

JAN 04 2008

STATE OF ILLINOIS
Pollution Control Board

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

IN THE MATTER OF:)
)
) **AS 08-003**
) **(Adjusted Standard)**
)
PETITION FOR ADJUSTED)
STANDARD FROM 35 ADM. CODE)
620.420 FOR NOBEL RISLEY'S)
LANDFILL #2)

NOTICE

John Therriault
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

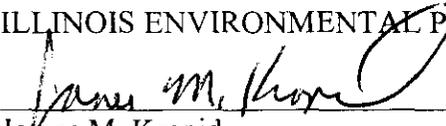
Penni S. Livingston
Attorney for Petitioner
5701 Perrin Road
Fairview Heights, IL 62208

Carol Webb
Hearing Officer
IPCB
1021 North Grand Ave. East
P.O. Box 19274
Springfield, Illinois 62794

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **RECOMMENDATION TO AMENDED PETITION FOR ADJUSTED STANDARDS**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,


James M. Kropid
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: January 2, 2008

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RECOMMENDATION TO AMENDED PETITION FOR ADJUSTED STANDARDS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James Kropid, Assistant Counsel, and, pursuant to 35 Ill. Adm. Code 104.416, hereby submits a recommendation to the Illinois Pollution Control Board ("Board") in response to the Amended Petition for Adjusted Standards ("Amended Petition" or "Amend. Pet.") filed by Nobel Risley's Landfill #2 ("Petitioner") on November 30, 2007. The Petitioner is seeking adjusted standards from 35 Ill. Adm. Code Part 620.420 Class II groundwater standards ("groundwater standards") regarding chloride and sulfate. The Illinois EPA recommends that the Board grant the adjusted standard request for chloride and deny the adjusted standard request for sulfate. In support of this recommendation, the Illinois EPA states as follows:

BACKGROUND

1. The Petitioner is seeking a certificate of closure from the Illinois EPA for Nobel Risley's Landfill #2 is located in Franklin County near the town of Benton.
2. The Amended Petition requests an increase in the groundwater standards for chloride from 200 milligrams per liter (mg/L) to 600 mg/L and an increase in the groundwater standards for sulfate from 400 milligrams per liter (mg/L) to 4,500 mg/L.

3. The Board has not yet accepted the Amended Petition and has made no finding as to whether the Amended Petition satisfies the content requirements of Section 104.406 (35 Ill. Adm. Code 104.406).

4. This recommendation is submitted pursuant to a November 26, 2007, Board Order, which set the due date for the Illinois EPA recommendation before or on January 7, 2008.

RESPONSE TO CERTAIN FACTS PRESENTED IN THE AMENDED PETITION

5. Petitioner states that Nobel Risley's Landfill #2 ("Landfill") is "centrally situated on a 38-acre parcel of land", with "a smaller trench-filled area to the north, comprising of approximately 0.4 acres. The permit number is 1980-21-DE/OP." Amend. Pet. at 3. In fact, the portion of the 38 acres utilized was the southern, not central, 1/3 of the acreage. Additionally, the smaller trench-filled area to the north was outside of the permitted boundary and not covered by the permit.

6. The Amended Petition sets forth the specific permit requirements for the construction of the Landfill (Amend. Pet. at 4) but does not state if Petitioner actually followed these requirements when constructing any or all portions the landfill.

7. Petitioner states that "Specific areas were designated where the landfill would operate by trenches", and that "The trenches in Area 1 ran north and south with the first trench being excavated along the west property line with the operation moving in an easterly direction." Amend. Pet. at 4. In fact, the east-west running trenches started at the south end of the site and ran from the south to the north.

8. The Amended Petition describes "both landfill areas" as being closed. Amend. Pet. at 5. However Petitioner does not mention, or make reference to any landfill, other than Nobel Risley's Landfill #2, in the Amended Petition.

9. Petitioner states that “It is important to consider that a request for remediation of the Landfill has never been made to the IEPA.” Amend. Pet. at 11. Although the Illinois EPA has made no specific remediation requests related to chloride or sulfate concentrations in the groundwater, several compliance issues, including the proper construction of trench seals, have been associated with this Landfill. On September 8, 1988, counsel for Nobel Risley, Jr. & Sons, Inc. sent Illinois EPA a letter stating that the normal operation of the Landfill would cease while the facility was brought into technical compliance. (See Exhibit 1). Although about two-thirds of the design capacity remained at the Landfill, the owners apparently decided to leave it closed rather than bring the site up to the required compliance standards.

10. Lastly, Petitioner maintains that the addition of the adjusted standard request for sulfate in the Amended Petition was at the suggestion of the Illinois EPA. (Amended Petition at 1) In discussions with the Petitioner, the Illinois EPA mentioned the fact that sulfate concentrations, as well as chloride concentrations, would be a certification of closure issue. The Illinois EPA however did not provide a suggestion as to how this issue could be resolved.

SECTION 104.406 FACTORS FOR THE CHLORIDE REQUEST

11. In order for the Board to grant the request for an adjusted standard increasing the allowable limit of chloride Petitioner must satisfactorily address all informational requirements set forth in Section 104.406 of the Board’s procedural regulations (35 Ill. Adm. Code 104.406). The Illinois EPA must respond to each issue raised by these requirements.

