

ILLINOIS POLLUTION CONTROL BOARD
February 27, 1992

IN THE MATTER OF:)
)
PETITION OF OLIN CORPORATION)
FOR AN ADJUSTED STANDARD FROM)
35 ILL. ADM. CODE 724 and 725) AS 90-8
Related to Closure and Post) (Adjusted Standard)
Closure of RCRA Regulated)
Surface Impoundments))

JEFFREY C. FORT OF SONNENSCHN NATH & ROSENTHAL APPEARED ON
BEHALF OF THE PETITIONER.

JOHN P. WALIGORE APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board on the filing of a petition for adjusted standard by Olin Corporation (Olin). Olin seeks an adjusted standard allowing delayed closure of its RCRA regulated surface impoundment pursuant to 35 Ill. Adm. Code 724.213(e) and 725.213(e). This is a case of first impression before the Board as it involves the first use of the adjusted standard proceeding for delayed closure.

Procedural History

On November 20, 1990, Olin filed a petition for adjusted standard pursuant to 35 Ill. Adm. Code 724.213(e) and 35 Ill. Adm. Code 725.213(e) for its Zone 6 Emergency Holding Lagoon (Lagoon) located at Olin's East Alton Plant in Madison County, Illinois. The petition requested that the Illinois Environmental Protection Agency (Agency) join Olin as a co-petitioner. In addition, Olin filed a motion for leave to file a single copy of voluminous technical documents supporting the petition.

On December 11, 1990, the Agency filed its response to the petition. The response stated that the Agency declined to join as co-petitioner because of several other proceedings concerning the Lagoon in which the Agency and Olin are adverse parties. In addition, the Agency response pointed out several deficiencies in the petition and stated that there was no objection to the granting of the adjusted standard under certain conditions.

On December 20, 1990, the Board granted the motion to file a single copy and requested that the Agency file a more detailed response. In addition, the Board order stated that a hearing would be held to discuss the conditions proposed by the Agency. The Agency filed its amended response on February 4, 1991. In

the amended response the Agency declined to specify any terms or conditions which should be imposed on the adjusted standard.

On February 28, 1991, the Board accepted the matter for hearing. Olin submitted prefiled testimony to the Board on July 17, 1991. Two hearing officer orders were issued prior to the hearing requesting both Olin and the Agency to address certain questions at the hearing. Hearing was held on July 31, 1991 in Edwardsville with two members of the public in attendance. On September 13, 1991, Olin and the Agency filed a joint motion with agreed suggested language for the adjusted standard.

Prior to the filing of this adjusted standard petition, Olin initiated several related proceedings with the Agency. In June of 1988, pursuant to the Resource Conservation and Recovery Act (RCRA) requirements that hazardous waste surface impoundments be closed or retrofitted, Olin submitted to the Agency a closure plan for the Lagoon. The Agency approved the closure plan subject to conditions in January, 1989. Olin appealed the conditions to the Board on February 10, 1989.¹ During this same period, Olin had applied to the Agency for a Part B Permit for the entire East Alton facility. The Agency approved part and denied part of the application. Olin appealed the Agency's decision to the Board on November 3, 1989.² According to both Olin and the Agency the present proceeding affects both the closure plan and Part B permit proceedings.

BACKGROUND

Olin is a Virginia corporation that owns and operates an East Alton, Illinois facility manufacturing explosives and copper alloys. The process wastewater from the manufacturing operations, sanitary wastewater, and stormwater is treated in the Zone 6 wastewater treatment facility (WWTF) which has a capacity of 6.25 million gallons per day. The Zone 6 WWTF has an additional 1,000,000 gallon capacity when the Zone 6 Emergency Holding Lagoon (Lagoon) is used to hold excess flow caused by heavy rainfall or temporary flow diversions. Treatment of the excess waters in the Lagoon occurs gradually through controlled discharge to the Zone 6 WWTF.

