

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

VEOLIA ES TECHNICAL SOLUTIONS,
L.L.C.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Respondent.

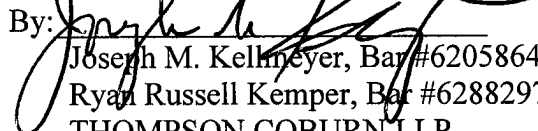
PCB No. 010-_____
(RCRA Permit Appeal)

NOTICE OF FILING

John Therriault, Assistant Clerk of the Board
Illinois Pollution Control Board
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Suite 11-500
Chicago, IL 60601

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
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Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a **Petition for Hearing and Review of the Illinois Environmental Protection Agency's Final Agency Decision Regarding RCRA Hazardous Waste Management Permit Log No. B-29R, Issued to Veolia ES Technical Solutions, L.L.C.** and Entries of Appearance for Joseph M. Kellmeyer and Ryan Russell Kemper, copies of which are herewith served on you by approved electronic means and/or First-Class mail, postage pre-paid.

By: 
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Respondent.)	

**PETITION FOR A HEARING AND REVIEW OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY'S FINAL AGENCY DECISION REGARDING RCRA
HAZARDOUS WASTE MANAGEMENT PERMIT Log No. B-29R, ISSUED TO VEOLIA
ES TECHNICAL SOLUTIONS, L.L.C.**

COMES NOW the Petitioner, Veolia ES Technical Solutions, L.L.C. ("Veolia"), by its attorneys Thompson Coburn LLP, pursuant to the Illinois Environmental Protection Act, 735 ILCS 5/40, and 35 Ill. Adm. Code Part 105, Subpart B, and 35 Ill. Adm. Code § 705.212, and does hereby appeal the December 2, 2009 decision of the Respondent the Illinois Environmental Protection Agency ("Agency" or "IEPA") in granting Veolia its RCRA Permit #29R, Part B Log No. B-29R, but, in so doing, denying the permit as requested in Veolia's application for RCRA permit renewal. As set forth below, Veolia appeals the Agency's issuance of RCRA Permit #29R, Part B Log No. B-29R in its entirety.

1. Veolia received its initial RCRA Part B Permit on March 31, 1988. (*See infra Exhibit A*, Section I.C., Page I-2 of I-2.) This initial permit expired on May 5, 1998, consequently, Veolia submitted an application for renewal in November of 1997. (*See id.*)

2. The Agency deemed Veolia's application for renewal administratively complete on or about April 17, 1998. Since that time, Veolia has submitted and has been required to

submit information and materials to the Agency on numerous occasions in pursuit of Agency approval of its application for renewal, including but not limited to submissions dated August 30, 1999, January 7, 2000, November 16, 2000, January 26, 2001, June 26, 2002, May 30, 2003, January 16, 2004, and October 30, 2007. (*See infra* **Exhibit A**, Section I.C., Page I-2 of I-2.)

3. In the midst of these submissions, IEPA issued draft versions of Veolia's permit in June of 2003 and July of 2008. In each instance, Veolia submitted timely comments to the draft permit provisions. Veolia's comments on the June 2003 draft permit are dated September 17, 2003 and are attached hereto as **Exhibit B** (hereinafter "Veolia 2003 Comments"). Veolia's comments on the July 2008 draft permit are dated September 12, 2008 and are attached hereto as **Exhibit C** (hereinafter "Veolia 2008 Comments").

4. Finally, 12 years after Veolia submitted its application for renewal of its RCRA Part B Permit, on December 2, 2009, the Agency issued and served upon Veolia the Agency's final decision granting Veolia's renewal request; however, in so doing, the Agency denied the RCRA permit that Veolia requested pursuant to its duly submitted application for renewal. A true and accurate copy of the Agency letter dated December 2, 2009 and accompanying RCRA Permit #29R, Part B Log No. B-29R are attached hereto as **Exhibit A** (hereinafter "Agency Approval Letter and RCRA Permit").

