

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

MAR 28 2008

STATE OF ILLINOIS  
Pollution Control Board

In the Matter of: )  
Petition of BFI Waste Systems ) AS 08-5  
of North America, Inc. for an ) (Adjusted Standard-Land)  
Adjusted Standard Waste ) (Waste Delisting)  
Delisting )

NOTICE OF FILING

To: Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Patricia F. Sharkey  
McGuire Woods LLP  
77 West Wacker Drive, Suite 4100  
Chicago, Illinois 60601

Mary A. Gade, Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Please take notice that I have filed today with the Illinois Pollution Control Board the attached Attorney Appearance and Response to Petition for Adjusted Standard on behalf of the Illinois Environmental Protection Agency, copies of which are served upon you herewith.

  
William D. Ingersoll, Manager  
Enforcement Programs

William D. Ingersoll, Manager  
Enforcement Programs  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
Telephone: 217/782-9827  
Attorney Reg.: 6186363

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**STATE OF ILLINOIS**  
**Pollution Control Board**

APPEARANCE

I hereby file my appearance in the proceedings on behalf of the Illinois Environmental Protection Agency.

Respectfully submitted,

By:

  
William D. Ingersoll, Manager  
Enforcement programs

Date:

March 25, 2008

William D. Ingersoll, Manager  
Enforcement Programs  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
RESPONSE TO THE PETITION FOR ADJUSTED  
STANDARD WASTE DELISTING

Now comes the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, William D. Ingersoll, Manager, Enforcement Programs, and, pursuant to 35 Ill. Adm. Code 104.416, hereby submits a response to the Illinois Pollution Control Board ("Board") to the petition for adjusted standard ("Petition") filed by BFI Waste Systems of North America, Inc. ("BFI" or "Petitioner"). For reasons stated in detail below, the Illinois EPA recommends that the Board deny the adjusted standard request. In support of this recommendation the Illinois EPA states as follows:

I. INTRODUCTION

BFI is seeking an adjusted standard waste delisting to delist landfill leachate classified as hazardous waste F039 generated at the closed Phase I Unit at BFI's Davis Junction Landfill located in Davis Junction, Ogle County, Illinois.

To obtain a positive ruling from the Board, BFI must satisfactorily address all the factors set forth in Section 104.406 of the Board's procedural regulations (35 Ill. Adm. Code 104.406), Section 28.1(a) of the Environmental Protection Act ("Act")(415 ILCS 5/28.1(a)), and 35 Ill. Adm. Code 720.122(d). Since the primary hazardous property of F039 listed hazardous waste is Toxicity (See 35 Ill. Adm. Code 721.131), Section 720.122(d) is the relevant provision.

II. SECTION 104.406 FACTORS

For the reasons more fully set forth below the Illinois EPA does not believe that BFI's request for a RCRA waste delisting of landfill leachate generated at the closed Phase I Unit at BFI's Davis Junction Landfill has met the required level of justification.

**A. Section 104.406(a) – Statement describing the standard from which an adjusted standard is sought**

The Illinois EPA does not take issue with BFI's statement on this topic.

**B. Section 104.406(b) – Statutory basis of regulation of general applicability**

The Illinois EPA does not take issue with BFI's statements on this topic.

**C. Section 104.406(c) – Level of justification**

The Petition sets forth the level of justification required at page 6 and page 22. The Illinois EPA does not believe that BFI has met the level of justification for its request for the adjusted standard.

**D. Section 104.406(d) – Description of the nature of petitioner's activity**

The Illinois EPA does not take issue with BFI's statements on this topic.

**E. Section 104.406(e) – Efforts necessary to comply**

The Illinois EPA does not take issue with BFI's statements on this topic.

**F. Section 104.406(f) – Proposed adjusted standard**

The Illinois EPA does not believe that the proposed adjusted standard should be granted by the Board since BFI has not met the required level of justification to warrant issuance of the adjusted standard.

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

The Petition at page 33 indicates that four constituents exceeded the delisting levels generated by the Delisting Risk Assessment Software ("DRAS") model. The Illinois EPA does not believe that BFI has submitted sufficient information regarding the 1,4-dioxane that has been detected at the site.

