

ILLINOIS POLLUTION CONTROL BOARD
March 25, 1993

IN THE MATTER OF:)
)
ADJUSTED STANDARD OF C.J.) AS 92-6
GOODALL TIRE CO., INC. FROM) (Adjusted Standard)
35 ILL. ADM. CODE 848.202)

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

This matter comes before the Board on C. J. Goodall Tires' (Goodall) petition for an adjusted standard filed on September 8, 1993, and an amended petition filed on November 17, 1993. The original petition requested an exemption from the 14 day storage limitation for used and waste tires found in 35 Ill. Adm. Code 848.202(b)(5). On October 1, 1993, the Board issued an order directing petitioner to file an amended petition to cure several deficiencies in the original petition. Goodall's amended petition requested an exemption from the unit dimension and aisle spacing requirements found in 35 Ill. Adm. Code 848.202(c)(5)(B) and the financial assurance requirements found in 35 Ill. Adm. Code 848.404, in addition to the request in the original petition. The Agency filed a response on December 12, 1993, recommending that the adjusted standard be granted in part and denied in part. Hearings in this matter were waived and none were held.

BACKGROUND

C.J. Goodall Tire Company is located in the City of Belleville, St. Clair County, Illinois. The business has been owned and operated by C.J. and Dorothy Goodall for 52 years. Goodall buys damaged specialty tires, and then restores and sells the tires. (Am. Pet. at 4-5.)¹ The business deals primarily in mine, quarry, and airplane tires. There are approximately 1200 tires on site. Goodall sold approximately 900 tires and bought approximately 650 in 1991. (Am. Pet. at 6.) Goodall sold over \$400,000 worth of tires in 1991, resulting in an income of \$83,635. During the same time period, Goodall had five full-time employees with a payroll of \$86,202. (Am. Pet. at 3.)

The Goodall facility consists of an office, warehouse, a new storage building, and a building where the repair process takes place. The new building is used to store intermediate size tires. Goodall stores 300 tires indoors and stores 750 tires outside in the tire yard. The tire yard is made up of three tire units. Each unit is 90 feet by 100 feet. A minimum twenty-five

¹ Goodall's amended petition will be cited throughout this opinion and order as ("Am. Pet. at ____.") Exhibits are those submitted by petitioner with its original and amended petitions.

0140-0295

foot aisle separates the units. (Am. Pet. at 4.)

Goodall does not deal in passenger tires. Petitioner's tires range in size from "15.5 X 25", (3 feet high, 25 inch rim size, and 200 pounds), to "35.00 X 51" (ten feet high, 51 inch rim size, and 6000 pounds). Goodall purchases repairable tires from mines, quarries, and other suppliers. Tires are inspected and bid on at the source. Goodall typically pays between a hundred and a thousand dollars for an individual tire. After a tire is hauled to the Goodall facility, water is vacuumed out of the tire and an approved pesticide is applied. The tires are then stored in a building or outside until a customer orders the tire. (Am. Pet. at 4-5.) Goodall does not repair a tire until it is ordered. As a result, a tire may stay at the Goodall facility for months or even up to a year before being repaired and sold. (Am. Pet. at 5.)

PROCEDURAL HISTORY

On September 8, 1992, Goodall filed a petition for an adjusted standard. The petition requested an adjusted standard from the 14 day storage limitation for used and waste tires found in 35 Ill. Adm. Code 848.202(b)(5). On October 1, 1993, the Board issued an order directing petitioner to file an amended petition to cure several deficiencies in the original petition. The order noted that the petition presented justification for an exemption from the 14 day storage regulations, but that the petition did not sufficiently address and justify an exemption from the aisle spacing and financial assurance regulations. In addition, the order directed petitioner to provide more information regarding tire inventory, and compliance alternatives and costs.

Goodall filed an amended petition on November 17, 1992, which addressed the tire inventory, and compliance alternatives and related cost data. The amended petition also addressed the aisle spacing provisions and financial assurance regulations. The Agency filed a response on December 18, 1993. The Agency recommended approval of the adjusted standard in regard to the 14 day storage limitation and the aisle spacing requirements. The Agency asserted that the petition did not adequately define the scope of the proposed adjusted standard. Therefore, the Agency recommended additional language to clarify which tires would be regulated by the new standard. The Agency also opposed the exemption from the financial assurance requirements of 848.404.

