

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1998

IN THE MATTER OF:)
)
PETITION OF THE METROPOLITAN)
WATER RECLAMATION DISTRICT OF) AS 98-5
GREATER CHICAGO FOR ADJUSTED) (Adjusted Standard - Land)
STANDARD FROM 35 ILL. ADM. CODE)
811, 812, AND 817 (SLUDGE)
APPLICATION))

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

On March 13, 1998, the Metropolitan Water Reclamation District of Greater Chicago (District) filed a petition for an adjusted standard from the Board's landfill regulations with a motion for expedited decision. On March 25, 1998, the District filed proof of publication of notice of the adjusted standard pursuant to Section 28.1(d)(1) of the Environmental Protection Act (Act). 415 ILCS 5/28.1. On April 1, 1998, the Illinois Environmental Protection Agency (Agency) filed a motion asking the Board to dismiss the adjusted standard petition. On April 8, 1998, the Board received the District's response. As will be discussed in detail below, the Board dismisses the petition for adjusted standard as unnecessary to achieve the relief requested.

BACKGROUND

The petition for adjusted standard seeks an adjusted standard which would allow the nonhazardous waste landfill operators throughout the state to use the District's sludge as a soil alternative for final vegetative cover without additional site-specific review by the Agency. Pet at 4. In the petition, the District requests that the Board dismiss the present petition if the Board determines that this request is duplicative of an adjusted standard previously granted by the Board. See, Petitioner of the Metropolitan Water Reclamation District of Greater Chicago for Adjusted Standard from 35 Ill. Adm. Code 811, 812, and 817 (Sludge Application), AS 95-4, (August 24, 1995) (AS 95-4).

In AS 95-4 the Board granted the following adjusted standard:

1. This adjusted standard applies only to the air-dried sludge product generated by the Metropolitan Water Reclamation District of Greater Chicago (District).
2. District sludge that complies with the conditions in paragraph 3 below is approved as an alternative to the soil material standard at the inert waste, the putrescible (MSWLF) and chemical waste landfills, or the steel and foundry industry potentially usable and low risk waste classes of landfills regulated at 35 Ill. Adm. Codes 810-815 and 817, for application as the final protective layer, as the final cover. The sections where the soil material standard is used are: 35

Ill. Adm. Codes 811.204, 811.314(c)(3), 812.813(d), 817.303 and 817.410(c)(2) and (c)(3).

3. When providing sludge for the applications enumerated in Paragraph 2, the District shall provide air-dried sludge as described in its petition for adjusted standard and processed in accordance with the following conditions:
 - a. Anaerobic digestion at 95° ñ 10°F for a minimum of 15 days or longer, as necessary to ensure that the District’s air-dried sludge product will meet the USEPA’s Part 503 pathogen requirements for a Class B sludge; and
 - b. Storage in lagoons for a minimum of 1 and ½ years after the final addition of sludge; and
 - c. Air-drying for a minimum of 4 weeks, or as necessary to achieve a solids content of 60 percent.
4. When providing sludge for the applications enumerated in Paragraph 2, the District shall limit the sludge provided to amounts that are sufficient for a final depth of three feet as compacted using normal landscaping practices.
5. The District will report to the Agency the start up, discontinuance, and quantity of sludge deliveries to each facility;
6. District sludge, when used in compliance with this adjusted standard, is not a waste.

The Board noted that this adjusted standard is “somewhat unique” in that the adjusted standard is for use of the District’s sludge “throughout the state” and not at a specific site. AS 95-4 at 11. The Board further noted that the adjusted standard mechanism was appropriate because the sludge would be subject to specified criteria before leaving the District’s management for use as a soil alternative and the standard was not for municipal sludge in general. AS 95-4 at 11. The Agency agreed that an adjusted standard was the appropriate mechanism and substantially agreed with and supported the request. AS 95-4 at 6 and 11. The Agency did seek the imposition of one condition because of concerns about the ability of the Agency to monitor the use of the District’s sludge at landfills which need not be permitted pursuant to Section 21(d) of the Act. AS 95-4 at 11. The Board did not accept the Agency’s condition but did add condition number four (see above) to address the Agency’s concern. AS 95-4 at 11.

