

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

IN THE MATTER OF:)
)
PETITION OF METROPOLITAN WATER)
RECLAMATION DISTRICT OF GREATER)
CHICAGO FOR AN ADJUSTED STANDARD)
FROM 35 Ill. Adm. Code 811, 812 and 817, and)
MODIFICATION OF AS 95-4)
(SLUDGE APPLICATION))
)

RECEIVED
CLERK'S OFFICE

MAY 02 2003

STATE OF ILLINOIS
Pollution Control Board
AS 03-02
(Adjusted Standard-Land)

NOTICE OF FILING

TO: Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
Attn: Mark Gurnik

Office of Legal Services
Illinois Department of
Natural Resources
524 S. Second Street
Springfield, IL. 62701-1787

Ms. Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Chicago, Illinois 60601

Ms. Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704

PLEASE TAKE NOTICE that on May 2, 2003, we filed the attached Amended Petition for an Adjusted Standard, District's Reply to Agency's Response to Petition for an Adjusted Standard, and District's Motion to Confirm that its Amended Petition for an Adjusted Standard Need not be Re-Noticed with the Clerk of the Pollution Control Board, a copy of which are herewith served upon you.

Metropolitan Water Reclamation
District of Greater Chicago,

By: Michael G. Rosenberg
Michael G. Rosenberg, its Attorney

Michael G. Rosenberg/Ronald M. Hill
Metropolitan Water Reclamation
District of Greater Chicago
100 East Erie Street
Chicago, IL 60611
(312) 751-6583

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

CERTIFICATE OF SERVICE

I, Michelle Valdez, being duly sworn on oath, certify that I caused a copy of the attached Amended Petition for an Adjusted Standard, District's Reply to Agency's Response to Petition for an Adjusted Standard, District's Motion to Confirm that its Amended Petition for an Adjusted Standard Need not be Re-Noticed, and Notice of Filing/Certificate of Service to be sent via first class U.S. Mail to the below named at their addresses as shown, with proper postage prepaid, from 100 E. Erie Street, Chicago, Illinois, at or near the hour of 4:00 p.m., this 2 day of May, 2003.

TO: Division of Legal Counsel
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, IL 62794-9276
 Attn: Mark Gurnik

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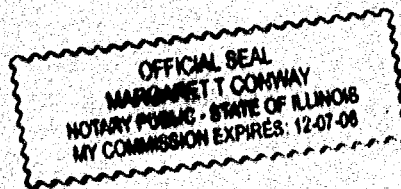
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 Chicago, Illinois 60601

 Ms. Carol Sudman
 Hearing Officer
 Illinois Pollution Control Board
 600 S. Second Street, Suite 402
 Springfield, Illinois 62704

Michelle Valdez

SUBSCRIBED and SWORN to before
me this 2nd day of May, 2003.

Margaret T. Conway
Notary Public



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AS 03-02
(Adjusted Standard - Land)

AMENDED PETITION FOR AN ADJUSTED STANDARD

DATED: May 2, 2003

Metropolitan Water Reclamation
District of Greater Chicago
Michael G. Rosenberg
Ronald M. Hill
100 East Erie Street
Chicago, Illinois 60611
(312)751-6583

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AS 03-02
(Adjusted Standard - Land)

AMENDED PETITION FOR AN ADJUSTED STANDARD

Petitioner, Metropolitan Water Reclamation District of Greater Chicago ("District"), by its Attorney, Michael G. Rosenberg, petitions the Illinois Pollution Control Board ("Board") under Section 28.1 of the Illinois Environmental Protection Act, 415 ILCS 5/28.1, to grant the District an adjusted standard from 35 Ill. Adm. Code 811.204, 811.314(c)(3), 812.313(d), 817.303 and 817.410(c)(2) and (3), which require use of soil as a final cover at landfills in Illinois, as well as from the final order in AS 95-4. In support hereof, the District states as follows:

I. INTRODUCTION

This petition seeks one minor modification to the order of the Board entered on August 24, 1995, in the matter of *Petition of the Metropolitan Water Reclamation District of Greater Chicago for Adjusted Standard From 35 Ill. Adm. Code 811, 812, and 817 (Sludge Application)*, docket number AS 95-4. (A copy of the Opinion and Order of the Board entered August 24,

1995, is marked Exhibit "A" and attached to the District's original Petition.)¹ In AS 95-4, the Board granted the District's petition for an adjusted standard to the Board's rules of general applicability found at 35 Ill. Adm. Code 811.204, 811.314(c)(3), 812.313(d), 817.303 and 817.410(c)(2) and (3) for use of soil as a final cover at landfills in Illinois. Basically, the order authorized the use of the District's air-dried sludge material at non-hazardous waste landfills in lieu of soil material for the top protective layer for final cover to support vegetation.

As will be discussed in greater detail in this petition, the District is seeking to modify the temperature and detention time requirements in AS 95-4, which will make the proposed modifications entirely consistent with the Class B pathogen requirements of the Part 503 sludge regulations.

II. PROCEDURAL BACKGROUND

On March 31, 1995, the District submitted a *Petition of the Metropolitan Water Reclamation District of Greater Chicago for Adjusted Standard From 35 Ill. Adm. Code 811, 812, and 817 (Sludge Application)*, docket number AS 95-4, seeking an adjusted standard to the Board's rules of general applicability found at 35 Ill. Adm. Code 811.204, 811.314(c)(3), 812.313(d), 817.303 and 817.410(c)(2) and (3). The District sought an adjusted standard in order that the District's air-dried sludge material could be used at non-hazardous waste landfills in lieu of soil material for the top protective layer for final cover to support vegetation. On August 24, 1995, the Board issued an opinion and order granting the District the relief sought in its petition.

¹ The exhibits referenced herein are attached to the District's original Petition for an Adjusted Standard. Pursuant to 35 Ill. Adm. Code 104.418(d), in an effort not to overburden the record, the District has not reattached the exhibits to this Amended Petition.

The relief granted by the Board in AS 95-4 was conditioned upon the sludge being processed in accordance with certain conditions enumerated in the order. Those conditions included: "Anaerobic digestion at $95^{\circ} \pm 1^{\circ}$ F for a minimum of 15 days or longer, as necessary to ensure that the District's air-dried sludge product will meet the USEPA's Part 503 pathogen requirements for a Class B sludge; Storage in lagoons for a minimum of 1 and 1/2 years after the final addition of sludge; and Air-drying for a minimum of 4 weeks, or as necessary to achieve a solids content of 60 percent."