On January 4, 1993, Goodall filed an answer to the Agency's response to the petition for an adjusted standard. On January 11, 1993, the Agency filed a motion for leave to file and reply to petitioner's answer to the Agency's response. On January 20, 1993, petitioner filed a motion to strike, or, in the alternative, leave to file a reply. On January 29, 1993, the

0140-0296

Agency filed a response in opposition to petitioner's motion to strike. In a February 4, 1993, Board order, the Board accepted petitioner's answer to the Agency's response, the Agency's reply to petitioner's answer and denied petitioner's alternative motion to strike. The Agency's leave to file a reply was denied.

ADJUSTED STANDARD JUSTIFICATION

The Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992).)² and Part 848 of the Board rules (35 Ill. Adm. Code 848) regulate used and waste tires in order to assure proper disposal, and to protect the public from disease-carrying insects and the danger of air and water pollution from fires associated with large accumulations of used and waste tires. (415 5/53 (1992).) Section 28.1 of the Act allows the Board to grant an "adjusted standard" modifying the effect of general rules in specific cases. 35 Ill. Adm. Code 106.Subpart G contains procedures to be followed in adjusted standard matters. Where the Board specifies a "level of justification" at the time it adopts the rule of general applicability, then that level of justification controls any adjusted standards filed pursuant to the rule. Absent a specified level of justification, the level of justification is found in Section 28.1(c) of the Act.

Because Part 848 does not specify a level of justification, an adjusted standard from Part 848 must meet the criteria found in Section 28.1 of the Act. Section 28.1 of the Act states

28.1(c) (1-4)

- c) If a regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, 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

² Formerly codified at Ill.Rev.Stat. ch. 111 1/2 par. 1001 et seq.

result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and

4. the adjusted standard is consistent with any applicable federal law.

REGULATIONS

Goodall seeks to be exempt from the following regulations:

848.202(b)(5)

- (b) At sites at which more than 50 used or waste tires are located the owner or operator shall comply with the following regulations:
 - (5) Used or waste tires received at the site shall not be stored unless within 14 days after receipt of any used tire, the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. All used and waste tires received at the site before June 1, 1989, shall be altered, reprocessed, converted or otherwise prevented from accumulating water by January 1, 1992.

848.202(c)(5)(B)

- (c)(5)

- (B) The tire storage unit is separated from all buildings whether located on or off the site, and all other site storage units by a separation distance that is not less than the distance identified by the following:

(Table Omitted)

848.404

- (a) The owner or operator shall submit to the Agency a written estimate of the cost of removing all used and waste tires from the site.
 - 1) The owner or operator shall submit the cost estimate with the annual notice of activity pursuant to Section 55(d) of the Act.

- 2) The cost estimate is due on January 1 of each year, commencing January 1, 1992.
- (b) The owner or operator shall revise the cost estimate whenever a change in the removal plan increases the cost estimate.
 - (c) The cost estimate equals the larger of the following:
 - 1) The cost of removing all used and waste tires accumulated at the site; or
 - 2) The cost of removing the maximum number of used and waste tires which the owner or operator anticipates will be accumulated at the site at any time.
 - (d) The owner or operator shall base the cost estimate on either:
 - 1) Costs to the Agency under a contract to perform the tire removal actions in the area where the site is located; or
 - 2) Projected costs, assuming that the Agency will contract with a third party to implement the removal plan. A third party is a person who is neither a parent or subsidiary of the owner or operator.
 - (e) The cost estimate must, at a minimum, include all costs for all activities necessary to remove all used and waste tires in accordance with all the requirements of this Part.
 - (f) Once the owner or operator has completed an activity, the owner or operator may revise the cost estimate indicating that the activity has been completed, and zeroing that element of the cost estimate.