Thus, in AS 95-4, the Board granted an adjusted standard to regulations of general applicability statewide. The adjusted standard allows nonhazardous landfills throughout the State to use the District’s sludge as an alternative to soil material standard at specific landfills for the final protective cover.

MOTION TO DISMISS

Agency Argument

The Agency, in its motion to dismiss, argues that the relief sought by the District is not suitable for an adjusted standard because the petition is not seeking an adjusted standard from a regulation of general applicability. Mot. At 2. In fact, the Agency maintains the petition simply seeks the same relief that the District obtained from the Board in AS 95-4. The Agency argues that the District is seeking an advisory opinion from the Board regarding the scope of the adjusted standard granted by the Board in AS 95-4. Mot. at 2.

The Agency maintains that the District is interpreting the adjusted standard from AS 95-4 too broadly. Mot. at 2. The Agency asserts that the District's interpretation would give all affected landfills "immediate license to accept the Sludge," even those landfills with permits issued prior to the adjusted standard being granted. Mot. at 2. The Agency argues that such an interpretation would effectively modify permits without any Agency consideration. Mot. at 2.

The Agency also argues that the District's interpretation is beyond the scope of relief requested in AS 95-4. Mot at 2. The Agency asserts that the relief sought was from regulations restricting certain landfills to using only soil material in the final protective layer of the landfill. Mot. at 2. None of the regulations addressed modification of permits already issued by the Agency prior to the granting of the adjusted standard according to the Agency. Mot at 3. The Agency argues that once the Agency has issued a permit, the permit holder must comply with the conditions or seek a modification of the conditions. Mot. at 3. The Agency is the appropriate forum for the initial review of a permit modification, not the Board, according to the Agency. Mot. at 3.

District Response

In response to the Agency's argument that this relief being sought is not appropriate for an adjusted standard, the District argues that nothing precludes the Board from looking at an adjusted standard proceeding especially when it can serve to resolve a fundamental issue. Res. at 3. The District maintains that it is seeking an adjusted standard. Res. at 8. However, because the District believes the relief it is seeking has already been granted, the District is asking the Board to dismiss the petition if the Board agrees and finds the petition duplicative. *Id.* The District asserts that if the Board does not agree that the petition is duplicative, the District will proceed to seek the relief it is requesting. *Id.*

The District also responds to the Agency's argument that the District's interpretation of AS 95-4 is too broad as being beyond the scope of relief requested in AS 95-4. Res. at 4. The District asserts that the relief granted in AS 95-4 is consistent with the relief requested in this petition. Res. at 4. The District argues that the permit and permit modification process do not apply when the District sludge material is used for final vegetative cover. Res. at 4-5. The District maintains that the Agency did not have before, and does not now, have a permit-related review authority affecting the use of District sludge material for final vegetative cover. Res. at 5. The District maintains that since 1990, soil has been the only material that a landfill operator is allowed to select for final vegetative cover in the permit setting. *Id.* The District

asserts that the Agency permit simply authorizes a soil material; soil is already the “required” choice in the regulations. *Id.* The District argues that in the new landfill regulations effective in 1990, the Board left to itself the handling of non-soil material and the Board approved the use of District sludge as an additional material for use throughout the State in AS 95-4. *Id.*

Agency Argument

The Agency also maintains that the petition fails to comply with the requirements of 35 Ill. Adm. Code 106.705 in that the District has failed to provide the information required by the Board’s rules in a petition for adjusted standard. Mot. at 3. The Agency asserts that the District has only complied with Section 106.705(j), waiver of hearing. Mot. at 3.

Finally, the Agency argues that the District is inappropriately attempting to reopen AS 95-4 with this filing. Mot. at 4. The Agency maintains that the District attempts to overcome informational shortcomings by incorporation of the record from AS 95-4. Mot. at 4. The Agency asserts that the District admits it is not seeking relief other than that granted in AS 95-4 and so that the opinion cannot be reopened. Mot. at 4.

District Response

The District argues that it has fully complied with the provisions of 35 Ill. Adm. Code 106.705 by incorporating the record from the prior proceeding. Res. at 7. The District asserts that the incorporation of the prior proceedings is appropriate and the contents of the previous petition were sufficient to support granting an adjusted standard. Res. at 3.

