

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

IN THE MATTER OF:)
)
PETITION OF CONVERSION SYSTEMS,) AS 93-5
INC., FOR ADJUSTED STANDARD FROM) (Adjusted Standard)
35 ILL. ADM. CODE PART 811)
(MONOFILL))

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 an 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 (monofill).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 On July 21, 1993, the Agency filed a motion for leave to file, which is granted, and a modification to its motion to dismiss. 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.

¹ On the same day, July 2, 1993, CSI also filed a companion petition, docketed as AS 93-4, for adjusted standard from 35 Ill. Adm. Code 811 (liner). 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.

Alternative technologies. The Board views requests for approval of alternate technologies from the following perspective: a) 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 its proposed Poz-O-Tec treatment process to be used on utility ash and Flue Gas Desulfurization waste, but limited to where new landfills are receiving the waste generated by a particular utility. We note that the definition of landfill in the Board's landfill regulations presently does not regulate the surface impoundments commonly used by most utilities for disposal.³

CSI requests that the Board allow the use of Poz-O-Tec materials "to be disposed of in a monofill [chemical waste landfill] without the need for a liner, cap or leachate collection system, as has been a commercial practice for the past seventeen years." (Pet. at 1.)

Arguments. This Board order today is not to be construed as reaching any conclusions about the merits of CSI's proposal or 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 93-4.

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

³ 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.)

presented to the Agency before any waste is accepted either in the permit process or by the reporting required for onsite facilities.

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 for its 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.⁴

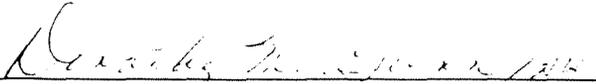
We emphasize that the landfill regulations are drafted to hold the owner or operator of a specific site responsible for compliance with the regulations and any applicable adjusted standard in all respects, up to and including compliance with the non-degradation standard of no contaminant transport beyond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

CSI's petition for adjusted standard is accepted. We suggest that 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
 Illinois Pollution Control Board

⁴ 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 owner responsible for ongoing maintenance.