PROPOSED STANDARD

Petitioner proposes the following adjusted standard for inclusion in the Board's order in this matter:

C.J. Goodall Co., Inc., Tire Repair Site. For a site owned and operated by the C.J. Goodall Co., Inc., located at 905 West Boulevard, Belleville, Illinois, the scope of the exemption and alternate management standards applied to that facility are as follows:

a) Scope of Exemption

- 1) The storage limitation on whole tires specified at Section 848.202(b)(5) and the unit dimension and aisle spacing requirements of 848.202(c)(5) do not apply to tires size 18.00 X 25 and larger at the site.
- 2) C.J. Goodall Tire Co., Inc., may exclude from the cost estimate under Section 848.404 the cost of removing all tires purchased for repair and resale at the site.

b) Alternative Management Standards. As part of the contingency plan requirements of Section 848.203 C.J. Goodall Tire Co., Inc., shall:

- 1) Within 90 days after the effective date of these regulations develop and implement a tire storage plan to minimize the threat of fire and mosquito breeding. Such a plan shall include, but is not to be limited to, tire storage arrangements, aisle space, access to fire fighting personnel and equipment and mosquito inspection and control.
- 2) Request, and submit to the Agency, a statement from the Illinois Department of Public Health that the program developed under subsection (c)(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. C.J. Goodall Tire Co., Inc., 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

In summary, petitioner requests to be exempt from the requirements of 848.202(b)(5), 848.202(c)(5)(B) and 848.404. Under this adjusted standard, petitioner must receive from the Department of Public Health a determination that petitioner's alternative management plan is adequate to control mosquito larvae and pupae. This determination must be submitted to the Agency. Furthermore, petitioner requests exemption from the cost estimate requirements of 848.404.

AGENCY RESPONSE

The Agency recommended that the petition be granted as to 848.202(b)(5) and 848.202(c)(5)(B) but with clarifying language. In addition, the Agency recommends that the Board not exempt petitioner from 848.404. The Agency believed that the petition was unclear as to what tires would be regulated by the proposed standard. The Agency asserted that the amended petition does not adequately define which tires are larger than 18" X 25". For instance, it was not clear whether a tire must exceed the minimum width dimension only, the minimum rim size only, or whether it must meet or exceed both dimensions to qualify for the exemption created by the adjusted standard. To avoid this uncertainty, the Agency proposed that the adjusted standard apply to tires that are 18 inches or greater in width and fit on tire rims that are 25 inches or greater in diameter. The Agency suggested the following language for inclusion in the adjusted standard:

A tire shall be deemed to be of a size equal to or greater than 18.00 X 25 if it is 18 inches or greater in width and fits on a tire rim that is 25 inches or greater in diameter.

The Agency also recommended that the adjusted standard include a condition that states that all tires that do not satisfy the conditions for the exemption created in the adjusted standard shall be handled pursuant to the provisions of 35 Ill. Adm. Code 848.

The Board agrees that the petition does not adequately define what tires are to be regulated by the adjusted standard. Therefore, the Board accepts the Agency's recommended language. The Board also agrees with the Agency that the adjusted standard should contain a condition that tires which do not satisfy the conditions for exemption shall be handled pursuant to 35 Ill. Adm. Code 848.

DISCUSSION

The Board now turns to consideration of petitioner's request in light of the Section 28.1 criteria.

14 Day Storage and Aisle Spacing Limitations

Under Section 28.1(c)(1), petitioner must show that factors relating to petitioner are substantially and significantly different from the factors relied upon by the Board in adopting 848.202(b)(5) and 848.202(c)(5)(B). Goodall contends that, in devising the used and waste tire regulations, the Board envisioned facilities and operations dealing in common passenger tires. Petitioner claims that these operations buy thousands, or perhaps millions, of tires and then quickly processes the tires

into fuel. Furthermore, Goodall contends the Board primarily considered sites that store tires in unmanaged piles or stacks.

Goodall's claim that it is differently situated than those facilities the Board envisioned in devising the rules³ is supported by the record. For instance, in R88-24, the Board frequently referred to common passenger sized tires and tire piles. (R88-24 at 7, 8, 11, 13, 14, 18.) In R90-9A, the Board considered "tire monofills" and "tire stacks". (R90-9A at 3-4.) In considering Parts 848.302 and 848.303, the Board used a conversion factor that employed tires the size of common passenger tires. (R90-9A at 12, 18 and 19.) Testimony regarding the use of pesticides also presumed that the tires would be common passenger tires. (R90-9A at 13.) Furthermore, in R90-9B, the Board considered facilities that quickly convert their tires into fuel chips. (R90-9B at 3-5, 11.)

