

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2008

IN THE MATTER OF:)
)
RCRA DELISTING ADJUSTED) AS 08-10
STANDARD PETITION OF PEORIA) (Adjusted Standard – Land)
DISPOSAL COMPANY)

ORDER OF THE BOARD (by A.S. Moore):

On April 25, 2008, Peoria Disposal Company (PDC) filed an adjusted standard petition to delist the residue from treating K061 electric arc furnace dust (EAFD) at PDC's waste stabilization facility, which is located at 4349 W. Southport Road in Peoria, Peoria County. Petition at 1. Before PDC can be granted a hazardous waste delisting for the treated EAFD, PDC must prove that the material no longer constitutes hazardous waste under the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 *et seq.* Today the Board rules on numerous non-party requests for an additional public hearing in this proceeding.

The Board held a public hearing in this case on August 18, 2008, in Peoria, Peoria County. On August 13, 2008, the Board received a letter from Illinois State Representative Bill Mitchell of the 87th District. Representative Mitchell asks that the Board hold an additional public hearing, this time in Clinton, DeWitt County. PDC filed a response on August 14, 2008, opposing Representative Mitchell's request. At the August 18 hearing in Peoria and through post-hearing written public comment, a total of seven citizens have also requested that one or more additional public hearings be held in DeWitt, Tazewell, and Pike Counties. On August 29, 2008, PDC filed a response opposing the citizen requests. Also on August 29, 2008, the Board received a letter from Illinois State Senator Bill Brady of the 44th District, expressing his opinion that further public hearings in this proceeding do not appear to be necessary. On September 2, 2008, the Illinois Environmental Protection Agency (IEPA) filed a response to certain public comments, but explicitly took no position on whether the Board should grant any of the hearing requests.

For the reasons set forth below in this order, the Board declines the requests to hold one or more additional public hearings. The Board will, however, accept written public comment for an extra two weeks, extending the deadline for filing public comments from September 11, 2008 to September 25, 2008, in recognition of the significant public interest in this case.

**REPRESENTATIVE MITCHELL'S LETTER REQUESTING
AN ADDITIONAL HEARING**

On August 13, 2008, State Representative Bill Mitchell of the 87th District filed a letter with the Board (PC 5) requesting that the Board hold "an *additional* hearing with venue change." PC 5 at 1 (emphasis in original). Representative Mitchell states that if PDC is granted the delisting:

Peoria Disposal Company intends to possibly transport the EAFD to Indian Creek Landfill No. 2, located in Tazewell County OR to two other Subtitle D landfills in Illinois affiliated with Peoria Disposal. One of these Subtitle D landfills is located near Clinton, Illinois, in DeWitt County.

I represent DeWitt County and have received calls from constituents expressing concerns of the long term public health and safety of this specific proposal before the Pollution Control Board. Therefore, I request a public hearing be held in Clinton, Illinois. This second hearing will allow residents of DeWitt and surrounding counties an opportunity to participate in a public hearing regarding this important issue. I also respectfully request that the Board make every effort to schedule a public hearing for evening hours in order to make public attendance possible. *Id.*

In its August 14, 2008 response (Hrg. Resp. 1) opposing Representative Mitchell's hearing request, PDC states that the Board properly selected Peoria County as the forum for the public hearing because "the waste stabilization facility at issue is in Peoria County." Hrg. Resp. 1 at 2. PDC, observing that "Peoria is approximately one hour from Clinton by car," further asserts that any concerned citizens of DeWitt County will have the opportunity to speak at the August 18, 2008 hearing in Peoria. *Id.* It is clear from Representative Mitchell's letter, PDC continues, that DeWitt County citizens are aware of the hearing. *Id.* Moreover, PDC notes that the citizens of DeWitt County will be allowed to submit written public comments to the Board for a period of time after the hearing. According to PDC, "[t]he rights of the citizens of DeWitt County are clearly being protected by holding the public hearing in Peoria on Monday, August 18, 2008." *Id.*

PDC states that Representative Mitchell's request for a hearing in DeWitt County is "based upon his concern that delisted waste may be accepted at Clinton Landfill, Inc., located in DeWitt County." Hrg. Resp. 1 at 2. PDC represents that at a special meeting of the DeWitt County Board on August 13, 2008, the DeWitt County Board considered a resolution to request that the Board hold a public hearing in DeWitt County, "as is requested in Representative Mitchell's letter." *Id.* PDC further states that representatives of Clinton Landfill, Inc., the owner of Clinton Landfill:

made a commitment to the [DeWitt] County Board that Clinton Landfill, Inc. would not accept any waste delisted by the Pollution Control Board pursuant to the instant petition without prior permission from the DeWitt County Board, subject to whatever public hearings and procedures the County Board saw fit to require. (Clinton Landfill, Inc. is affiliated with Peoria Disposal Company, the Petitioner in this case). Clinton Landfill, Inc.'s commitment will be reduced to writing in an amendment to the Host Agreement with DeWitt County. *Id.* at 2-3.