Section 104.406(a) – Standard from which adjusted standard is sought

The Illinois EPA does not take issue with the Petitioner’s statements on this subject.

Section 104.406(b) – Regulation of general applicability

The Illinois EPA does not take issue with the Petitioner’s statements on this subject.

Section 104.406(c) – Level of justification

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(d) – Petitioner's activities

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(e) – Efforts necessary to comply

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(f) – Proposed adjusted standard

In the Illinois EPA copy¹ of Exhibit 1 of the Amended Petition, dated November 7, 2006, and titled "Technical Justification for Adjusted Standard for Chlorides in Groundwater", Petitioner requested an adjusted standard of 2,500 mg/L for chloride. The Illinois EPA does not agree with the 2,500 mg/L request as found in the November 2006 Exhibit.

The Amended Petition, however, requests an adjusted standard for chloride of 600 mg/L (Amend. Pet. at 1 and 16); the Illinois EPA does not disagree with this request.

Section 104.406(g) – Quantitative and qualitative impact on the environment

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(h) – Justification of the proposed adjusted standard

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(i) – Consistency with federal law

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(j) – Hearing

The Illinois EPA defers to the Board and the Board's November 1, 2007, Order stating that the Petitioner has waived its right to a hearing and that any informational deficiencies should be addressed in the Amended Petition.

Section 104.406(k) – Supporting documents

¹ The Illinois EPA received its copy of this document on or about November 20, 2006.

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(l) – Additional Information

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

SECTION 104.406 FACTORS FOR SULFATE REQUEST

12. In order for the Board to grant the request for an adjusted standard increasing the allowable limit of sulfate Petitioner must satisfactorily address all informational requirements set forth in Section 104.406 of the Board's procedural regulations (35 Ill. Adm. Code 104.406). The Illinois EPA must respond to each issue raised by these requirements.

Section 104.406(a) – Standard from which adjusted standard is sought

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(b) – Regulation of general applicability

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(c) – Level of justification

The Illinois EPA does not take issue with the Petitioner's statements as to the required level of justification.

Section 104.406(d) – Petitioner's activities

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(e) – Efforts necessary to comply

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(f) – Proposed adjusted standard

The Illinois EPA does not believe the proposed adjusted standard should be granted by the Board in its present form as the Petitioner has not provided sufficient justification to warrant issuance of the adjusted standard.

Section 104.406(g) – Quantitative and qualitative impact on the environment

The Illinois EPA does not take issue with the Petitioner's statements on this subject.

Section 104.406(h) – Justification of the proposed adjusted standard

The Illinois EPA does not believe the Petitioner has met the required level of justification. Specifically, there is no justification for the request for an adjusted standard of 4,500 mg/L for sulfate.

The sulfate adjusted standard has been requested due to potential impacts in well G104. (Amended Petition at 11) The highest sulfate concentration monitored in this well was approximately 3300 mg/L in January 2000 (See Table B-1 of Appendix B at Exhibit 2). Subsequent monitoring showed a decreasing trend to approximately 2100 mg/L in September 2004, when the operator ceased monitoring. A sample taken from this well in May 2007 yielded a sulfate concentration of 941 mg/L. Table B-1 indicates that the overall average concentration of sulfate for all wells is 840 mg/L.

The data set from G104 was statistically evaluated. Prior to statistical evaluation, the data set was evaluated for distribution, seasonality and outliers. (See Exhibits 2, 3 & 4). The data set was normally distributed, showed no seasonality and one outlier was found. The outlier was identified as the value (941 mg/L) from the final sample taken in May 2007. Outliers should not be eliminated from the data set unless it is demonstrated that the value is in error (e.g., sampling or laboratory error). There was no independent check on this value to indicate error; and, as it is part of a downward trending data set, it is considered a valid observation and was retained in the set for statistical evaluation.

The decreasing trend in G104 was verified using Mann-Kendall/Sen's Slope at 95% confidence. (See Exhibit 5) **Intra-well prediction limits were developed** using all data (21 observations), the last 12 quarters and the last 8 quarters. (See Exhibit 6) All results were significantly lower than the proposed adjusted standard of 4500 mg/L.

The Amended Petition provides no meaningful rationale as to the appropriateness of a 4,500 mg/L standard. This is a crucial omission given the fact that the technical data points to a significant downward trend in sulfate concentrations.

Section 104.406(i) – Consistency with federal law

The Illinois EPA does not take issue with the Petitioner’s statements on this subject.

Section 104.406(j) – Hearing

The Illinois EPA defers to the Board and the Board’s November 1, 2007, Order stating that the Petitioner has waived its right to a hearing and that any informational deficiencies should be addressed in the Amended Petition.

Section 104.406(k) – Supporting documents

The Illinois EPA does not take issue with the Petitioner’s statements on this subject.

Section 104.406(l) – Additional Information

The Illinois EPA does not take issue with the Petitioner’s statements on this subject.

COMMENT ON SECTION 28.1(C)

13. Petitioner must also demonstrate to the Board that the provisions of Section 28.1(c) of the Illinois Environmental Protection Act (“Act”) (415 ILCS 5/28.1(c)) are met.

