

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:** )  
 )  
 )  
 )  
 )  
**Petition for Adjusted Standard** ) **AS 08-003**  
**from 35 Ill. ADM. CODE 620.420** ) **(Adjusted Standard-Water)**  
**For Nobel Risley's Landfill #2** )

**NOTICE OF FILING**

To: Illinois Environmental Protection Agency  
Mr. James Kropid  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

**PLEASE TAKE NOTICE** that today I have filed with the Office of the Clerk of the Pollution Control Board **APPEARANCE** of Penni S. Livingston on behalf of Nobel Risley's Landfill #2; **MOTION FOR EXPEDITED REVIEW; MOTION TO ALLOW FILING OF LESS THAN NINE COPIES; AND PETITION FOR ADJUSTED STANDARD** in the above-titled manner.

As to the Exhibits for the **PETITION FOR ADJUSTED STANDARD**, you have previously received two copies each of the Technical Justification for an Adjusted Standard for Chlorides in Ground-water prepared by Leggette, Brashears & Graham, Inc. (dated November 7, 2006) and Technical Justification for an Adjusted Standard for Chlorides in Ground-water Response to IEPA Comments prepared by Leggette, Brashears & Graham, Inc. (dated July 10, 2007). Additional copies of these exhibits are not being served upon you. Copies of the remaining documents are hereby served upon you.

Respectfully submitted,

Nobel Risley

By: LIVINGSTON LAW FIRM

/s/ Penni S. Livingston

PENNI S. LIVINGSTON #06196480

Attorney for the Petitioner

penni@livingstonlaw.biz

5701 Perrin Road

Fairview Heights, IL 62208

Telephone 618-628-7700

Fax 618-628-7710

DATED: September 5, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**Petition for Adjusted Standard  
from 35 Ill. ADM. CODE 620.420  
For Nobel Risley's Landfill #2**

)  
)  
)  
)  
)  
)  
)  
)

**AS 08-003  
(Adjusted Standard-Water)**

**APPEARANCE**

I hereby file my appearance in this proceeding, on behalf of Nobel Risley.

Respectfully submitted,

Penni S. Livingston

/s/ Penni S. Livingston  
PENNI S. LIVINGSTON #06196480  
Attorney for the Petitioner  
penni@livingstonlaw.biz  
5701 Perrin Road  
Fairview Heights, IL 62208  
Telephone 618-628-7700  
Fax 618-628-7710

DATED: September 5, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 )  
 )  
 )  
 )  
 **Petition for Adjusted Standard** ) **AS 08-003**  
 **from 35 Ill. ADM. CODE 620.420** ) **(Adjusted Standard-Water)**  
 **For Nobel Risley's Landfill #2** )

**PETITION FOR ADJUSTED STANDARD**

**NOW COMES** the Risley Landfill #2 (“Risley”), by and through its attorney Penni S. Livingston, of the Livingston Law Firm, pursuant to §28.1 and consistent with §27(a) of the Illinois Environmental Protection Act, 415 ILCS 5/28.1, 5/27(a), and 35 Ill. Adm. Code 104.400, *et seq.*, and hereby petitions the Illinois Pollution Control Board for an Adjusted Standard to requirements contained in 35 Ill. Adm. Code 620.420 increasing allowable limits of chlorides under Class II Groundwater Standards from 200 mg/L to 600 mg/L for the Risley Landfill #2.

This requested Adjusted Standard allows the Illinois Environmental Protection Agency to certify closure of the Risley #2 Landfill. In support of the request for an Adjusted Standard, the Petitioner states as follows:

**Introduction**

1. Consistent with Section 27 of the Illinois Environmental Protection Act, 415 ILCS 5/27, (hereinafter the “Act”), the Illinois Pollution Control Board (hereinafter “Board”) may adopt substantive regulations that make different provisions as required by circumstances for different contaminant sources and which may include regulations specific to individual persons or sites.

Furthermore, in accordance with Section 28.1 of the Act, 415 ILCS 5/28.1, after adopting a regulation of general applicability, the Board may grant an adjusted standard for persons who can justify such an adjustment consistent with Section 27 of the Act. Petitioner will demonstrate to the Board that it meets the standards set forth in these Sections of the Act with respect to its request for an adjusted standard for chlorides and, most importantly, Petitioner will demonstrate that the requested relief will not result in environmental or health effects more adverse than those considered by the Board in adopting the rule of general applicability. Petitioner believes that the requested adjusted standard will not result in any adverse environmental impacts as demonstrated by the evidence in the attached Technical Reports.