Goodall does not purchase large volumes of tires and does not process its tires quickly. Goodall generally has less than 1500 tires on site. Furthermore, Goodall does not store its tires in stacks or piles. The tires are placed in rows to allow for individual inspection by customers. (Am. Pet. at 4-5.) Therefore, the Board finds that the factors envisioned in adopting the rules are significantly different than factors relating to petitioner.

Under Section 28.1(c)(2), the petitioner must show the existence of those factors envisioned by the Board in adopting the rules of general applicability, justifies an adjusted standard. Goodall asserts that because it is differently situated than the facilities the Board considered in adopting the rule of general applicability, compliance with the regulations imposes an arbitrary burden. In addition, Goodall also claims that compliance with the regulations would result in an undue financial burden.

The regulations require that sites at which more than 50

³ The Board originally adopted used and waste tire regulations in emergency rule R88-12, Managing Tire Accumulations to Limit the Spread of the Asian Tiger Mosquito, 12 Ill. Reg. 8485 (May 13, 1988). On April 27, 1989, the Board adopted R88-24, Managing Scrap Tire Accumulations For the Control of Mosquitoes, Part 849, 13 Ill. Reg. 7949 (May 26, 1989), 98 PCB 393. On April 25, 1991, the Board adopted R90-9A and B, Used and Waste Tire Regulation (35 Ill. Adm. Code 848), 15 Ill. Reg. 7959, (May 24, 1991). On February 6, 1992, the Board adopted R90-9B, Used and Waste Tire Regulations (35 Ill. Adm. Code 848) (35 Ill. Adm. Code 849), 16 Ill. Reg. 2880, (February 21, 1992). These rulemakings shall be cited herein as "(R88-24 at ___.)", "(R90-9A at ___.)", and "(R90-9B at ___.)" respectively.

used or waste tires are located, the owner or operator shall not store the tires for more than 14 days after receipt, unless the used tire is altered, reprocessed, converted, covered or otherwise prevented from accumulating water. (848.202) Goodall suggests that it cannot change the structure of the tire to prevent water accumulation without further damaging the tire. Because the purpose of Goodall's business is to restore tires, further damaging the tires is contrary to Goodall's purpose. Therefore, Goodall contends that it is arbitrary to require Goodall to alter or convert its tires.

Goodall claims that it also cannot comply with the regulations by covering the tires. Goodall claims storing the tires in buildings or covering the tires with tarps would be prohibitively expensive.⁴ Goodall claims that it would have to use a tarp 40 feet by 55 feet in order to adequately cover the tires and secure them. Goodall claims that tarps this size would be difficult to manage and would prevent customers from viewing the tires. In Goodall's business, customers inspect a tire before buying it. This is different from a typical tire storage situation where the tires can be haphazardly piled together or stacked while awaiting processing. Goodall estimates that it would have to spend \$15,000 to purchase the tarps. (Am. Pet. at 11.) In addition, Goodall claims it would have to add an additional employee to cover and uncover the tires. Moreover, Goodall has covered its tires with tarps in the past in an attempt to comply with the regulations and this resulted in a mosquito infestation.

Goodall also asserts that it cannot construct a suitable building to store its largest tires. Goodall recently added a new storage building at a cost of \$40,000. (Am. Pet. at 4.) Goodall uses this building to store its intermediate sized tires. An additional storage building with interior aisles, large enough to store Goodall's largest tires, would cost an estimated \$120,000. Goodall has also considered constructing buildings with the exterior aisles, but claims these buildings would cost \$150,000 to \$200,000 to construct. (Exhibit 6.)