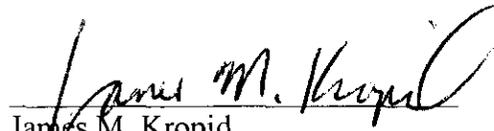
14. In an attempt to explain how the factors relating to the Landfill are substantially and significantly different from the factors relied on by the Board in adopting the general regulation as required by Section 28.1(c)(1) (Amend. Pet. at 8), Petitioner states that “Mr. Riley would like to obtain a certification of closure” and that the Landfill cannot obtain closure without the granting of these adjusted standards. However Petitioner does not clearly show how the circumstances of Mr. Risley are substantially or significantly different from any other landfill owner or operator in the State of Illinois who must also contend with the general regulations prior to obtaining a certificate of closure.

CONCLUSION

WHEREFORE the reasons more fully set forth herein, the Illinois EPA respectfully recommends that Petitioner's request for an adjusted standard for chloride be granted; but because there is no justification for the request for an adjusted standard of 4,500 mg/L for sulfate, the Illinois EPA respectfully recommends that Petitioner's request for an adjusted standard for sulfate be denied.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,



James M. Kropid
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
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217/782-5544
217/782-9143 (TDD)
Dated: January 2, 2008

This filing submitted on recycled paper.

FORD AND KORITZ
ATTORNEYS AT LAW



0558020005/franklin
Benton / Risley
Compliance

September 8, 1988

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RICHARD G. KORITZ
101 E. FRANKLIN
SESSER, IL 02804
(618) 438-5011

BY XEROGRAPHY
KORITZ

Illinois Environmental Protection Agency
Division of Land Pollution Control #24
Field Operation Section
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62702-3498

Attn: Glenn Savage

RE: Risley, Noble
Franklin County Case #85-CH-63

Dear Mr. Savage:

This letter is to confirm our telephone conversation of this 8th day of September, 1988. Risley Trash has this date received a copy of the Judgment Order entered in Franklin County Case #85-CH-63, which effectively enjoins the operation of the landfill until it is brought into compliance with the Illinois Environmental Protection Act. I have this date advised Noble Risley, Jr. & Sons, Inc. to cease operation of the landfill for the use of accepting refuse.

Noble Risley, Jr. & Sons, Inc., will continue the operation of the landfill facility for the sole purpose of bringing the facility into compliance with E.P.A. regulations. At this time Risley is doing earth work to build the proper seals to bring the facility into compliance.

If you have any question, please contact my office.

Sincerely,

FORD & KORITZ

Richard G. Koritz

RGK:SLI

cc: Noble Risley, Jr. & Sons, Inc.

RECEIVED

SEP 12 1988

IEPA-DLPC

DLPC

9300500462

Shapiro Wilk Normality Test, alpha=0.01

EXHIBIT 2

Constituent SULFATE, DISSOLVED (MG/L AS S04)1

Facility Landfill X

Data File: nlsky

Date: 12/5/07

Time: 3:54 PM

View: nlsky2

Well	Transform	Calculated	Tabulated	Normal
G104 (n=21)				
	None	0.9386	0.873	true
	square root(x)	0.9427	0.873	true
	square(x)	0.8889	0.873	true
	cube root(x)	0.9392	0.873	true
	cube(x)	0.8215	0.873	false
	ln(x)	0.9237	0.873	true
	x^4	0.7582	0.873	false
	x^5	0.704	0.873	false
	x^6	0.704	0.873	false

Shapiro Wilk Normality Test, alpha=0.01

Constituent SULFATE DISSOLVED (MG/L AS SO4)() Facility Landfill X Data File: rxdley

Date: 12/5/07 3:45 PM Client: Regulatory Use View: rxdley2

Date	GL04
10-19-99	1220
01-14-00	2290
05-02-00	2810
08-13-00	1810
12-15-00	2950
02-14-01	2080
04-13-01	2010
08-15-01	2690
11-13-01	2050
01-06-02	1950
04-18-02	1410
08-28-02	1980
01-07-03	1860
04-13-03	1610
05-07-03	1990
08-26-03	2110
11-12-03	2620
02-26-04	2110
05-07-04	1710
09-02-04	2090
09-09-07	241

