

ILLINOIS POLLUTION CONTROL BOARD
March 21, 1996

IN MATTER OF:)
)
PETITION OF TOMMY HOUSE TIRE CO.,) AS 95-1
INC. FOR AN ADJUSTED STANDARD) (Adjusted Standard - Land)
FROM 35 ILL. ADM. CODE 848.202.)

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

This matter is before the Board on an amended petition for adjusted standard filed by Tommy House Tire Company, Inc. (Tommy House) on May 8, 1995. Tommy House seeks an adjusted standard from the Board's regulations at 35 Ill. Adm. Code 848.202, as they apply to its tire retreading facility located at 304 E. Main Street, Decatur, Illinois (the site). Specifically, Tommy House is requesting an adjusted standard from the tire and building separation requirements of 35 Ill. Adm. Code 842.202(b)(2), and the 14-day storage limitation for used and waste tires at 35 Ill. Adm. Code 842.202(b)(5).

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

Based upon the record before it and upon review of the factors involved in the consideration of adjusted standards, the Board finds that petitioners have demonstrated that grant of an adjusted standard is warranted. The adjusted standard accordingly will be granted.

ADJUSTED STANDARD PROCEDURE

Section 28.1 of the Act provides that a petitioner may request, and the Board may adopt, an environmental standard that is: (a) applicable solely to the petitioner, and (b) different from the standard that would otherwise apply to petitioner pursuant to a rule of general applicability. Such a standard is called an adjusted standard. The general procedures that govern an adjusted standard proceeding are found at Section 28.1 of the Act and within the Board's procedural rules at 35 Ill. Adm. Code Part 106.

Where, as here, the regulation of general applicability does not specify a level of justification required for a petitioner to qualify for an adjusted standard, the Act at Section 28.1(c) specifies four demonstrations that must be made by a successful petitioner:

- 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 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.

(Section 28.1 of the Act.)

PROCEDURAL HISTORY

Tommy House filed its original petition for adjusted standard on January 9, 1995. The Agency filed its response to the petition on February 10, 1995. In its response, the Agency noted several deficiencies in the petition, but recommended that the adjusted standard be granted, subject to certain conditions. Tommy House filed a reply to the Agency response on February 23, 1995, in which Tommy House responded to several of the concerns raised by the Agency.

On March 9, 1995, the Board issued an order finding the petition deficient, and directing Tommy House to file an amended petition on or before April 10, 1995. On April 12, 1995, Tommy House filed a motion for clarification of the Board's order, and requested an extension of time to file an amended petition. By order dated April 20, 1995, the Board granted the motion for clarification, and granted Tommy House an extension until May 10, 1995 to file its amended petition.

Tommy House filed an amended petition on May 8, 1995, which the Board accepted at its May 10, 1995 meeting. The Agency did not file an additional response to the amended petition. On September 7, 1995 the Board issued an order finding that substantial questions remained as to the propriety of the proposed adjusted standard, and directing the matter to hearing to address the remaining issues. Subsequently, on October 12, 1995, Tommy House filed a motion to supplement the record and continue the hearing in this matter. On October 19, 1995, the Board issued an order granting petitioner's motion to supplement the record, directing Tommy House to address the concerns outlined in the Board's September 7, 1995 order, and staying the hearing pending the Board's review of the supplemental information. On November 27, 1995, Tommy House filed a motion for extension of time to file the supplemental information, which we hereby

grant. On December 4, 1995, Tommy House filed its supplemental information. On January 1, 1996, the Agency filed a response to Tommy House's supplemental information, recommending that several additional conditions be imposed on grant of the adjusted standard. On January 29, 1996, Tommy House filed a reply to the Agency's response, accompanied by a motion to file instant, which we hereby grant. In its response, Tommy House agreed to the additional conditions recommended by the Agency. We find that the information provided by Tommy House is sufficient for the Board to render its decision in this matter, and that it is therefore unnecessary to hold a hearing in this matter.

BACKGROUND

Tommy House was founded in March 1953, and was incorporated in the State of Illinois on July 1, 1970, under the name Tommy House Company. (Am. Pet. at 2.) Thereafter, the name was changed to Tommy House Tire Company, Inc. Tommy House has four main sales outlets, which are located in Decatur, North Pekin, Bloomington/Normal, and Champaign. (Am. Pet. at 3.)