Petitioner asserts that aisle spacing, separation, and drainage requirements are met at the site. Moreover, petitioner claims that bringing these large tires indoors may create a fire hazard. Petitioner claims that the Chief of the Belleville East Side Fire Department, Wes Krummrich, approves of the manner in which petitioner has chosen to segregate and store its tires outdoors. Goodall claims that it would have to eliminate 25-33% of its inventory if required to meet the current aisle spacing

⁴ The Board notes that when granting permanent relief the Board does not view the financial plight of a petitioner as dispositive. (See Elizabeth Street Foundry, As 89-2)

requirements. (Am. Pet. at 11.) The Agency is in general agreement with petitioner concerning compliance efforts and costs.

Under Section 28.1(c)(3), petitioner must show that the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability. Pursuant to the proposed plan, Goodall would submit an alternative management plan to the Department of Public Health and/or the Agency. Goodall proposes to apply an approved pesticide on the day a tire is received. Thereafter, Goodall would inspect the tires every month for mosquito larvae and pupae. If larvae and pupae are present, the tires would again be treated with pesticide in compliance with the regulations.

In adopting the waste tire regulations, the Board considered the use of pesticides as a primary method of mosquito prevention. The regulations allow the use of pesticides but emphasize non-chemical control measures. However, the use of pesticides was strongly advocated by one expert, Dr. Robert Novak⁵, at the regulatory hearings. Dr. Novak stated:

The original intent of the legislation and the rules was to prevent a public health situation. We feel that under many circumstances the use of an approved pesticide is the only way at this particular time to deal with this problem. However, you do understand *** the use of a pesticide over extended periods of time should not be a way to provide a solution to our problem.

(R90-9B at 5-6.)

Other participants testified in favor of periodic inspections of tires that are stored on-site for mosquito pupae and larvae and the application of pesticides upon the detection of mosquito infestation as a management tool. (R90-9A at 14.) Experts at the hearing emphasized the need to use pesticides only to address a specific infestation problem. (R90-9B at 6.) It was generally agreed that the prohibition against ongoing use was aimed at preventing frequent spraying without inspection. The Board concluded that the use of pesticides in response to an inspection which finds mosquito larvae and pupae present was intended by the Act.

The Board finds that, in general, an alternative management plan, approved by the Department of Public Health and/or the

⁵ Dr. Novak is a medical entomologist with the Illinois Natural History Survey.

Agency, which employs the use of approved pesticides in response to a specific infestation problem, will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability.

Under Section 28.1(c)(4), petitioner must show that the adjusted standard is consistent with any applicable federal law. Goodall asserts that the proposed adjusted standard will not violate any applicable federal law. The Agency did not cite any federal law with which the adjusted standard would conflict.

The Board finds in light of the Section 28.1 factors, petitioner has met its burden for an exemption from 848.202(b)(5) and 848.202(c)(5)(B).

Financial Assurance Provisions

The financial assurance provisions of Part 848 are intended to protect the public by providing funds for the removal of tires, if the owner or operator abandons the site or is otherwise unable to properly terminate operations. Goodall requested an exemption from 848.404 and characterized this as a request for a total exemption from the financial assurance provisions. (Am. Pet. at 17.) The Agency asserted that the petition failed to make a formal request for relief from Section 848.404 and that its proposed language goes well beyond the relief which the Board has deemed suitable for retreading facilities, which exclude from the cost estimate under 848.404 the cost of removing one fourth of the previous calendar's year production. (848.206(a)(2)(B)) Therefore, the Agency contends that Goodall should not be exempt from Section 848.404.

For the reasons stated below, the Board construes petitioner's request as an adjusted standard from the regulations that reference the passenger tire equivalent (PTE).⁶ The PTE is defined at Section 848.303(c) and is used to calculate the number of tires on site. The result of an adjusted standard from the PTE sections is that petitioner will be subject to management standards based on the actual number of tires on site, rather than the PTE.