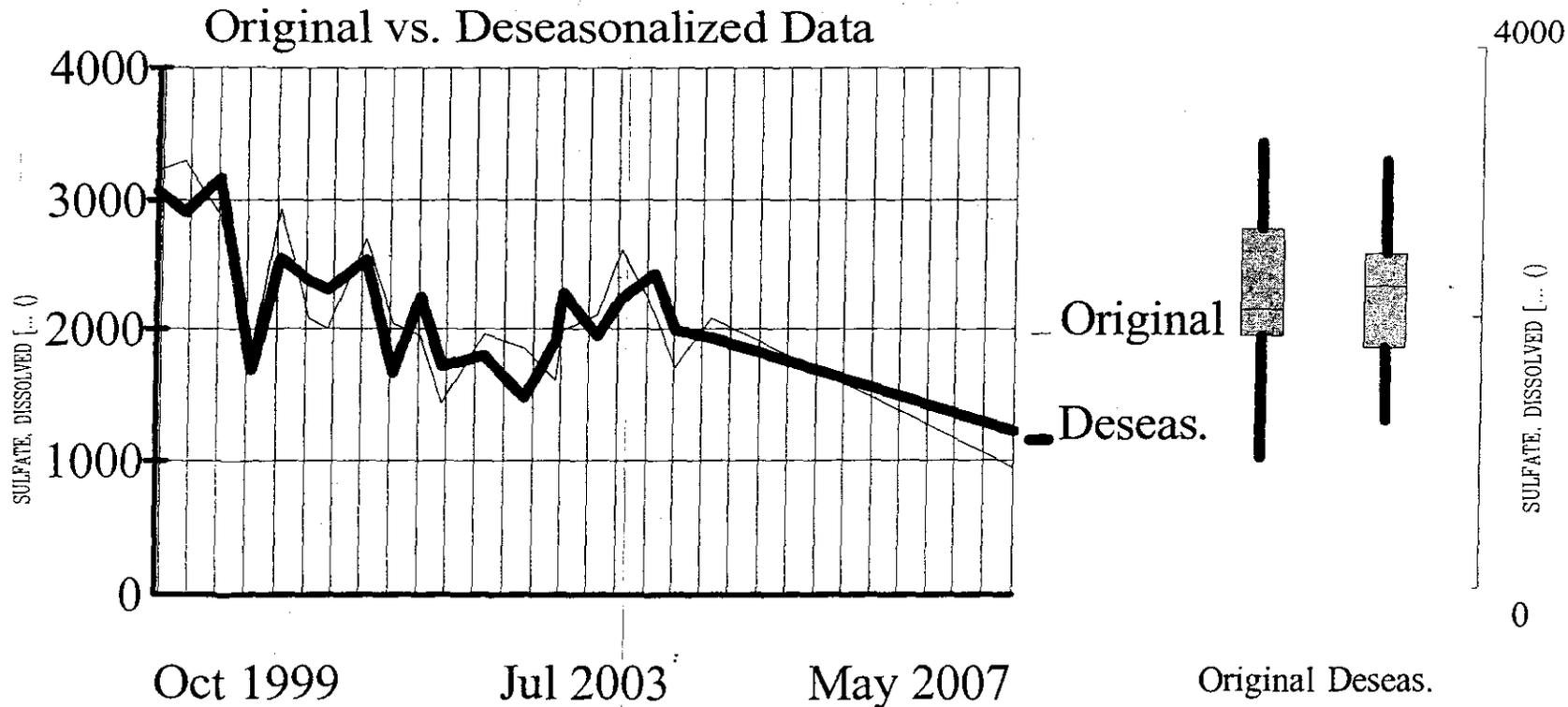
SEASONALITY: G104

For the data shown, the Kruskal-Wallis test indicates **NO SEASONALITY** at the 5% significance level. Because the calculated Kr statistic is less than or equal to the Chi-squared value, we conclude that no season has a significantly different median concentration of this constituent than any other season.

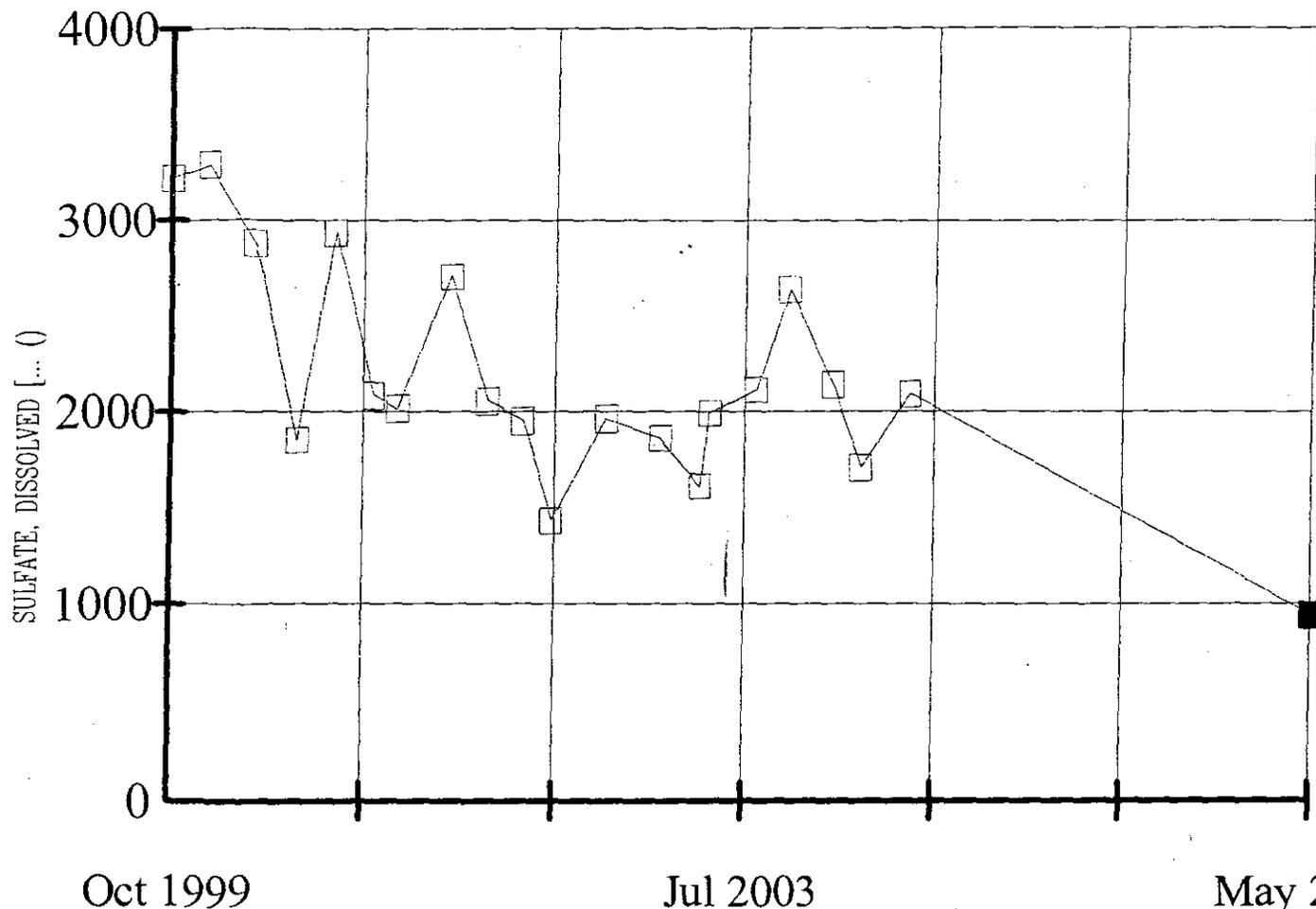
Calculated Kruskal-Wallis statistic = 4.393