The treated wastewater of some of the manufacturing operations generates wastewater treatment sludges which are listed as hazardous wastes. Olin's petition states that wastewater treatment sludge from electroplating operations (EPA

¹ Olin has waived the decision due date of this case, PCB 89-30, until July 31, 1992.

² Olin has waived the decision due date of this case, PCB 89-178, until September 16, 1992.

Hazardous Waste No. F006) and wastewater treatment sludge from the manufacturing, formulation and loading of lead-based initiating compounds (EPA Hazardous Waste No. K046) are produced by certain of its manufacturing processes. [Pet. at 2.] F006 waste is listed as a hazardous waste from nonspecific sources at 35 Ill. Adm. Code 721.131. K046 waste is listed as a hazardous waste from specific sources at 35 Ill. Adm. Code 721.132.

The Lagoon was constructed in approximately 1973. Between 1973 and November of 1988, the Lagoon accepted all process wastewaters and stormwater generated at Olin's facility. In that time an estimated three percent of the process wastewater flow through the Lagoon was the type which generates hazardous sludges after treatment. [Pet. at 3.] In June of 1988, Olin removed and disposed of the listed hazardous sludge from the Lagoon and cleaned the Lagoon liner.³ [Pet. at 3-4.] After November of 1988 the Lagoon did not accept any more process wastewaters which generate listed hazardous wastes. Those process wastewaters which generate listed hazardous sludges have been sent to a separate treatment facility since November, 1988. [Pet. at 2.]

REGULATORY FRAMEWORK

Between mid-1988 and August of 1989 USEPA proposed and finalized rules which allowed delayed closure of land disposal units like the Lagoon. 54 Fed. Reg. 33393, August 14, 1989. In R90-2, the Board adopted, in an identical in substance rulemaking, these USEPA rules allowing hazardous waste management units which have received the final volume of hazardous waste to continue receiving non-hazardous wastes under certain conditions. In the Matter of: RCRA Update, USEPA Regulations, R90-2, 113 PCB 131, July 3, 1990. The rules are found in the Board's regulations at 35 Ill. Adm. Code 724.213 and 725.213. Part 724 contains standards for owners and operators of hazardous waste treatment, storage and disposal facilities; Part 725 contains interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities. The format and language of both of these Parts is very similar.

The regulations governing closure and post-closure of hazardous waste treatment, storage and disposal facilities are lengthy. For an overview of the regulations, portions of Section 724.213(a), (b), (d), and (e) will be reproduced below. The language in Section 725.213(a), (b), (d), and (e), governing interim status, is similar in substance and will not be

³ At hearing Olin asserted that the material removed from the Lagoon, although not hazardous by characteristic, was treated as hazardous because it might have contained solids from "a wastewater process from a listed source." [Tr. at 71.]

reproduced here. The differences between Sections 724.213 and 725.213 will be identified in the Board's discussion.

Section 724.213 Closure; Time Allowed for Closure

- (a) All permits must require that, within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements of subsections (d) and (e), at a hazardous waste management unit or facility, the owner or operator treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes . . . The Agency shall approve a longer period if the owner or operator demonstrate [certain conditions].

* * *

- (b) All permits must require that the owner or operator complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes, if the owner or operator complies with all the applicable requirements in subsections (d) and (e), at the hazardous waste management unit or facility, unless the owner or operator makes the following demonstration . . . The Agency shall approve a longer period if the owner or operator demonstrate [certain conditions].

* * *

- (d) Continued receipt of non-hazardous waste. The Agency shall permit an owner or operator to receive only non-hazardous wastes in a landfill, land treatment unit or surface impoundment unit after the final receipt of hazardous wastes at that unit if [certain conditions].

* * *

- (e) Surface impoundments. In addition to the requirements in subsection (d), an owner or operator of a hazardous waste surface impoundment which is not in compliance with the liner and leachate collection system requirements in Section 724.321(c), (d) or (e) shall receive non-hazardous wastes only as authorized by an adjusted standards pursuant to this subsection.

