August 26, 1993, the Board issued an order, with two Board Members dissenting, which allowed CSI's petition to proceed as an adjusted standard. (See Board Order of August 26, 1993, B. Forcade and C.A. Manning dissenting.)

impact studies by the Department of Energy and Natural Resources.² Clear from the very language of Section 28.1(c), 28.1(e) and 28.1(h) of the Act is the fact that the adjusted standard procedure was never intended to be utilized as CSI has here. For example, requirements for the publication of notice of the filing of an adjusted standard in Section 28.1(d) states that it must be in "...the area likely to be affected..." and Section 28.1(c) states that "...the Board may grant an individual adjusted standards..." show that an adjusted standard is for site-specific relief. CSI cannot possibly know all future sites where the Poz-O-Tec process may be utilized and can not possibly demonstrate that each purchaser meets the justification requirements of Section 28.1(c) of the Act.

While we do not believe that the adjusted standard provisions are the appropriate procedural mechanism for the granting of the relief sought by CSI, we do believe that there are situations that adjusted standard relief is appropriate for new technology. The adjusted standard given by this Board to the Detroit Diesel Corporation (In the Matter of: Petition of Detroit Diesel Corporation and the Engine Manufacturers Association, (May 20, 1993, AS 92-4)) is one example of the appropriate use of the adjusted standard. In that case the Board's granted the following adjusted standard:

Detroit Diesel Corporation is granted an eighty-five percent (85%) peak smoke opacity standard for all DDC 1987-1990 model year Series 60 engines in lieu of the fifty-five percent (55%) peak opacity standard of 35 Ill. Adm. Code 214.141(a)(2).

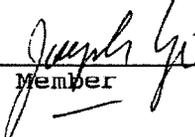
Unlike CSI's adjusted standard here where there are requirements placed upon the purchaser in order to demonstrate the effectiveness to the Agency, the Detroit Diesel adjusted standard places no requirements on the purchasers and is simply an adjusted standard for a particular type of engine produced by a specific manufacturer. We believe that the requirements of the adjusted standard in CSI and the lack of site-specific or use-specific information in the record prohibit the requested relief from being given pursuant to the adjusted standard provisions of the Act.

However, the issue presented today is whether CSI, given the previous decision of the Board, has shown that adjusted standard is warranted. For the reasons stated we concur.

²The economic impact study was removed as a component of Board rulemaking by P.A. 87-860, effective July 1, 1992. See Environmental Register No. 456, September 2, 1992 at p. 1.

For the above stated reasons, we respectfully concur.


Board Member
J. Theodore Meyer


Board Member
J. Yi

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was submitted on the 12th day of July, 1995.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board