

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

IN THE MATTER OF:)
)
PETITION OF WINNEBAGO RECLAMATION) AS 94-11
SERVICE, INC. FOR AN ADJUSTED) (Adjusted Standard)
STANDARD, FROM 35 ILL. ADM. CODE)
811.710(c) AND 811.713(c)(1))

JOHN HOLSTROM III, APPEARED ON BEHALF OF WINNEBAGO RECLAMATION SERVICE, INC.;

ROBERT J. SCHERSCHLIGHT APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY.

OPINION AND ORDER OF THE BOARD (by E. Dunham):

On June 2, 1994, Winnebago Reclamation Service, Inc. (petitioner) filed a petition for adjusted standard regarding Pagel's Landfill Facility in Winnebago County, Illinois. A certificate of publication was filed on August 4, 1994. The Illinois Environmental Protection Agency (Agency) filed a recommendation with the Board on June 7, 1994, recommending that the adjusted standard be granted. A hearing was held in this matter on October 14, 1994, before hearing officer Allen Schoenberger. No members of the public attended the hearing.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq. (1992)). The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois" (415 ILCS 5/5(b)(1992)) and to "grant * * * an adjusted standard for persons who justify such an adjustment" (415 ILCS 5/28.1(a)(1992)). More generally the Board's responsibility is based on a system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Agency is responsible for carrying out the principal administrative duties.

ADJUSTED STANDARD PROCEDURE

The adjusted standard provision of the Act, at Section 28.1 (415 ILCS 5/28.1 (1992)), was created by the legislature to provide an expedited alternative to site-specific rulemaking. The result of either an adjusted standard or a site-specific rule proceeding is the same (i.e., relief from a particular rule). In both a general rulemaking proceeding and a site-specific rulemaking proceeding, the Board, pursuant to Section 27 of the Act, is required to take the following factors into consideration: the existing physical conditions, the character of the area involved, including the character of surrounding land

uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. (See specifically, Section 27(a).)

Section 28.1 of the Act establishes the level of justification required for an adjusted standard and also requires the adjusted standard to be consistent with Section 27(a). The level of justification required, as set forth in Section 28.1(c), is that the petitioner present adequate proof that:

- . 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 that petitioner;
- . the existence of those factors justifies an adjusted standard;
- . 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; and
- . the adjusted standard is consistent with any applicable federal law.

DISCUSSION

Petitioner requests relief from 35 Ill. Adm. Code 811.710 and 811.713 as those sections specify the form of trust and letters of credit allowed as financial assurance for closure and post closure care of a waste disposal site in Winnebago County. The site in question, Pagel's Pit, is on the Federal National Priorities List (NPL) established under the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA). The U.S. EPA has accepted the trust and letters of credit offered by petitioner in a consent decree entered on February 10, 1993, between U.S. EPA and petitioner in United States vs. Winnebago Reclamation Service Inc. et al. No. 92C20346, U.S. District Court for the Northern District of Illinois, Western Division.

The Board finds that Winnebago Reclamation Service, Inc. has provided sufficient justification for the granting of an adjusted standard. Petitioner is not subject to 35 Ill. Adm. Code Parts 724 and 725 and has already provided financial assurance to the U.S. EPA and the Agency for Closure/Post-Closure activities as part of the consent decree. The granting of the adjusted standard will not result in environmental or health effects substantially or significantly more adverse than the effects

considered in adopting the rule. The adjusted standard is consistent with federal law.

The Board finds that imposition of financial assurance according to the forms specified in Appendix A of 35 Ill. Adm. Code 811 in addition to the trust and letters of credit specified in the consent decree constitute an unreasonable hardship for petitioner. The Board notes that the site is under strict scrutiny of the Agency and of the U.S. EPA, and that the consent decree containing the existing financial assurance mechanism is enforceable by the consent of the parties in Federal Court.

The Board therefore, grants an adjusted standard to Winnebago Reclamation Service, Inc. from the financial assurance forms allowed under 35 Ill. Adm. Code 811.710(a) and 811.713(c)(i) as ordered below.

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

ORDER

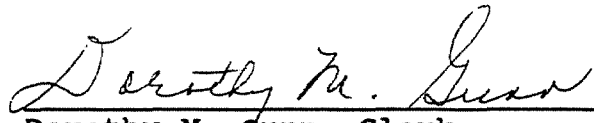
The Board hereby grants the following adjusted standard from 35 Ill. Adm. Code 811.710 and 811.713 to Winnebago Reclamation Service, Inc.:

In addition to the mechanisms which may be utilized under 35 Ill. Adm. Code 811.706 to provide financial assurance for closure and post closure case and for corrective action, Winnebago Reclamation Service, Inc., shall be entitled to utilize the Letter of Credit and the Trust Fund established pursuant to the Consent Decree in the case entitled United Staes vs Winnebago Reclamation Service, Inc., et al. No. 92C20346, U.S. District Court for the Northern District of Illinois, Western Division, to provide financial assurance for any closure and post closure and corrective action activities at the Pagel's Pit Landfill facility which are also required under that Consent Decree.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board 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, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above opinion and order was adopted on the 12th day of December, 1994, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board