The District argues that it is the Agency which is attempting to relitigate the issues in AS 95-4. Res. at 7. The District maintains that the Agency is attempting to argue the “permit” issue by “declarative pronouncement rather than making any reference to the AS 95-4 proceeding to justify its interpretation.” Res. at 7. The District asserts that it would not even be petitioning the Board if the Agency had not chosen at this untimely date to resurrect the sit-specific issue regarding the use of the District’s sludge. Res. at 7.

DISCUSSION

The Board is not persuaded by the Agency’s arguments. The District may ask the Board to grant an adjusted standard from 35 Ill. Adm. Code 811, 812, and 817. And in fact, the Board has previously granted such an adjusted standard with the support of the Agency. Therefore, the relief being sought in this petition is generally appropriate for an adjusted standard. The Agency seems to be concerned that because the District already has one adjusted standard, it cannot use the adjusted standard mechanism to clarify or seek additional relief. The Board disagrees. If in fact the relief the District thought it received in AS 95-4 is not what it did receive, the District may seek a new adjusted standard to obtain that relief. That is what the District is doing with this petition. The District does agree that if the petition is seeking the same relief as that already granted in AS 95-4, the petition should be dismissed pursuant to the Board’s rules at 35 Ill. Adm. Code 106.902(a).

With regards to the arguments by both parties concerning the interpretation of the adjusted standard in AS 95-4, the Board notes that we have quoted extensively from our opinion and order in that proceeding above. It is clear that the adjusted standard granted in AS 95-4 approved the District's sludge, on a statewide basis, as a soil alternative for final vegetative cover at certain landfills. The District's sludge must meet certain standards before leaving the District's control. The many benefits of the District's sludge as a final protective cover for certain landfills, including protection of human health and the environment, was amply documented. It is clear to the Board, as we reread the opinion in AS 95-4 that the Board intended for the District's sludge, when properly treated, to be an appropriate and legal substitute for soil in the final protective layer of certain nonhazardous landfills.

In light of this, the Board finds that neither the District nor the owner or operator of a landfill needs to provide any additional justification to the Agency concerning the appropriateness of the use of District's sludge as an alternative to soil material for application as the final protective layer. However, the Board agrees with the Agency that in order to use the alternative material, the owner or operator of certain permitted landfills must seek a permit modification to use the alternative material. Specifically, a permit modification must be sought if the landfill's existing permit specifies that the landfill final cover protective layer must consist of soil material. In this regard, the Board notes, that while it has found the District's sludge to be an appropriate substitute to soil, it is not soil material. Since an owner or operator of a landfill is required to comply with permit requirements, the Board believes that a permit modification is necessary to ensure that all the operational conditions are consistent with the applicable standards.

The Board notes that 35 Ill. Adm. Code 813.201 allows either the operator or the Agency to initiate a permit modification. Since the issue in this proceeding concerns the use of an alternative to already-approved soil material for a landfill's final protective layer, the Board believes that an operator must initiate a permit modification to seek the Agency's approval to use the alternative material. The Board expects the permit modification process to be a simple one, since the permit review would be limited to only the informational requirements concerning the use of the alternative material and not a re-evaluation of whether the District's sludge is a suitable alternative cover material.

The Board also finds that the petition is sufficient. The Board's rules specifically allow for incorporations from prior proceedings. See 35 Ill. Adm. Code 106.708. Therefore, it is appropriate to incorporate a previous docket into a new petition for adjusted standard. Also, because the Board finds that the District's petition is an appropriate use of the adjusted standard proceeding, the District is not seeking an "advisory" opinion.

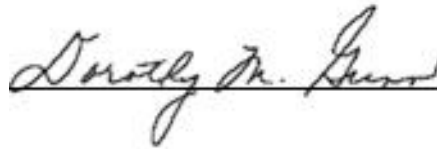
The Board will, however, dismiss this adjusted standard petition as duplicative. The District has already sought and been granted an adjusted standard (AS 95-4) which allows the use of the District's sludge as an alternative to the soil material standard at specific landfills for the final protective cover. Therefore, the relief the District is seeking is duplicative of the adjusted standard in AS 95-4 and is unnecessary. Regarding the issue of permit modification, the Board agrees with the Agency that certain landfills may need to obtain a permit modification in order to use the District's sludge as an alternative to soil material. This

petition is dismissed pursuant to 35 Ill. Adm. Code 106.902 as duplicative of the petition for relief granted in AS 95-4.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of May 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board