PDC maintains therefore that "Representative Mitchell's concerns regarding local input have been addressed," adding that the DeWitt County Board "voted 10-2 against the pending resolution to request a Pollution Control Board hearing in DeWitt County on this matter." *Id.* at 3.

For these reasons, PDC requests that the Board decline Representative Mitchell's request for an additional hearing. Hrg. Resp. 1 at 3.

CITIZENS' REQUESTS FOR ADDITIONAL HEARINGS

At the Board's August 21, 2008 meeting, the Board reserved ruling on all pending requests for an additional public hearing in this proceeding, including the hearing request of Representative Mitchell. As noted by the Board in its order of August 21, 2008, several citizen hearing requests were made verbally on the record at the August 18, 2008 hearing in Peoria, which was transcribed by a certified court reporter. Accordingly, these citizen requests, and the reasons given by the citizens for requesting another hearing, would be set forth in the official hearing transcript. See RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company, AS 08-10, slip op. at 1 (Aug. 21, 2008). The Board received the 139-page transcript (Tr.) on August 25, 2008, and promptly made it available to the public on the Board's website (www.ipcb.state.il.us) through the Clerk's Office On Line (COOL).

On the record at the August 18 hearing, the following six citizens requested that the Board hold one or more additional hearings: Mr. Matt Varble, resident of DeWitt County and President of "WATCH Clinton Landfill" ("We're Against Toxic Chemicals") (WATCH) (Tr. at 45-55); Mr. Rudy Habben, a resident of Peoria County and the Vice-Chairman of the Heart of Illinois Sierra Club (Tr. at 70-73); Ms. Tessie Bucklar, a resident of Peoria County (Tr. at 73-77); Ms. Diane Jorgensen, a resident of Tazewell County and member of the Heart of Illinois Sierra Club (Tr. at 78); Mr. David Taylor, an elected trustee for the Village of Wapella in DeWitt County (Tr. at 85-86); and Mr. Rick Fox (Tr. at 138). See AS 08-10 Hearing Report at 1, Attachment A (Aug. 19, 2008). An additional citizen request for another hearing was made in a written public comment filed on August 25, 2008 (PC 20) by Lisa Offutt, a resident of Peoria County and a member of Peoria Families Against Toxic Waste.

Mr. Varble of WATCH requests that a hearing be held in Clinton, DeWitt County. Tr. at 47, 55. Quoting Section 28(a) of the Environmental Protection Act (Act) (415 ILCS 5/28(a) (2006)), Mr. Varble states that "in the case of statewide regulations[,] hearings shall be held in at least two areas." Tr. at 45-47, citing the Board's procedural rules at 35 Ill. Adm. Code 102.412. Mr. Varble asserts that failing to hold the second hearing "would result in material prejudice" to the residents of DeWitt County:

[W]e grant that the treatment process is site-specific to Peoria. That said, the potential impact from this K061 delisting is effectively converting subtitle D landfills into hazardous landfills without local siting approvals if an error is made and the resulting residue starts to exhibit its previous hazardous characteristics at some time in the future.

While hearings at all subtitle D locations statewide may not be practical, we feel hearings at two locations as required by 415 ILCS 5/28a and at the next closest site, which is Clinton, is not only required but prudent. Tr. at 47-48.

Mr. Varble also argues that DeWitt County residents did not receive adequate notice of the Board's August 18 hearing "to enable their informed participation." Tr. at 48. He states that WATCH was informed of the hearing by the Heart of Illinois Sierra Club on August 7, 2008, eleven days before hearing. *Id.* According to Mr. Varble, there needs to be adequate time to educate DeWitt County residents on this delisting request and to allow for the "forming of opinions." Tr. at 52.

Mr. Varble also maintains that DeWitt County residents did not have adequate transportation to the Peoria hearing, representing that DeWitt County has "a larger-than-average senior population . . . living on fixed incomes [and] a larger-than-average poverty level population with inadequate private transportation . . ." Tr. at 52.

Finally, Mr. Varble asserts that PDC's offered amendment to the host agreement with DeWitt County "is not an adequate substitute for the right for concerned residents to express their concerns directly as would be afforded them if a hearing was convened in Clinton." Tr. at 54-55.