5. Veolia appeals the Agency's issuance of the Approval Letter and RCRA permit in its entirety. Veolia's grounds for appeal are three-fold: (a) the Approval Letter and RCRA Permit contain numerous erroneous findings of fact and conclusions of law, including but not limited to those set forth in detail in subparagraphs 5(a) through 5(o) below; (b) the Agency's final permit decision as represented by the Approval Letter and RCRA Permit is an abuse of the Agency's discretion as it arbitrarily and capriciously inserted and/or denied certain permit

conditions; and/or (c) the Approval Letter and RCRA Permit raise numerous important policy considerations, which the Board, in its discretion, should review. In addition to appealing the entirety of the Approval Letter and RCRA Permit, Veolia sets forth the following specific defects in the RCRA permit as issued as grounds for appeal:

a. Page II-6 of II-7 Section II: Containers, §§ J.1; J.4; J.5; J.6 regarding Special Requirements for Incompatible Waste: The Agency failed to consider relevant facts and circumstances regarding the transportation, nature, and handling of the waste that Veolia processes and thus improperly changed the method of container storage from the modified U.S. Department of Transportation compatibility procedure that Veolia utilizes under its existing RCRA permit, and that was set forth in the June 2003 draft permit. (*See* Veolia 2008 Comments at 2.)

b. Page III-4 of III-8 Section III. Tank Systems, § F.2 regarding Inspections: Section F.2 requires Veolia to “perform a visual inspection, a pressure test **and** an ultrasonic thickness test” on certain tank systems (emphasis added). Veolia believes that the “and” in this provision is a typographical error that should be changed to “or” because performing pressure tests on certain tank systems that Veolia utilizes would result in tank failures.

c. Page IV-2 of IV-6 Section IV. Incineration §§ A.9; A.10; A.11; A.12; A.13: Sections A.9 through A.13 regarding mercury feed rate limits and mercury analysis procedures are erroneous, arbitrary, capricious, and unsupported by the relevant facts and data, including but not limited to the results of the Human Health Risk Assessments performed by both the Agency and Veolia during the 12 years that Veolia’s application for renewal has been pending before the Agency; more specifically:

(i) *Section A.9:* (1) sets forth a total mercury annual feed rate limit of 3.63 kilograms that does not take into consideration the removal efficiencies of the incineration units that have been demonstrated through comprehensive metals testing results submitted to the Agency in August of 2008; (2) depends upon a flawed Human Health Risk Assessment performed by the Agency; (3) does not account for the results of the Human Health Risk Assessment performed by Veolia and submitted to the Agency in November of 2005; and (4) when combined with the analytical requirements set forth in the remainder of the permit, makes Veolia's facility non-viable as a ongoing business. (*See* Veolia 2008 Comments at 5-6.)

(ii) *Section A.10* requires Veolia to implement special mercury procedures that are overly onerous, appear punitive, and have no regulatory or safety basis. Under its existing RCRA permit, Veolia has implemented an effective Waste Analysis Plan ("WAP") that reviews all incoming waste for mercury in compliance with all applicable RCRA requirements. (*See* Veolia 2008 Comments at 6-15.)

(iii) *Sections A.11, A.12, and A.13* require recordkeeping provisions that are overly onerous, appear punitive, and have no regulatory or safety basis. Veolia currently maintains all of the required records that are set forth in Sections A.11, A.12, and A.13 in full compliance with RCRA regulations. (*See* Veolia 2008 Comments at 15-16.)

d. Section IV.a. Fixed Hearth Incinerators No. 2 & 3 and Section IV.b. Transportable Rotary Kiln Incinerator (TRKI No. 4)

The operating conditions specified in Sections IV.a.D., IV.a.E., IV.b.D. and IV.b.E. are inconsistent with the current incineration MACT standards and Veolia's current operating parameter limits ("OPLs") as defined in Veolia's October 14, 2008, Document of Compliance

("DOC") (showing Veolia's adherence to the permanent replacement MACT standards.)¹ The OPLs are also based upon a flawed Human Health Risk Assessment performed by the Agency and do not account for the results of the Human Health Risk Assessment performed by Veolia and submitted to the Agency in November of 2005. In short, the OPLs contained in Sections IV.a.D., IV.a.E., IV.b.D. and IV.b.E. saddle Veolia with inconsistent and incompatible compliance obligations under RCRA and the CAA. Specifically, the grounds for Veolia's appeal include but are not limited to the following defects in the provisions of Section IV.a:

(i) Section B.2 sets forth a HCL limit that is neither the Illinois standard under 35 Ill. Adm. Code § 724.443(b) nor the current incinerator MACT standard under 40 C.F.R. Part 63, Subpart EEE.

