

**Electronic Filing - Received, Clerk's Office, April 14, 2008**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**PETITION OF BFI WASTE SYSTEMS  
OF NORTH AMERICA, INC. FOR AN  
ADJUSTED STANDARD WASTE  
DELISTING**

**AS 08-05  
(RCRA 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, IL 60601

Bradley P. Halloran, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph St., Suite 11-500  
Chicago, IL 60601

Mary A. Gade, Regional Administrator  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Boulevard  
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Division of Legal Counsel  
Illinois Environmental Protection Agency  
9511 West Harrison Street  
Des Plaines, IL 60016

Mr. William Ingersoll, Manager  
Enforcement Programs  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

Please take notice that on April 14, 2008 the undersigned caused to be filed with the Clerk of the Illinois Pollution Control Board BFI WASTE SYSTEMS OF NORTH AMERICA, INC.'S RESPONSE TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RECOMMENDATION, MOTION TO AMEND PETITION FOR ADJUSTED STANDARD WASTE DELISTING, AND PROPOSED AMENDMENT TO PETITION FOR ADJUSTED STANDARD, copies of which are herewith served upon you.

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By: One of the Attorneys for Petitioner

Patricia F. Sharkey  
McGuireWoods LLP  
77 West Wacker, Suite 4100  
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Telephone: 312/849-8100

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CERTIFICATE OF SERVICE

I, Patricia F. Sharkey, hereby certify that I served a copy of the above-listed documents upon those listed on the attached Notice of Filing on April 14, 2008 via First Class United States Mail, postage prepaid.

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One of the Attorneys for Petitioner

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**PETITION OF BFI WASTE SYSTEMS  
OF NORTH AMERICA, INC. FOR AN  
ADJUSTED STANDARD WASTE  
DELISTING**

**AS 08-05  
(Adjusted Standard –Land)  
(Waste Delisting)**

**BFI WASTE SYSTEMS OF NORTH AMERICA, INC. RESPONSE TO  
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY RECOMMENDATION**

NOW COMES BFI Waste Systems of North America, Inc. (“BFI”), by its attorneys McGuireWoods LLP, and responds to the Illinois Environmental Protection Agency (“Agency”) recommendation in this matter, titled “Response to the Petition for Adjusted Standard Waste Delisting,” and dated March 25, 2008.

In response, BFI states:

1. In its recommendation, the Agency stated that it believed that BFI had not met the required level of justification to warrant issuance of the adjusted standard.
2. BFI and the Agency have had further discussion on this matter since March 25, 2008. In response to those discussions, BFI has drafted amendments to the Adjusted Standard language contained in the Petition, a copy of which is attached hereto and which is being filed with the Board today as an amendment to the Petition. BFI believes these amendments satisfy the concerns raised in the Agency’s recommendation.
3. BFI has also received a number of specific questions from the Board. It is BFI’s intent to answer those questions on the date specified. BFI will also be prepared to discuss these matters, as well as the amendatory language, at the hearing scheduled for May 15, 2008.

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Respectfully submitted,

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BFI Waste Systems of North America, Inc.

By One of Its Attorneys

April 14, 2008

Patricia F. Sharkey  
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Suite 4100  
77 West Wacker Drive  
Chicago, Illinois 60601  
(312) 849-8100

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**IN THE MATTER OF:**

**PETITION OF BFI WASTE SYSTEMS  
OF NORTH AMERICA, INC. FOR AN  
ADJUSTED STANDARD WASTE  
DELISTING**

**AS 08-05  
(Adjusted Standard –Land)  
(Waste Delisting)**

**MOTION TO AMEND  
PETITION FOR ADJUSTED STANDARD  
WASTE DELISTING**

NOW COMES BFI Waste Systems of North America, Inc. (“BFI”), by its attorneys McGuireWoods LLP, moves the Illinois Pollution Control Board (“Board”) to accept the attached Proposed Amendment to the Petition for Adjusted Standard filed in this matter on November 21, 2007 for consideration in this proceeding.

In support thereof, BFI states:

1. On November 21, 2007, BFI filed a Petition for Adjusted Standard in this matter which included proposed language for the Adjusted Standard. That language was designed to expressly limit the scope of the hazardous waste delisting which is the subject of the Petition to leachate which is transported pursuant to an Illinois Special Waste Manifest to a permitted wastewater treatment plant.
2. Based upon the recommendation of the Illinois Environmental Protection Agency (“Illinois EPA”) (filed on March 26, 2008) and conversations with Illinois EPA personnel, BFI is proposing to amend the language of the Adjusted Standard to clarify the intended scope of the Adjusted Standard and thus the delisting. BFI is also proposing to

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amend the language to include the specific testing requirements suggested by Illinois EPA in its recommendation.

3. Specifically, BFI is proposing amendatory language for paragraph (g) which would clarify that the delisting would only apply to leachate which is transported to and received by a permitted waste water treatment facility located in Illinois which has a Pretreatment Program which has been approved by the United States Environmental Protection Agency.

4. As stated in the Petition (p.17):

“The Adjusted Standard will not allow the leachate to be managed in a land impoundment, ditch or by any other means which could result in contamination of the leachate and/or a release of the leachate directly to the environment.”