Tabulated Chi-Squared value = 7.815 with 3 degrees of freedom at the 5% significance level.

There were 0 groups of ties in the data, so no adjustment to the Kruskal-Wallis statistic (H) was necessary.



EPA OUTLIER TEST G104



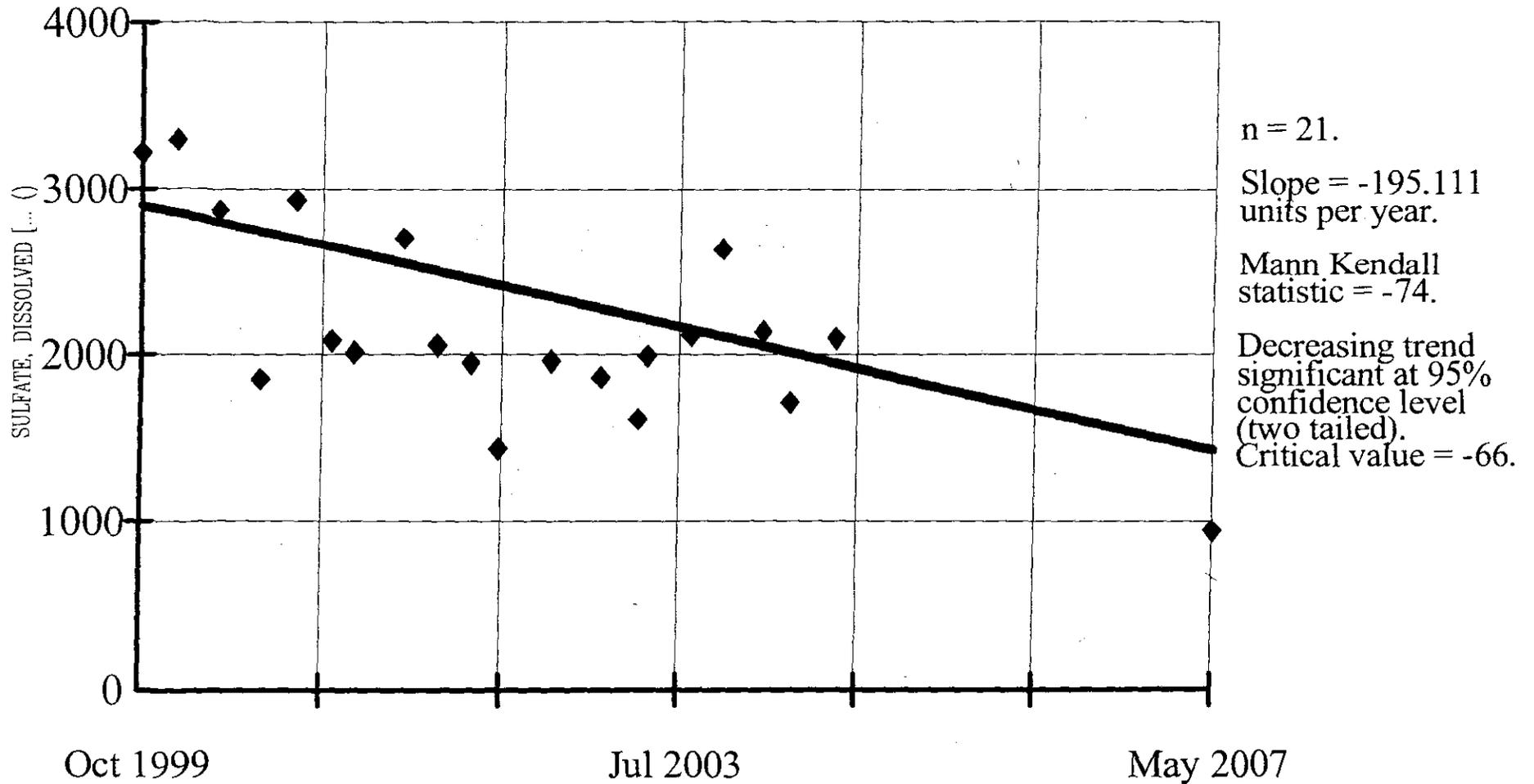
n = 21. Mean = 2161, after outlier removal 2223.
Std. Dev. = 585.8, after outlier removal 528.1.
Critical Tn = 2.58, after outlier removal 2.557.

