

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

IN THE MATTER OF:)
)
PETITION OF JEFFERSON SMURFIT) AS 92-3
CORPORATION FOR AN ADJUSTED) (Adjusted Standard)
STANDARD FROM 35 ILL. ADM.)
CODE 304.105 AND 302.208)

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

On April 16, 1992, petitioner filed an adjusted standard petition with the Board seeking an adjusted standard from 35 Ill. Adm. Code 304.105 & 302.208, setting the standard for the release of boron. The Board requested additional information in an order dated May 7, 1992. On May 20, 1992, the Illinois Environmental Protection Agency (the "Agency") filed a recommendation supporting the granting of the adjusted standard request. The petitioner filed an amended petition on June 22, 1992, and the Agency filed an amended recommendation on July 20, 1992. The amended recommendation again supported the granting of the adjusted standard but suggested certain conditions. The petitioner then filed a response to the amended recommendation on August 6, 1992, which accepted the conditions suggested by the Agency. A hearing was not held in this matter.

Background

Jefferson Smurfit's facility is located in Alton, Madison County, Illinois and borders on the Mississippi River. The site encompasses 107 acres. (Am. Pet. at 3.)¹ The facility employs 51 salaried and 230 union personnel and produces approximately 600 tons of paperboard per day from 100% recycled fiber. (Am. Pet. at 3.) The site discharges from two outfalls known as "outfall 001" and "outfall 002". Only outfall 002 is subject to this request for adjusted standard.

At the site, fly ash is deposited in the ash pond. Fly ash contains soluble boron which dissolves in the ash pond water and then escapes the pond through the levee into the North Ditch Holding Pond. It is from the North Ditch Holding Pond that outfall 002 discharges.

Under normal conditions, there is no discharge from outfall 002. (Am. Pet. at 6.) During normal operations, the purpose of the pond is to capture the boiler blowdown, ash pond seepage and

¹ The petition will be cited as "Pet. at "; the amended petition will be cited as "Am. Pet. at "; the Agency recommendation will be cited as "Rec. at " and the amended recommendation will be cited as "Am. Rec. at ".

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storm water and pump those flows for use in the mill's process water system. (Am. Pet. at 6.) The pumps are capable of pumping the normal flow from the pond. Discharges from outfall 002 are rare and petitioner maintains that only a "rainfall event in excess of 0.80 inches in 24 hours will create a discharge." (Am. Pet. at 8.)

Adjusted Standard

Petitioner requests that the Board grant an adjusted standard from 35 Ill. Adm. Code 304.105 as it applies to the water quality standard for boron at 302.208. The adjusted standard requested is for the intermittent discharges from outfall 002 located at Jefferson Smurfit's facility in Alton, Illinois. Petitioner requests that the standard for boron be raised from 1 mg/l to a level of 15 mg/l to apply from outfall 002 downstream to the point of the discharge from the Illinois Power Company. (Am. Pet. at 11.)

The Agency recommends that the petition be granted with certain conditions. (Am. Rec. at 1.) Specifically, the Agency requests that the standard to apply should be 8.0 mg/l, rather than 15 mg/l, at the point of outfall 002 discharge based on the 5.6 mg/l reported maximum for boron at this outfall. The Agency states that the, "8.0 mg/l standard would not cause a substantial impact on the environment and would provide sufficient margin for petitioner to comply with the adjusted standard." (Am. Rec. at 6-7.)

On August 6, 1992, the Board received a filing from petitioner indicating that petitioner agrees with the conditions stated in the Agency's amended recommendation.

Discussion

Section 28.1 of the Act allows, in pertinent part, for an adjusted standard from a rule of general applicability upon adequate proof 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 the 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

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- adopting the rule of general applicability; and
4. the adjusted standard is consistent with any applicable federal law.

The petitioner asserts that the boron water quality standard was adopted to avoid any harm from farm crop irrigation and with the belief that compliance would not be difficult. (Am. Pet. at 2.) The petitioner further points out that the outfall 002 discharges into the "North Ditch" and the "North Ditch" discharges into the Miami drainage ditch. The Miami drainage ditch meanders for a short distance and then discharges into Wood River Creek. (Am. Pet. at 8.) The petitioner states:

A pipe coating plant is located directly east of outfall 002. The other land surrounding the Miami drainage ditch and Wood River Creek is vacant, undeveloped land all the way to the Illinois Power Company plant. (Am. Pet. at 8.)

Thus, petitioner reasons, there is little human contact with the discharge waters until the time that the discharge reaches Wood River Creek.

