

ILLINOIS POLLUTION CONTROL BOARD
September 17, 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.)

ORDER OF THE BOARD (by M. McFawn):

Before the Board is a "Motion to Reconsider" filed by petitioner, the City of Salem, Illinois (Salem), seeking reconsideration of the Board's order of July 8, 1998, denying Salem's petition for an adjusted standard. The Board is unconvinced by Salem's arguments that its decision in the July 8 order was in error. Accordingly, the Board denies the motion and affirms its order of July 8, 1998.

Salem owns and operates a municipal solid waste landfill, located within the city. 35 Ill. Adm. Code 814.401(a) requires landfills which will not meet the strict operating requirements of 35 Ill. Adm. Code 814.Subpart C to initiate closure on or before September 18, 1997. Salem's landfill consists of two units: a southern unit which does not meet the requirements of Subpart C (and consequently under Section 814.401(a) was required to close in 1997) and a northern unit which will meet the Subpart C requirements, but which was still under construction when Salem filed its adjusted standard petition. Salem's petition sought a one-year extension of the closure deadline. The purpose of the adjusted standard was to allow Salem to continue operating the southern unit of its landfill until the northern unit was ready to receive waste. Salem stated in its petition that, absent relief, it would be forced to purchase an additional truck at a cost of approximately \$75,000 and to transport waste to another landfill 50 miles away; it would additionally lose tipping fees and be forced to raise the cost of service. Pet. at 11-13.

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.

In its order of July 8, 1998, the Board found that Salem had not met the first two criteria, and denied the adjusted standard petition. With regard to the first criterion, Salem cited two factors it claimed were substantially and significantly different from the factors relied upon by the Board in adopting the landfill rules: (1) the length of time required to obtain its significant modification permit 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. The Board concluded that neither factor rendered Salem's circumstances significantly different from those considered by the Board when the landfill regulations were adopted. In its "Motion to Reconsider," Salem contends that the Board erred in its conclusion that "the length of time it took Salem to obtain its significant-modification permit is not a distinguishing factor[.]" None of Salem's arguments, however, establish any error. The matters Salem claims were overlooked by the Board are not relevant to whether the two factors cited are substantially and significantly different from those considered when the landfill regulations were adopted.

Salem states that "the point being made in relation to the permit-review process is that at no time was it demonstrated that Salem did not, in good faith, pursue the permit-review requirements[.]" Nothing in the Board's July 8 opinion should be read to suggest that the Board questioned Salem's good faith in pursuing its permit. Salem's good faith, however, can hardly be considered a factor differentiating it from permit applicants envisioned by the Board when the landfill regulations were adopted. Salem further contends that "the closure of the southern unit and transition time to construct and develop the northern unit was [sic] integral to the application documents filed and the permit-review process. Thus, the Board's finding that the permitting and development of the northern unit is not relevant to the closure date for the southern unit is . . . contrary to the law and the facts." Mot. at 3. The Board is not convinced by Salem's unsupported statements. Salem attempted to show a significantly different factor based on the time it took for Salem to obtain a permit to open its new landfill. The regulations from which Salem sought adjustment govern closure of existing landfills. Complications relating to the new landfill are not relevant to the existing, southern unit. Salem's arguments cloud this distinction. The fact that Salem's significant modification permit concerns both closure of the southern unit and construction of the northern unit does not change the fact that these two activities and respective landfills are regulated separately and differently. In fact, the closure deadline rule applies to only one—the southern unit.

Salem claims that “[t]he Board erred in construing the Agency comments as support for its position that the lengthy time for Salem to obtain its permit . . . does not distinguish it from the factors considered by the Board when it adopted the solid waste regulations.” Mot. at 3. Whether the Agency comments do or do not support the Board’s conclusion is not relevant. After considering the record, the Board concluded that Salem had not met the first statutory criterion. This conclusion is not premised upon the Agency’s position, and therefore Salem’s argument that the Board misperceived the Agency’s position is not relevant.

Salem also claims that its small size and ownership by a unit of local government should be considered significant distinguishing factors. Mot. at 6. This argument is without merit. Small landfills and landfills owned by governmental units were in existence when the landfill regulations were promulgated; it strains credulity to suggest that the landfill regulations were not intended to apply to small municipally operated landfills the same as any other landfills.

Salem cites often the lack of environmental impact which would result from granting the requested adjusted standard. These arguments are misplaced. Environmental impact is a separate criterion to be considered when an adjusted standard petition is filed. The Board did not find against Salem on that issue. A petitioner may not, however, obtain an adjusted standard merely by showing no impact on the environment. There are three other criteria which must also be met; it was with respect to two of these criteria that Salem’s petition was found deficient.

Salem addresses other arguments to the Board’s decision on the second criterion, that Salem’s factors, even if significantly different, did not justify an adjusted standard. Having concluded, however, that its decision on the first criterion was not in error, the Board need not reach these arguments.

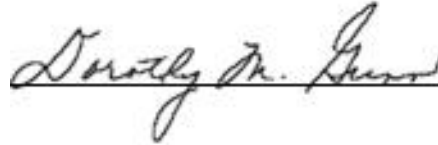
For the foregoing reasons, upon reconsideration the Board denies the motion for reconsideration and affirms its decision of July 8, 1998.

IT IS SO ORDERED.

Board Member R.C. Flemal dissented.

Board Member G.T. Girard abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of September 1998 by a vote of 5-1.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board