Statistical outliers are shown as solid squares. Data, after outlier removal, were found to be normally distributed.
Normality test used: Shapiro Wilk.
W Statistic = 0.8849
W Quantile = 0.873

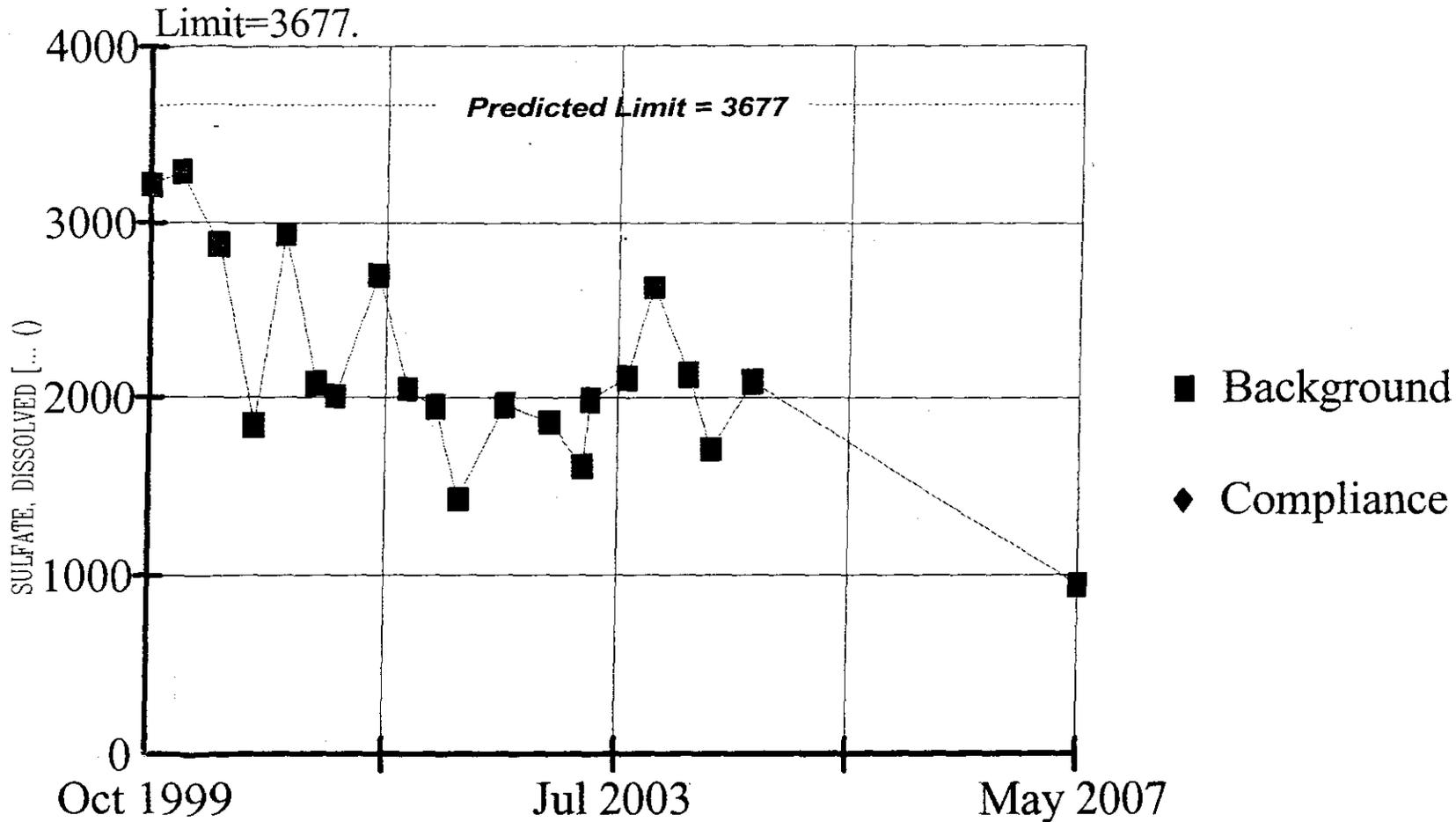
Note: EPA guidance directs that statistical outliers should not be removed or altered unless independent evidence error exists.

SEN'S SLOPE ESTIMATOR G104

EXHIBIT 5



PARAMETRIC INTRA-WELL PREDICTION LIMIT G104



Background Data Summary: Mean=2161, Std. Dev=585.8, 0% nds, 21 obs. Normality test: Shapiro Wilk. W Statistic for bac data = 0.9386, W Quantile = 0.873 at alpha = 0.01. Alpha used for construction of limit = 0.01, based on user-set 'k' (future values) of 1.