Tommy House is primarily a tire and wheel sales organization. (Am. Pet. at 3.) Over 85 percent of its revenues are derived from the commercial fleet truck tire business in central Illinois. (Id.) To accommodate this business, Tommy House has two retreading facilities, located in North Pekin and Decatur. These two facilities combined retread over 35,000 light truck and medium truck tires annually. (Id.) Tommy House also has three retail facilities, located in Decatur, North Pekin, and Champaign, where it services automobiles and light trucks, and engages in retail sales to the public of tires, parts, and accessories. Tommy House currently employs 81 full-time employees, and 1 part-time employee. (Id.)

Of Tommy House's 81 full-time employees, 35 are employed at the Decatur retreading facility (site). (Supplementary Information at 2.) This facility annually processes approximately 19,000 tires. (Id. at 1.) On a monthly basis, the number of tires it processes ranges from a low of 900 units to a high of 1,800 units. (Id. at 1-2.) Tommy House stores a maximum of 4000 new tires, 1,500 retread tires, 1,800 tires, and 1,200 scrap or waste tires at the site. (Id. at 1.) Of these, a maximum of 400 retread tires, 1,800 used tires, and 1,200 scrap and waste tires are stored outside. (Id.)

Site Description.

The Decatur retreading facility is located on an irregularly-shaped site at 340 E. Macon, Decatur, Illinois. The area is zoned heavy commercial. The boundaries of the facility are fully enclosed by an 8-foot high cyclone fence. Tires are stored in several outside areas around the site. Each of the outside storage piles is less than two feet from the nearest building. (Supplementary Information Exh. A.)

Tommy House's corporate offices and a new tire warehouse are located at the northwest corner of the site, facing Industry Court, which intersects E. Macon. (Pet at 3.) These facilities are housed in an irregularly shaped building which measures 45 feet x 45 feet x 68 feet. East of the corporate office and the new tire warehouse is a "special customer tire staging area." (Id.) This staging area is bordered to the south by the retread warehouse, and is bounded to the east by a retaining wall, which runs north-south. East of the retaining wall is a raw materials storage trailer. The "special customer tire staging area" encompasses approximately 2,220 square feet. (Supplementary Information Exh. B.) Tires are also stored in a 496 square-foot area extending southwest from the "special customer tire staging area" along the southwest wall of the retread warehouse. (Id.)

Directly to the south of the corporate office and the new tire warehouse is the "Michelin warehouse", which is used to serve the needs of Michelin, Tommy House's largest customer. (Pet at 3.) This warehouse has dimensions of 40 x 30 feet. Tires are stored outside the Michelin warehouse along its west wall in a rectangular area encompassing 720 square feet, and to the east of the Michelin warehouse in an area encompassing 512 square feet. (Supplementary Information Exh. B.)

A retread production plant lies along the south border of the site. This facility is 140 x 60 feet. There is a covered breezeway to the north of the retread production plant, which borders the southern walls of the Michelin warehouse and the retread warehouse. The area inside the breezeway is lined on both sides with stacked tires. (See Pet. Exh. C.)

The retread tire staging area is located at the eastern end of the property. This area contains four tire storage areas totaling 4,131 square feet. (Supplementary Information Exh. B.) A storage trailer is located east of the retaining wall along the eastern boundary of the site, which is used to store tires that the retreading facility has rejected. Rejected tires that do not fit into the trailer are stacked on the ground and covered by tarps or "top-covers." Top-covers are 1-inch plywood covers which measure 4 feet by 4 feet. (Id.)

Tommy House's Process.

When tires are first brought to the facility for processing, they are drained of any water, and are then stacked to wait inspection. Tires are inspected and generally "turned around" within 14 days. (Am. Pet. at 3.) Tires which are not accepted are returned to the customer, or, if the customer does not want the tire, it is stored in the storage trailer before being shipped off-site for destruction and disposal. (Id.)