On March 13, 1998, the District filed a *Petition of the Metropolitan Water Reclamation District of Greater Chicago for Adjusted Standard From 35 Ill. Adm. Code 811, 812, and 817 (Sludge Application)*, docket number AS 98-5, basically seeking a clarification of the Board's order in AS 95-4. On May 7, 1998, the Board issued an order dismissing AS 98-5. On June 2, 1998, the District filed for a motion of modification of the Board's May 7, 1998 order. The Board denied the District's request of a motion for modification on August 6, 1998, stating that "the Board's Order of May 7, 1998, clearly states the Board's position regarding the existing adjusted standard and further clarification of the Board's May 7, 1998 Order is not necessary."

A. Facts Necessitating This Petition

In 2001, the District reviewed AS 95-4 while in the process of preparing Standard Operating Procedures ("SOPs") for the operation of the District's sludge processing trains ("SPTs") for the National Biosolids Partnership (an alliance of the Association of Metropolitan Sewerage Agencies, Water Environment Federation, United States Environmental Protection Agency, and other stakeholders to advance environmentally sound and accepted sewage sludge management practices). During this review, it was realized that the anaerobic digestion temperature requirements of $95^{\circ} \pm 1^{\circ}$ F in the Board's AS 95-4 opinion and order may not

always be met at the District water reclamation plants ("WRPs") that produce sewage sludge used under AS 95-4.

The original intent of AS 95-4 was to ensure that the District's air-dried sludge product would meet the Class B pathogen requirements in the United States Environmental Protection Agency (USEPA) Part 503 Sewage Sludge Regulations. Although the temperature in the anaerobic digesters may be lowered temporarily during digester feedings and briefly fluctuate below the minimum of the $95^{\circ} \pm 1^{\circ}\text{F}$ criterion in AS 95-4, the District's digesters always achieve a monthly mean temperature of 95°F or above and meet the Part 503 Sludge Regulations time and temperature requirements for Class B sewage sludge.

In October of 1999, the USEPA issued a revised guidance document entitled *Environmental Regulations and Technology, Control of Pathogens and Vector Attraction in Sewage Sludge, (Including Domestic Septage) Under 40 CFR Part 503*. (A copy of the relevant provisions from this guidance document is marked Exhibit "B" and attached to the District's original Petition.) The guidance document addresses the relevant time and temperature requirements necessary in the treatment of sludge to Class B standards when employing anaerobic digestion. The guidance document states in relevant part as follows:

"Values for the mean cell residence time and temperature shall be between 15 days at 35°C to 55°C (95°F to 131°F) and 60 days at 20°C (68°F). Straight line interpolation to calculate mean cell residence time is allowable when the temperature falls between 35°C and 20°C ."

This was the intent of AS 95-4, but it is not explicitly stated as such in AS 95-4.

The inconsistency in the time/temperature provisions of paragraph 3(a) in AS 95-4 and the Class B pathogens requirements, Appendix B(A)(3) of the Part 503 Sewage Sludge Regulations, occurred when preparing the initial submittal to the Board. (See Attachment 14 of the AS 95-4 petition, which petition the District has sought to incorporate by reference into the

instant proceeding.) This inconsistency went undetected. The inconsistency also included reporting temperatures in Fahrenheit instead of Celsius. In the 350-plus pages of the proceedings for AS 95-4, there are only two narrative sentences in the District's petition that mention time/temperature, and the contents of both were inconsistent with the District's Order as proposed and adopted by the Board. This inconsistency was never one of the contested issues, and it was never commented upon during the AS 95-4 proceedings.

At the time of the development of the District's submittal to the Board for an adjusted standard, there were some uncertainties on how sewage sludge as a final protective vegetative cover for municipal solid waste landfills ("MSWLF") would be regulated under the Part 503 Sewage Sludge Regulations. The USEPA had just promulgated two sets of regulations that were relevant to the use of sewage sludge for the top protective layer in MSWLFs.

First, the USEPA regulated the type of material which may be used at non-hazardous MSWLF facilities through its RCRA Subtitle D regulations at 40 CFR 258, *Criteria for Municipal Solid Waste Landfills*, effective October 9, 1993. (See Attachment 1 of AS 95-4). The Board in AS 95-4 did not consider these regulations as a barrier to the use of the District's sewage sludge as a final cover at landfills in Illinois.

Next, the USEPA promulgated its final Part 503 Sewage Sludge Regulations for the use and disposal of municipal sludge on February 19, 1993. Not only do the Part 503 Sewage Sludge Regulations not regulate non-hazardous waste landfills, but the USEPA in the Preamble, page 9258, specifically endorsed the use of municipal sludge as a cover material in non-hazardous waste landfills for the support and enhancement of vegetative growth. (See Attachment 2 of AS 95-4.) It was concluded that sewage sludge used as a final vegetative cover at MSWLFs is not regulated by the Part 503 Sewage Sludge Regulations. Also, the adjusted

standard was compatible with the sludge regulations of 40 CFR Part 503, and conformed to the amendments in 40 CFR 257 and 403 of the Clean Water Act.

The District, at the time of preparing the submittal for the adjusted standard to the Board, was also working on obtaining approval from USEPA for certification of the SPTs as equivalent to a Process to Further Reduce Pathogens (PFRP). In 1998, a letter was sent to the Pathogen Equivalence Committee (PEC) of the USEPA. (See Exhibit "C" attached to the District's original Petition.) On page 3 of this letter, the District proposed modifying the codified sludge SPT operation, previously submitted to USEPA in August 1994, as follows:

"The operating temperatures of the anaerobic digesters were codified as $35^{\circ}\text{C} \pm 2^{\circ}\text{C}$ ($95^{\circ} \pm 3.6^{\circ}\text{F}$), instead of $35^{\circ}\text{C} \pm 1^{\circ}\text{C}$.

This change will provide operational flexibility and recognize events such as instrument malfunction, and the fact the digesters operate at detention times in excess of conventional requirements."

This is one of the current codified operational protocols that the District used to obtain approval from the PEC that the District's SPTs are equivalent to PFRP, and produce a final sewage sludge product which meets the USEPA's "Class A" numerical criteria for pathogens under the Part 503 Sewage Sludge Regulations. The AS 95-4 does not reflect this change in the codified operational protocol for the District's STPs.

The District in a letter to Mr. John Colletti, USEPA, Region V, dated November 30, 2001, submitted a request for certification of site-specific PFRP for the low solids and high solids SPTs at the Stickney and Calumet WRPs. (A copy of the letter is marked Exhibit "D" and attached to the District's original Petition.) In a letter dated June 20, 2002, to Mr. Jack Farnan, General Superintendent of the District, the USEPA, Region V, granted a conditional site-specific certification of equivalency to a PFRP for the low and high solids SPTs at the District's Stickney

and Calumet WRPs. (A copy of the letter is marked Exhibit "E" and attached to the District's original Petition.)