Under Section 848.400(c)(4), owners and operators of tire storage sites and tire disposal sites are exempt from the financial assurance provisions where, as reported in the annual

⁶ The passenger tire equivalent is defined at 848.303(c). Sections 848.303(b)(3), 848.303(d-g), and 848.304(b) directly reference the PTE. Section 848.400(c)(4) indirectly references the PTE.

notice of activity,⁷ less than 5000 used or waste tires are stored at the site and less than 50 used or waste tires have been disposed. Under the regulations, an owner or operator determines the number of tires at a site with the use of a passenger tire equivalent equation. The PTE is calculated by the weight or volume of the tires on site. The Board's technical and scientific staff devised, and the Agency endorsed, the PTE because at many sites the tires are too numerous and disorganized to count. (R90-9A at 18.) The practical importance of the PTE derived figure is that different management standards apply depending on the number of tires on site. These management standards primarily concern mosquito control and fire management. (R90-9B at 12.)

Section 848.303(e) allows an owner or operator to establish different procedures for the purposes of estimating the number of tires as long as the tires are estimated in terms of passenger tire equivalent. Goodall, however, maintains an accurate inventory of its tires and does not need to estimate the number of tires at its site. The requirement of a PTE estimate serves no function where, as here, the actual number of tires is known.

The Board believed that exempting retreading facilities with less than 5000 tires from the financial assurance requirements would allow those facilities to avoid obtaining financial assurance provided they process tires quickly and do not accumulate large numbers of tires. (R90-9B at 8.) The Board believes that reasoning should also apply to Goodall. The Goodall facility is a relatively small operation; it has less than 1500 tires on site. It buys abandoned or waste tires, repairs them and returns them to usefulness. Because they wait for a customer to order a tire before repairing it, they are currently processing their tires as quickly as is reasonable under their circumstances. In addition, in 50 years of operation, Goodall has not accumulated large numbers of tires, and there is no evidence that they will start now.

Moreover, the financial assurance provisions were adopted because used and waste passenger tires have little intrinsic value and the possibility of abandonment is great. (R90-9A at 7.) In R90-9B, the Agency emphasized that it is unusable material that truly needs to be covered by financial assurance. (R90-9B at 4.) The Board reasoned that so long as a market exists for a tire, that tire will have an intrinsic value in excess of a

⁷ The record keeping and reporting requirements of Subpart C apply to sites, such as Goodall, which store more than 500 tires. (848.301) Owners and operators are required to keep a daily tire record and an annual tire summary. (848.302) The daily tire record is used to supply information for the annual report.

typical used or abandoned tire. (R90-9B at 8.) In R90-9B, the Board considered facilities that paid between 50 cents and \$4.50 per tire. (R90-9B at 8.) The Board concluded that to require retreaders to insure against the tire removal when the intrinsic value of the tire already does so, places an unnecessary burden on that industry. The exemption from the financial assurance provisions was viewed as a means of encouraging the beneficial use of tires. (R90-9B at 8.) Goodall pays from a hundred to several thousands dollars per tire. Therefore, Goodall's tires have a much greater intrinsic value than do the tires the Board considered in adopting the used tire regulations. This greater intrinsic value suggests that it is unlikely that Goodall's tires will be abandoned.

As a final point, the Board notes that the adjusted standard granted today does not precisely parallel Section 848.400(c)(5). The adjusted standard granted today provides for the termination of the financial assurance exemption where Goodall has been found to have violated Section 55(a), (b) or (c) of the Act more than once in any calendar year. Section 848.400(c)(5) provides for the termination of the financial assurance exemption where a facility has received "more than one written notice of violation of Section 55(a), (b) or (c) of the Act" in any calendar year. (emphasis added) The Board has not previously ruled whether "written notice of violation of Section 55(a), (b) or (c) of the Act" means a finding of violation or mere notice of a possible violation. The Board does not reach that issue today. However, the Board notes that Section 55.5(b) requires that an investigation be conducted prior to a finding of a violation. In addition, Section 55.5(c) allows a facility to take corrective action upon notice of an alleged violation, prior to a finding of a violation. Thus, Sections 55.5(b) and 55.5(c) afford procedural safeguards that mere notice of an alleged violation does not. The Board concludes that in the instant matter, termination of the exemption upon a finding of more than one violation better comports with the Act, and the used and waste tires regulations, than does mere notice of more than one alleged violation. Therefore, the Board will grant this adjusted standard so long as Goodall is not found to have violated Section 55(a), (b) or (c) of the Act more than once in any calendar year.

