

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF

RCRA DELISTING ADJUSTED STANDARD)
PETITION OF PEORIA DISPOSAL COMPANY) AS 08-10
) (Adjusted Standard – Land)
) (RCRA Delisting)

PETITIONER'S RESPONSE TO REQUESTS FOR ADDITIONAL PUBLIC HEARINGS

NOW COMES Petitioner Peoria Disposal Company ("PDC"), by its attorneys, Elias, Meginnes, Riffle & Seghetti, P.C. and Brown, Hay & Stephens, LLP, and as and for its response to the requests for additional public hearings made at the public hearing in this case on August 18, 2008, states as follows:

1. Delistings that have not been adopted by United States Environmental Protection Agency (the "USEPA") should be proposed to the Board pursuant to a petition for adjusted standard pursuant to Section 28.1 of the Illinois Environmental Protection Act (the "Act"). *See* 35 Ill. Adm. Code §720.122(n).
2. A Petition for Adjusted Standard is governed by Section 28.1 of the Act, which provides that the Board make an "adjudicatory determination" on the petition. 415 ILCS §5/28.1(a).
3. PDC filed this Petition for Adjusted Standard on April 25, 2008 in accordance with the Act, Board regulations and prior Board delisting cases.
4. Pursuant to Section 28.1 of the Act, the Board has adopted procedural rules concerning adjusted standards which provide that a hearing is not always required in an adjusted standard proceeding, but a public hearing will be held "upon the request of any person received

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by the Board within 21 days after publication of the notice of the filing of the petition.” 35 Ill. Adm. Code §§104.408 and 104.420.

5. Such hearing provisions are more liberal than corresponding federal procedures for RCRA delistings. 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.” See 40 CFR §260.20(d).

6. In accordance with the Act and Board procedural rules, PDC published notice of the filing of this petition on April 28, 2008. Requests for public hearing should have been filed no later than May 19, 2008, 21 days after filing of the notice.

7. In its Order dated June 5, 2008, the Pollution Control Board found the following:

On April 30, 2008, PDC filed a certificate of publication, documenting that the required notice of the petition was published on April 28, 2008, in the *Peoria Journal Star*. The Board finds that PDC has met the notice requirements of the Act and the Board’s procedural rules.

* * *

Because notice of PDC’s adjusted standard petition was published in the *Peoria Journal Star* on April 28, 2008, any hearing request was required to be filed with the Board by May 19, 2008. The Board has received four timely requests that a hearing be held. On May 12, 2008, Lisa Offutt filed a hearing request; on May 14, 2008, Tom Edwards filed a hearing request; on May 17, 2008, Kim McLean Converse filed a hearing request on behalf of Peoria Families Against Toxic Waste; and on May 19, 2008, Joyce Blumenshine filed a hearing request on behalf of the Heart of Illinois Group Sierra Club. See 35 Ill. Adm. Code 101.300(b)(2) (Converse’s request, received on May 20, 2008, is deemed filed on the U.S. Mail postmark date under the “mailbox rule”). Any one of these hearing requests is alone sufficient to trigger the requirement

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to hold a hearing on PDC's requested relief. See 415 ILCS 5/28.1(d)(2) (2006); 35 Ill. Adm. Code 104.422(a)(2).

The Board therefore accepts this matter for hearing. * * *

(Order entered June 5, 2008, pgs. 1 and 2).

8. On August 11, 2008, 105 days after the date of the publication of the petition notice, Representative Bill Mitchell wrote a letter to the Board requesting that it hold a second public hearing, specifically in DeWitt County. The Board docketed the request as Public Comment on August 13, 2008. On August 14, 2008, PDC filed a response to Representative Mitchell's request.

9. In accordance with the Act, the Board held a hearing on August 18, 2008, at the Peoria Public Library in Peoria, Illinois (Peoria County).

10. At the hearing, PDC presented testimony from qualified expert witnesses, Laura Curtis and Dr. Ajit Chowdhury. Ms. Curtis, a senior environmental engineer with RMT, Inc., testified as to her familiarity with K061 waste delistings in general and the instant petition in particular. Ms. Curtis's testimony consisted mainly of a summary of the preparation of the Petition for Adjusted Standard, the technical substance of which she prepared. Dr. Chowdhury has a bachelor's degree, master's degree and Ph.D. in chemical engineering and has been a chemical engineer for 36 years. He developed the chemistry and technology for stabilization of the K061 waste, which he has licensed to PDC and which he is considering patenting.

11. Prior to the hearing, the Board reviewed the petition and, on July 15, 2008, submitted a comprehensive list of pre-hearing questions to PDC. PDC responded to those questions on August 7, 2008. At hearing, the Board had no further questions: "At this time, the

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Board has reviewed the responses provided by PDC, and I think our questions that were raised in those questions have been answered. Thank you.” (Tr. p. 29, Anand Rao).