(ii) Sections C.2. & C.8 set forth a total chlorine feed rate and a lower combustion chamber temperature standard that are inconsistent with and/or have been superseded by the OPLs contained in Veolia's DOC.

(iii) Sections D.1, D.2, D.3, D.4, and D.5 set forth operating conditions and limits that are inconsistent with and/or have been superseded by the OPLs contained in Veolia's DOC.

(iv) Section D.7 sets forth a limit for carbon monoxide concentrations in stack gas that is inconsistent with and/or has been superseded by the provisions of 40 C.F.R. Part 63, Subpart EEE.

(v) Section E sets forth automatic waste cut-off procedures that are inconsistent with and/or have been superseded by the OPLs contained in Veolia's DOC.

¹ Veolia is required to place a Document of Compliance ("DOC") in its operating record showing its compliance with the MACT permanent replacement standards pursuant to 40 C.F.R. § 63.1211. Veolia's October 14, 2008, DOC contains the operating parameter limits ("OPLs") that ensure Veolia's compliance with 40 C.F.R. §§ 63.1200 through 63.1221 (i.e., the Hazardous Waste Combustor permanent replacement MACT standards).

(vi) Section F sets forth monitoring parameters for fixed hearth incinerators No. 2 and No. 3 that are inconsistent with and/or have been superseded by the provisions of 40 C.F.R. Part 63, Subpart EEE.

(vii) Sections G.1 & G.2 set forth waste analysis monitoring requirements that are inconsistent with the requirements included in 40 C.F.R. Part 63, Subpart EEE.

(viii) Section H.3 includes an erroneous cross reference regarding the recording of one minute averages of all compliance data for Operating Limits—i.e. “Section V.a.D” should read “Section IV.aD.”

In addition, the grounds for Veolia’s appeal include but are not limited to the following defects in the provisions of Section IV.b:

(ix) Section B.2 sets forth a HCL limit that is neither the Illinois standard under 35 Ill. Adm. Code § 724.443(b) nor the current incinerator MACT standard under 40 C.F.R. Part 63, Subpart EEE.

(x) Sections C.2. & C.9 set forth a total chlorine feed rate and a lower combustion chamber temperature standard that are inconsistent with and/or have been superseded by the OPLs contained in Veolia’s DOC.

(xi) Sections D.1, D.2, D.3, D.4, and D.5 set forth operating conditions and limits that are inconsistent with and/or have been superseded by the OPLs contained in Veolia’s DOC.

(xii) Section D.7 sets forth a limit for carbon monoxide concentrations in stack gas that is inconsistent with and/or has been superseded by the provisions of 40 C.F.R. Part 63, Subpart EEE.

(xiii) Section E sets forth automatic waste cut-off procedures that are inconsistent with and/or have been superseded by the OPLs contained in Veolia’s DOC.

(xiv) Section F sets forth monitoring parameters for fixed hearth incinerators No. 2 and No. 3 that are inconsistent with and/or have been superseded by the provisions of 40 C.F.R. Part 63, Subpart EEE.

(xv) Section G sets forth waste analysis monitoring requirements that are inconsistent with the requirements included in 40 C.F.R. Part 63, Subpart EEE.

(xvi) Section K sets forth conditions concerning the powdered activated carbon injection system/line recirculation system that that are inconsistent with and/or have been superseded by the OPLs contained in Veolia's DOC.

e. Page VI-1 of VI-3, Section VI, Special Conditions Nos. 1, 3, 4:

(i) Section VI.1 provides Veolia with 60 days to submit a permit modification to amend the facility contingency plan to address flood incidents. Veolia requested 90 days to formulate this permit modification; however, the Agency did not respond to Veolia's comments regarding Section VI.1 in violation of 35 Ill. Adm. Code § 705.181 and § 705.210. (*See* Veolia 2008 Comments at 20.)