A recent examination of the temperatures recorded during sludge treatment in the heated anaerobic digesters indicates that the temperatures occasionally fluctuate to a small degree above and below the temperature limit in paragraph 3(a) of the Board's Order in AS 95-4. However, it should be noted that the Class B pathogen requirements are always being met, although there is a small degree of temperature fluctuation when the sludge is fed into and drawn off from the anaerobic digesters. In fact, by virtue of the further processing required under AS 95-4, the sludge that is produced by the District's SPTs meets the Class A pathogen requirements of the Part 503 Sewage Sludge Regulations.

These fluctuations are implicitly accepted by the USEPA in the Part 503 Sewage Sludge Regulations, as noted previously, and in Exhibit "B". However, the current wording of AS 95-4 does not take into account these occasional temperature fluctuations. Consequently, it is prudent to make the appropriate changes to the AS 95-4, so that the language of the Board Order in AS 95-4 will be consistent with the language of the Part 503 Sewage Sludge Regulations, and consistent with the codified operational requirements of the District's site-specific equivalency certification for a PFRP process granted by the USEPA, Region V.

The District was in the early stages of codifying its operational requirements in the SPTs to produce Class A sewage sludge at the time the Board's Order on AS 95-4 was issued on August 24, 1995. Since then, there has been a marked improvement in the processing of sludge in the District's low and high solids SPTs. The District is now consistently producing a final sewage sludge product that meets the Class A pathogen requirements of the Part 503 Sewage Sludge Regulations, as verified by extensive testing of sludge samples for pathogens, and the

granting of site-specific equivalency for a PFRP by the USEPA, Region V. Class B sludge is achieved after anaerobic digestion, and Class A sludge is achieved after lagooning the anaerobically digested sludge, and subsequently air-drying it, as is required by AS 95-4.

In view of the foregoing considerations, the District requests that the current specifications for anaerobic digestion of sludge in AS 95-4 be modified so that they are consistent with the specifications of the USEPA's Class B pathogen requirements. The temperature and detention times indicated by the standard operating procedures of the District's SPTs are consistent with the Class B pathogen requirements of the Part 503 Sewage Sludge Regulations.

III. INFORMATIONAL REQUIREMENTS OF 35 ILL. ADM. CODE 104.406

At the outset, the District wishes to note that much of the information required by the Code in support of the District's petition has already been supplied to the Board in AS 95-4. The District has filed a request pursuant to 35 Ill. Adm. Code 101.306 asking that the petition and supporting documents filed in AS 95-4 be incorporated into this proceeding. In an effort to avoid redundancy, and to keep the record in the instant proceeding more manageable, information previously supplied to the Board in the District's prior petition will not be repeated herein, but simply incorporated herein by reference to section and page number. In addition, each section will be supplemented as necessary.

A. 104.406(a): Standard from which an adjusted standard is sought.

The District is seeking to modify the adjusted standard granted in AS 95-4, which approved the use of District sludge for final cover at non-hazardous waste landfills if the sludge meets the criteria set forth in AS 95-4. There has been no change in this requirement since AS 95-4 was approved by the Board on August 24, 1995.

In AS 95-4, the Board granted the District relief from various sections of the Code addressing soil material. The sections of the Code referencing the use of soil material at non-hazardous waste landfills are: 35 Ill. Adm. Codes 811.204, 811.314(c)(3), and 812.813(d), (effective on September 18, 1990), and 817.303 and 817.410(c)(2) and (c)3 (effective on August 1, 1994). Section 811.314 was amended on November 25, 1997, but this amendment does not impact the relief sought herein.

B. 104.406(b): Whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the Clean Water Act, Safe Drinking Act Water, CERCLA, Clean Air Act, or state programs concerning RCRA, UIC, or NPDES.

The District incorporates herein pages 13 and 14 of its petition in AS 95-4. The adjusted standard sought by the District, although not specifically covered by federal regulations, is entirely consistent with the sewage sludge regulations of 40 CFR Part 503, and conforming amendments in 40 CFR Part 257, and Section 403 of the Clean Water Act.

C. 104.406(c): The level of justification or other information or requirements specified in the regulation of general applicability or a statement that there is no such specification.

The regulation of general applicability does not specify a level of justification, or other information or requirements regarding the soil material standard for which the District is requesting an adjusted standard.

D. 104.406(d): Description of Petitioner's activity that is the subject of the proposed adjusted standard.

The activities conducted by the District were described in detail in AS 95-4, Section 106.705(d), pages 14 through 23. The District incorporates by reference the information contained therein. Furthermore, in order to update the information in our prior petition, we are attaching hereto a report dated March 13, 2002, submitted by the District to Mr. Thomas L.

Bramscher, USEPA, Region V. The report describes the District's activities conducted in 2001 under the Part 503 regulations, 40 CFR Part 503. (See Exhibit "F" attached to the District's original Petition.)

E. 104.406(e): Efforts needed to comply with the regulation of general applicability and compliance alternatives, including costs.

No amount of District effort will result in compliance with the regulatory requirement to use soil material. The District generates air-dried sewage sludge as a final component of its water reclamation processes, as described in AS 95-4. Consequently, the District believes that this informational requirement is not applicable, as described in AS 95-4, Section 106.705(e), pages 23 through 26, and incorporated herein by reference.

With respect to compliance with AS 95-4, no amount of effort or expenditures will enable the District to comply with the anaerobic digestion temperature requirements all of the time.

F. 104.406(l): A narrative description of the proposed adjusted standard and proposed language for a Board order that would impose the standard, as well as efforts necessary to achieve the proposed standard and corresponding costs.

The District is requesting that the Board allow the application of the District's air-dried sludge product as an alternative to soil material wherever the application of soil material is required in 35 Ill. Adm. Codes 811, 812, and 817 as the final protective layer supporting vegetation at non-hazardous waste landfills. This petition relies upon the information contained in the District's AS 95-4 petition, as well as the final opinion and order adopted by the Board on August 24, 1995, to meet the requirements of the narrative description and the efforts necessary to achieve the proposed standard and corresponding costs for this section.

The District's current wastewater processing and treatment procedures would not be changed by modifying the current AS 95-4. This is because the proposed modification would correct the wording in the Order to make it consistent with current operational protocols, the site-specific certification of equivalency for a PFRP by USEPA, Region V, and the Class B pathogen requirements in the Part 503 Sewage Sludge Regulations. Consequently, there would be no substantial change in the operating and monitoring costs associated with wastewater treatment and processing to produce a final sludge product suitable for use as a final vegetative cover at solid waste municipal landfills. The final sludge product currently being used for final vegetative cover at landfills under AS 95-4 meets the Class B pathogen requirements of the Part 503 Sewage Sludge Regulations, and the proposed modification of the wording in the Order will not alter or change the final sludge product being produced by the District's SPTs, as described in AS 95-4. In fact, because of the further processing required under AS 95-4, the sewage sludge that is produced by the District's SPTs meets the Class A pathogen requirements of the Part 503 Sewage Sludge Regulations.