SUMMARY STATISTICS

Constituent: SULFATE, DISSOLVED (MG/L AS SO4-I)

Facility: Landfill X

Data File: r1sley

Date: 12/28/07, 3:30 PM

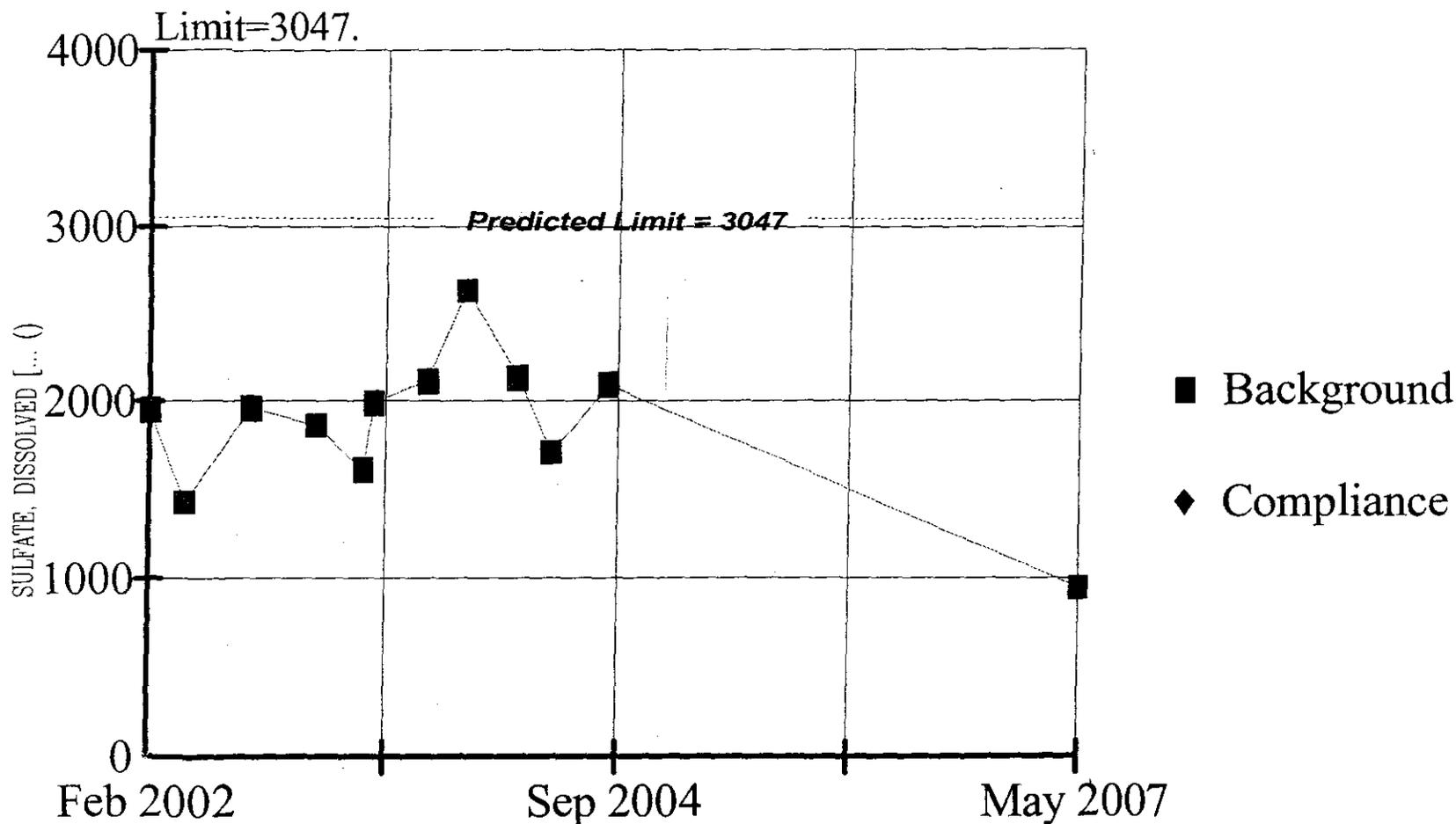
Client: Regulatory Use

View: r1sley2

For observations made between 10/19/1999 and 05/09/2007, a summary of the selected data set:

Well	#Obs	ND/Tests	Min	Max	Mean	Median	Std. Dev.	Skewness
G104	21	0	941	3290	2161	2050	585.8	0.2859

PARAMETRIC INTRA-WELL PREDICTION LIMIT G104



Background Data Summary: Mean=1867, Std. Dev=417.2, 0% nds, 12 obs. Normality test: Shapiro Wilk. W Statistic for background data = 0.9404, W Quantile = 0.805 at alpha = 0.01. Alpha used for construction of limit = 0.01, based on user-set 'k' (future values) of 1.