(ii) Section VI.3 sets forth a requirement for mercury testing that is not a mandatory analysis under the WAP referenced in the final permit and is inconsistent with the Agency's response to Veolia's comments, which previously contained the condition now set forth in Section VI.3. (*See* IEPA Response to Veolia 2008 Comments, Page V-1, Special Condition 6, attached hereto as **Exhibit D.**)

(iii) Section VI.4. sets forth a parameter that representative samples of conforming waste streams shall have an identified pH range not to exceed four standard units of the pH set forth in the waste profile—those representative samples of waste stream profiles that exceed four standard units are deemed nonconforming. As drafted, the four standard unit parameter of

Section VI.4 is overly burdensome and arbitrary as Veolia's current pH testing procedures, as contained in the WAP accompanying the final permit, comply with the applicable waste characterization provisions of RCRA. (*See* Veolia 2008 Comments at 18-19.)

f. Page VII-1 of VII-1, Section VII, Subpart X Unit No. 4: Section VII. Subpart X Unit No. 4 sets forth a erroneous cross reference to "Section X"; this reference should be changed to "Section IX." Veolia pointed this out in its comments, see Veolia 2008 Comments at 20; however, the Agency failed to respond to Veolia's comments in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

g. Page VIII-3 of VIII-4, Section VIII. Subpart BB, §V Skip Period Alternate for Valves, No. 4: This Section does not allow Veolia to use the "Alternative Percentage Standard for Valves" as provided by 35 Ill. Adm. Code § 724.961. Veolia requested to use this alternative standard in its comments, see Veolia 2008 Comments at 20-21; however, the Agency failed to respond to Veolia's comments in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

h. Page IX-1 et seq., Section IX. Subpart CC: Subpart CC sets forth air emissions standards applicable to certain of Veolia's waste storage tank systems. As Veolia stated in its comments, the waste storage tank systems at Veolia's facility are currently subject to the requirements of 40 C.F.R. Part 61, Subpart FF (NESHAP for Benzene Waste Operations) and have been subject to such requirements since November 25, 1996. (*See* Veolia 2008 Comments at 21-23.) Should Veolia discontinue management of BWON wastes, the waste storage tank systems will become subject to the Subpart CC requirements; however, until that time, the application of Subpart CC to Veolia's waste storage tank systems imposes inconsistent and incompatible obligations on Veolia. Moreover, the Agency failed to respond to Veolia's comments regarding Subpart CC in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

i. Page IX-5 of IX-5, Section IX. Subpart CC, §J: The outline header to Section J needs to be deleted as it is merely a continuation of Section I. Veolia pointed this out in its comments, see Veolia 2008 Comments at 23; however, the Agency failed to respond to Veolia's comment in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

j. Page IX-5 of IX-5, Section IX. Subpart CC, § J.1: Section J.1 sets forth a erroneous cross reference to "Section X.J.2"; this reference should be changed to "Section IX.J.2" Veolia pointed this out in its comments, see Veolia 2008 Comments at 24; however, the Agency failed to respond to Veolia's comment in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

k. Page IX-5 of IX-5, Section IX. Subpart CC, § J.2: Section J.2 requires a report to be submitted in the event that either of two events occurs: 1) the continuous operation of a control device which is out of compliance with the requirements of 35 Ill. Adm. Code § 724.935(c)(4) for more than 24 hours; and 2) when no flare was operated with visible emissions for five minutes or longer in a two-hour period, as defined in Section 724.933(d). 35 Ill. Adm. Code § 724.935(c)(4) sets out requirements for regenerative carbon systems; however, Veolia does not operate any regenerative carbon systems. Moreover, Veolia does not operate any flares at its facility.

l. Page X-1 et seq., Section X Corrective Action: Section X sets forth numerous erroneous cross references to "Section XI"; this reference should be changed to "Section X" as the permit does not contain a "Section XI." Veolia pointed this out in its comments, see Veolia 2008 Comments at 24; however, the Agency failed to respond to Veolia's comment in violation of 35 Ill. Adm. Code § 705.181 and § 705.210.

