

ILLINOIS POLLUTION CONTROL BOARD
September 8, 1988

IN THE MATTER OF:)
)
PETITION OF CRETEX PRESSURE)
PIPE, INC. (FORMERLY)
GIFFORD-HILL AMERICAN LOCK) R84-45
JOINT, INC.) FOR SITE)
SPECIFIC RELIEF FROM 35 ILL.)
ADM. CODE 807.305)

ADOPTED RULE. FINAL ORDER.

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

Procedural History

This matter comes before the Board on the December 20, 1984 petition of Gifford-Hill American Lock Joint, Inc. (GHA) for site specific relief from the daily, intermediate, and final cover requirements of 35 Ill. Adm. Code 807.305 (a,b,c) for its disposal of concrete wastes at its South Beloit, Winnebago County, reinforced concrete pipe manufacturing facility. Hearing was held on April 23, 1985, at which GHA presented testimony and exhibits, as well as an amendment to its request. No members of the public have participated in or made comments concerning this proceeding. The Illinois Environmental Protection Act (Agency) filed comments in support of GHA's request on July 5 and August 13, 1985; GHA's final comments were filed August 20, 1985. In letters of June 13 and July 2, 1985, the Department of Energy and Natural Resources made its determination that an Economic Impact Study concerning this proposal was unnecessary on the basis that:

"The net economic impact of the regulation is favorable and the costs of compliance are small or are borne entirely by the proponent of the regulation."

Consequently, no economic hearings have been held.

The Board adopted and authorized first notice publication of these rules by its proposed Opinion and Order of October 24, 1985. The Agency filed a comment concerning this proposal on November 8, 1985. Due to administrative error, the first notice publication did not appear in the Illinois Register until March 13, 1987 at 11 Ill. Reg. 4215. The only comment received thereafter was that of the Administrative Code Division of the Secretary of State, filed April 9, 1987.

On April 30, 1987, the Board adopted a Proposed Opinion and Order directing the Clerk to submit the proposed rules to the Joint Committee on Administrative Rules (JCAR), pursuant to Second Notice requirements of the Administrative Procedures Act. In the Opinion, the Board limited the relief to Gifford-Hill only, and indicated that any successors in interest would be required to make a showing that they were entitled to similar relief.

On May 13, 1987, prior to mailing of the Second Notice submittal to JCAR, the Board received a letter which stated in pertinent part that:

"GHA Lock Joint, Inc., sold the South Beloit plant to The Cretex Companies, Inc., located in Elk River, Minnesota. The South Beloit, Illinois plant was renamed Cretex Pressure Pipe, Incorporated. Both the hourly and salaried staff remain. Cretex will continue to manufacture Lock Joint concrete products.

Cretex Pressure Pipe, Inc., shall continue to meet the disposal activities as required of Gifford-Hill American Lock Joint, Incorporated, by the Illinois Pollution Control Board.

Accordingly, by Order of May 14, 1987, in light of these changed circumstances the Board vacated its April 30, 1987 Opinion and Order. In that Order, the Board noted that:

"the only sworn testimony in this record is that presented by Gifford-Hill. If Cretex wishes to adopt as its own and reaffirm the testimony presented on behalf of Gifford-Hill concerning all aspects of the manufacturing and disposal activities, Cretex should do so by way of affidavit from personnel having authority to so bind the corporation. In this event, the Board would consider proposing the rules without holding an additional hearing. If, however, circumstances have substantially changed, Cretex should so inform the Board, as an additional hearing would then be required to update this record."

On June 8, 1987, Cretex filed an affidavit executed by its President, Peter W. Raymoure. The substance of the affidavit was that Cretex adopted and reaffirmed the record created by Gifford-Hill.

By Hearing Officer Order of June 15, 1987, the comment period was reopened through July 3, 1987. The participants were specifically requested to indicate whether they had any procedural objections to the Board's grant of relief to Cretex on the basis of the hearing record and the Cretex affidavit. The only responsive comment received was that filed by the Agency on June 24. The Agency stated that it had no objection to the procedure, suggesting only that the caption of this docket be amended.

On July 16, 1987, the Board granted relief to Cretex on the basis of the hearing record and the Cretex affidavit, and authorized the second notice submittal of the rule.