The AS 95-4 petition, section 106.705 (e), pages 23 through 26, describes the cost savings to the District for substitution of its sludge for soil in landfill closure. The section also describes the estimated cost savings to the landfill operator for the substitution of the District's sewage sludge for soil material as a final vegetative cover. The cost savings described in AS 95-4 and the benefit to the District and its taxpayers in 1995 are the same in 2003. The proposed modification of AS 95-4 will not change the previously described costs and benefits to the District, its taxpayers, and landfill operators, and it will not change the District's current operating and monitoring costs for producing a final sewage sludge product suitable for use as a final vegetative cover in municipal solid waste landfills.

Proposed Order. The District, in accordance with the requirement of 104.406(f), proposes the following modification to the AS 95-4 Order adopted on August 24, 1995, with the modified Order to read as follows:

PROPOSED ORDER

The Board hereby grants the District's motion to modify the adjusted standard that was adopted in the Board Order of August 24, 1995, pursuant to the authority of Section 28.1 of the Environmental Protection Act, and the Order shall now read as follows:

1. This adjusted standard applies only to the air-dried sludge product generated by the Metropolitan Water Reclamation District of Greater Chicago (District).
2. District sludge that complies with the conditions in paragraph 3 below is approved as an alternative to the soil material standard at the inert waste, the putrescible (MSWLF) and chemical waste landfills, or the steel and foundry industry potentially useable and low risk waste classes of landfills regulated at 35 Ill. Adm. Codes 810-815 and 817, for application as the final protective layer, as the final cover. The sections where the soil material standard is used are 35 Ill. Adm. Codes 811.204, 811.314(c)(3), 812.8313(d), 817.303 and 817.410(c)(2) and (c)(3).
3. When providing sludge for the applications enumerated in Paragraph 2, the District shall provide air-dried sludge as described in its petition for an adjusted standard (AS 95-4) and in its motion for modification and processing in accordance with the following conditions:
 - a. Anaerobic digestion: (1) at 95° ± 1°F 35 to 55 degrees Celsius, except when a digester temperature, lowered temporarily due to digester feedings, might occasionally and briefly fluctuate below the minimum, and (2) for a minimum of 15 days or longer, as necessary with digestion temperatures and times (i.e. "Values for the mean cell residence time and temperature shall be between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius") managed so as to ensure that the District's air-dried sludge anaerobically digested product is consistent with will meet the USEPA's Part 503 pathogen treatment requirements for a Class B sludge; (40 CFR Part 503, Appendix B(A)(3)); and

- b. Storage in lagoons for a minimum of 1 and ½ years after the final addition of sludge, and
 - c. Air-drying for a minimum of 4 weeks, or as necessary to achieve a solids content of 60 percent.
- 4. When providing sludge for the applications enumerated in Paragraph 2, the District shall limit the sludge provided to amounts that are sufficient for a final depth of three feet as compacted using normal landscaping practices.
 - 5. The District will report to the Agency the start up, discontinuance, and quality of sludge deliveries to each facility;
 - 6. District sludge, when used in compliance with this adjusted standard, is not a waste.
- G. 104.406(g): Quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard.**

Modification of AS 95-4 as requested herein will have the same quantitative and qualitative impact on the environment as the original adjusted standard as set forth in AS 95-4, Section 106.705(g), pages 34 through 52, which the District incorporates herein by reference.

II. 104.406(h): A statement of justification for the proposed adjusted standard.

The regulation of general applicability does not specify a level of justification required to qualify for an adjusted standard. Therefore, the District must establish that it complies with the criteria set forth in Section 28.1(c) of the Act and the corresponding section of the Board's procedural rules at 35 Ill. Adm. Code 104.426(a).

The information provided in the District's original petition, as described in AS 95-4, Section 106.705(h), pages 52 through 58, along with the exhibits to the instant petition that supplement the original petition, fully and accurately sets forth the facts supporting an adjusted standard from the regulations of general applicability. With respect to the amendment sought in

the instant petition, the facts set forth herein fully describe the differences between the relief currently sought and that granted in AS 95-4, state the factors justifying an adjusted standard, and establish that the relief sought is justified.

I. 104.406(h): Consistency of proposed adjusted standard with federal law.

The District's petition is consistent with the Part 503 Sewage Sludge Regulations and its subsequent revisions by the USEPA. On February 19, 1994, the USEPA Part 503 Regulations (*Federal Register*, Volume 58, No. 32, February 19, 1993) became effective.

The USEPA made subsequent changes to the Part 503 Regulations in 1994 (*Federal Register*, Volume 59, No. 38, February 25, 1994), 1995 (*Federal Register*, Volume 60, No. 26, October 25, 1995), and 1999 (*Federal Register*, Volume 64, No. 149, August 4, 1999). Briefly, these changes were related to deleting the pollutant limit for molybdenum in sludge applied to land but retaining the molybdenum ceiling limit; deleting the pollutant limit for chromium in sewage sludge applied to land; changing the pollutant concentration limit for selenium in land applied sludge to the ceiling limit; and allowing the permitting authority greater flexibility in reducing the monitoring requirements for compliance with the Part 503 Regulations.

These regulations do not regulate the utilization of sewage sludge at non-hazardous waste landfills. However, they endorse the productive use of sludge for a final protective layer at non-hazardous waste landfills, as noted in AS 95-4.

The consistency of the proposed standard with existing federal law is the same as that described in AS 95-4, Section 106.705(i), pages 58 through 60. Furthermore, the adjusted standard sought is consistent with the USEPA's Guidance Document (See Exhibit "B" attached to the District's original Petition), and the site-specific certification for PFRP granted by USEPA, Region V. (See Exhibit "E" attached to the District's original Petition.)

J. 104.406(j): A statement requesting or waiving a hearing on the Petition.

The District waives a hearing on the petition.

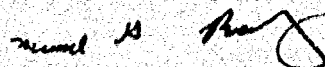
CONCLUSION

The District's Petition seeks one minor modifications to the adjusted standard approved by the board in AS 95-4. The proposed change will amend the time/temperature requirements in order that they are consistent with USEPA guidance, and the site-specific certification for PER granted by USEPA, Region V. The modification requested is entirely consistent with federal law and will not adversely affect the environment.

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago respectfully requests that the Board grant the District's Amended Petition for an Adjusted Standard.