m. Attachments G and H: Attachments G and H contain requirements and procedures related to the initiation of corrective action at the facility. These requirements are not applicable to Veolia because the culmination of these procedures are set forth in Section X, therefore, Attachments G and H subject Veolia to redundant and/or inconsistent requirements. Moreover, the Agency failed to respond to Veolia's comments regarding Attachments G and H in violation of 35 Ill. Adm. Code § 705.181 and § 705.210. (*See* Veolia 2008 Comments at 24.)

n. Attachment D, No. 10: The screening protocol set forth in Attachment D, No. 10—"Temporary initial screening protocol"—is inconsistent with and/or has been superseded by the MACT incinerator regulations contained in 40 C.F.R. Part 63, Subpart EEE. Moreover, the Agency failed to respond to Veolia's comments regarding the screening protocol in violation of 35 Ill. Adm. Code § 705.181 and § 705.210. (*See* Veolia 2008 Comments at 25.)

o. Attachment E, List of Approved Wastes: The permit erroneously excludes three waste codes that were previously and currently approved by the existing RCRA permit: P006, U006, U033. The Agency failed to respond to Veolia's comments regarding the omission of these codes in violation of 35 Ill. Adm. Code § 705.181 and § 705.210. (*See* Veolia Comments at 25.)

6. The filing of this Petition for a Hearing and Review is timely because it has been filed within 35 days of the Agency's issuance of the Approval Letter and RCRA Permit. The time for appeal is up to and including January 6, 2010.

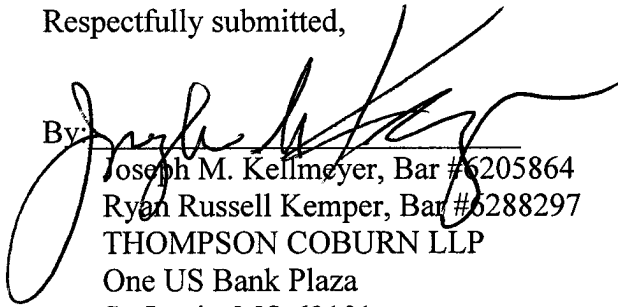
7. Joseph M. Kellmeyer and Ryan Russell Kemper file herewith an Entry of Appearance on behalf of Petitioner Veolia.

WHEREFORE, because the Approval Letter and RCRA Permit contain numerous erroneous findings of fact and conclusions of law, including but not limited to those set forth in

detail in subparagraphs 5(a) through 5(o) above; the Agency's final permit decision as represented by the Approval Letter and RCRA Permit is an abuse of the Agency's discretion as it arbitrarily and capriciously inserted and/or denied certain permit conditions; and/or the Approval Letter and RCRA Permit raise numerous important policy considerations, which the Board, in its discretion, should review, Veolia requests that the Board conduct a hearing, that the Board amend and modify the Agency's December 2, 2009 decision regarding RCRA Permit #29R, Part B Log No. B-29R as set forth above, and for such other relief as the Board deems appropriate.

Respectfully submitted,

By:



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(RCRA Permit Appeal)

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the aforementioned **Petition for Hearing and Review of the Illinois Environmental Protection Agency's Final Agency Decision Regarding RCRA Hazardous Waste Management Permit Log No. B-29R, Issued to Veolia ES Technical Solutions, L.L.C.** and Entries of Appearance for Joseph M. Kellmeyer and Ryan Russell Kemper,

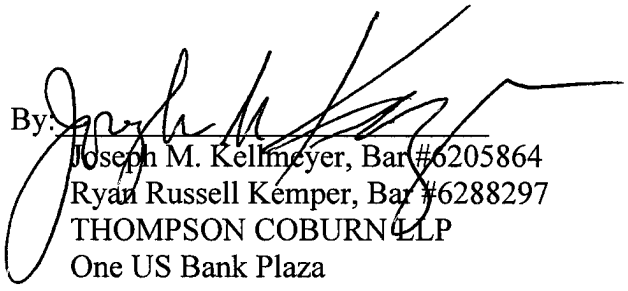
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