By its Order of February 25, 1988, the Board noted that adoption of a second first notice order was necessary, since first notice publication occurred on March 13, 1987, and was not sufficient time for this rule to proceed to final adoption within the one-year period required by Section 5.01(d) of the APA.

This second first notice was published in 12 Ill. Reg. 5168, March 19, 1988. Pursuant to the Board's Second Notice Order of May 19, 1988, the proposed rules were submitted to the Joint Committee on Administrative Rules (JCAR). On August 23, 1988, JCAR issued a Certification of No Objection to the rules, based upon the making of certain modifications.

The Cretex Operation

Cretex, as did its predecessor GHA, operates a plant involved in the manufacture of reinforced concrete pipe. This facility, located in Northern Winnebago County, Illinois, spans 93 acres. The facility employs approximately 150 people.

In the course of a day, Cretex uses approximately 120 tons of sand, 90 tons of stone, and 45 tons of cement. These materials are mixed together with water to make concrete, which is then placed in steel molds and cured. After curing, the molds are removed leaving a concrete pipe which is then used for water and wastewater transmission.

Upon completion of a day's production, there remains a quantity of concrete to be disposed of. Daily amounts will vary from 2 to 4 tons. This is a result from spillage, breakage and waste. The refuse to be placed in the landfill is concrete waste, cull pipe and an occasional steel rod embedded in the concrete. The material is non-putrescible and non-biodegradable.

The cover requirements of 35 Ill. Adm. Code 807.305 can be briefly summarized as follows: daily - 6 inches, intermediate - 12 inches, final - 2 feet. Pursuant to variances granted to GHA and its predecessor Interpace Corporation (see PCB 75-495, June

6, 1976; PCB 77-274, December 20, 1977; PCB 79-206, December 13, 1979; and PCB 83-125, December 29, 1983) cover has been placed on this material as follows: daily - none, "intermediate" - 1 foot every 6 months, final - 2 feet at the end of every variance period, or roughly 1-2 years. In this petition for site specific rule change (filed in response to a suggestion in the PCB 83-125 variance), Cretex requests the following cover requirements: daily - none; "intermediate" - 6 inches per week; final - 2 feet on final sloping faces, 6 inches on flat surfaces used for industrial purposes. Cretex proposes retention of other conditions of the variance including limitation of the disposal area to one acre, and of the disposal height to that of the adjacent improved terrain.

The concrete waste disposal area is a 25 acre tract located to the north of the plant; since operations began on the site in 1952, 10 acres have been filled. The life of the remaining 15 acres of the disposal area is anticipated to be a minimum of 20 years (R. 15, 39-40). Cretex' nearest neighbor to the north is a quarry operation, to the south a manufacturing facility, to the east a closed landfill, to the west the City of South Beloit. The nearest residential dwellings are directly across the road from the plant itself, or roughly one half mile to the south of the landfill area.

During the past 10 years, disposal of the waste concrete without daily cover pursuant to variance has neither produced a noxious odor nor harbored rodents. Quarterly tests of water quality on wells on the Cretex property have shown no change and the Winnebago Department of Public Health tests show the water is safe to drink (Group Exh. 5). The Agency has inspected this facility nine times between 1978-1983 and found no environmental problems resulting from lack of daily cover during any of the inspections (Group Exh. 11). The Agency has received no complaints regarding operation of the site.

GHA asserted and Cretex affirmed, that continued "Waiver" of the daily cover requirements results in a cost savings on the order of \$1300-\$1600 per week (R.47 and Exh. 2). The further modification of the intermediate cover requirements would be estimated to save an additional \$44,400 per year and final cover requirements an estimated \$19,356 per year (Group Exh. 10).

Concerning final cover, Cretex requests, in essence, that six inches of final cover comprised of "silty sand which provides good structural support in conjunction with the landfilled material" and which "minimizes vegetative cover" be permitted on the reclaimed flat (top) of the landfill area in lieu of the normally mandated two feet of suitable cover (usually capable of supporting beneficial vegetative cover). Cretex believes that this sand is preferable to conventional cover materials because it deters vegetative growth. This is desirable given Cretex'

continuing use of the finished flat top of the landfill area for inventory storage, heavy equipment (see photographs, Group Exh. 12) and, possibly, the future site of additional production buildings. Cretex agrees that if and when such "industrial uses" cease, the site will be restored to more of a natural state, including two feet of cover capable of supporting vegetation. Cretex also agrees to provide two feet of cover capable of supporting vegetation to provide erosion control on the final (east) slope of the landfill and any other "final sloping faces."