35 Ill. Adm. Code 724.213.

PROPOSED ADJUSTED STANDARD

Olin's petition for adjusted standard is filed pursuant to those subsections of Section 724.213(e) and Section 725.213(e) governing the contents of the adjusted standard petition and the procedures to be used in filing.⁴ Subsection (e)(1) requires that a petition for adjusted standard include a plan for removal of hazardous wastes and a contingent corrective measures plan. Subsection (e)(2) details what the removal plan must provide, and subsection (e)(3) details the requirements of a contingent corrective measures plan. Olin has submitted both a Hazardous Waste Removal Plan and a Contingent Corrective Measure Plan with its petition for adjusted standard.

Pursuant to subsection (e)(8)(A), Olin has followed the Board's procedural rules in 35 Ill. Adm. Code 106.Subpart G. Olin has stated the standard from which the adjusted standard is sought and the nature of the applicable regulations as required by Section 106.705 (a) and (b). Pursuant to Section 106.705(c), Olin has submitted plans to meet the level of justification specified in the regulation of general applicability. Olin has described the facility and its processes as required by Section 106.705(d) and this information is summarized in the Background section of this opinion.

Section 106.705(e) requires that a petitioner discuss compliance with the governing regulation, compliance alternatives and the cost of the alternatives. Olin asserts that it has three compliance options which are 1) closure of the present lagoon and construction of a new one, 2) clean closure of the present lagoon and restoration of the lagoon in the same place, and 3) delayed closure of the present lagoon. Olin calculated the relative costs using Office of Management and Budget guidance documents. Olin's present worth cost estimates show that the first two options would cost over 1 million dollars each while delayed closure is less than \$200,000. Olin also states that the first two options require Olin to pay twice "in order to end up with what it now has" by paying to close and then paying to rebuild or restore.

To satisfy the requirement of Section 106.705(f), the Board requested at hearing that Olin and the Agency work together to draft proposed language for the adjusted standard. On September 13, 1991, the parties submitted a joint motion with agreed suggested language for the adjusted standard.

⁴ The two sections are nearly identical except for language differences in subsections (e)(4) and (e)(9) and the addition of an (e)(10) in Part 724.

Olin's petition states, in response to Section 106.705(g), that it believes that there will be no difference in the impact on the environmental quality between closing the Lagoon now or in forty years. Because the Lagoon is fenced in on the company's property, there are no visitors or nearby residents, and the hazardous sludges have been removed, Olin contends that there is no increased threat to human health, safety or the environment in response to Section 106.705(h). Olin asserts, pursuant to Section 106.705(i), that a grant of the adjusted standard would be consistent with federal law. Olin requested a hearing and attached various supporting documents to its petition pursuant to Section 106.705 (j) and (k).

AGENCY RESPONSE

The Agency filed its response on December 11, 1990, and an amended response on February 4, 1991. The Agency states that it does not oppose the granting of the adjusted standard from 35 Ill. Adm. Code 725 but does oppose the granting of one from 35 Ill. Adm. Code 724 "since Olin does not have a Part B Permit currently in effect." The Agency stated that its response was filed pursuant to 35 Ill. Adm. Code 106.414 instead of pursuant to the procedures in 35 Ill. Adm. Code 106.Subpart G as required by subsection (e)(8). Even so, the Agency appears to have reviewed most of the petition.

Pursuant to subsection (e)(1), (e)(2), and (e)(3), the Agency reviewed the plan for removing hazardous wastes and the contingent corrective measures plan included in the adjusted standard petition. In its original response, the Agency stated that it had negotiated with Olin about terms for an acceptable removal plan and contingent corrective measures plan, and, on the basis of those negotiations, the Agency supported granting the adjusted standard from Part 725. In its amended response, the Agency stated that Olin's removal of hazardous waste residues from the Lagoon "appear[ed] to satisfy" subsections (e)(1)(A) and (e)(2). The Agency also stated that it had reviewed the contingent corrective measures plan which also appeared to be "in general conformity with the requirements of" subsection (e)(3) and (e)(5).