SUMMARY STATISTICS

Constituent: SULFATE, DISSOLVED (MG/L AS SO4) (1)

Facility: Landfill X

Data File: risley

Date: 12/5/07, 3:30 PM

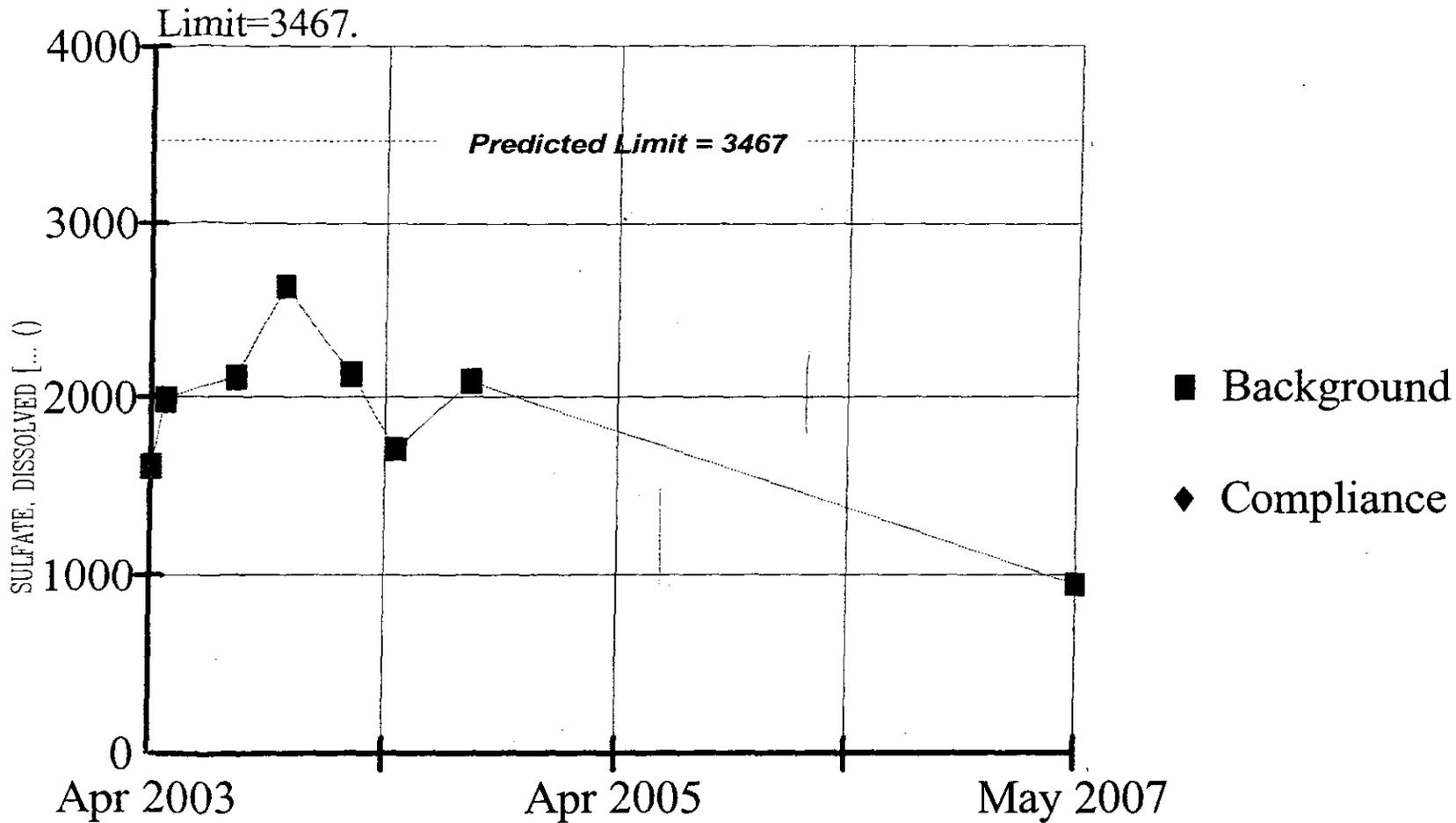
Client: Regulatory Use

View: risley2

For observations made between 02/06/2002 and 05/09/2007, a summary of the selected data set:

Well	#Obs	ND/Trigs	Min	Max	Mean	Median	Std. Dev.	Skewness
G104	12	0	941	2620	1867	1935	417.2	-0.5531

PARAMETRIC INTRA-WELL PREDICTION LIMIT G104



Background Data Summary: Mean=1900, Std. Dev=492.7, 0% nds, 8 obs. Normality test: Shapiro Wilk. W Statistic for bac data = 0.9282, W Quantile = 0.749 at alpha = 0.01. Alpha used for construction of limit = 0.01, based on user-set 'k' (future values) of 1.

SUMMARY STATISTICS

Constituent: SULFATE, DISSOLVED (MG/L AS SO4) ()

Facility: Landfill X

Data File: r1sley

Date: 12/5/07, 3:51 PM

Client: Regulatory Use

View: r1sley2

For observations made between 04/15/2003 and 05/09/2007, a summary of the selected data set:

Well	nObs	ND/Trace	Min	Max	Mean	Median	Std. Dev.	Skewness
G104	8	0	941	2620	1900	2040	492.7	-0.6531

CERTIFICATE OF SERVICE

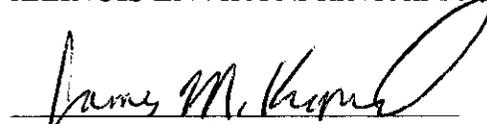
I, the undersigned attorney at law, hereby certify that on January 2, 2008, I served true and correct copies of a **RECOMMENDATION TO AMENDED PETITION FOR ADJUSTED STANDARDS**, by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault
Illinois Pollution Control Board
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100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Penni S. Livingston
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Dated: January 2, 2008