Mr. Rudy Habben, a resident of Peoria County and the Vice-Chairman of the Heart of Illinois Sierra Club, requests that a second hearing be held because "this delisting could impact municipal waste landfills across Illinois." Tr. at 71-72. He asks that the hearing be held in Clinton. Tr. at 72.

Ms. Tessie Bucklar, a resident of Peoria County, requests that "public hearings be held in both Clinton and Hopedale,¹ Illinois, so that citizens of those communities can have the same chance to voice their concerns as I have." Tr. at 77.

Ms. Diane Jorgensen, a resident of Tazewell County and member of the Heart of Illinois Sierra Club, requests a hearing in Clinton, adding that "[t]his delisting will create a statewide rule change allowing PDC to send its EAF [dust] to any subtitle D municipal waste landfill in Illinois." Tr. at 78.

Mr. David Taylor, an elected trustee for the Village of Wapella in DeWitt County, requests that the Board hold a public hearing in DeWitt County for the residents of DeWitt County: "As an elected trustee, I feel it's my obligation to request that for those who did not have notice and for those who have concerns." Tr. at 85-86.

Mr. Rick Fox made the final hearing request on August 18, suggesting that multiple additional hearings be held:

¹ Tazewell County Landfill, Inc., doing business as Indian Creek Landfill No. 2, is located in Hopedale, Tazewell County. PDC's April 2008 petition identifies Indian Creek Landfill No. 2, along with Clinton Landfill, Inc. and Pike County Landfill, Inc., as being among the "[p]otential Subtitle D landfills to which delisted EAFDSR [Electric Arc Furnace Dust Stabilized Residue] may be shipped," adding that "Indian Creek Landfill No. 2 is the most likely facility that will be used to dispose of the EAFDSR." *See* Petition, Technical Support Document at 2-3.

In the application [*i.e.*, PDC's petition] there are three landfills stated. And we have the Tazewell and DeWitt County facilities. There is also one in Pike County.² And I would like to make the request that there be a public hearing there for those folks so they can have an opportunity to have this discussion as well. Tr. at 138.

In addition to his oral request and reasoning for another hearing stated on the record at the August 18 hearing, Mr. Varble, President of WATCH, submitted post-hearing public comments concerning a second hearing. In PC 6, received on August 19, 2008, Mr. Varble argues that another hearing is needed because of several "procedural complaints" he has about the conduct of the August 18 hearing. Mr. Varble complains that the Board hearing officer "limited participation to no more than 10 minutes per person" and did not permit him to complete his presentation. PC 6 at 1. Further, Mr. Varble claims that during his presentation, the hearing officer allowed PDC's legal counsel "to interrupt and present arguments" responding to his comments, reducing the "limited time" he was allotted to speak. *Id.* According to Mr. Varble, no time limit for commenters was announced at the beginning of the hearing, several commenters spoke for more than ten minutes, and "Corporation Representatives from the Steel industry . . . speaking in favor of the delisting petition" were given "NO time limit reminder" by the hearing officer. *Id.* at 1-2 (emphasis in original). Mr. Varble asks for another hearing at which there should be "a stricter adherence to rules and procedures . . . during the public commenting process." *Id.* at 2.

In PC 19, received on August 25, 2008, Mr. Varble repeats many of the points he made at hearing, adding that "a legal notice published in the local Peoria newspaper, as required by statute," was ineffective for "residents impacted by this hearing outside of the Peoria area." PC 19 at 4 (referring to Clinton as "the next closest PDC site outside of the geographic region of the 8/18/08 hearing" (*id.* at 1)). Mr. Varble also suggests that an "alternative" to a second hearing would be to give DeWitt County residents four months to develop and submit written public comments:

Peoria County residents have had since late April 2008 to learn of the delisting issues and decide whether or not to attend this hearing and express any concerns. *** [T]he amount of time necessary is probably best demonstrated by that afforded Peoria County residents – four months, instead of the 11 days allowed so far. *Id.* at 3.

The last citizen request for another hearing came in an August 25, 2008 public comment (PC 20) filed by Lisa Offutt, a resident of Peoria County and a member of Peoria Families Against Toxic Waste. According to Ms. Offutt, the three landfills in three separate counties specifically listed in PDC's petition "can reasonably be expected to be affected by PDC's activities." PC 20 at 2. Ms. Offutt asserts that allowing PDC to dispose of the delisted material in any municipal landfill in the State of Illinois "radically widens the pool of counties likely to be

² Pike County Landfill, Inc. is located in Baylis, Pike County. See Petition, Technical Support Document at 2-3; see also n.1 above.

