

ILLINOIS POLLUTION CONTROL BOARD  
March 25, 1993

IN THE MATTER OF: )  
 )  
THE PETITION OF BORDEN CHEMICALS ) AS 93-2  
& PLASTICS OPERATING LIMITED ) (Adjusted Standard)  
PARTNERSHIP FOR AN ADJUSTED )  
STANDARD FROM 35 ILL. ADM. CODE )  
302.208 )

ORDER OF THE BOARD (by B. Forcade):

On February 26, 1993, Borden Chemicals & Plastics Operating Limited Partnership (BCP) filed a petition for adjusted standard from the general use water quality standard for sulfate in 35 Ill. Adm. Code 302.208.

The Board finds that the petition does not contain sufficient information to comply with the requirements of Section 28.1(c) of the Environmental Protection Act (Act) (415 ILCS 5/28.1(c) (1992))<sup>1</sup> or with 35 Ill. Adm. Code 106.705 regarding the contents of a petition for adjusted standard.

Section 28.1(c) of the Act requires a petitioner for an adjusted standard to prove 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 that petitioner;
2. the existence of those factors justifies an adjusted standard;
3. 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
4. the adjusted standard is consistent with any applicable federal law.

In addition, 35 Ill. Adm. Code 106.705 requires the petitioner to provide certain information in the petition to the Board.

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<sup>1</sup> The Act was formerly codified at 1991, Ill. Rev. Stat. ch. 111 $\frac{1}{2}$ , par. 1001 et. seq.

BCP states in its petition that the "factors relating to BCP are substantially and significantly different from the factors relied upon by the Board in adopting 35 Ill. Adm. Code 302.208" (Pet. at 13) because:

- A. The factors considered in adopting the sulfate water quality standard do not apply to the water receiving BCP's effluent.
  1. Effluent discharges at levels that would be permitted by the proposed adjusted standard will have no adverse impact on fish or other biota in the receiving stream.
  2. Effluent discharges at levels that would be permitted by the proposed adjusted standard will have no adverse impact on livestock.
  3. Effluent discharges at levels that would be permitted by the proposed adjusted standard will have no adverse impact on human health.

To support these assertions, the petitioners have cited a September 1981 report prepared by the Illinois State Water Survey for the Illinois Environmental Protection Agency titled, "Acute Toxicity of Chlorides, Sulfates, and Total Dissolved Solids To Some Fishes in Illinois" and attached the study as Exhibit I to the petition. The purpose of the study provides:

Of pertinent interest to this study is the validity of the maximum permissible concentrations of chloride (500 mg/l), sulfate (500 mg/l), and total dissolved solids (1000 mg/l) permitted in Illinois water in accordance with the general stream quality rule.

(Exh. I at 2.)

The petitioners also cited results from a 1984 stream survey performed for BCP by the Academy of Natural Sciences of Philadelphia (attached as Exhibit D). The stated object of this survey, "was to determine whether plant [BCP] effluent impacts the biota of the receiving water bodies and, if an impact were observed, whether it could be attributed to the concentration of ammonia, chlorides or total dissolved solids discharged by the plant at the time of the study." (Exh. D at i.)

Two studies of the effects of sulfates on livestock are also cited. BCP uses each of these studies as support that concentrations of 1000 mg/l sulfate are not harmful to livestock.

The studies described above partially fulfill the requirement of Section 28.1(c)(3) of the Act in examining the environmental and health effects of the adjusted standard; however, the Board questions the use of such studies to show that factors relating to BCP are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to the petitioner as required by Section 28.1(c)(1) of the Act. It is not clear that any of the data presented, with the exception of the 1984 stream survey (Exh. D), apply specifically to BCP's effluent or facility. It appears the petitioners are challenging the validity of the generally applicable standard rather than identifying conditions that would make BCP unique in the application of this standard. This type of challenge might be appropriate in the context of a rulemaking but not under the procedures addressing adjusted standard petitions.

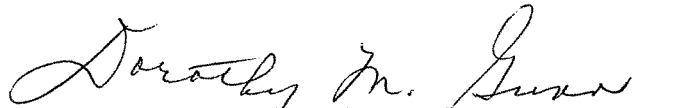
Therefore, the Board finds that the petition filed by BCP is insufficient for Board consideration and directs BCP to file an amended petition with the following information:

1. A statement, supported by pertinent documents, indicating that factors relating to BCP are substantially and significantly different than other facilities that are subject to the regulation of general applicability. For example, are the receiving waters for BCP's effluent uniquely suited to receive a higher concentration of sulfate than streams that other facilities utilize?
2. Data indicating that BCP's effluent has not had a cumulative adverse effect on the receiving stream in the years since the 1984 stream study or that such an effect should not be expected.
3. A description of the efforts necessary for BCP to achieve this proposed adjusted standard and the corresponding costs. (See 35 Ill. Adm. Code 106.705(f).)
4. Justification for the request of specific numeric limitations of a daily maximum sulfate load limit of 8257 lbs/day and a daily maximum sulfate concentration of 1000 mg/l.
5. A discussion of the qualitative and quantitative impact of BCP's activity on the environment if BCP were to comply with the regulation of general applicability. (See 35 Ill. Adm. Code 106.705(g).)

Nothing in today's order shall preclude BCP from filing any regulatory proposal it may chose to pursue. If BCP does not file an amended petition, addressing the above issues, on or before June 4, 1993, this matter may be subject to dismissal.

IT IS SO ORDERED.

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

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board