The Agency responses state that it has no terms or conditions to impose on the adjusted standard. The Agency states that the adjusted standard will be incorporated into the interim status closure plan and Part B permit and believes that terms and conditions should be imposed on the plan and the permit. The Agency also pointed out that Olin did not provide factual support for its assertions that continued use of the Lagoon is essential for compliance with its NPDES permit, that there is no increased threat to humans or the environment, that environmental quality will not be affected in the future, and that its estimates of the compliance options were accurate. The Agency does not assert

that the adjusted standard be denied on this basis or that the alleged deficiencies should be corrected.

BOARD DISCUSSION

This adjusted standard petition for delayed closure of surface impoundments of hazardous wastes is the first of its kind before the Board. Therefore, several of the issues that have arisen in this proceeding seem to stem from the parties unfamiliarity with the process. Some of these issues relate to the procedures and methods of the adjusted standard proceedings. The Agency and any potential adjusted standard petitioners are advised to refer to the Board's February 6, 1992 opinion and order in AS91-1, In the Matter of: Petition of Keystone Steel and Wire Co. for Hazardous Waste Delisting, for a complete discussion on the history, purpose, and procedures of the adjusted standard process.

One issue arose from the Agency's response recommending that the adjusted standard be granted only from the interim standard regulations because Olin did not yet have a Part B permit. The delayed closure provisions of the RCRA regulations provide relief for and are most likely to impact on several identifiable situations. The most likely situations are where 1) an owner or operator of a surface impoundment has been requested by the Agency to apply for a Part B permit and closure is a major issue in the permit negotiations, 2) an interim status facility wishes to convert prior to filing an application for a Part B permit, or 3) a facility with a Part B permit wishes to convert a surface impoundment to receive non-hazardous waste and delay final closure. The relief offered by the delayed closure regulations often impacts the above situations in the middle of a proceeding. For this reason, the Board's procedures contemplate a concurrent petition for adjusted standard from 35 Ill. Adm. Code 724 and 725 and are patterned after the USEPA procedure which allows granting of delayed closure within the application proceedings for a Part B permit. In addition, the measure of the sufficiency of the contingent corrective measures plan to meet the level of justification required in the Board's regulations is identical in both 35 Ill. Adm. Code 724 and 725. Therefore, requiring separate adjusted standard petitions would be, in part, repetitious and uneconomical.

A second issue stemming from the parties' unfamiliarity with the proceedings is that of the Agency's stated reluctance to propose terms and conditions for the adjusted standard. This matter was briefly discussed at hearing and will be explained more fully here. On August 9, 1990, in R90-2, the Board issued an order which discussed the comments submitted to the Board during the post-adoption comment period. The Agency had submitted comments raising questions about the use of the

adjusted standard procedure. The Board stated in response to the comments:

"The adjusted standard will be incorporated into the RCRA permit, and all reporting pursuant to the adjusted standard will be directed to the Agency.

* * *

The Agency cannot issue a RCRA permit for continued operation of such units without an adjusted standard.

* * *

[T]he Agency will need to actively participate in the adjusted standard proceeding to assure that the permit staff reviews the plan submitted to the Board, and provides timely input into the Board's decision process. Following approval of the adjusted standard, the Agency will be required to modify any RCRA permit in accordance with the adjusted standard."

In the Matter of: RCRA Update, USEPA Regulations, R90-2, 114 PCB 477, August 9, 1990.