Respectfully submitted,

Metropolitan Water Reclamation
District of Greater Chicago



Michael G. Rosenberg, its Attorney

DATED: May 2, 2003

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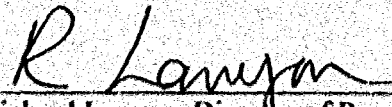
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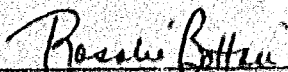
AFFIDAVIT OF RICHARD LANYON

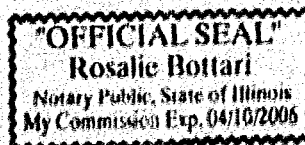
I, Richard Lanyon, being first duly sworn, on oath, depose and state that I am the Director of Research & Development for the Metropolitan Water Reclamation District of Greater Chicago, and that to the best of my knowledge and belief, the facts contained in the District's Amended Petition for an Adjusted Standard are true and correct.



Richard Lanyon, Director of Research &
Development, Metropolitan Water
Reclamation District of Greater Chicago

Subscribed and Sworn to Before Me
This 2 day of May, 2003.


Notary Public



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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OFFICE **RECEIVED**

MAY 02 2003

IN THE MATTER OF:

PETITION OF METROPOLITAN WATER
RECLAMATION DISTRICT OF GREATER
CHICAGO FOR AN ADJUSTED STANDARD
FROM 35 Ill. Adm. Code 811, 812 and 817, and
MODIFICATION OF AS 95-4
(SLUDGE APPLICATION)

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STATE OF ILLINOIS
Pollution Control Board

AS 03-02
(Adjusted Standard - Land)

DISTRICT'S REPLY TO AGENCY'S RESPONSE
TO PETITION FOR AN ADJUSTED STANDARD

DATED: May 2, 2003

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD RECEIVED
CLERK'S OFFICE

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**DISTRICT'S REPLY TO AGENCY'S RESPONSE
TO PETITION FOR AN ADJUSTED STANDARD**

Petitioner, Metropolitan Water Reclamation District of Greater Chicago ("District"), by its Attorney, Michael G. Rosenberg, hereby submits the following reply to the Illinois Environmental Protection Agency's ("Agency") response to the District's Petition for an Adjusted Standard:

I. INTRODUCTION

The District's Petition seeks two minor modifications to AS 95-4, which is a prior adjusted standard considered and granted by the Board in August, 1995. One change requests an amendment of the time/temperature requirements in AS 95-4 in order that they are consistent with United States Environmental Protection Agency ("USEPA") guidance, and the site-specific certification for Process to Further Reduce Pathogens ("PFRP") granted by USEPA, Region V. The other amendment seeks to incorporate the well accepted distinction between sludge and biosolids.

The Agency's response is devoid of any comments concerning an amendment to the time/temperature requirements in AS 95-4. The Agency was provided with a copy of the District's draft Petition in June of 2002, and formally served with the Petition in February, 2003. The Agency has never objected to this proposed amendment. Consequently, the District assumes that the Agency has no objection and requests that this minor modification be granted based upon the uncontroverted evidence in the District's Petition.

The Agency objects to the remainder of the District's request that seeks to have the adjusted standard distinguish between sludge and biosolids. The Agency states that "The use of the term "biosolids" will also create uncertainty regarding the applicability of other statutes and regulations for sludge that do not make any reference to "Biosolids." (Agency's Resp. p. 3.) Although the District still believes that the distinction is fully warranted, the District appreciates the concerns of the Agency that the lack of uniform definitions in the statutes and regulations at this time could create uncertainty. The District has no desire to cause any confusion and therefore withdraws that part of its Petition to identify the product generated by the District under AS 95-4 as "biosolids."

The District's withdrawal of its request to distinguish between sludge and biosolids, and the Agency's lack of opposition to a modification of the time/temperature requirements, resolves the only two issues raised by the District in its Petition.¹ However, the Agency has brought-up several additional issues beyond the limited scope of the District's Petition. These additional issues were either resolved or not of concern in the AS 95-4 proceeding.

¹ Simultaneous with the filing of this reply, the District has filed an Amended Petition for an Adjusted Standard. The Amended Petition seeks no additional or alternative relief, but simply corrects the typographical error in paragraph 2 of the Proposed Order and withdraws those portions of the Petition seeking to distinguish between biosolids and sludge.

Specifically, for the first time since the District filed its original adjusted standard petition in 1995, the Agency voices a concern about alleged elevated ammonia levels in storm water runoff from sites allegedly utilizing District sludge as final cover material. In addition, the Agency suggests that the Board should include additional runoff and groundwater monitoring requirements for landfills utilizing District sludge as final cover. Although the District believes that it is unnecessary to revisit these issues that were or should have been addressed in the AS 95-4 proceeding, the District will nevertheless establish in this reply that the Agency's concerns consist of mere speculation and are based upon inapplicable data.

II. Discussion

A. The District's only apparent avenue of relief is an adjusted standard.

Initially, the District wishes to address a procedural issue raised by the Agency. The Agency correctly notes that although the District has labeled its Petition as one for an adjusted standard and to modify AS 95-4, what the District is actually seeking is "to modify" the August 24, 1995, Board Order" issued in AS 95-4. It has always been the District's preference to retain the AS 95-4 designation for its final cover sludge. Unfortunately, the District was advised prior to filing the instant Petition that the only vehicle available for obtaining the desired modification was by filing a new petition for an adjusted standard. The District reviewed the Board's rules and precedent established thereunder and concurred that the Board's rules do not apparently provide a method to amend AS 95-4 at this point in time.

While the Board has granted motions in adjusted standard proceedings to reopen the docket beyond the one year provided for in 35 Ill. Adm Code 101.904, such motions are typically based upon the request to simply substitute one party for another as the holder of the

adjusted standard. See, for e.g. *In the Matter of: Petition of Commonwealth Edison Company for an Adjusted Standard from 35 Ill. Adm. Code 302.211(D) and (E)*, AS 96-10 (March 16, 2000) (Although neither the Act nor Board's procedural rules address the relief sought by the petitioner, the Board granted a motion to substitute the holder of the adjusted standard because none of relevant factors in granting the original adjusted standard had changed). *In the Matter of: Petition of Enviro Corp. for an Adjusted Standard from 35 Ill. Adm. Code 721 Subpart D: List of Hazardous Substances, Appendix I*, AS 94-10 (November 7, 1996)(proper to reopen docket and substitute petitioner where underlying factors upon which adjusted standard based have not changed.) Consequently, the District felt that it had no choice other than to file a new petition. To the extent the Board is of the opinion that the AS 95-4 docket can be reopened, this is the avenue of relief preferred by the District. The District has labeled its caption and phrased its Petition in such a way so that granting such would be within the scope of the District's Petition.

B. The District's Petition establishes that District sludge processed in accordance with the requirements set forth in AS 95-4 and its proposed modification does not elevate ammonia levels that result in environmental or health effects more adverse than the rules of general applicability.

