

BEFORE THE 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 )

**RECEIVED**  
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JUL 14 2008

NOTICE OF FILING

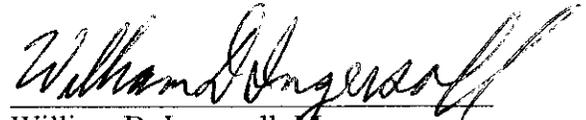
To: Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

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

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

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 Brief Of The Illinois Environmental Protection Agency 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

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Brief of the Illinois Environmental Protection Agency

Now comes the Illinois Environmental Protection Agency ("Illinois EPA") by one of its attorneys, William D. Ingersoll, Manager, Enforcement Programs, and hereby files its post-hearing brief in the above captioned matter.

BFI Waste Systems of North America, Inc. ("BFI" or "Petitioner") filed its petition for adjusted standard ("Petition") with the Illinois Pollution Control Board ("Board") on November 21, 2007. The Illinois EPA filed its Response To The Petition for Adjusted Standard Waste Delisting on March 25, 2008. On April 14, 2008 BFI filed its Response to Illinois Environmental Protection Agency's Recommendation and Proposed Amendment to Petition For Adjusted Standard. The Illinois EPA filed its Amended Response To The Petition For Adjusted Standard Waste Delisting on April 21, 2008. The hearing on BFI's Petition was held in Oregon, Ogle County, Illinois on May 15, 2008. No members of the public were present at the hearing.

On June 30, 2008 BFI filed its post-hearing brief. BFI's post-hearing brief includes an overview of the Petition that was filed by BFI in this matter. The Illinois EPA believes that the overview accurately describes the Petition that was filed. The overview references BFI's revised Adjusted Standard language included in the Proposed Second Amendment to Petition for Adjusted Standard. The overview indicates that the adjusted standard will allow BFI to transport the leachate over a shorter distance to a closer wastewater facility ("WWTF") which will provide equal or better treatment than this leachate is currently receiving as a listed hazardous waste. The overview also indicates that "If a spill occurs or if the leachate is not disposed of in a permitted and approved pretreatment WWTF, the delisting does not apply and the leachate will be subject to RCRA Subtitle C regulation as it is now (BFI Brief at page 2).

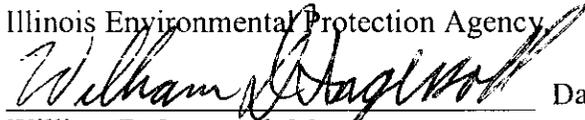
The Illinois EPA's concern with the adjusted standard was the possibility of land disposal of the leachate as the result of a release prior to delivery of the leachate at a WWTF. BFI's brief makes it clear that land disposal is not and will not be an issue. BFI's brief at page 11 states "In contrast, BFI's petition does not allow land disposal" and "...the delisting would not apply if the leachate were spilled on route to the pre-treatment facility..." (BFI Brief at page 12). BFI, in its brief, also states that "In contrast, the proposed BFI delisting does not authorize any contact of the leachate with land. (BFI Brief at page 19.)

With regard to whether USEPA's approval of the delisting is required, the Illinois EPA agrees with BFI in that the Illinois EPA is not aware of any reasons that USEPA approval would be required (BFI Brief at page 20). "BFI is not requesting a change to any federally approved water quality standard nor will this delisting affect any discharge to a water of the State or a water of the United States." (BFI Brief at page 20) It is also the Illinois EPA's position that Section 720.122 of the Illinois regulations, 35 Ill. Adm. Code 720.122, reflects the requirements for delisting of a hazardous waste established in the federal RCRA regulations at 40 CFR 260.22. The state regulations are, therefore, consistent with the federal requirements and USEPA's approval would not be necessary.

The Illinois EPA believes that the proposed adjusted standard language included in BFI's Proposed Second Amendment to Petition for Adjusted Standard has addressed the Illinois EPA's concerns with the requested adjusted standard and the Illinois EPA does not object to the requested adjusted standard.

Respectfully submitted,

Illinois Environmental Protection Agency

 Date: 7-10-08

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

State of Illinois )  
County of Sangamon )  
 )

Proof of Service

I, the undersigned, on oath state that I served the attached Brief Of The Illinois Environmental Protection Agency 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  
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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 July 10, 2008 with sufficient postage affixed.

Sara Vilmor

SUBSCRIBED AND SWORN TO BEFORE ME  
this 10<sup>th</sup> day of July, 2008

Brenda Boehner  
Notary Public