The accepted tires are converted into new retread tires by the following process. The tire casings are physically and visually inspected to determine their retreadability. Tires which are accepted are then buffed within 3/32" of the belt package. (Id.) The casing is then inspected using a machine called a Non-Destructive Inspector tire casing analyzer, which uses ultrasound

technology to analyze the structural soundness of the tire casing. (Am. Pet. at 4.) Tires which fail this inspection are also rejected.

An accepted casing is then sent through a series of repair stations where imperfections such as nail holes, rock gouges and other foreign object damage are repaired prior to the retreading or "building" process. Tires that have imperfections which are deemed too large or otherwise irreparable are also rejected at this point. (Id.)

After being repaired, accepted casings are sent to a "builder," where the appropriate tread is applied to the casing. (Id.) The tires are then sent to "curing chambers", where they are mounted on "park rings" and covered by a pressurized envelope. (Id.) The tires are hung in the curing chambers and cooked for approximately three hours, so as to adhere the rubber tread to the casing.

After the curing process, the tires are again inspected. If the rubber did not properly adhere to the casing, the casing may again be run through the entire process, or the tire may be rejected. (Id.) Tires which pass this final inspection are painted and staged for delivery to the customer, or stocked in the warehouse. The vast majority of finished products are sold to customers in Illinois. (Id.)

Ninety percent of the rejected tires are immediately loaded into the scrap tire trailer and hauled away from the site. (Supplementary Information at 3.) The tire storage trailers are removed from the site every 3 to 5 days from March through November, and every 7 to 9 days from December through February. (Id.) The remaining percentage of rejected tires belong to Tommy House's specialized "National" accounts, which include UPS, Ryder, and Penske. These tires must be inspected and verified by customer personnel before they are scrapped. These tires are stacked in the "Special Customer Tire Staging Area." (Id.)

RULE OF GENERAL APPLICABILITY

The regulations establishing management standards for used tire storage are found at 35 Ill. Adm. Code 842.201 et seq. Pursuant to 848.201(b)(1), Tommy House was required to comply with these regulations by January 1, 1992. The specific management requirements applicable to the facility are found at Section 848.202.

Tommy House is seeking an adjusted standard from the building separation requirements of 35 Ill. Adm. Code 848.201(b)(1) and 848.202(b)(2), and the 14-day storage limitation for used and waste tires at 35 Ill. Adm. Code 848.202(b)(5). 35 Ill. Adm. Code 848.201(b)(1)¹ provides in relevant part:

¹ Petitioner incorrectly cites this regulation as 848.202(b)(1) in its amended petition. (*See* Am. Pet. at 1.)

- (b) Owners and operators of tire storage sites and tire disposal sites . . . shall:
 - (1) Meet the requirements of this Part by January 1, 1992 if used or waste tires were disposed of or stored prior to January 1, 1992;

(35 Ill. Adm. Code 848.201(b)(1).)

35 Ill. Adm. Code 848.202(b) provides:

- (b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following requirements:

* * * *

- (2) Used or waste tires shall not be accumulated in any area located outside of any building unless the accumulation is separated from all buildings, whether on or off the site, by no less than 25 feet.

* * * *

- (5) Used or waste tires received at the site shall not be stored unless within 14 days after the receipt of any used tire the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. . . .

(35 Ill. Adm. Code 848.202(b).)

Additionally, Section 848.206 of the Board's regulations establishes exemptions from certain requirements in Section 848.202 for three categories of tire retreading facilities. The three categories of tire retreading facilities are: 1) new sites, 2) existing large sites, and 3) small sites.

The exemption for new facilities, set forth at Section 848.206(b), exempts new facilities from the tire storage limitations in Section 848.202(b), and from certain aspects of the cost estimate requirements set forth in Section 848.404. This exemption does not apply to Tommy House, since it has been incorporated in Illinois since 1970.

The exemption for existing large sites is set forth at Section 848.206(c), and applies to facilities which have no more than 100,000 tires at the facility and which process at least 500 tires per day. The exemption for "small sites" is set forth at Section 848.206(c), and applies to sites which have less than 500 used or waste tires on-site at one time. Sites covered by either the existing large site or small site exemption are exempt from several of the requirements in

830.202, including the pile separation requirements in 848.202(b)(1) and (2), and the 14-day storage limitation in 848.202(b)(5), from which Tommy House seeks relief. These two exemptions allow for the application of alternate management standards, pursuant to which the facility owner or operator must develop and implement a tire storage plan to minimize the threats of fire and mosquito breeding.