2. This Petition is supported by evidence gathered together in much more detail in the report prepared by Leggette, Brashears & Graham, the oldest and one of the most respected groundwater consulting firms in the nation. The report is attached to this Petition and is entitled "Technical Justification for an Adjusted Standard for Chlorides in Ground-water" prepared for Mr. Nobel Risley concerning Risley Landfill # 2. The Leggette Brashears & Graham report and responses to IEPA Comments regarding the Leggette Brashears & Graham report (herein after referred to as the "Technical Report") with supporting data and tables are dated November 7, 2006, and July 10, 2007, respectively, and contain the entire body of evidence supporting this Petition. Every issue addressed in this Petition is addressed in more detail with supporting technical data in this attached Technical Report.

**Existing Physical Conditions/ Character of the Area**

3. The site involved in this Petition is a closed landfill located in rural Franklin County, Illinois, with an address of 9957 River Bend Road, Benton, Illinois 62812. The footprint of the landfill is about eight acres with up to 20 feet of thickness of waste which is situated on a 38-acre parcel of land. The IEPA permit number is 1980-21-DE/1OP. The IEPA Site Number is 055 802 0005. The landfill stopped receiving non-hazardous municipal solid waste in 1988 and has completed its post-closure care period.

4. The surrounding area is rural and sparsely populated with light agricultural use. The nearest town is Benton, Illinois, approximately two miles Northeast with a population of 7,000. There are two rural residences immediately next to the 38-acre parcel, one on the east and one on the west along the frontage road.

5. The Franklin County area obtains its public water supply from Rend Lake. There are no private water wells located down gradient of the landfill. The natural groundwater in the area of the landfill is sporadic in occurrence and is significantly mineralized, thereby precluding its use for drinking water or other purposes. This groundwater in this area is not capable of supporting sustained yield of water given the limited horizontal area of the aquifer, the limited saturated thickness, and the very low hydraulic conductivity.

6. The receiving body of any groundwater from the landfill area is the Big Muddy River. The average flow of the Big Muddy River is 650 cubic feet per second. According to the Technical Report prepared for Nobel Risley, “[t]he change in chloride concentration in the Big Muddy River due to the inflow of impacted groundwater is  $3.33 \times 10^{-4}$  percent. The reason for the extremely low impact to chloride concentration in the Big Muddy River is because the flow is over

1.7 million times greater than the ground-water flow emanating from the landfill. There is virtually no practical scenario in which the groundwater down gradient of the Landfill would be used for industrial, domestic, or agricultural use.” Furthermore, as previously stated, there are no private water wells down gradient of the landfill.

**Issues of Technical Feasibility and Economic Reasonableness  
of Compliance Alternatives for Reducing Chlorides  
Apparently Coming from the Closed Risley Landfill**

7. The evidence makes clear that reducing the chlorides that showed up in two monitoring wells from this old landfill is technically infeasible and economically unreasonable. Full analysis is found in the supporting evidence to this Petition. Treatment options considered to comply with the standard include pumping and dewatering the landfill and treating the effluent for a cost of about \$615,000 with an annual operation and maintenance cost of \$81,000 per year. A second option is a possible groundwater trenching system with treatment of groundwater for a cost of \$583,000 with an annual operation and maintenance cost of \$78,000. The final and most expensive option is to relocate the landfill for a cost of about \$17.5 million. While developing treatment options was considered with all seriousness, Mr. Risley, who recently had a kidney transplant and is unable to continue to work for a living, is not in a financial position to pay any of these costs.

8. See Appendix N of the technical report attached to this Petition for details on treatment option costs.

**Substantially Different Factors**

9. The landfill at issue in this case has been closed for years and cannot obtain certification of closure without this adjusted standard. Mr. Risley would like to obtain certification

of closure now that the landfill has met its post-closure care obligations. The average chloride concentration in monitoring wells around the landfill is 26 mg/L, much lower than the allowable standard. Even so, there have been measurements of chlorides in the leachate of the landfill as high as 680 mg/L. As shown by the monitoring data, the geological and hydraulic data, and the modeling data, the level of impact to the receiving water shows virtually NO IMPACT to the Big Muddy River.