The Board concludes that Goodall processes it's tires as quickly as it can within the context of its business and does not accumulate large number of tires. The Board further concludes that the purposes of the Act and the used and waste tire regulations are not promoted by requiring Goodall to use the passenger tire equivalent to calculate the number of tires on site rather than the actual number of tires on site. Therefore, the Board believes that Goodall is an appropriate candidate for exemption from the financial assurance provisions so long as it maintains less than 5000 actual tires on site and less than 50

used or waste tires have been disposed as specified in 848.400(c)(4).

In summary, under the adjusted standard granted today, Goodall may report the actual number of tires on site in the annual tire summary. The Board wishes to emphasize that Goodall will be exempt from the financial assurance requirements, pursuant 848.400(c)(4), only so long as it has less than 5000 tires on site and disposes of less than 50 tires as reported in the annual tire summary. In addition, Goodall will lose its exemption from the financial assurance provisions if Goodall is found to have violated Section 55(a), (b) or (c) of the Act, more than once in any calendar year. Furthermore, under this adjusted standard, Goodall must continue to maintain a daily record and submit an annual tire summary to the Agency as required by 848.302, 848.303, and 848.304.

The following language shall be included in the adjusted standard:

Financial Assurance Provisions. The financial assurance exemption for whole tires specified at Section 848.400(c)(4) shall apply to Goodall Tires so long as less than 5000 used or waste tires are stored at the site and less than 50 used or waste tires have been disposed.

The number of tires at the site for purposes of this section, shall be the actual number of the tires at the site, rather than the passenger tire equivalent specified in 848.303(c).

This exemption does not apply if the number of tires at the site exceeds 5000 or if more than 50 used or waste tires have been disposed at the site.

This exemption does not apply if the owner or operator is found to have violated Section 55(a), (b) or (c) of the Act more than once in any calendar year.

CONCLUSION

Section 28.1 of the Act allows for an adjusted standard from a rule when certain conditions have been met upon adequate proof by the petitioner. Following a careful review of the record, the Board will grant the requested adjusted standards from 848.202(b)(5) and 848.202(c)(5)(B). As discussed above, the Board further exempts petitioner from the use of the passenger tire equivalent to determine the number of tires on site. So long as the actual number of tires at the Goodall facility is

less than 5000 and less than 50 tires are disposed at the site, as reported in the annual tire summary, the exemption provided for in 848.400(c)(4) shall apply to Goodall.

The Board finds that the circumstances surrounding the petitioner are substantially and significantly different from the factors relied upon by the Board when adopting the rule of general applicability. In adopting the rule of general applicability, the Board envisioned facilities that processed thousands to millions of common passenger tires. The Board believed that these facilities are able to process their tires quickly and structured the rules to encourage a quick turn-over.

Goodall does not deal in passenger tires. Goodall is unique in that it buys damaged, large sized tires, on an individual basis, and then repairs and sells the tires. Goodall often pays a large sum of money for each tire. By repairing and selling the tires, Goodall returns these otherwise abandoned tires to usefulness. Furthermore, Goodall does not store its tires in stacks or piles. The tires are placed in rows to allow for individual inspection by customers. Moreover, the Chief of the Belleville East Side Fire Department approves of the manner in which petitioner has chosen to segregate and store its tire outdoors. Goodall claims that it would have to eliminate 25-33% of its inventory if it is required to meet the current aisle spacing requirements. This reduction would likely result in forcing Goodall out of the business of restoring these used tires.

The Board finds that these factors justify the granting of an adjusted standard, when combined with the finding that the requested standard will not result in substantial environmental or health effects. The Agency believes that there will be no adverse health effects from granting the requested adjusted standard. In addition, the adjusted standard requires that petitioner submit a plan to Illinois Department of Public Health for approval. Petitioner indicates that it will submit an alternative management plan which employs the use of approved pesticides in response to a specific infestation problem. This plan will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability. Therefore, the Board finds that the environmental and health effects are not substantially or significantly more adverse than the effects considered by the Board when adopting the general standard.

