

ILLINOIS POLLUTION CONTROL BOARD

June 6, 1996

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

ORDER OF THE BOARD (by M. McFawn):

This matter is before the Board on a April 25, 1996 motion for reconsideration filed by petitioner Tommy House Tire Company (Tommy House). The Illinois Environmental Protection Agency (Agency) filed a response to the motion for reconsideration on May 7, 1996.

In its motion for reconsideration, Tommy House requests that the Board reconsider the requirement that all buildings at Tommy House's facility be equipped with an automatic fire alarm system connected to the local fire department, imposed as a condition in the March 21, 1996 final order granting Tommy House's request for an adjusted standard. In support of its request for relief from this requirement, Tommy House states that it has purchased a new facility, and will be moving to that facility beginning April 1, 1997. Tommy House states that at that time, all tires which are now stored outdoors will be stored indoors and under cover. Tommy House states that it has contacted suppliers of automatic fire alarm systems, and has received cost estimates for such systems ranging from \$1,350.00 to \$1,500.00 per building, with additional annual costs of \$300.00 to \$360.00 per building. No supporting documentation has been provided. Tommy House states that there are six buildings at its facility which would be subject to the fire alarm requirement.

Tommy House asks that the Board reconsider its imposition of the condition requiring Tommy House to install an automatic fire alarm system, given the cost of such a system, and given the new circumstance that Tommy House will be moving to a new facility in April, 1997. Tommy House states that it has a fire contingency plan in place, which contains protective measures which will mitigate the environmental harm caused by a tire fire at its facility.

In its response to the motion for reconsideration, the Agency states that it has no objection to allowing Tommy House to follow its fire contingency plan in lieu of installing an automatic fire alarm system, if Tommy House is required to comply with several conditions. The Agency's proposed conditions are as follows: 1) Tommy House should be required to comply with all other requirements of the Board order and the fire contingency plan; 2) Tommy House should be required to keep the facility locked when its personnel are not present on site; 3) Tommy House should be required to maintain a record of any discrepancies from the contingency plan; 4) if Tommy House remains at the present site past April 1997,

Tommy House should be required to inform the Board and the Agency in order to allow review of the requested change at that time, or, alternatively, the fire alarm condition should only be stayed until April 30, 1997.

In ruling on a motion for reconsideration the Board is to consider, but is not limited to, error in the decision and facts in the record which may have been overlooked. (35 Ill. Adm. Code 101.246(d).) In Citizens Against Regional Landfill v. County of Board of Whiteside (March 11, 1993), PCB 93-156, we stated that "[t]he intended purpose of a motion for reconsideration is to bring to the court's attention newly discovered evidence which was not available at the time of hearing, changes in the law or errors in the court's previous application of the existing law. (Korogluyan v. Chicago Title & Trust Co. (1st Dist. 1992), 213 Ill.App.3d 622, 572 N.E.2d 1154, 1158.)"

We find that the motion for reconsideration presents the Board with a substantial change in the petitioner's situation which was not made a part of the record in this proceeding prior to the issuance of our March 21, 1996 opinion and order. Furthermore, we find that this change affects the extent to which relief should be granted in this adjusted standard proceeding. Accordingly, we grant the petitioner's motion to allow reconsideration of the requirement that petitioner install a fire alarm system.

Because Tommy House will be remaining at its present facility only until April 1997, we find that the expense of installing an automatic fire alarm system at the present facility is not justified. We find that all other conditions of the adjusted standard and contingency plan are appropriate, and will remain in force, as recommended by the Agency. This includes the requirement that Tommy House keep the facility locked when its personnel are not present at the site. We further find that the additional condition recommended by the Agency, that Tommy House be required to maintain a record of any discrepancies from the contingency plan, is an appropriate addition, and will include it as part of the adjusted standard. Furthermore, because Tommy House will only be at the present site until April, 1997, we find that it is appropriate to include a "sunset clause" which terminates the adjusted standard as of April 30, 1997. Finally, Tommy House shall be required to notify the Agency of the status of its relocation efforts as of April 30, 1997.

The attached order vacates and supersedes the Board's final order issued March 21, 1996, and reflects the above determinations.

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. This order replaces and supersedes the Board's final order issued in this matter on March 21, 1996, which is hereby vacated.

- 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 one 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 three 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 three years; and
 - o) a requirement that Tommy House maintain a log of any deviations from the contingency plan, with such record to be retained for a period of at least three years.
- 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 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.
- 4) This adjusted standard terminates on April 30, 1997.

- 5) Tommy House shall notify the Agency of the status of its relocation efforts as of April 30, 1997.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) 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 order was adopted on the ____ day of _____, 1996, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board