**Standard From Which Petitioner Seeks Adjustment**

10. The regulation at issue in this Petition is found at 35 Ill. Adm. Code 620.420(a). Section 620.420 establishes Class II requirements for general ground water quality standards to be met in waters of the state in order to protect groundwater. Section 620.420 (a) establishes limits for chlorides at 200 mg/L.

**Proposed Adjusted Standard**

11. Risley petitions the Board to adopt the following language to establish the requested proposed adjusted standard:

The concentrations of chlorides shall not exceed 600 mg/L in the groundwater at the Risley #2 Landfill (IEPA Site Number is 055 802 0005, IEPA permit number is 1980-21-DE/1OP) located at 9957 River Bend Road, Benton, Illinois 62812. The Class II Groundwater Standards for chlorides as set forth at 35 Ill. Adm. Code 620.420 shall not apply to the groundwater at the Risley #2 Landfill.

**Justification For An Adjusted Standard**

12. The entire justification for this request for an Adjusted Standard is contained in the attached Technical Report with supporting data. The greatest justification for the adjusted standard

is that there is no adverse impact on the environment or human health from this long since closed landfill and the options for treatment to reduce one constituent found in two of nine wells is cost prohibitive. The purpose of obtaining this adjusted standard is to obtain certification of closure from Illinois EPA. No request for any remediation has even been made. Certification of Closure has, however, not been granted because of the readings of chlorides in two wells.

**Requested Adjustment Will Not Result  
In Adverse Environmental or Health Effects**

13. As previously stated and as shown in more detail in the Technical Report, no private water wells are used down gradient of this landfill. Furthermore, as stated previously, the receiving water, the Big Muddy River, will have no impact from the landfill's chlorides. As stated in the Technical Report: "The reason for the extremely low impact to chloride concentration in the Big Muddy River is because the flow is over 1.7 million times greater than the ground-water flow emanating from the landfill. There is virtually no practical scenario in which the ground-water down gradient of the Landfill would be used for industrial, domestic, or agricultural use."

14. For more detail on this issue, see the Technical Report narrative, particularly Section 4 entitled "Impact to Receiving Water" and Section 5 entitled "Toxicology." For supporting evidence of narrative assessment, see Appendix J entitled "USGS Surface-Water Daily Statistics for Illinois" including Table J-1 showing Average Flow calculations; Appendix K entitled "Chloride Concentration in the Big Muddy River" which includes an IEPA Chloride Data Table, Sample Location Map, and Sample Location Identity Table; Appendix L entitled "Calculators for Impact to Receiving Water"; and Appendix M entitled "World Health Organization Chloride in Drinking Water." Note that any changes to these documents, based on an IEPA review and comments to the

LBG technical report, are provided in LBG's "*Response to IEPA Comments*" letter report. All of these documents, along with the sampling results at the landfill, show that the Risley landfill meets the requirements for obtaining an adjusted standard.

**Consistency with Federal Law**

15. The Board, acting for the State of Illinois, has the primary authority and responsibility to establish water quality standards for the groundwater at the Risley Landfill in accordance with the Federal Clean Water Act. 33 USC 1251, 40 CFR 131.4(a). The Clean Water Act sets the policy of Congress "to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution [and] to plan the development and use . . . of land and water resources . . ." 33 USC 1251. With respect to revised standards, the Clean Water Act anticipates that "The Governor of a State or the State water pollution control agency of such State shall from time to time . . . hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." 33 USC 1313(c)(1). While this last cited provision appears to be applicable to navigable waters, it is clear from the Clean Water Act that each State has the authority and responsibility to designate appropriate uses for the waters of the State and the criteria to protect those uses.

16. The National Secondary Drinking Water Standards are non-enforceable guidelines regulating contaminants that may cause cosmetic effects or aesthetic effects in drinking water. Chlorides are of this type of constituent. There are no specified enforceable federal standards for chlorides. However, for a discussion of these Federal Guidelines, see Section 1.5 of the Technical Report.