The petitioner further asserts that the Board has already acknowledged the limited environmental impact of the proposed levels of boron by granting Illinois Power Company an 15 mg/l site-specific standard for boron for the same receiving stream, eighth-tenths of a mile below petitioner's property (In the Matter of: The Proposed Amendments to Rule 203.1 of the Water Pollution Regulations (March 16, 1978), R76-18, 29 PCB 395). Smurfit cites Exhibit 7 from the above cited case which presented information noting that, "toxicity concerns for low level boron concentrations (30 ppm) toward fish life have been reported ... to be minimal." This exhibit also identifies Wood Creek River, the receiving stream, as having no fishery value. The petitioner also states that the Agency noted in its initial recommendation that boron is not considered a threat to aquatic life at levels proposed by the petitioner and that the environmental impact is expected to be minimal. (Am. Pet. at 12-13.)

The Agency also noted that the primary purpose for development of the boron standard was to avoid harm from farm crop irrigation. The Agency further noted that "there is virtually no irrigation using the surface water in the area of the proposed adjusted standard". (Am. Rec. at 9.) The Agency went on to note that it believes that "in this situation the boron concentrations expected to be involved will not pose a threat to the aquatic life and plant life". (Am. Rec. at 9.)

The petitioner maintains that there are only two methods of

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compliance available to insure that the discharge does not exceed the general standard. The first method would require totally revising the method by which petitioner operates its coal fired boilers by installing a dry ash handling system. (Am. Pet. at 8-9.) Such a revision would require considerable construction cost and result in substantial interference with the plant's operations. In addition, the environmental problem the revision could create include wind blown emissions from the dry ash as well as handling and disposal. (Am. Pet. at 9.)

The second alternative would be to deliver the overflow to a stream with sufficient flow so that water quality based limitation to the discharge could be met. Such a diversion would require discharge directly to the Mississippi River. (Am. Pet at 9.) Construction costs alone for such diversion would cost over \$1,000,000. (Am. Pet. at 10.)

The Agency agrees that compliance alternatives are limited and further agrees that both suggested methods, although technically feasible, are economically unreasonable. (Am. Pet. at 8.)

Thus, the petitioner and the Agency agree that the environmental impact of the adjusted standard would be minimal. Further, the general standard is not a federal requirement and the Agency agrees that granting this adjusted will not be inconsistent with federal law.

Conclusion

The petitioner has requested an adjusted standard from Section 304.105 which generally prohibits violations of water quality standard. The Agency has recommended granting the adjusted standard from that provision. The Board will grant the adjusted standard to Section 304.105 only as it relates to boron releases to the level set forth in the adjusted standard. Thus, a violation of the adjusted standard will also be enforceable pursuant to Section 304.105.

The Board finds that the petitioner has demonstrated that compliance with the standard of general applicability is economically unreasonable. Further, the Board finds that the granting of the adjusted standard will have a minimal environmental impact. Therefore, the Board finds that the petitioner has justified the need for the adjusted standard and the Board hereby grants the following adjusted standard from 35 Ill. Adm. Code 304.105 and 302.208:

Jefferson Smurfit is granted an adjusted standard from 35 Ill. Adm. Code 302.208 for the discharge from Jefferson Smurfit's Alton Mill facility located in Alton, Illinois, at

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outfall 002. The standard for the discharge from outfall 002 is 8.0 mg/l. In addition, Jefferson Smurfit is granted an adjusted standard from 304.105 as it applies to the discharge of boron from Jefferson Smurfit's Alton Mill facility located in Alton, Illinois, at outfall 002.

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

ORDER

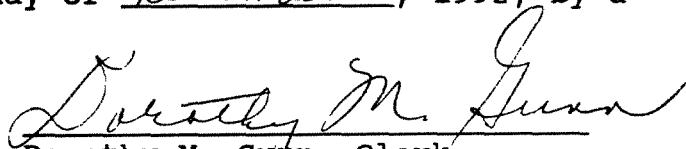
Pursuant to Section 28.1(b), the Board hereby grants an adjusted standard from 35 Ill. Adm. Code 304.104 and 302.208 to Jefferson Smurfit. The following standard becomes effective on the date of this order:

Jefferson Smurfit is granted an adjusted standard from 35 Ill. Adm. Code 302.208 for the discharge from Jefferson Smurfit's Alton Mill facility located in Alton, Illinois, at outfall 002. The standard for the discharge from outfall 002 is 8.0 mg/l. In addition, Jefferson Smurfit is granted an adjusted standard from 304.105 as it applies to the discharge of boron from Jefferson Smurfit's Alton Mill facility located in Alton, Illinois, at outfall 002.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 17th day of December, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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