affected by this delisting, should it go forward.” *Id.* Ms. Offutt comments that the deadline for requesting a public hearing is 21 days after the posting of the notice, but asks “how likely is it that citizens of DeWitt, Tazewell, and Pike counties would just happen [to] be reading the fine print in the Peoria Journal Star classified section on the day it was published?” *Id.* Ms. Offutt argues that merely satisfying “the letter of the law” is a “necessary but not sufficient condition for honorable and ethical behavior.” *Id.* Ms. Offutt therefore requests:

that a second public hearing be held in Clinton, Illinois, regarding this PDC delisting application, per 415 Illinois Compiled Statutes, 5, Section 28, (a). This delisting will create a state-wide rule change allowing PDC to send EAF to any Subtitle D municipal waste landfill in Illinois. *Id.*

As provided in the Board’s August 21, 2008 order, any response from PDC or IEPA to the citizen hearing requests was required to have been received by the Clerk of the Board no later than 10:00 a.m. on September 2, 2008. *See RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company*, AS 08-10, slip op. at 1 (Aug. 21, 2008). On August 29, 2008, PDC filed a response (Hrg. Resp. 2) opposing the citizen requests for an additional hearing made orally at the August 18 hearing. IEPA, on September 2, 2008, filed a response to several public comments, but noted that IEPA “takes no position” on whether the “multiple requests” for an additional public hearing “should be granted, but rather leaves the matter entirely to the sound discretion of the Board.” IEPA Response at 1.

PDC emphasizes in its response that by Board regulation (35 Ill. Adm. Code 720.122(n)), delistings that have not been adopted by the United States Environmental Protection Agency (USEPA) may be proposed to the Board by adjusted standard petition. Hrg. Resp. 2 at 1. Further, when an adjusted standard petition is filed, Section 28.1 of the Act (415 ILCS 5/28.1(a) (2006)) calls upon the Board to make an “adjudicatory determination.” *Id.*

The Board’s procedural rules concerning adjusted standards, PDC continues, provide that a hearing is not always required, but a public hearing will be held upon the request of any person received by the Board within 21 days after publication of notice of the petition’s filing. Hrg. Resp. 2 at 1-2, citing 35 Ill. Adm. Code 104.408, 104.420. These Board hearing provisions are “more liberal” than corresponding USEPA procedures for RCRA delistings, according to PDC. *Id.* at 2. PDC explains:

When a request for RCRA delisting is presented directly to the USEPA for an administrative determination, a public hearing is held only at the discretion of the USEPA Administrator, upon the written request of an interested person, who must “state the issues to be raised and explain why written comments would not suffice to communicate the person’s views.” *Id.*, quoting 40 C.F.R. § 260.20(d).

On April 28, 2008, PDC published notice of the filing of its adjusted standard petition. PDC asserts therefore that requests for public hearing should have been filed no later than May 19, 2008, twenty-one days after notice. Hrg. Resp. 2 at 2. PDC notes that because requests for hearing were made within 21 days, the Board held a hearing, which took place on August 18, 2008, at the Peoria Public Library in Peoria, Peoria County. *Id.* at 2-3. PDC further notes that

on August 11, 2008, “105 days after the date of the publication of the petition notice,” Representative Bill Mitchell requested that the Board hold a second public hearing, specifically in DeWitt County. *Id.* at 3.

PDC states that it presented the testimony of qualified expert witnesses at hearing. Though neither Board nor IEPA staff present questioned these witnesses at hearing, PDC observes that the Board posed to PDC a comprehensive list of pre-hearing questions to which PDC had responded before hearing, and IEPA filed a recommendation to which PDC responded before hearing. Hrg. Resp. 2 at 3-4. Further, technical staff from both IEPA and USEPA provided pre-filing input to PDC on the delisting petition. *Id.* at 4.

PDC observes that twenty-seven persons offered oral public comment at hearing, including representatives from five of the ten steel mills that send their K061 waste to PDC for treatment and disposal. Hrg. Resp. 2 at 4. According to PDC, during this public comment session, Mr. Varble asked for a second hearing and asserted that the Act’s rulemaking provisions require two public hearings in this proceeding. *Id.* at 4-5. PDC counters that an adjusted standard proceeding, such as this delisting request, is not a “statewide rulemaking of general applicability.” *Id.* at 5. Instead, PDC seeks an adjudicatory determination from the Board that would, “on the basis of a highly technical demonstration, approve a site-specific process that delists a particular hazardous waste so that it can be safely disposed of in a Subtitle D landfill, instead of a Subtitle C landfill.” *Id.* PDC asserts:

That the resulting treated waste would be characterized in a manner that allows for disposal in any Illinois permitted Subtitle D landfill does not turn this proceeding into a rulemaking of general applicability, nor does it in any way implicate local government siting pursuant to Section 39.2 of the Act [415 ILCS 5/39.2 (2006)]. *Id.*