The District's Petition seeks to modify the relief granted in AS 95-4 in only two limited respects: amend the time/temperature requirements so that they are consistent with USEPA guidance, and the site-specific certification for PFRP granted by USEPA, Region V; and incorporate the well accepted distinction between sludge and biosolids. The District has agreed to withdraw its request to have its final cover sludge designated as "biosolids," and the Agency has no objection to tweaking the time/temperature requirements. While this should resolve all issues in the Petition, the Agency has interjected two additional issues. One issue concerns the

elevated ammonia levels in storm water run-off from sites allegedly utilizing District sludge as final cover material, while the other involves the Agency's request for additional monitoring and reporting.

The issue involving storm water runoff from sites utilizing District sludge that the Agency now wants to revisit was thoroughly addressed to both the satisfaction of the Board and the Agency in AS 95-4. In this reply, the District will briefly review the uncontested facts established in AS 95-4. The question then becomes what has changed since AS 95-4 was granted that resulted in the Agency voicing concerns for the very first time about alleged "elevated levels of ammonia observed in storm water runoff from landfills using sludge as the final cover material." (See Agency's Resp. p. 4.) Throughout its response, the Agency cites storm water runoff data from Land and Lakes Landfills. As will be discussed herein, however, Land and Lakes has never been supplied with AS 95-4 sludge. Consequently, it is impossible for AS 95-4 final cover material to be the cause of elevated ammonia levels from Land and Lakes landfill. Furthermore, according to allegations made by the Agency against Land and Lakes in the case of *People of the State of Illinois, ex. rel. James E. Ryan, Attorney General of the State of Illinois v. Lake and Lakes Company*, 98 CH 0175, the unsuitable sludge that was shipped to Land Lakes may have been improperly accumulated or held in an area that lacked adequate drainage and runoff and erosion controls. (A copy of the complaint filed against Land and Lakes is marked exhibit "G" and attached hereto.)

With respect to the request for monitoring and reporting, it is unnecessary to include such conditions in the District's adjusted standard. As the District will discuss, the Agency already has adequate controls in place to ensure that the environment is protected.

- C. In the AS 95-4 proceeding, the Board and Agency concluded that District sludge processed in accordance with the requirements specified therein presented no adverse health or environmental effects.

On January 30, 1995, approximately two months prior to the filing of the AS 95-4 petition, a meeting was held with staff from the Agency in Springfield, Illinois. The purpose of this meeting was to clarify the technical issues associated with the District's intent to file a petition for an adjusted standard. On February 23, 1995, Dr. Cecil Lue-Hing, the District's Director of Research and Development, wrote to Melanie A. Jarvis, Assistant Counsel for the Agency, clarifying the District's position on the technical issues, and summarizing the District's understanding of the Agency's position regarding the issues. A copy of the letter is marked exhibit "H" and attached hereto.

One of the items specifically addressed in the February 23 letter is the chemical composition of the District's sewage sludge, which was discussed at length in the meeting with Agency staff on January 30, 1995. There is a section of the letter entitled "Use of District Sludge as Final Cover," which confirms that the Agency stated that it would classify runoff from District sludge used as final cover as storm water runoff that can be captured in control structures built for a 25-year storm. The only constituent of concern to the Agency was suspended solids.

Ms. Melanie A. Jarvis, Assistant Counsel for the Agency, responded to Dr. Lue-Hing's letter on March 21, 1995. A copy of her letter is marked exhibit "I" and attached hereto. The first paragraph of the letter states that "The Agency agrees that all technical matters concerning the proposed adjusted standard have been resolved."

The District subsequently filed its petition in AS 95-4, and introduced evidence establishing that the District's air-dried sludge material could be used as the final vegetative

cover at nonhazardous waste landfills without any adverse health or environmental effects. The District's AS 95-4 petition discussed at length the scientific justifications for granting the petition. Among other things, the District noted the following in its AS 95-4 petition:

- The District has been applying sludge on approximately 5,700 acres in Fulton County, Illinois for over 22 years and growing row crops such as corn on the land. No adverse impact on surface water and groundwater quality has been observed at the site from long-term sludge application. (See Dist.'s AS 95-4 Pet., pp. 18-19.)
- Beginning in 1982, at 103rd and Doty Municipal Solid Waste Landfill, over 225 acres was covered with a top layer of District sludge. The closure plan required the installation of four monitoring wells installed in the limestone aquifer underlying the site. The wells were sampled quarterly, and there has been no significant change in groundwater quality in the ten years of monitoring. (See Dist.'s AS 95-4 Pet., pp. 20, 36.)
- A study titled "The Effects of Sewage Sludge on Leachates and Gas from Sludge Refuse Landfills" by J.B. Farrell, *et al.* concluded that the addition of municipal sludge to landfills *improved* the quality of leachate. (See Dist.'s AS 95-4 Pet., pp. 38-39.)

The District's AS 95-4 petition established that air dried sludge: can be worked like soil; contains fertilizer for encouraging speedy vegetative growth; can protect the low permeability layer in the final cover from freezing; has sponge-like capacity to hold excess moisture to lessen erosion; can act to enhance leachate quality; has pathogen and metal content controls sufficient

to provide a sludge suitable for public access; and its use has no greater pollution potential for surface water or groundwater than does the use of soil. (See Dist.'s AS 95-4 Pet., p. 57.)

In its AS 95-4 opinion and order, the Board considered all of the evidence presented and the comments of the Agency, and concluded that "The use of the sludge will not result in substantially or significantly more harmful health and environmental effects. In fact, the District has provided information that the use of sludge may even reduce the potential for leachate contamination of surface and groundwater at landfills by improving the quality of any leachate generated." (Opinion and Order of Board, p. 12.)

D. The same facts and evidence upon which AS 95-4 was granted still exist today, and there is no legal or scientific basis upon which to conclude that sludge processed in accordance with AS 95-4 presents environmental or health risks greater than the rules of general applicability.

The Board and Agency agreed with the District in 1995 that the use of District sludge as final vegetative cover at nonhazardous waste landfills would have no adverse health and environmental effects. In response to the District's Petition in the instant case seeking a minor modification of AS 95-4, the Agency raises a concern about the concentrations of ammonia nitrogen in the District's sewage sludge used for a final vegetative cover. The Agency's concerns are based upon data submitted for the discharge monitoring reports of the Land and Lakes Landfills for the years 1991 through March of 1998. The District assumes that these data are from the capture basin discharges of the runoff collected at the Land and Lakes Landfills.

While the District does not dispute that ammonia nitrogen in air-dried sewage sludge processed according to the requirements of AS 95-4 may be slightly greater than that found in agricultural soils, the District strongly disagrees with the Agency's statement that ammonia

nitrogen from lagoon aged, air-dried sewage sludge meeting the requirements of AS 95-4 and used as a final vegetative cover in solid municipal waste landfills has resulted in or caused the high ammonia concentrations observed in the capture basin discharges from the Land and Lakes Landfills.