12. The other party to this proceeding is the Illinois Environmental Protection Agency (the “IEPA”). *See, e.g.* 35 Ill. Adm. Code §104.402. The IEPA was present through, and represented by, counsel at the hearing. The IEPA had no questions of the PDC’s witnesses at hearing.

13. As the record reflects, technical staff from both the IEPA and the USEPA provided input and review of the Petition prior to its filing with the Board. The IEPA also reviewed the petition subsequent to its filing, as evidenced by its recommendation concerning the petition, filed on June 12, 2008, to which Petitioner responded on June 26, 2008.

14. Consistent with the Board’s procedural rules and subsequent to the Petitioner’s testimony, the Hearing Officer opened the hearing for public comment. Persons who offer public comment are neither sworn, nor subject to examination or cross examination. Public comment is not testimony and is not entitled to the same weight as testimony.

15. Twenty-seven persons offered public comment at the public hearing (including representatives from five of the ten steel mills that send their K061 waste to PDC for treatment and disposal).

16. Some public commentators requested that the Board hold a second hearing. One public commentator, Matt Varble, asserted that the Act (“Title 35 of the Environmental Protection Act”, Tr. 45) requires two public hearings. In particular, he cited the Board’s procedural rules found at 35 Ill. Adm. Code §102.412, which govern Board public hearings relevant to the Board’s authority, pursuant to Section 27 and 28 of the Act, to promulgation state-wide

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regulations of general applicability: "In the case of state-wide regulations hearings shall be held in at least two areas." *See* 415 ILCS §5/28(a).

17. An adjusted standard proceeding, such as this delisting request, is a not a state-wide rulemaking of general applicability pursuant to Section 27 and 28; this delisting petition instead 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. 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.

18. The public hearing the Board held in this matter was sufficient. Further public hearings, to allow for further 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.

19. The public hearing the Board held in this matter was fair. A review of the transcript of the public hearing demonstrates that any claims of public commentators otherwise are misplaced.

20. The public hearing the Board held in this matter meets the requirements of the Act. Further hearings that serve to delay a Board determination in this matter will highly prejudice the Petitioner.

21. The Petitioner has met all the requirements of the Act and has spent significant time and resources developing and proposing this delisting petition. The petition is supported by

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the steel industry the Petitioner serves (*see* Tr., pages 83-84, 86-91, 131-138). Moreover, as expressed by PDC in its Motion for Expedited Ruling, given the limited space available 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.

22. This matter should proceed according to the schedule set by the Pollution Control Board. The public comment deadline has been set to September 11, 2008. (*See* the Order entered on August 21, 2008). PDC has been directed to file its post-hearing Brief on or before September 25, 2008, and the Illinois Environmental Protection Agency has been directed to file its Brief on or before October 2, 2008. (This schedule was announced at the public hearing on August 18, 2008).

23. In its Order on June 5, 2008, the Pollution Control Board granted PDC's Motion for Expedited Hearing, stating as follows:

Considering all of the factors, including the economic information PDC has presented, the Board grants the motion for expedited review, consistent with decision deadlines and available resources. See 35 Ill. Adm. Code 101.512(c); see also Petition of Big River Zinc Corp. for an Adjusted Standard Under 35 Ill. Adm. Code 720.131(c), AS 06-4, slip op. at 1-2 (Aug. 4, 2006) (granting motion to expedite review). As stated above, the Board directs the hearing officer to proceed expeditiously to hearing.

(Order entered June 5, 2008, pgs. 3-4).

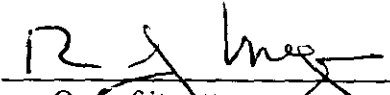
WHEREFORE, PDC respectfully requests that the Pollution Control Board decline the requests for additional public hearings made at the public hearing on August 18, 2008.

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Dated: August 29, 2008

Respectfully submitted,

PEORIA DISPOSAL COMPANY,
Petitioner

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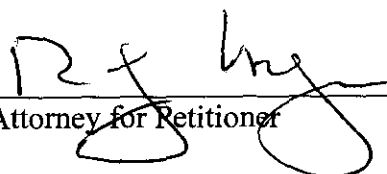
CERTIFICATE OF FILING AND SERVICE

I certify that on August 29, 2008, I filed the foregoing document with the Clerk of the Illinois Pollution Control Board by email, with authorization from the Clerk's Office, and I served the foregoing document on all parties hereto, by enclosing a true copy of same in an envelope addressed to the attorney of record of each party or the party as listed below, with first class postage fully prepaid, and depositing each of said envelopes in the United States Mail at 5:00 p.m. on said date:

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