5. As further stated in the Petition (p.19):

“The Adjusted Standard allows the leachate to be transported *for disposal at* a permitted waste water treatment facility to Clean Water Act discharge requirements. This is consistent with the domestic sewer exemption in 35 Ill. Adm. Code 721.104(40 CFR 261.4(a)). ...It is also consistent with the statutory exemption for certain F039 leachate found in 35 Ill. Adm. Code 721.104(b)(15)(A)(iv) (40 CFR 261.4 (b)(15)(iv)). That exemption exempts from the definition of hazardous waste certain leachate and gas condensate from landfills where certain listed hazardous wastes were *disposed of*, on certain conditions, including the condition that the waste stream is being transported *for treatment and disposal at* an off-site facility which is *subject to regulation under Section 307(b) or 402 of the Federal Clean Water Act.*” [emphasis added]

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6. The amendatory language to paragraph (g) in the attached Proposed Amendment is designed to make two things clear:

A. That the leachate will not be delisted unless it is actually transported to *and received by* a permitted wastewater treatment plant. Thus, if the leachate were transported somewhere else, spilled along the way, or otherwise disposed of, it would not be covered by the delisting and would be considered a listed hazardous waste subject to all applicable requirements of the Resource Conservation and Recovery Act (“RCRA”) program. Among other things, this clarification assures that the RCRA program corrective action clean-up requirements will be triggered in the unlikely event that a spill occurs during the transport of the leachate to the wastewater treatment facility.

B. That the receiving permitted wastewater treatment facility must be one that has a Pretreatment Program which has been approved by the United States Environmental Protection Agency. This assures that the wastewater treatment facility has met the Clean Water Act’s (“CWA”) rigorous requirements for treating industrial waste.

7. In short, the Proposed Amendment to paragraph (g) clarifies the intent of the Petition for Adjusted Standard to provide continued protection of the public health and the environment within the context of two established and complimentary programs – RCRA and CWA -- administered by Illinois EPA and the Board.

8. The amendatory language for paragraph (d) in the attached Proposed Amendment will require that a representative sample from the first three truckloads of leachate be tested for compliance with the delisting levels, as well as quarterly sampling for the remainder of the first year of operation under the delisting. This language, which

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was recommended by the Illinois EPA, provides for more intensive sampling at the outset to ensure that the leachate meets the criteria established in the delisting.

WHEREFORE, BFI respectfully requests that the Board accept the attached Proposed Amendment to Petition for Adjusted Standard for consideration in this proceeding.

Respectfully submitted,

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BFI Waste Management Systems of North America  
By One of Its Attorneys

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(Adjusted Standard –Land)  
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**PROPOSED AMENDMENT TO  
PETITION FOR ADJUSTED STANDARD**

BFI proposes the following amendment, as shown by underscoring, to the Proposed Language for the Proposed Adjusted Standard included on pp. 14- 16 of the Petition:

**A. Proposed Language**

Leachate generated at the closed Phase I Unit at the BFI Waste Systems of North America, Inc. (“BFI”) Davis Junction Landfill in Davis Junction, Ogle County, Illinois shall not be deemed a hazardous waste pursuant to 35 Ill. Adm. Code 721 under the following circumstances:

- a) The Phase I Unit is subject to an Illinois Environmental Protection Agency RCRA Post –Closure Permit which prohibits the disposal of any new solid or liquid waste in the Phase I Unit, requires maintenance of the landfill cap and liner, and requires operation of a leachate collection system;
- b) The leachate is hard-piped directly from the landfill to an on-site storage tank which is regulated under the RCRA Post-Closure Permit and is not stored or managed in a surface impoundment, conveyed by ditches or otherwise managed prior to transportation for off-site disposal;
- c) The leachate does not exhibit any characteristic of hazardous waste as defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123 and 721.124 and shall not exceed the delisting level concentrations in Table A below;
- d) 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 by

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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;

e) If concentrations of the constituents listed in Table A (below) are confirmed to exceed the delisting levels using the verification procedures described above in item (d) or if the leachate is confirmed to exhibit a hazardous characteristic, the leachate shall not be disposed of except as a hazardous waste until such time as it is demonstrated by the testing procedures below to meet the criteria of this Adjusted Standard. Prior to re-initiating management and disposal pursuant to this Adjusted Standard, BFI must perform additional testing, including a minimum of four representative samples taken over not less than a 14 day period, each of which confirms concentrations of F039 hazardous constituents below the delisting levels and the absence of any hazardous characteristic;

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

h) At least 60 days prior to transporting the first load of delisted leachate, BFI shall provide a one-time written notification to the Illinois Environmental Protection Agency stating that it is commencing transportation of delisted leachate pursuant to this delisting and the name of the waste water treatment facility to which the leachate will be transported. If BFI changes disposal facilities, it shall provide to Illinois Environmental Protection Agency a one-time written notification of such change; and

i) BFI shall not transport the leachate delisted pursuant to this Adjusted Standard outside of the State of Illinois.

Table A

Constituent of Concern	Delisting Level (mg/L)
Arsenic	0.525
Barium	151
Benzene	0.153
Cadmium	0.409
Carbon Disulfide	118
Chromium	1,040
Dichloropropene, cis-1, 3-	1,000,000

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Cobalt	118
Copper	24,700
Diethyl phthalate	1,270
Endrin	32,700
Ethylbenzene	57.2
Isobutyl alcohol	299
Lead	204
Mercury	0.22
Methanol	499
Methyl ethyl ketone	599
Methylene chloride	0.198
Methyl isobutyl ketone	79.8
Naphthalene	6.51
Nickel	76.8
Cresol, p-	5.37
Phenol	645
Styrene	6.2
Tetrachloroethylene	0.174
Tin	1180
Toluene	40.2
Trichloroethylene	0.164
Vanadium	57.1
Vinyl chloride	0.2
Xylenes (total)	886
Zinc	760
Dichloroethane, 1-1-	99.8
Dichloroethane, 1,2-	0.0354
Dioxane, 1,4-	100
Trichlorophenoxypropionic acid, 2,4, 5- (Silvex)	1.43
Dichlorophenoxyacetic acid, 2,4- (2,4-D)	1.86
Dimethylphenol, 2,4-	27.6
Acetone	99.8

Respectfully submitted,

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BFI Waste Management Systems of North America  
By One of Its Attorneys

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