From 1994 through 1998, the District submitted yearly reports to the USEPA identifying the locations where the District's sludge was beneficially reused, as required by the Part 503 Sewage Sludge Regulations. The yearly reports demonstrate that none of the sewage sludge that was trucked to the Land and Lakes Landfills from 1994 through 1998 was AS 95-4 specified material, and none of it was used for a final vegetative cover by Land and Lakes at its landfills. The District sewage sludge that was shipped to the Land and Lakes Landfills during this period was co-disposed with municipal solid waste. The quality of some of the material shipped to Land and Lakes Landfills were what the District refers to as "unsuitable", being old rebar, broken concrete, and dumped materials along with the sewage sludge typically not meeting the requirements of AS 95-4. Marked exhibit "J" and attached hereto are relevant portions of the contract that the District entered into with Land and Lakes, which clearly state that the sludge shipped to Land and Lakes was unsuitable.

Table 1 shows the tabulation of District sewage sludge sent to Land and Lakes Landfills from 1994 through 1998, and reported to the USEPA for the Part 503 Sewage Sludge Regulations.

TABLE 1
AMOUNTS OF SEWAGE SLUDGE SHIPPED TO LAND AND LAKES LANDFILLS
FOR CO-DISPOSAL

Year	Water Reclamation Plant Source	Landfill	Amount
			Dry Tons
1994	Calumet	122 nd St.	4,381
	Stickney	None	None
1995	Calumet	122 nd St.	1,963
		138 th St.	19,655
	Stickney	122 nd St. 138 th St. 138 th St.*	74,875 57,684 1,395
1996	Calumet	122 nd St. 138 th St.	28,043 6,727
		Stickney	122 nd St. 138 th St.
1997	Calumet	122 nd St. 138 th St.	None 274
		Stickney	122 nd St. 138 th St.
1998	Calumet	122 nd St. 138 th St.	483 None
		Stickney	122 nd St. 138 th St.

*Amount shipped by construction contractor working at the Lawndale Avenue Solids Management Area.

Consequently, any contamination of surface water runoff was not from District sewage sludge used as a final vegetative cover. The District believes that if the sewage sludge co-disposed in the Land and Lakes Landfills was properly handled and covered by the landfill operator, the contamination of any surface runoff by the constituents in the sewage sludge would be minimal.

E. AS 95-4 sludge has considerably lower ammonia nitrogen levels than sludge not processed in accordance with AS 95-4 sludge.

As discussed above, the data cited by the Agency is meaningless because it does not involve a site utilizing AS 95-4 sludge. Nevertheless, in order to leave no uncertainty with the Board, the District wishes to address the nitrogen content of sludge processed in accordance with AS 95-4. The total Kjeldahl nitrogen and ammonia nitrogen contents of the District's sewage sludge decreases as the sewage sludge moves through the low and high solids sludge processing trains that are used to produce AS 95-4 quality sludge at the Stickney and Calumet Water Reclamation Plants ("WRP"s). Table 2 shows the changes that occurred for volatile solids and nitrogen in sewage sludge processed at the Stickney WRP in 1999. Nearly 65 percent of the total Kjeldahl nitrogen and 82 percent of the ammonia nitrogen in the sewage sludge were lost during the lagoon aging and air drying to meet the requirements for AS 95-4. This is typical of the changes that occur in the nitrogen composition of the sewage sludge in the low and high solids processing trains.

TABLE 2

**REDUCTIONS OF VOLATILE SOLIDS AND NITROGEN IN SEWAGE SLUDGE BY
THE STICKNEY WATER RECLAMATION PLANT HIGH SOLIDS PROCESS TRAIN
IN 1999**

	Centrifuge Cake	Air-Dried Sewage Sludge	Percent Reduction Achieved
Volatile Solids, %	50.7	37.5	41.7
Total Kjeldahl-N, mg/kg	47,435	16,862	64.5
Ammonia-N, mg/kg	3,571	656	81.6

The sewage sludge shipped to the Land and Lakes Landfills for co-disposal typically did not meet the aging and air drying requirements of AS 95-4. Consequently, to the extent that the sewage sludge shipped to Land and Lakes by the District for co-disposal was the cause of the increased ammonia levels, of which there is no direct evidence, such sludge was not AS 95-4 sludge and would have been expected to contain higher levels of total Kjeldahl and ammonia nitrogen.

F. The Agency has not established a correlation between ammonia levels at Land and Lakes, and unsuitable District sludge.

The discharge monitoring reports for the three outfalls (001, 002, and 003) of the Land and Lakes Landfills from 1991 through March 1998 submitted by the Agency to the Board evidence considerable variation in the ammonia nitrogen concentrations. From the ammonia nitrogen data reported by the Agency to the Board for the three outfalls, the yearly means and the minimum and maximum concentrations were determined. These data are shown in Table 3. Although the mean ammonia nitrogen levels were somewhat higher for outfalls 001 and 002 in 1995 and 1996 when increased amounts of District sewage sludge were co-disposed at the landfills, outfall 003 shows higher levels prior to 1995 and 1996. The District believes that these data are certainly not conclusive as to the source of ammonia nitrogen in the landfill runoff considering the variable nature and amounts of the materials being disposed of in the landfills.

TABLE 3

CONCENTRATIONS OF AMMONIA NITROGEN IN THE OUTFALLS OF LAND AND LAKES LANDFILLS REPORTED BY THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Year	Mean	Minimum	Maximum
-----mg/L-----			
<u>Outfall 001</u>			
1991	3.80	--	--
1992	1.02	0.14	2.71
1993	1.64	0.00	4.48
1994	2.04	0.56	2.94
1995	2.96	0.42	10.9
1996	28.4	0.42	235
1997	1.56	0.40	2.80
1998*	1.29	0.31	2.10
<u>Outfall 002</u>			
1991	6.60	--	--
1992	3.81	0.28	7.63
1993	4.35	0.56	17.6
1994	3.73	0.98	8.82
1995	12.6	1.26	38.5
1996	18.8	6.84	33.1
1997	3.68	3.01	4.34
1998*	0.56	--	--
<u>Outfall 003</u>			
1991	56.3	19.5	105
1992	24.0	1.35	63.1
1993	52.3	14.4	127
1994	3.32	1.40	7.93
1995	16.1	0.84	78.2
1996	35.8	1.26	83.4
1997	19.0	1.82	73.1
1998*	31.8	11.9	51.8

*Data were reported through March 1998.