PDC argues that the August 18 public hearing was sufficient and maintains that further public hearings, to allow for additional oral public comment, “will not serve to provide evidence which further informs the Board on the viability of PDC’s proposed technical process, which is the decision the Board is here called upon, and qualified to, determine.” Hrg. Resp. 2 at 5. PDC further asserts that the Board’s hearing was fair, adding that the hearing’s transcript “demonstrates that any claims of public commentators otherwise are misplaced.” *Id.*

In addition, PDC states that the Board’s hearing meets the requirements of the Act and maintains that more hearings that “serve to delay” a Board determination “will highly prejudice” PDC. Hrg. Resp. 2 at 5. Given the “limited space available” for disposal at PDC’s Peoria County facility, an “affirmative decision on this petition by the Board is essential to PDC’s continued ability to treat K061 waste into 2009.” *Id.* at 6. PDC urges that this case proceed according to the schedule announced by the hearing officer at hearing, including the public comment deadline of September 11, 2008, and the respective brief filing deadlines of September 25 and October 2, 2008, for PDC and IEPA. *Id.*

**SENATOR BRADY'S LETTER CONCERNING
ADDITIONAL HEARINGS**

On August 29, 2008, State Senator Bill Brady of the 44th District filed a letter with the Board (PC 24) stating that it is his “opinion that further public hearings in Peoria Disposal Company’s (PDC) delisting petition do not appear to be necessary, especially given PDC’s voluntary commitment to DeWitt County concerning Clinton Landfill.” PC 24 at 1. Senator Brady notes that both Indian Creek Landfill and Clinton Landfill are located within the 44th District. *Id.* It is the Senator’s understanding that the Hopedale Township Board has “expressed its support of PDC’s K061 delisting petition” and that IEPA has reviewed PDC’s petition and “has no objection” to the Board granting the delisting. *Id.*

Senator Brady states that PDC is an 80-year old central Illinois company with “an excellent and long history of compliance with environmental law and regulations.” PC 24 at 2. It is Senator Brady’s understanding that if PDC does not receive the K061 delisting, PDC:

may be forced to lay off most of its 70 union employee work force in Peoria, which accounts for an approximate \$3,500,000 payroll, as this is the largest waste stream that PDC currently processes at its facility in Peoria County. In addition, PDC’s steel mill customers would have to transport their K061 waste to more distant outlets, which would have a multi-million dollar cost impact on their facilities. Finally, Tazewell County and Hopedale Township could stand to collectively lose hundreds of thousands of dollars in new host fees for beneficial programs like municipal recycling grants, environmental enforcement activities and road improvement programs. *Id.*

Senator Brady states that for all of these reasons, including the “fact that the Illinois steel industry” has indicated it needs PDC’s services “to continue to be competitive and keep good paying jobs at its facilities in Illinois,” it is his opinion that further public hearings do not appear necessary. PC 24 at 2. The Senator concludes by urging the Board to reach an expedited decision on PDC’s petition. *Id.*

DISCUSSION

The Board has thoroughly reviewed each of the requests that the Board hold one or more additional public hearings in this adjusted standard proceeding, as well as each of the responses to the requests. For the reasons provided below, the Board declines to hold another hearing. As explained in the conclusion of this order, however, the Board will keep the public comment period open for 14 extra days based on the considerable public interest in this case.

The Act (415 ILCS 5 (2006)) requires an adjusted standard petitioner to publish notice of the petition’s filing by “advertisement in a newspaper of general circulation in the area likely to be affected” by the proposal. *See* 415 ILCS 5/28.1(d)(1) (2006); *see also* 35 Ill. Adm. Code 104.408(a). Publication must take place within 14 days after the petition is filed, or the Board lacks jurisdiction to hear the petition. *See, e.g., In re* Petition of SCA Tissue North America, L.L.C. for an Adjusted Standard from 35 Ill. Adm. Code 218.301 and 218.302(c), AS 05-1 (Jan.

6, 2005). The newspaper notice must indicate that any person may cause a public hearing to be held on the proposed adjusted standard by filing a hearing request with the Board within 21 days after publication. *See* 415 ILCS 5/28.1(d)(1) (2006); 35 Ill. Adm. Code 104.408(b). Within 30 days after filing the petition, the petitioner must file a certificate of publication with the Board. *See* 35 Ill. Adm. Code 104.410.