Neither the existing small site exemption nor the large site exemption applies to Tommy House's facility. Tommy House has more than 500 tires at its facility, and therefore does not qualify as a small site. (Am. Pet. at 4.) While Tommy House has sufficient equipment to process 500 tires per day, it does not currently do so, and it therefore fails to qualify as an existing large site. (Id.)

JUSTIFICATION OF ADJUSTED STANDARD

The main hardship that Tommy House alleges is the unavailability of space at the site to meet the necessary cover and setback requirements. (Am. Pet. at 4-5.) The problem caused by the limited space available is exacerbated by the existence of a utility easement held by Illinois Power, which covers a 60-foot right-of-way. (Am. Pet. at 5.) Under the terms of the easement, no structures can be built within the 60-foot zone. Tommy House asserts that it cannot construct a storage facility for either of the two staging areas that the Agency objects to, due to the Illinois Power easement. (Am. Pet. at 5.) Tommy House asserts that it has no other available space for construction of a storage facility.

Tommy House also asserts that it is unable to tarp the exposed tires, because there is insufficient space available to properly drape the tarps, since available space is taken up by the staged tires and the truck aisle. (Am. Pet. at 5.) Tommy House claims that if it covers the tires with improperly draped tarps, water will collect in the folds of the tarp, creating a mosquito breeding ground. Therefore, Tommy House instead covers its tires with the wooden "top-covers".

Tommy House asserts that its space limitations force it to store the tires at the rear of the facility near the access lane, less than 25 feet from a building. This access lane is used by trucks which bring tires to the staging area. Tommy House asserts that it is the only route available for semi-trucks to access the staging area, since they must be able to turn through the gate into the staging area. (Am. Pet. at 5.)

Because there is insufficient space available at the site, Tommy House asserts that it would be forced to find storage space off-site in order to meet the setback and cover requirements. Tommy House estimates that it would cost approximately \$4.00 to \$6.00 per tire for off-site storage, including the direct cost for the storage space, supervision, transportation, and daily labor for movement of the tires. (Am. Pet. at 4.)

Additionally, Tommy House asserts that compliance with the 25-foot setback requirement would result in the loss of 8 - 10 employee parking spaces. (Am. Pet. at 5.) It would also require that Tommy House move the scrap tire trailer, which would eliminate another 4 - 6 employee parking spaces. Tommy House states that the nearest parking facility is 3 city-blocks away. (Id.)

Furthermore, Tommy House asserts that the regulations recognize that the general standards should not be universally applicable, and that they therefore establish three classes of exemptions for retreading facilities. (Am. Pet. at 8.) While Tommy House recognizes that none of the exemptions apply to its facility, it asserts that the established management standards do not fit for its facility, and that it should therefore be given a similar exemption, since it provides the same or similar benefits to the Illinois economy and environment that exempted large and small facilities do. (Id.) Tommy House emphasizes that it is not an unmanaged tire site, and that it converts a potential waste problem into a useful product and provides employment, thereby positively affecting the local and regional economy.

COMPLIANCE ALTERNATIVES

Setback Requirements.

Petitioner asserts that, since there is no additional storage space available on the site, in order to meet the setback requirements, it would be forced to find storage space off-site. (Am. Pet. at 4.) Tommy House estimates that it would cost approximately \$4.00 to \$6.00 per tire for off-site storage, including the direct cost for the storage space, supervision, transportation, and daily labor for movement of the tires. (Am. Pet. at 4.)

Tommy House asserts that it has also investigated setbacks of less than 25 feet, and that a set back of as little as 10 feet would cause it difficulty, since any setback would reduce the present storage area available at the site. (Id.) Tommy House also asserts that the present access lane is the only route available to allow semi-trucks to access the staging area. (Id.)

Cover Requirements.