The Board's statements were intended to help avoid the situation which briefly occurred in this matter. That situation arose when the Agency's responses indicated its intent to refrain from negotiating terms and conditions of the adjusted standard in favor of imposing terms and conditions during its permit review process. The Agency clearly has the authority to impose conditions on a permits pursuant to Section 39 of the Environmental Protection Act, Ill. Rev. Stat. 1991. ch. 111 1/2, par. 1039. But, the Agency could not impose conditions which might conflict with the adjusted standard; the conditions would have to be based on the Board's regulations as modified by the adjusted standard. The potential for conflict between conditions in the permit and those in the adjusted standard can be avoided by the Agency's early review and participation in the adjusted standards proceedings. For these reasons, the Board encouraged Olin and the Agency to work together on the language for this adjusted standard.

A third issue, concerning certain terminology in the regulations, was raised by the Agency at hearing. The Agency noted that the regulations used the terms "corrective measures plan" and "contingent corrective measures plan" in subsection (e) without identifying if the terms were identical or different. For clarification purposes, the Board here finds that these terms are identical in meaning.

Two additional issues arose in this proceeding because of a release from the Lagoon prior to the initiation of this proceeding.⁵ The Agency's amended response states that it has knowledge "that a release or releases have occurred from the surface impoundment unit." At hearing, Olin stated that it had "made a determination of a release of something from some facility, but [it] did not appear to be [from] the lagoon." [Tr. at 91.] The first issue arising from the release is that, pursuant to subsection (e)(5), an additional level of justification is imposed requiring that the owner or operator must begin to implement the contingent corrective measures plan.

The requirements of a contingent corrective measures plan are governed by subsection (e)(3). Pursuant to (e)(3)(A), a contingent corrective measures plan "must meet the requirements of a corrective action plan under Section 724.199, based upon the assumption that a release has been detected from the unit." Therefore, as discussed in the opinion for R90-2, when the contingent corrective measures plan is implemented after a release, the plan actually becomes the corrective action plan. The Agency's amended response states that Olin's contingent corrective measures plan "appears to be in general conformity with the requirements of 35 Ill. Adm. Code 725.213(e)(3) and 725.213(e)(5)." The Board notes that the language of 35 Ill. Adm. Code 724.213 (e)(3) and 724.213(e)(5) is identical to the sections of Part 725 mentioned by the Agency. Therefore, the Board finds that Olin has met the additional level of justification based on a release event at the Lagoon for both Part 724 and Part 725.

The second issue stemming from the release concerns subsections (e)(5) and (e)(8)(C). Subsection (e)(5) governs the actions of an owner or operator after a release and requires that an owner or operator;

- "A) Within 35 days, file with the Board a petition for adjusted standard. If the Board finds that it is necessary to do so in order to protect human health and the environment, the Board will modify the adjusted standard . . ."

Subsection (e)(8)(C)(iv) states that;

- "C) The Board will include the following conditions in granting an adjusted standard pursuant to subsection (e)(1):

⁵ A release from a permitted facility is defined at 35 Ill. Adm. Code 724.213(e)(4). A release from an interim status facility is defined at 35 Ill. Adm. Code 725.213(e)(4). The two definitions are different.

- iv) A requirement that, in the event of a release, the owner or operator shall: within 35 days, file with the Board a petition for adjusted standard; implement the corrective measures plan; and, file semi-annual reports with the Agency."

The problem is how these statutory requirements that contemplate a future event should be implemented in an adjusted standard where the event has already occurred.

The parties addressed this issue in their joint motion filed September 13, 1991. The parties stated:

The parties have previously stated their positions that this provision is either not applicable to the Olin situation since a release has already occurred, or if the provision is applicable, that the contingent corrective measures plan submitted by Olin assures a proper response given conditions known at this time."

In addition, the joint motion expresses the intent of the parties to tailor the requirements for adjusted standard for delayed closure to the specific circumstances of Olin. The parties further state that they "recognize that the filing of subsequent petitions . . . may become necessary" and have provided for such occurrences in the proposed suggested language.