On April 30, 2008, PDC filed a certificate of publication with the Board, documenting that the required notice of the petition was published on April 28, 2008, in the *Peoria Journal Star*. The Board found in its June 5, 2008 order that PDC met the notice requirements of the Act and the Board's procedural rules. *See* RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company, AS 08-10, slip op. at 2 (June 5, 2008).

Under the Act, the Board "shall hold a public hearing" whenever a request is made within 21 days after publication of newspaper notice of the adjusted standard petition. *See* 415 ILCS 5/28.1(d)(2) (2006); *see also* 35 Ill. Adm. Code 104.408. As found in the Board's order of June 5, 2008, the Board received timely hearing requests on May 12, 14, 17, and 19, 2008. *See* RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company, AS 08-10, slip op. at 2 (June 5, 2008); *see also* 35 Ill. Adm. Code 104.420(a) ("The requests must be filed not later than 21 days after the date of publication of the petition notice."), 104.422(a)(2).

The Board therefore directed that a public hearing be held, even though PDC had waived hearing. *See* RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company, AS 08-10, slip op. at 2 (June 5, 2008). The Act provides that if a hearing is to be held on an adjusted standard petition, then "at least 20 days before the hearing the Board shall publish notice of the hearing by advertisement in a newspaper of general circulation in the area likely to be affected." 415 ILCS 5/28.1(d)(2) (2006). The Board's procedural rules further provide that "[h]earings are to be held in the county likely to be affected by the petitioner's activity that is the subject of the proposed adjusted standard." 35 Ill. Adm. Code 104.422(b). The public hearing took place on August 18, 2008, in Peoria, Peoria County. Notice of the hearing was published on July 3, 2008, in the *Peoria Journal Star*.

The August 18 hearing was held in an auditorium at the Peoria Public Library, beginning at 3:00 p.m., and included evening hours. As stated in the Board hearing officer's June 16, 2008 notice of hearing: "The hearing officer will hold the record open until at least 6:00p.m., and will stay until everyone has an opportunity to speak." AS 08-10 Hearing Notice at 1 (June 16, 2008). The hearing lasted until 6:35 p.m. and was attended by upwards of 100 members of the public, including citizens of Peoria, Tazewell, and DeWitt Counties. Twenty-seven citizens provided oral public comments at hearing, including members of the Heart of Illinois Sierra Club and Peoria Families Against Toxic Waste, as well as Mr. Varble, President of WATCH. The hearing officer also received seven written public comments at hearing (PC 9-15). *See* AS 08-10 Hearing Report at 1, Attachment A (Aug. 19, 2008).

PDC's waste stabilization facility, which would be the site for receiving and treating the K061 EAFD under PDC's proposal, is located in Peoria, Peoria County. No one has argued to the Board that Peoria County is not "the county likely to be affected by the petitioner's activity" (35 Ill. Adm. Code 104.422(b)) or that the *Peoria Journal Star* is not "a newspaper of general

circulation in the area likely to be affected” (415 ILCS 5/28.1(d)(2) (2006)). In fact, Mr. Varble conceded at the August 18, 2008 hearing that the “public hearing . . . in the affected county . . . is what we are at today.” Tr. at 46.

The Board appreciates the concerns expressed about the inherent limits of newspaper notices and the availability of viable transportation for citizens to attend hearings. The Board does not suggest that no other area or county of the State could be affected if PDC’s requested delisting is granted. PDC’s petition seeks permission to be able to dispose of the treated EAFD, if delisted, in any Subtitle D non-hazardous waste landfill in Illinois. Petition at 13-14. Of course, potential environmental concerns rarely if ever respect political boundaries, and given the reality of finite administrative resources, the adjusted standard provisions wisely require only that the notice be provided and the hearing be held in “the” area or county “likely” to be affected. 415 ILCS 5/28.1(d)(2); 35 Ill. Adm. Code 104.422(b) (2006). More importantly, however, especially with the expanded public comment period discussed below, citizens from every county in the State have the opportunity to express their views through written public comment, which the Board will give the same weight as any oral comments that would be received at the requested hearings in DeWitt, Tazwell, and Peoria Counties.

In addition, though not legally required, the Board did provide public notice of both PDC’s April 25, 2008 petition and the Board’s August 18, 2008 hearing through the Board’s website and monthly newsletter, the *Environmental Register*. For example, notice of the August 18 hearing was given on the Board website’s “Calendar of Events” roughly two months before hearing. PDC’s petition, including its references to Clinton Landfill, Pike County Landfill, and Indian Creek Landfill No. 2, has been available to the public on the Board’s website since it was filed in April of this year, some four months before hearing. *See* Petition, Technical Support Document at 2-3.