As an alternative means of complying with the cover requirements, Tommy House procured an estimate for a "Butler- type" building capable of storing all tires completely indoors. (Am. Pet. at 5.) Tommy House estimates that, based on its projected tire needs, it would require a building with an area of approximately 20,000 square feet, at a cost of \$23.00 per square foot. (Id.) The cost of such a building would thus be approximately \$460,000. (Id.)

PROPOSED ADJUSTED STANDARD

Petitioner proposes that the following be adopted as an adjusted standard applicable to the site:

Tommy House Tire Co., Tire Retreading Site (Decatur, Illinois). For a site owned and operated by the Tommy House Tire Co., located at 304 E. Macon Street, Decatur, Illinois, the scope of exemption and/or alternate management standards applied to that facility are as follows:

a) Scope of Exemption

The storage limitation for whole tires specified at Section 848.202(b)(5) and the pile separation distances specified at Section 848.202(b)(1) and (2) do not apply at the site.

b) Alternate Management Standards. As part of the contingency plan requirements of Section 848.203 Tommy House Tire Company, Inc., shall:

- 1) Develop and implement a tire storage plan to minimize the threat of fire and mosquito breeding. Such a plan shall include, but is not limited to, tire storage arrangements, aisle space, access to fire fighting personnel and equipment and mosquito inspection and control.
- 2) Request and submit to the Agency a statement from the Illinois Department of Public Health that the program developed under subsection (b)(1) is adequate to control mosquito larvae and pupae; except that, if the Department has not sent a statement within 45 days after receipt of the request, such statement need not be submitted and the Agency shall make such a determination. Tommy House Tire Co., Inc. has the burden of demonstrating that the threat of mosquito breeding has been minimized. Requests for such statements of determination shall be sent to:

Division of Environmental Health
Office of Health Protection
Illinois Department of Public Health
525 W. Jefferson Street
Springfield, Illinois 62761

(Am. Pet. at 5 - 6.)

In our order of March 9, 1995 which found Tommy House's initial petition deficient the Board directed Tommy House to file an amended petition, including a copy of the proposed

alternative management plan it intended to submit to the Agency. In response, Tommy House submitted the contingency plan for its site, required pursuant to Section 848.202 of the regulations. (Am. Pet. Exh. D.) The plan includes a response plan to be implemented in the event of a tire fire, and includes provisions for controlling tire fire run-off. It designates Bodine Environmental as the entity to be contacted in the event of a tire fire, and states that Bodine is capable of providing 24-hour emergency service in the event of such a fire.

Furthermore, the proposed plan includes a plan for the prevention of mosquito breeding, which includes routine inspection of tires, and treating tires with pesticides. Any large infestation would be reported to the police, disease control, and the Agency. The contingency plan also includes a plan for evacuation of the premises in the event of an emergency.

Finally, the plan includes a tire storage plan. For tires stored within buildings, the plan states that tires will be arranged in stacks according to size, between 8 and 12 tires high. It specifies that aisles will be spaced approximately two feet apart, at that there will be minimum ceiling clearance of 10 feet. The tire storage plan further states that there will be no unit heaters, duct furnaces, or sprinkler deflectors in any of the tire storage facilities. However, the tire storage plan does not address storage arrangements for tires stored outside, which are precisely the tires for which Tommy House seeks the adjusted standard.

Tommy House also appears to be seeking an exemption from the January 1, 1992 effective date of the tire management standards, set forth at 848.201(b)(1). As a general rule the Board grants an adjusted standard effective as of the date of the Board decision, although relief has been granted retroactively under extraordinary circumstances. (See In the Matter of Petition of Waste Management of Illinois, Inc. for an Adjusted Standard from 35 Ill. Adm. Code 807.665(b) and 811.714(b), AS 94-12, pp. 6-7 (April 6, 1995.)) However, Tommy House has not demonstrated that extraordinary circumstances exist in this case which caused it to file its petition 3 years after the effective date of the regulation. Therefore, the adjusted standard will not be granted retroactively, but will be effective as of the date of this opinion and order.