The Board concludes that Goodall processes its tires as quickly as is reasonable within the context of its business and does not accumulate large number of tires. Moreover, Goodall's tires have a much greater intrinsic value than the tires the Board considered in adopting the regulations. This intrinsic

value guards against abandonment. The Board concludes that to require Goodall to insure against the tire removal when the intrinsic value of the tire already does so, places an unnecessary burden on Goodall. In addition, the Board concludes that the purposes of the Act and the used and waste tire regulations are not promoted by requiring Goodall to use the passenger tire equivalent to calculate the number of tires on site. Therefore, the Board believes that Goodall is an appropriate candidate for exemption from the financial assurance provisions so long as it maintains less than 5000 tires on site and disposes of less than 50 tires as specified in 848.400(c)(4) and does not commit more than one violation of Section 55 of the Act in any calendar year.

The Board agrees with the Agency that the adjusted standard should include language that clarifies what tires are regulated by the adjusted standard. Therefore, the Board will adopt the adjusted standard with the clarifying language suggested by the Agency.

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

ORDER

The Board hereby grants Goodall Tires an adjusted standard from 848.202(b)(5) and 848.202(c)(5). The Board also grants an adjusted standard to Goodall Tires from 848.400(c)(4), but only to the extent that Goodall shall report the actual number of tires on site rather than the passenger tire equivalent. The following standard becomes effective on the date of this order:

C.J. Goodall Co., Inc., Tire Repair Site. For a site owned and operated by the C.J. Goodall Co., Inc., located at 905 West Boulevard, Belleville, Illinois, the scope of the exemption and alternate management standards applied to that facility are as follows:

a) Scope of Exemption

- 1) The storage limitation on whole tires specified at Section 848.202(b)(5) and the unit dimension and aisle spacing requirements of 848.202(c)(5)(B) do not apply to tires size 18.00 X 25 and larger at the site.
- 2) A tire shall be deemed to be of a size equal to or greater than 18.00 X 25 if it is 18 inches or greater in width and fits on a tire rim that is 25 inches or greater in diameter.
- 3) All tires that are not size 18.00 X 25 and larger at

the site shall be managed pursuant to the provisions of 35 Ill. Adm. Code 848.

- b) Financial Assurance Provisions. The financial assurance exemption for whole tires specified at Section 848.400(c)(4) shall apply to Goodall Tires so long as less than 5000 used or waste tires are stored at the site and less than 50 used or waste tires have been disposed.
- 1) The number of tires at the site for purposes of this section, shall be the actual number of the tires at the site, rather than the passenger tire equivalent specified in 848.303(c).
 - 2) This exemption does not apply if the number of tires at the site exceeds 5000 or if more than 50 used or waste tires have been disposed at the site.
 - 3) This exemption does not apply if the owner or operator is found to have violated Section 55(a), (b) or (c) of the Act more than once in any calendar year.
- c) Alternative Management Standards. As part of the contingency plan requirements of Section 848.203 C.J. Goodall Tire Co., Inc. shall:
- 1) Within 90 days of the effective date of this adjusted standard develop and implement a tire storage plan to minimize the threat of fire and mosquito breeding. Such a plan shall include, but is not to be limited to, tire storage arrangements, aisle space, access to fire fighting personnel and equipment and mosquito inspection and control.
 - 2) Request and submit to the Agency a statement from the Illinois Department of Public Health that the program developed under subsection (c)(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. C.J. Goodall Tire Co., Inc. has the burden of demonstrating that the threat of mosquito breeding has been minimized. Requests for such statements of determination shall be sent to:

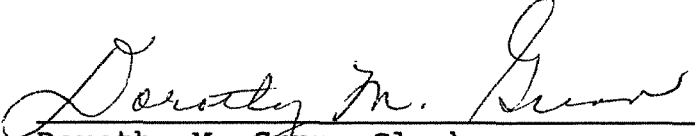
Division of Environmental Health
 Office of Health Protection
 Illinois Department of Public Health
 525 W. Jefferson Street
 Springfield, Illinois 62761

- 3) Meet all requirements found in 35 Ill. Adm. Code 848.203.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041 (415 ILCS 5/41) 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.); Strube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3d Dist. March 15, 1993).

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 25th day of March, 1993, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board