17. The natural groundwater at the closed Risley Landfill #2 is not suitable for use as potable water as it is sporadic in occurrence and is significantly mineralized, thereby precluding its use for drinking water or other purposes. Furthermore, there are no private water wells located down gradient of the landfill. This groundwater in this area is not capable of supporting sustained yield of water given the limited horizontal area of the aquifer, the limited saturated thickness, and the very low hydraulic conductivity. As stated in the Technical Report: "There is virtually no practical scenario in which the ground-water down gradient of the Landfill would be used for industrial, domestic, or agricultural use." Discussion of the receiving body, the Big Muddy River, is found in Paragraph 6 above where it is explained that the reason for the extremely low impact to chloride concentration in the Big Muddy River is because the flow is over 1.7 million times greater than the ground-water flow emanating from the landfill.

18. Furthermore, the provisions of Section 104.420 of the Board's regulations, 35 IAC 104.420, giving any person a right to request a hearing in this proceeding and the provisions of 35 IAC 104.408 regarding publication of notice advising any person of a right to request a public hearing, fully satisfy the mandate of the Clean Water Act with respect to public participation as found in 33 USC 1251(e). Proof of notice of this filing and the declaration of the rights thereunder for any person will be provided to the Board hereafter as publication in the newspaper of general circulation in the geographic area of the Risley Landfill.

19. For these reasons and those stated in the supporting documentation, the requested adjusted standard is protective of public health and welfare. The adjusted standard requested by Petitioner complies with all applicable Federal requirements.

**Waiver of Hearing**

20. While proof of notice of this filing and the rights thereunder for any person to request a hearing will be provided as publication in the newspaper of general circulation in the geographic area of the Risley Landfill , Petitioner waives hearing in this matter as permitted by Section 104.406 provided the Illinois EPA does not have a contrary recommendation to the requested adjusted standard. The purpose of this requested adjusted standard is to obtain certification of closure of the Risley #2 Landfill. Petitioner anticipates Illinois EPA having a favorable recommendation as to the request for the adjusted standard.

**WHEREFORE**, for all of the reasons stated above as more fully addressed in the Technical Report entitled: "Technical Justification for an Adjusted Standard for Chlorides in Ground-water" prepared by Legette Brashears & Graham, the Petitioner respectfully requests that the Board **GRANT** the Petitioner's request for an Adjusted Standard for chlorides in groundwater from 240 mg/L to 600 mg/L after finding that:

- (1) The factors relating to the Petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general applicability regulation;
- (2) The existence of these factors justifies an adjusted standard;
- (3) The requested standard will not result in environmental or health effects more adverse than those considered by the Board in adopting the rule of general applicability;
- (4) The adjusted standard is consistent with federal law; and
- (5) The adjusted standard is necessary and appropriate by American standards

of justice and fairness in order to avoid extreme economic unreasonableness of implementation of any technical remedy to eliminate chlorides that have virtually no impact on the receiving water body from this 8-acre landfill which stopped receiving municipal solid waste in 1988.

Respectfully submitted,

Nobel Risley

By: /s/ Penni S. Livingston  
PENNI S. LIVINGSTON #06196480  
Attorney for the Petitioner  
penni@livingstonlaw.biz  
5701 Perrin Road  
Fairview Heights, IL 62208  
Telephone 618-628-7700  
Fax 618-628-7710

DATED: September 5, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:** )  
 )  
 )  
 )  
**Petition for Adjusted Standard** ) **AS 08-003**  
**from 35 Ill. ADM. CODE 620.420** ) **(Adjusted Standard-Water)**  
**For Nobel Risley's Landfill #2** )

**MOTION FOR EXPEDITED REVIEW**

NOW COMES the Risley Landfill #2 ("Risley"), by and through its attorney, Penni S. Livingston, of the Livingston Law Firm, and pursuant to 35 Ill. Adm. Code 101.512, respectfully requests that the Illinois Pollution Control Board ("Board") expedite its review of this matter and states in support as follows:

1. As is described more fully in the Petition and the supporting exhibits, Risley seeks this relief in order to allow the Illinois Environmental Protection Agency ("IEPA") to certify the completion of post-closure care at the Risley Landfill. The landfill stopped receiving non-hazardous municipal solid waste in 1988 and has completed its post-closure care period. The surrounding area is rural and sparsely populated with light agricultural use.
2. As is briefly described in Paragraphs 5 through 6 and 12 through 14 of the Petition for Adjusted Standard, and more fully described in the Technical Report attached to the Petition, there is no adverse impact on the environment or human health from this long since closed landfill and the impact to the receiving body of any groundwater from the landfill is extremely low. Since the post-closure monitoring period began, Risley hired professionals who performed numerous groundwater studies and analyses and submitted these to IEPA for review.
3. Upon review of the technical report submitted on November 7, 2006, the Agency

3. Upon review of the technical report submitted on November 7, 2006, the Agency responded with numerous useful comments to which Risley addressed in the response dated July 10, 2007. While the IEPA has worked closely with Risley, it has been determined that it cannot certify post-closure completion without relief in the form of an adjusted standard. It is Risley's expectation that, based upon this supplemental information, the IEPA will recommend that this relief be granted.

WHEREFORE, for the reasons stated in this Motion, Risley respectfully requests that the Board expedite its review of this Petition in order to finally complete the process of obtaining certification of completion of its post-closure care.

Respectfully submitted,

Nobel Risley

By: LIVINGSTON LAW FIRM

/s/ Penni S. Livingston

PENNI S. LIVINGSTON #06196480  
Attorney for the Petitioner  
penni@livingstonlaw.biz  
5701 Perrin Road  
Fairview Heights, IL 62208  
Telephone 618-628-7700  
Fax 618-628-7710

DATED: September 5, 2007

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:** )  
 )  
 )  
 )  
 )  
**Petition for Adjusted Standard** ) **AS 08-003**  
**from 35 Ill. ADM. CODE 620.420** ) **(Adjusted Standard-Water)**  
**For Nobel Risley's Landfill #2** )

**MOTION TO ALLOW FILING OF LESS THAN NINE COPIES**

**NOW COMES** the Nobel Risley Landfill #2 ("Risley"), by and through its attorney Penni S. Livingston, of the Livingston Law Firm, and hereby respectfully requests that the Illinois Pollution Control Board ("Board") allow it to file less than nine copies of its Petition for Adjusted Standard as required by 35 Ill. Adm. Code 101.302(h).

The Petition includes a detailed Technical Justification for an Adjusted Standard for Chlorides in Ground-water attached as an exhibit. This Report consists of two volumes dated November 7, 2006 and July 10, 2007 and includes over 1,250 pages. This level of detail was required because further investigation and clarification was requested by the Illinois Environmental Protection Agency. These volumes contain oversize documents and color illustrations.

Risley has attached an original set and three copies and submits that submitting six additional copies would be an unnecessary expense and a burden on the Board's resources.

WHEREFORE, for the reasons stated in this Motion, Risley respectfully requests that it be allowed to submit an original set and three copies of its Petition and Exhibits instead of the nine copies otherwise required by the Board rules.

Respectfully submitted,

Nobel Risley

By: LIVINGSTON LAW FIRM

/s/ Penni S. Livingston

PENNI S. LIVINGSTON #06196480

Attorney for the Petitioner

penni@livingstonlaw.biz

5701 Perrin Road

Fairview Heights, IL 62208

Telephone 618-628-7700

Fax 618-628-7710

DATED: September 5, 2007

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

Petition for Adjusted Standard  
from 35 Ill. ADM. CODE 620.420  
For Nobel Risley's Landfill #2

)  
)  
)  
)  
)  
)  
)  
)

AS 08-003  
(Adjusted Standard-Water)

PROOF OF SERVICE

I, Penni S. Livingston, an attorney, hereby certify that I caused the attached pleadings to be served upon all parties listed on the attached Notice of Filing via first class U.S. Mail from 5701 Perrin Road, Fairview Heights, Illinois 62208, on September 5, 2007.

Respectfully submitted,

Penni S. Livingston

/s/ Penni S. Livingston  
PENNI S. LIVINGSTON #06196480  
Attorney for the Petitioner  
penni@livingstonlaw.biz  
5701 Perrin Road  
Fairview Heights, IL 62208  
Telephone 618-628-7700  
Fax 618-628-7710

DATED: September 5, 2007