The Board believes that Tommy House may additionally be seeking an exemption from the requirements of 35 Ill. Adm. Code 848.202(b)(1), which establishes minimum pile separation distances, since the proposed adjusted standard language at page 5 of the amended petition would exempt Tommy House from this requirement. (Am. Pet. at 5.) However, petitioner failed to discuss the need for such an exemption anywhere in the amended petition or anywhere else in this proceeding, i.e., in its original petition or the supplemental information filed December 4, 1995. Petitioner has repeatedly exhibited inability to provide the basic facts necessary to support its petition, evidence the need for the Board to issue two more information orders in this proceeding. The Board can do nothing further to cure this deficiency. Since the request for such an exemption is unclear and there is no evidence supporting the same, the Board will not include an exemption for Section 848.202(b)(1) in the adjusted standard.

HEALTH AND ENVIRONMENTAL EFFECTS

Tommy House asserts that granting the adjusted standard will have no or negligible impact on the environment, as compared to petitioner's compliance with the regulation of general applicability.

Twenty-Five-Foot Building Separation Requirement.

Tommy House asserts that allowing tires to be stored within twenty-five feet of a building will not pose a greater threat of fire being transferred between a building and the tires than the rule of general applicability. As specified above, Tommy House has proposed an alternate standard management standard for fire minimization which it asserts will alleviate any threat of a building fire being transferred between a building and the tire storage area. Tommy House emphasizes that it has never had a fire at its facility. Furthermore, Tommy House emphasizes that the gate to the facility is kept locked, as recommended by the Agency.

While Tommy House has submitted its contingency plan for the site which includes a tire storage plan, we find that it does not adequately address the proper storage of tires outside buildings at the facility. We believe that the storage requirements for tires stored within buildings should also be applied to tires stored outside, and that this should be specified in the Alternative Management Plan.

Furthermore, we believe that the Alternative Management Standards Plan should include certain additional requirements for the outside tires. Therefore, we will require in the adjusted standard that the Alternative Management Plan include the following information: the maximum number of tires that will be stored at the site; the maximum number of tires that will be stored outside; a diagram of the site, including the location of each tire pile; a narrative description of the location of each outside tire pile; and the distance that will be maintained between each tire pile and the nearest building.

Additionally, as Tommy House suggests, the setback requirement is designed to address the threat of a building fire being transferred to the tires or vice versa. Because the protections of a 25-foot setback will not be present at the site, we believe it is necessary to provide greater protection against the threat of a fire. Therefore, we will require that all buildings at Tommy House's facility be equipped with an automatic fire alarm system connected to the local fire department. This will ensure prompt response to the occurrence of any fire and provide adequate protection in the absence of the setback.

Fourteen-Day Tire Storage Limitation.

Tommy House asserts that, although its tires are partially exposed to the elements, Tommy House manages them under all other applicable standards. Tommy House asserts that managing the tires under the proposed adjusted standard, which requires Tommy House to

implement a plan to minimize the threat of fire and mosquito breeding, will pose no greater threat to the environment than the regulation of general applicability.

Because Tommy House will be allowed to store its tires outside in such a manner that they will be exposed to the elements, we believe that the proposed alternative management plan must include additional requirements to address this increased risk. Therefore, we will require that the alternative management plan include a description of the cover used for each pile, whether wooden top-covers or tarps.

Furthermore, Tommy House has indicated that some of the tires stored outside are those rejected tires which do not fit in the tire storage trailer. We believe that this situation can be minimized or cured by assuring that the tire storage trailer is picked up on a timely and consistent basis. We will therefore require that the alternative management plan specify that the turn over time for the rejected tire storage trailer once it is full, shall not exceed 14 days.

CONSISTENCY WITH FEDERAL LAW

Tommy House asserts, and the Agency agrees, that none of the requirements from which relief is sought were promulgated, in whole or in part, pursuant to federal requirements.

AGENCY RESPONSE

The Agency filed its response to the original adjusted standard petition on February 10, 1995, recommending that the Board grant the adjusted standard, subject to certain conditions. In response to Tommy House's December 4, 1995 submittal of supplemental information, the Agency submitted an additional response on January 1, 1996.

In its February 10, 1995 response, the Agency agrees with Tommy House's representations concerning the quantitative and qualitative impacts on the environment, and recommends that the adjusted standard be granted, subject to three conditions. First, the Agency asks that Tommy House clarify which specific provisions of the regulations it is seeking an adjustment from. Second, the Agency asks that Tommy House correct the address of its facility. Third, the Agency requests the inclusion of several amendments to the Alternate Management Standards provisions of the proposed adjusted standard. The Agency's first two concerns were addressed by Tommy House in its amended petition.