The Agency supports grant of the requested relief, noting that the compactible nature of the principal waste material--concrete rubble--limits the effect of lack of daily cover, and indeed, may be preferable to other cover materials. The only material which potentially poses even a de minimus threat of water pollution is the steel reinforcing bars which have the potential to create leachate problems. Although stating that this is an "unlikely prospect", the Agency urges inclusion of a provision in the rule requiring petitioner to limit inclusion of such wastes in the landfill. In this context, the Agency notes that the Industrial Materials Exchange Service, operated by the Illinois State Chamber of Commerce in cooperation with the Agency, might be able to find a market for some of the wastes landfilled.

The Proposed Rule

It is the opinion of the Board that the site-specific relief requested by Cretex may be granted with minimum risk to the environment; based upon the communications from DENR and the other evidence in the public hearing record, the Board finds that grant of the request will have no adverse economic impact on the people of the State of Illinois.

The Board therefore adopted for first notice a rule substantially similar to that suggested by Cretex and the Agency, as outlined in the attached Order. Language revisions were necessary to covert the looser language used in the variances to comport with requirements of the Joint Committee on Administrative Rules. In this context, the Board notes that it did not include the Agency's suggestion that Cretex be ordered to minimize disposal of metal-bearing waste "to the extent practicable" due to inability to frame precise guidelines or standards for enforcement for what is essentially a variance-type hortatory injunction.

The Board did not adopt Cretex' suggestion that the rule provide that it need not provide an additional one and one-half feet of final cover to the flat reclaimed area in the event of sale of the site to another industrial user who also would prefer that the area continue without vegetative cover. Variance and/or site-specific relief would be the more appropriate mechanism in

that case, to allow for determination by the Board of the similarity of the uses to which the successor industry would put the property and the resulting environmental impact.

The Board notes that Cretex made no objection to this proposal, which was contained in the vacated May 14, 1987 Order.

Finally, the Board has amended the proposed rule to substitute references to Cretex for references to GHA in light of the ownership change.

Response To Comments

The Administrative Code Unit's April 9, 1987 comment requested that minor format changes be made, which are reflected in the rule as set forth below.

The Agency's November 8, 1985 comments were that while it was generally supportive of the rule, that it was not aware of precedent for "corporation-specific (as opposed to site-specific) rules", and queried whether such rules could be offensive to the constitutional prohibition against special legislation contained in Ill. Const., Art. IV, Section 13. While the Agency is correct that 35 Ill. Adm. Code Part 800 does not contain "corporation-specific" rules 35 Ill. Adm. Code Part 304, Subpart B contains some eleven rules adopted since 1981 which establish "site-specific" effluent standards for individual corporations and sanitary districts. Precedent for such rules does exist, and the legislature has specifically articulated its intention that rules may be adopted specific to individual "persons" such as corporations as well as to geographical areas or sites. (See P.A. 84-1320, Section 30, eff. Sept. 4, 1986, which amended Section 28.1 of the Act to provide that the "Section shall not be construed so as to affect or limit the authority of the Board to adopt, amend or repeal regulations specific to individual persons, geographic areas or sites pursuant to Section 27 and 28 of this Act, or so as to affect or impair the validity of any such existing regulations".)

As to the concern regarding special legislation, the Illinois Supreme Court has applied the same analysis to Board regulations as to actions of the General Assembly. In a case rejecting a constitutional challenge which regulated equipment used in mining while identical equipment used in construction was exempted, the Court expressed its view that:

The legislature may create legislative classifications, for "perfect uniformity of treatment of all persons is neither practical nor desirable." A classification must not, however, be arbitrary, and it must be based on a rational difference of condition or

situation existing in the persons or objects upon which the classification rests. This was also expressed by this court in People ex rel. County of Du Page v. Smith, 21 Ill.2d 572, 578, when it was said: "If there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not, the General Assembly may constitutionally classify persons and objects for the purpose of legislative regulation or control, and may pass laws applicable only to such persons or objects." Also, there must be a reasonable basis for the classification in view of the objects and purposes to be accomplished by the statute. Ill. Coal Operators Assn. v. PCB, 59 Ill.2d 305, 319 N.E.2d 782, _____ (1974).