The Board finds that Mr. Varble’s and Ms. Offutt’s reliance on Section 28(a) of the Act (415 ILCS 5/28(a) (2006)) is misplaced. That provision, requiring that a hearing be held in “at least two areas,” applies only to rulemaking proceedings in which the Board is considering a proposal for a statewide regulation. 415 ILCS 5/28(a) (2006); *see also* 35 Ill. Adm. Code 102.412(a). On the other hand, an adjusted standard proceeding, like PDC’s delisting request, is not a rulemaking and cannot amend a statewide regulation. This is made clear in the Act, which explicitly exempts adjusted standard proceedings from the rulemaking provisions of the Act and the Illinois Administrative Procedure Act (5 ILCS 100 (2006)). *See* 415 ILCS 5/28.1(a) (2006). Rather, an adjusted standard request is an adjudicatory proceeding, by which the petitioner seeks an alternative standard that would apply to the petitioner in lieu of the regulation of general applicability. *See* 415 ILCS 5/28.1(a) (2006).

Nor does the official transcript of the August 18, 2008 hearing support Mr. Varble’s claims of procedural irregularities. Twenty-seven persons signed up at hearing to provide oral comment. *See* AS 08-10 Hearing Report at 1, Attachment A (Aug. 19, 2008). To give each person the chance to speak after PDC’s presentation, the hearing officer necessarily limited the time period of each commenter. Those commenters who approached ten minutes of speaking time were appropriately reminded by the hearing officer to conclude their remarks. *See, e.g.,* Tr. at 110. The hearing officer has the authority to establish such reasonable time limits. *See* 35 Ill.

Adm. Code 101.610(e). Commenters were also informed by the hearing officer that their oral comments could be supplemented in writing. *See, e.g.*, Tr. at 51, 61.

Further, PDC's legal counsel breached no procedural rule by objecting to a portion of Mr. Varble's comment at hearing and supporting that objection with argument. *See* 35 Ill. Adm. Code 101.610(l). The objection took only a few moments (*see* Tr. at 50-51) and did not reduce Mr. Varble's available speaking time.³ Mr. Varble's oral comments were lengthier than those of most of the other speakers. The transcript also reflects that, contrary to his assertion, Mr. Varble ended his comments of his own accord. *See* Tr. at 55. Moreover, as stated by the hearing officer at hearing, not only may all interested persons file written public comments with the Board, but those written filings are given no less weight by the Board than the oral comments received at the August 18 hearing. *See* Tr. at 61. The Board notes that Mr. Varble has availed himself of the ability to supplement his oral comments, having since submitted ten written comments. *See* PC 6-8, PC 17-19, PC 21, PC 22, PC 25, PC 26.

The Board has always considered public participation in Board proceedings to be vital to the efficacy of Illinois' system of environmental decision-making. That "the public may participate in various types of environmental matters before the Board" is "one of the philosophical underpinnings of the Act." Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20, slip op. at 4 (Dec. 21, 2000). The Board believes that the hearing held on August 18 in Peoria provided a meaningful opportunity for citizens to participate. The attendance at that hearing confirms that numerous members of the public were able to and did take advantage of that opportunity. The hearing, however, was but one way for citizens to participate in this proceeding. Public comments, whether transcribed at hearing or submitted in writing, become a part of the official record of this case and are thoroughly reviewed by the Board. The Board has received 26 written public comments in this proceeding so far, most of which were filed after the close of the August 18 hearing.

Aside from PDC's assurances regarding the disposal of any delisted material at Clinton Landfill, the Board wishes to emphasize to Representative Mitchell, Senator Brady, and all concerned citizens the nature of a RCRA delisting proceeding. Consistent with USEPA criteria, the Board's regulations require a delisting petitioner to prove, among other things, that the treated material "does not meet any of the criteria under which the waste was listed as a hazardous or acute hazardous waste" and "does not exhibit any of the characteristics" of hazardous waste. *See* 35 Ill. Adm. Code 720.122(a)(1), (d)(3); *see generally* 35 Ill. Adm. Code 720.122(a), (b), (d), (n). In short, to receive a delisting, it must be shown that the material is no longer hazardous waste under RCRA. Without this demonstration by PDC to the Board's satisfaction, the K061 EAFD treatment residue cannot be delisted and, by law, cannot be disposed of in any Subtitle D non-hazardous waste landfill in Illinois. Furthermore, when the Board decides this case on the merits, the Act requires that the Board "issue an order and opinion

³ PDC's attorney pointed out that Mr. Varble was relying upon the rulemaking provisions of the Act and the Board's procedural rules (415 ILCS 5/28(a) (2006); 35 Ill. Adm. Code 102.412) rather than the adjusted standard provisions. *See* Tr. at 50-51. The procedures that govern an adjusted standard proceeding are found in Section 28.1 of the Act and Part 104, Subpart D of the Board's procedural rules. *See* 415 ILCS 5/28.1 (2006); 35 Ill. Adm. Code 104.400-104.428.