As its third condition to recommending that the Board grant the proposed adjusted standard, the Agency recommends the imposition of several amendments to the proposed adjusted standard. First, the Agency recommends that Tommy House be required to implement the proposed tire management plan within 30 days of the adoption of the adjusted standard. Similarly, the Agency proposes that Tommy House be required to request approval of the proposed management plan from the Department of Health within 30 days of the adoption of the adjusted standard. Finally, the Agency proposes that the adjusted standard include a provision

requiring that it not be effective if the Agency or Department of Health finds that the program developed by Tommy House is inadequate to control mosquito larvae and pupae. The adjusted standard would then only become effective upon a finding that an appropriate plan has been proposed.

In its January 1, 1996 response, the Agency responds to the additional information provided by Tommy House and recommends the imposition of several additional conditions on the grant of the adjusted standard. In response to Tommy House's statement that up to 1,200 waste tires will be stored at the facility, the Agency states that, while this is intended to be a maximum number, this is nevertheless a high figure. (Agency's January 4, 1996 response at 1.) The Agency also states that relying on tire haulers may be an inadequate means of handling this volume of waste tires. The Agency therefore requests that, if the facility stores greater than 1,000 waste tires on site at one time, Tommy House be required to seek another means of waste tire disposal. (Id. at 1-2.)

In response to Tommy House's statement that all waste tires may be stored outside, (Supplementary Information at 1), the Agency states that this would be a deviation from the current practice of storing waste tires in enclosed trailers. (Agency's January 4, 1996 response at 2.) The Agency therefore requests that Tommy House be required to store the waste tires in trailers whenever feasible and practical. (Id.)

The Agency further states that Tommy House's assertion regarding fire control measures someone will be making "constant visual checks of each tire storage area," is unrealistic, and that a more realistic standard should be set. (Id.) The Agency requests that Tommy House be required to keep a log of storage area inspections documenting a minimum of one inspection per area per eight hour working shift. (Id.) The Agency states that this would assist an Agency inspector in determining whether the storage area inspections were being conducted appropriately. The Agency further suggests that the storage area inspection logs be kept for at least three years, in order to maintain consistency with other recordkeeping requirements. (Id.)

In describing the length of time rejected tires are stored outside before being shipped off-site, Tommy House states that 95 percent of the rejected tires are removed from the site within 7 days. (Supplementary Information at 3.) The remaining 5 - 10 percent belong to Tommy House's national account customers. Tommy House asserts that tires belonging to these customers must be inspected and verified by customer personnel before Tommy House disposes of them. (Id.) Tommy House does not state how long this inspection and verification process may take. In response, the Agency asserts that a maximum timeframe should be set for on-site storage of these tires prior to disposal. (Agency's January 4, 1996 response at 2.) The Agency recommends that Tommy House be required to dispose of the national account waste tires with or without customer verification after two months have passed. (Id.)

Concerning Tommy House's statements regarding measures to be taken for mosquito control (Supplementary Information at 3), the Agency states that Tommy House should be

required to keep inspection logs. The Agency requests that Tommy House be required to inspect outside tires for mosquito activity on at least a weekly basis, that it be required to keep logs of such inspections, and that it be required to retain such inspection logs for a period of at least three years. The Agency further reminds Tommy House that all pesticides must be applied in accordance with the requirements of the Illinois Pesticide Act and the regulations at 35 Ill. Adm. Code 848.205.

The Agency states that if all of above conditions are satisfied, along with the original conditions proposed in its initial response to the petition for adjusted standard, the Agency recommends that the petition for adjusted standard be granted. In its reply to Agency's January 1, 1996 response, Tommy House agrees to all the conditions recommended in the Agency's January 1, 1996 response.

The Board finds that the conditions recommended by the Agency are appropriate limitations on the adjusted standard, and accordingly incorporates them into the adopted adjusted standard.

