

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

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

ORDER OF THE BOARD (by J. Anderson):

On July 2, 1992, Conversion Systems, Inc. (CSI) filed a motion regarding procedural matters that included a request that the Board determine whether an adjusted standard is the appropriate procedural mechanism for CSI's petition. The Illinois Environmental Protection Agency (Agency) does not object to CSI's motion, which accompanied CSI's petition for an adjusted standard from 35 Ill. Adm. Code 811 (liner).¹ The motion asserts that this procedural issue was raised by the Agency and the disagreement has impeded the discussions between the Agency and CSI.

On July 20, 1993, the Agency filed a response and motion to dismiss CSI's petition. On July 20, CSI filed a response to the Agency's motion to dismiss.² Letters of support for proceeding with the adjusted standard were also received from Central Illinois Public Service Company (August 2, 1993, August 6, 1993); Central Illinois Light Company (August 3, 1993); and the City of Springfield (August 4, 1993). On August 5, 1993, CSI filed a motion for expedited decision, which we need not rule on in that the decision is rendered today.

Alternative technologies. The Board views requests for approval of alternate technologies from the following perspective: a)

¹ On the same day, July 2, 1993, CSI also filed a companion petition, docketed as AS 93-5, for adjusted standard from 35 Ill. Adm. Code 811 (monofill). The filings in both dockets addressed similar procedural matters, some of which were addressed by separate orders of the Board on July 22, 1993. In like manner, the Board will continue here to address the remaining procedural issue regarding whether the adjusted standard is the appropriate procedural mechanism.

² We note that the Agency and CSI argued this same issue in a predecessor docket, AS 92-9. In that both CSI and the Agency again argued the issue in the present filings, the Board will not review the arguments in the AS 92-9 record on this issue.

consideration of new alternate technologies is to be encouraged; b) the Board will continue to make flexible use of the adjusted standard, except as expressly limited by the statute, as a procedural vehicle to bring issues before it for consideration on the merits; and c) the merits of a petition is a separate and distinct issue from the procedure used.

Nature of relief sought. CSI requests Board approval of the use of utility ash and Flue Gas Desulfurization (FGD) waste treated with its Poz-O-Tec process as a liner and cap material for new chemical waste landfills accepting only FGD sludges and coal combustion waste. We note that that the definition of landfill in the Board's landfill regulations presently does not include the surface impoundments commonly used by most utilities for disposal.³

Arguments. This Board order today is not to be construed as reaching any conclusions about the merits of CSI's proposal or of any of the merit-related arguments of the parties. We also note that we anticipate shortly seeking more information from CSI pending a more detailed review of the petition.

The Agency's arguments in essence assert that an adjusted standard cannot be granted on other than a site specific basis, with the operator as a necessary party (although the Agency acknowledges that the Board's PIMW regulations allow for technology-specific adjusted standards that are not site-specific). We note that the Agency's legal arguments paralleled those put forth in the companion docket AS 93-5.

CSI argues that it cannot realistically supply site-specific information regarding the hydrogeology or surrounding land uses of each site utilizing its Poz-O-Tec and does not agree that it must do so. CSI points out that all of the site specific information the Agency has indicated as necessary must be presented to the Agency before any waste is accepted either in the permit process or by the reporting required for onsite facilities.

35 Ill. Adm. Code 811.306. We note that both parties refer to 35 Ill. Adm. Code 811.306 (Liner Systems), subsection (g) of the Board's generally applicable landfill regulations. That

The supernatant discharged from the utility surface impoundments, commonly called ash lagoons, is regulated by NPDES permit. The Board earlier had held a number of hearings on a proposal of the utilities that included proposed amendments to the landfill regulations that would regulate ash lagoon disposal, but the utilities moved to dismiss the proposal prior to Board action. (In the Matter of: Industry Amendments to the Landfill Regulations (Parts 810-815), dismissal order April 9, 1992.)

subsection allows the Agency to authorize the owner or operator to use alternative technologies or materials when constructing the liner provided that equivalent or superior performance is provided, it has been utilized in a similar application, and manufacturing and construction quality assurance can be implemented.

The subsection does not address an adjusted standard procedure. On the contrary, subsection (g) provides a different procedure for utilizing another technology that has been utilized at least once before; the procedure is available, though, only to an operator when applying for an Agency permit. This reflected the Board's desire to encourage other, if not new, technologies not envisioned by the regulations.⁴ Such Agency permit determinations pursuant to subsection (g) certainly do not supersede, or otherwise diminish, the Board's statutory authority in Section 28.1(c) of the Act to grant an adjusted standard from its regulations and impose conditions if it determines that a person has made the justifications pursuant to the statute.

Board conclusions. The Board concludes that CSI's petition for an adjusted standard is an appropriate procedural approach.

While the Board appreciates the "site specific" tradition, we find nothing in the adjusted standard language, implicitly or otherwise, precluding any person who has developed a new alternate technology from seeking approval its for use by others. Section 28.1 does not limit petitioners to only owners and operators applying on a site-by-site basis. The Board has provided for, and granted, adjusted standards in a number of settings, including those involving the developer or manufacturer.⁵

⁴ The R88-7 Board opinion noted testimony and research that addressed the possibility that special construction techniques might even allow for a thinner liner, examples being the use of paving equipment that could lay down very thin horizontal layers of carefully mixed material, the use of admixtures such as soil cement, asphalt, bentonite or chemical soil additives such as petroleum-based emulsions, powdered polymers, and monovalent cationic based salts. "Equivalent performance" expected under subsection (g) means that the technology must be at least equal to the performance of a clay liner compacted to a hydraulic conductivity of 1×10^{-7} cm/sec. (R88-7, final opinion, Appendix A-1, at 37, 38, Appendix A-2 at 78.)

See e. g., the adjusted standards related to: new alternate technologies in the PIMW program; the diesel exhaust program, where AS was granted to engine manufacturer but vehicle

We emphasize that the landfill regulations are drafted to hold the owner or operator of a specific site responsible for compliance with the regulations and any applicable adjusted standard in all respects, up to and including compliance with the non-degradation standard of no contaminant transport beyond 100 feet in 100 years.

CSI's petition for adjusted standard is accepted. We suggest that the Board's comments in Keystone (In the Matter of: Petition of Keystone Steel and Wire Company for Hazardous Waste Delisting, (February 6, 1992, pp. 8-10), AS 91-1) may be especially helpful here, in that in this proceeding and the RCRA delisting in the Keystone proceeding, we share the experience of dealing with a rather new use of the adjusted standard process.

IT IS SO ORDERED.

C. A. Manning and B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 26th day of August, 1993, by a vote of 4-2.

Dorothy M. Gunn, Clerk
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Illinois Pollution Control Board

owner responsible for ongoing maintenance.