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

The Illinois EPA does not believe that sufficient data has been submitted to support the requested adjusted standard. Of particular concern to Illinois EPA is the proposed delisting level for 1,4-dioxane of 100 mg/L. This level is based on a non-standard risk assessment methodology of questionable validity, and is an order of magnitude above the Land Disposal Restriction (LDR) treatment standard of 12 mg/L for 1,4-dioxane in F039 wastewaters found in Title 35 Ill. Adm. Code 728. Table T. Illinois EPA would not be opposed to a delisting level higher than the DRAS-calculated level of 2.4 mg/L given an acceptable risk assessment methodology was used, but in no case would a delisting level higher than that allowable for hazardous waste disposal be acceptable to Illinois EPA.

If the Board decides to grant the Petition contrary to the Illinois EPA's recommendation, the Illinois EPA recommends, at a minimum, revisions to the proposed delisting language in Section F.1 of the petition as follows:

1. Change Item d as follows:

“Within the first 12 months following the effective date of this delisting, BFI tests a representative sample of the leachate from the first three tanker trucks of leachate shipped pursuant to this Adjusted Standard, and from one tanker truck in each of the next three quarters of the 12 month period. Such samples shall be analyzed for the constituents listed in Table A (below) and hazardous characteristics as defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123 and 721.124. If none of the delisting levels in Table A are confirmed to be exceeded, such testing shall continue on a semi-annual basis thereafter. If an initial sample concentration is observed above the delisting level, then a verification sample will be collected within 7 days and reanalyzed for the constituent(s) exhibiting a concentration greater than the delisting level. A confirmed exceedance of the delisting level will be deemed present if both the original and verification sample exhibit concentrations above the delisting level;”

This change is necessary to provide more up-front confirmation that the delisted waste meets the proposed delisting levels.

2. Change Item g as follows:

“The leachate is transported in compliance with the requirements applicable to an Illinois Special Waste (35 Ill. Adm. Code Part 809) to a waste water treatment facility located in Illinois which has a Pretreatment Program which has been approved by the United States Environmental Protection Agency.”

This change will ensure that the delisted waste goes to a facility that is able to adequately deal with it.

**I. Section 104.406(i) – Consistency with federal law**

The Petition at page 24 sets forth BFI's statement with regard to consistency with federal law. The Illinois EPA does not take issue with BFI's statements on this topic in that federal law provides the regulatory framework for delisting hazardous waste. The Illinois EPA does not believe, however, that BFI has met the required level of justification to warrant issuance of the adjusted standard.

**J. Section 104.406(j) – Hearing**

The Illinois EPA does not take issue with BFI's statements on this topic.

**K. Section 104.406(k) – Supporting documents**

The Illinois EPA does not take issue with BFI's statement on this topic, except with regard to 1,4-dioxane as explained above.

**III. SECTION 28.1 FACTORS**

In accordance with Section 28.1(a) of the Act, persons seeking a RCRA waste delisting must justify the request consistent with Section 27(a). Section 27(a) provides:

In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a) (2004).

Pursuant to Section 28.1(b) of the Act, the Board has specified the level of justification for hazardous waste delistings in Section 720.122 of the Board's regulations.

The comments made above for the factors set forth in Section 104.406 apply to the Section 28.1 factors as well as the 720.122 factors.

**IV. CONCLUSION**

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board deny BFI's request for an adjusted stand.

Respectfully submitted,

Illinois Environmental Protection Agency,



William D. Ingersoll, Manager  
Enforcement Programs  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-9827  
Date: March 25, 2008

State of Illinois )  
County of Sangamon )  
 )

Proof of Service

I, the undersigned, on oath state that I served the attached Appearance and Response to Petition For Adjusted Standard upon the following persons, by placing a copy in an envelope addressed to:

Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

Patricia F. Sharkey  
McGuire Woods LLP  
77 West Wacker Drive, Suite 4100  
Chicago, Illinois 60601

Mary A. Gade, Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

and mailing it by First Class U.S. mail from Springfield, Illinois on March 25, 2008 with sufficient postage affixed.

Vickie Brown

SUBSCRIBED AND SWORN TO BEFORE ME  
this 25 day of March, 2008

Cynthia L. Wolfe  
Notary Public