CONCLUSION

The Board finds that Tommy House has demonstrated that an adjusted standard is appropriate for its tire retreading facility located in Decatur, Illinois. Tommy House has demonstrated that it is unable to comply with the regulation of general applicability, due to the limited space available at its site, and due to the utility easement held by Illinois Power, which prevents Tommy House from constructing a storage facility for its tires. Tommy House has shown that there are no economically viable alternatives which will enable it to comply with the standard of general applicability. Furthermore, Tommy House has demonstrated that the alternative standard as conditioned will not significantly impact human health or the environment, and that it can be granted consistent with federal law. The adjusted standard is therefore granted, subject to the conditions set forth below.

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

ORDER

Tommy House Tire Company, Inc. (Tommy House) is hereby granted an adjusted standard, pursuant to 415 ILCS 5/28.1, applicable to Tommy House's facility located at 304 E. Macon Street, Decatur, Illinois (the site), subject to the provisions and conditions listed below.

- a) Scope of Exemption. The storage limitation for whole tires specified at Section 848.202(b)(5) and the pile and building separation distance specified at Section 848.202(b)(2) do not apply at the site.

- b) **Alternate Management Standards. As part of the contingency plan requirements of Section 848.203 Tommy House shall:**
- 1) **Within 30 days after the adoption of this adjusted standard, develop and implement a tire storage plan to minimize the threat of fire and mosquito breeding. The plan shall include, but is not limited to, tire storage arrangements, aisle space, access to fire fighting personnel and equipment and mosquito inspection and control. The plan must also include the following:**
 - a) **the maximum number of tires that will be stored at the site;**
 - b) **the maximum number of tires that will be stored outside;**
 - c) **a diagram of the site, including the location of each tire pile;**
 - d) **a narrative description of the location of each outside tire pile;**
 - e) **a description of the cover used for each pile, whether wooden top-covers or tarps;**
 - f) **the distance that will be maintained between each tire pile and the nearest building;**
 - g) **the turn over time for the rejected tire storage trailer once it is full, which shall not exceed 14 days;**
 - h) **a requirement that each pile shall have a maximum height of 12 tires;**
 - i) **a requirement that an aisle space of at least two feet will be maintained between rows of tires;**
 - j) **a requirement that the facility gate be locked during non-business hours;**
 - k) **a requirement that Tommy House immediately seek and implement another means of waste tire disposal if the number of waste tires stored on-site exceeds 1,000 tires;**
 - l) **a requirement that Tommy House dispose of waste tires from its national accounts after they have been stored on the site for two**

months, whether or not they have been inspected and verified by the national account customer;

- m) a requirement that Tommy House conduct and maintain a log of at least 1 fire control inspection of each of tire storage area per eight hour working shift, with records of such inspections to be retained for a period of at least 3 years;
 - n) a requirement that Tommy House conduct and maintain a log of at least weekly mosquito control inspections of all outside tire piles, with records of such inspections to be retained for a period of at least 3 years;
 - o) a requirement that all buildings at the facility be equipped with an operational automatic fire security system hooked up to the local fire department.
- 2) Within 30 days after the adoption of this adjusted standard, request and submit to the Illinois Environmental Protection Agency (Agency) a statement from the Illinois Department of Public Health (Department) that the program developed under subsection (b)(1) is adequate to control mosquito larvae and pupae; except that, if the Department has not sent a statement within 45 days after receipt of the request, such statement need not be submitted and the Agency shall make such a determination. If the Department or the Agency determines that the plan submitted by Tommy House is inadequate, this adjusted standard shall not be effective until such time as an amended plan is approved. Tommy House Tire Co., Inc. has the burden of demonstrating that the threat of mosquito breeding has been minimized. Requests for such statements of determination shall be sent to:

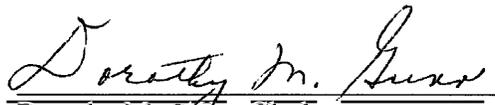
Division of Environmental Health
Office of Health Protection
Illinois Department of Public Health
525 W. Jefferson Street
Springfield, Illinois 62761

- 3) Within 30 days after the adoption of this adjusted standard, a copy of the Alternative Management Plan shall be submitted to the Agency and to the Pollution Control Board.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders 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 21st day of March, 1996, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board