stating the facts and reasons leading to the final Board determination.” 415 ILCS 5/28.1(d)(3) (2006).⁴

The Board stresses that it is carefully scrutinizing PDC’s petition, as it does all delisting requests. For example, because the Board found shortcomings in the technical justifications of their respective petitions, BP Products North America, Inc. and Waste Management of Illinois, Inc. were recently denied delisting requests. *See* Petition of BP Products North America, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122, AS 07-1 (Feb. 15, 2007); Petition of Waste Management of Illinois, Inc. for RCRA Waste Delisting Under 35 Ill. Adm. Code 720.122 for Solid Treatment Residual for CID Recycling and Disposal Facility Biological Liquid Treatment Center, AS 05-7 (Dec. 15, 2005). Here, for instance, through a July 15, 2008 hearing officer order, the Board raised four pages of detailed questions and issues regarding PDC’s petition, requiring PDC to respond before hearing. PDC timely responded on August 7, 2008, with a 137-page filing, which the Board will take into account along with the rest of the record of this proceeding, including the hearing testimony of PDC in support of its request and the oral and written public comments of all interested persons.

Under these circumstances, the Board declines the requests to hold another public hearing.

CONCLUSION

The Board appreciates the keen public interest in this case, and has carefully considered all of the requests for holding one or more additional public hearings, including all of the arguments articulated in support of and in opposition to the requests. For the reasons provided in this order, the Board declines the requests to hold another hearing. In doing so, the Board reiterates two points made above. First, concerned citizens have had, and will continue to have through the extended the public comment period, meaningful opportunities to be heard concerning PDC’s delisting request. Second, the residue from PDC treating K061 EAFD cannot be delisted without proof, in accordance with strict federal standards, that the material is no longer hazardous waste under RCRA.

This proceeding has benefited from the citizen contributions made to the record at and after the August 18, 2008 public hearing in Peoria. Twenty-seven oral and seven written public

⁴ This adjusted standard proceeding, Board docket AS 08-10, in which the Board is considering PDC’s RCRA delisting request, is separate and distinct from two recent proceedings before the Board involving PDC. In Board docket PCB 06-184, the Board on June 21, 2007, affirmed the Peoria County Board’s decision to deny siting approval of PDC’s application to site an expansion of PDC’s hazardous waste landfill. *See* Peoria Disposal Company v. The Illinois Pollution Control Board and County of Peoria, No. 3-07-0435 (3rd Dist.), *appeal pending*. In Board docket PCB 08-25, the Board on January 10, 2008, affirmed IEPA’s denial of PDC’s application for modification of its RCRA Part B permit to allow the expansion necessary to construct a proposed residual waste landfill. *See* Peoria Disposal Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, No. 3-08-0030 (3rd Dist.), *appeal pending*.

comments were received at hearing, and the Board has received numerous written public comments since the close of hearing. The Board welcomes continued public participation through the submission of written public comments, which form a critical part of this proceeding's official record. To that end, and given the substantial public interest in this case, the Board extends by 14 days the deadline for filing public comments, from September 11, 2008 to September 25, 2008. In light of this extension, the post-hearing briefs of PDC and IEPA will be due on October 9, 2008 and October 23, 2008, respectively, though either party may file sooner.⁵

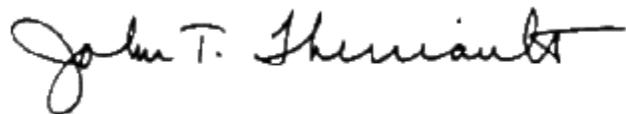
The Board takes public comments very seriously, whether made orally at hearing or in writing. The Board encourages interested persons filing public comments to include all of the information they wish the Board to consider when the Board makes its final decision on PDC's petition. Written public comments may be submitted to the Board at:

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

Board docket AS 08-10 should be indicated on the public comment. Additionally, public comments may be filed electronically through the Clerk's Office On Line (COOL) on the Board's website at www.ipcb.state.il.us. Any person may file a public comment, regardless of whether the person has already provided oral or written public comment in this proceeding. The August 18 hearing transcript, as well as most other documents making up the official record of this proceeding, may be viewed, searched, and downloaded through COOL.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 4, 2008, by a vote of 4-0



John T. Therriault, Assistant, Clerk
Illinois Pollution Control Board

⁵ If IEPA decides not to file a post-hearing brief, it must notify the hearing officer as soon as that decision is made.