The Board believes that this record provides a reasonable basis for modification of cover requirements for Cretex. The unrefuted evidence is that, while operating pursuant to modified cover requirements established by variance, GHA caused none of the environmental problems which the Act and the implementing Board regulations were intended to prevent, and that its successor Cretex has sworn to continue operations in like fashion. In these circumstances, to require Cretex to expend substantial sums to achieve full compliance with existing cover requirements in the interests of "perfect uniformity of all persons is neither practical nor desirable". To the extent that the Agency is concerned about "co-tenants and successor owners and operators of the property", the Board believes that it is rational to restrict the relief granted here to Cretex which has adopted and reaffirmed the record developed before the Board. The Board questions the legality of extending regulatory relief to an unknown entity on the mere speculation that its future waste disposal operations will be handled competently.

In short, the Board does not find that the proposed rule requires modification in response to the Agency's initial comment.

Another subject which needs to be briefly addressed relates to the grant of relief to Cretex on the basis of its adoption and affirmation of the record created by Cretex. As aforementioned, only the Agency has commented on this issue, and has stated its lack of objection thereto.

The Board believes that this procedure satisfies the rulemaking requirements of the Environmental Protection Act, as the Board has based its decision on a sworn record. Substitution of parties is a not-uncommon occurrence in other types of actions before the Board, such as variance proceedings, when an ownership

change occurs during the pendency of the proceeding and the successor company agrees to be bound by the record created by its predecessor. Utilization of this procedure, given all of the circumstances here, is in the best fiscal and administrative interests of all concerned, as it allows allocation of scarce resources to more useful projects than replication of existing documentation, testimony and comments.

Finally, to satisfy JCAR's concerns, the Board has agreed to modify Sections 807.700(b)(1), 807.700(b)(4), and to update the authority note, to read as set forth in the Order below. These changes do not change the substance of the rules, but are responsive to JCAR's desires for further clarity.

ORDER

The Board directs that the following rules be filed with the Secretary of State:

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE G: WASTE DISPOSAL
CHAPTER I: POLLUTION CONTROL BOARD
SUBCHAPTER i: SOLID WASTE AND SPECIAL WASTE HAULING

PART 807
SOLID WASTE

SUBPART G: SITE SPECIFIC RULES AND EXCEPTIONS NOT OF GENERAL
APPLICABILITY

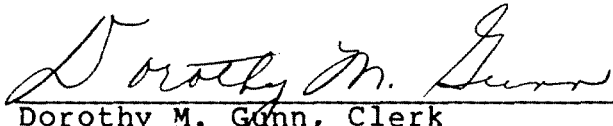
Section 807.700 Cretex Pressure Pipe, Inc.
 Concrete Waste Disposal Site

- a) The cover requirements of Section 807.305(a), (b) and (c) shall not apply to the on-site disposal of concrete waste resulting from the manufacturing operations of Cretex Pressure Pipe, Inc. (Cretex) at its South Beloit, Winnebago County, plant.
- b) Disposal activities shall meet the following requirements:
 - 1) Cretex shall limit waste disposal to the types of waste disposed of pursuant to variance granted in PCB 83-125, which are concrete waste, cull pipe, and metal reinforcing rods embedded in concrete. Cretex shall take all reasonable measures to minimize disposal of such metals as waste through use of recycling, such as reuse of the metals on-site or sale or exchange of the metals through the Illinois Industrial Materials Exchange Service.

- 2) Cretex shall limit the exposed, active surface of its disposal site to a one acre area, and the height of the fill in the active area to that of adjacent improved terrain.
- 3) Once a week, Cretex shall cover the exposed, active surface of its disposal site with a compacted layer of at least 6 inches of earthen material.
- 4) Within 60 days of cessation of disposal activities, in any one acre area, Cretex shall provide any final, sloping faces of its disposal site with at least two feet of final cover consisting of compacted earthen material. Cretex shall insure that a vegetative cover is established to control erosion.
- 5) Within 60 days of cessation of disposal activities, Cretex shall provide any flat reclaimed area of its disposal site which is to be used for the storage of pipe inventory and equipment, or which is to be occupied by buildings, with at least six inches of final cover consisting of silty sand or similar material. However, within 60 days of cessation of such uses, Cretex shall provide at least an additional 18 inches of final cover material as specified in subsection (b)(4) above.

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 8th day of September 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board