Based on the information before it,⁶ the Board finds that Olin has made a sufficient showing to fulfill the justification requirements for an adjusted standard pursuant to 35 Ill. Adm. Code 724.213(e) and 725.213(e). Specifically, Olin has shown that its removal plan and contingent corrective measures plan meet the requirements of 35 Ill. Adm. Code 724.213(e)(2) and (3) and the requirements of 35 Ill. Adm. Code 725.213(e)(2) and (3). Additionally, Olin has provided the information necessary to fulfill the requirements of 35 Ill. Adm. Code 106.Subpart G. The language of the order granting an adjusted standard is based largely on the joint motion to file agreed suggested language. Some format and nonsubstantive changes were made by the Board. Lastly, even though Olin has already carried out its Hazardous Waste Removal Plan, to fulfill the requirements of subsection (e)(8)(C)(i) and (ii) the adjusted standard retains a condition requiring removal pursuant to a hazardous waste removal plan.

⁶ We suggest that the parties review the delayed closure adjusted standard petition as amended and the Agency response in AS 91-4, Amoco Oil Company, with respect to the regulations from which an adjusted standard is sought. We also note that the Board is placing AS 91-4 on the decision agenda at its March 12, 1992 Board meeting.

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

ORDER

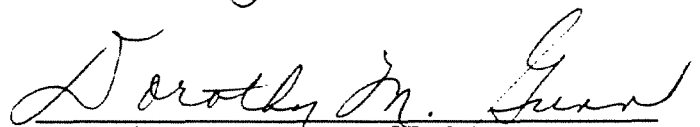
- A. Pursuant to the authority of Section 28.1 of the Illinois Environmental Protection Act, the Board hereby adopts the following Adjusted Standard. This Adjusted Standard becomes effective on February 27, 1992 and is subject to the conditions stated in (C) through (I) below.
- B. Olin Corporation ("Olin") is hereby granted an adjusted standard in accordance with 35 Ill. Adm. Code 724.213(e) and 35 Ill. Adm. Code 725.213(e). Subject to the conditions set forth below, Olin is permitted to operate Olin's Zone 6 Emergency Holding Lagoon (the "Lagoon") located at Olin's East Alton Plant in Madison County, Illinois, for receipt of only non-hazardous wastewater until the year 2039, at which time the lagoon shall be permanently closed in accordance with I (a) and (b).
- C. Olin must remove hazardous wastes from the Lagoon in accordance with the Hazardous Waste Removal Plan submitted as part of Olin's Petition for an Adjusted Standard ("Olin's Petition") which was filed on November 20, 1990.
- D. In the event of a release requiring implementation of the Contingent Corrective Measures Plan submitted as part of Olin's Petition, Olin shall
 - (a) implement the measures called for in the Contingent Corrective Measures Plan; and
 - (b) file semi-annual reports, pursuant to Section 724.213(e)(6) or 725.213(e)(6) as applicable, with the Illinois Environmental Protection Agency ("Agency").
- E. In the event that the Agency determines that Olin has failed to make substantial progress in implementing the Contingent Corrective Measures Plan and achieving the facility's groundwater protection standard for the Lagoon, it may petition the Board to modify the Adjusted Standard. The action levels set out in Olin's Contingent Corrective Measures Plan shall be the groundwater protection standards for the lagoon.
- F. Any party hereto may petition at any time the Board to modify the terms and conditions of this Adjusted Standard.
- G. Termination of the Adjusted Standard.

- (a) This Adjusted Standard shall terminate if Olin fails to implement the Contingent Corrective Measures Plan when required by Condition D.
 - (b) This Adjusted Standard shall automatically terminate if Olin fails to implement the Hazardous Waste Removal Plan submitted in conjunction with Olin's Petition.
- I. In the event that this Adjusted Standard is terminated, Olin shall commence closure of the Lagoon in accordance with
- (a) the Amended Plan for Delayed Closure as approved by the Agency and
 - (b) 35 Ill. Adm. Code 724 or 725, as applicable.

Section 41 of the Illinois Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041, provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and Order was adopted on the 27th day of February, 1992, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board