The Agency has indicated that District sludge used as a final vegetative cover may be the source of the ammonia nitrogen in the runoff from the Land and Lakes Landfills. To the District's knowledge, the sewage sludge was co-disposed and not used as a final vegetative cover, as indicated previously. The sewage sludge shipped for co-disposal typically did not meet the lagoon aging and air-drying requirements specified in AS 95-4. *Consequently, the Agency statement about District sewage sludge used as a final vegetative cover being the source of ammonia nitrogen in landfill runoff is inaccurate.*

As mentioned previously, the District believes that if the co-disposed sewage sludge was effectively covered by the landfill operator, this practice would minimize the potential for sewage sludge or any other landfilled material to be a potential source for ammonia nitrogen contamination of surface water runoff from the landfill. Total suspended solids and total dissolved solids from the applied daily cover would be the major constituents in surface water runoff from the landfill.

The technical issues concerning the original filing of AS 95-4 were previously discussed and resolved with Agency staff in early 1995. Since AS 95-4 was approved by the Board on August 24, 1995, the District's sewage sludge has been successfully used as a final vegetative cover at many landfills. This includes the application of 9,197 dry tons of air-dried sludge meeting AS 95-4 requirements at the American Grading Company municipal solid waste landfill adjacent to the Des Plaines River in Lyons, Illinois in 1996. The applied sewage sludge was used as a top dressing to establish a vegetative cover on the landfill final cover, as recommended by Agency staff.

The District is not aware of any environmental impacts, including ammonia nitrogen in surface water runoff, from the use of its aged, air-dried sewage sludge meeting the requirements of AS 95-4 that has been used as a final vegetative cover at solid waste municipal landfills. In

fact, the use of sewage sludge meeting AS 95-4 requirements usually results in the quick establishment of a final vegetative cover on landfills that helps to reduce or eliminate surface water runoff. As described in AS 95-4, the District has used its sewage sludge as a final vegetative cover on coal refuse piles in Fulton County, Illinois to remediate acid mine drainage with the approval of the Agency. (AS 95-4 Pet. pp 36-37.)

G. The current regulatory structure provides adequate safeguards without including additional runoff and groundwater monitoring requirements in the District's adjusted standard.

In its "Response to the District's Petition for an Adjusted Standard," the Agency submitted comments which requested the Board to "include runoff and groundwater monitoring requirements for such landfills to determine whether leachable constituents in the sludge pose a threat to human health and the environment." The Agency is requesting that the Board include this requirement for landfills that utilize sewage sludge under AS 95-4 to monitor the runoff and groundwater so as to determine whether leachable constituents in the sludge pose a threat to human health and the environment. This requirement currently does not exist in the Board Order for AS 95-4.

The District opposes the Agency's request because not only is it unnecessary, it is also overly burdensome and it will present a severe impediment to the cost effective recycling of a valuable product. The use of sludge in a final vegetative cover of landfills under AS 95-4 requires that the landfill operator obtain an Agency permit with the use of sludge specified in the final closure plan. If a landfill operator decides to use sludge in the protective layer of an approved final closure plan that does not specify its use, the operator is obligated to submit a revised closure plan which includes the use of sludge to the Agency for approval prior to accepting sludge under AS 95-4.

The District feels that under the current regulatory structure, the Agency has a sufficient opportunity to review the use of sludge in the final protective layers at all Illinois landfills prior to its delivery under AS 95-4. The necessity of imposing monitoring requirements for runoff or groundwater should be made on a case-by-case basis. The Agency can take into account the quantity of sewage sludge being used, the manner in which the sludge is being used, the location on the landfill where the sludge is being used, the relationship of the landfill to the local environment, and the presence of environmental control structures. Monitoring requirements should not be imposed *a priori* by imbedding them in an Adjusted Standard Board Order which would require them to be universally undertaken.

While AS 95-4 allows landfills with Agency approved closure plans to utilize up to three feet of sewage sludge in their final protective layers, they are not obligated to do so. In fact, most landfills have often not done so. In most cases where sewage sludge has been used in the protective layer of landfill final covers, it has been used as a soil amendment or only as a component of the three foot thick final protective layer. These uses of sewage sludge do not warrant the imposition of monitoring requirements under any circumstance.

In the Agency's response, it expresses concern about the detection of ammonia nitrogen in runoff discharged from Land and Lakes Landfills during years when District sewage sludge was delivered to the landfill. No direct evidence is presented by the Agency that the elevated ammonia nitrogen in the runoff discharged from the landfill site originated from District sewage sludge meeting AS 95-4 requirements. The Agency does not even present an accurate accounting of whether the sludge was disposed in the landfill or used in the final protective layer. As stated elsewhere in the District's response, District sewage sludge delivered to the Land and Lakes Landfills was used for co-disposal and not as a final vegetative cover. The Agency, based upon a faulty premise, jumps to the conclusion that all leachable constituents of sludge

should be monitored to determine whether they pose a threat to human health or the environment at all landfill sites where sludge will be used in the final protective layer.

There are no known routes of human exposure from the runoff or leaching at landfill sites in the Chicago metropolitan area. Landfill runoff does not drain to Lake Michigan and the landfill protective layers sit upon impermeable layers which preclude the leaching of final cover constituents into the landfill or the groundwater beneath the landfill. In fact, the leachate from the collection system at the Land and Lakes Landfills is returned to the District's Calumet Water Reclamation Plant for treatment. There is no reason to monitor runoff or groundwater for leachable constituents of sludge to assess the impacts on human health.

With regard to the environmental impacts of leachable constituents from sewage sludge, the District concurs with the Agency that sludge contains higher amounts of nutrients than soils. These nutrients in the sludge make it a valuable recyclable resource. When sludge is used as a major component of the final protective layer of landfills, appropriate runoff controls should be considered for the first few years of operation while excess nutrients are mineralized and the vegetative cover is maturing.

Nearly all of the nutrients in sewage sludge are associated with the solids, and loss during runoff can be controlled by minimizing erosion and by trapping suspended solids in the runoff water. This environmental control system has proven extremely effective at the District's Fulton County land reclamation site for the past 30 years.

The Agency has the opportunity to review the environmental controls and the potential environmental impacts at each landfill site prior to approving the use of sewage sludge under AS 95-4 in the final closure plan. The Agency can utilize this opportunity to ensure that appropriate controls are in place for the specified application rate and intended use of the sludge on a site-specific basis. This approach provides effective environmental safeguards, and it is less costly to

landfill operators and owners than imposing general runoff and groundwater monitoring requirements at landfills using sludge in the protective layers of the final covers.

The District has discovered that the Agency recently resolved a civil action that was filed against Land and Lakes Company on December 17, 1998 in the Circuit Court of Cook County, Illinois. *People of the State of Illinois, ex. rel. James E. Ryan, Attorney General of the State of Illinois v. Land and Lakes Company*, 98 CH 01751. The complaint alleged violations of the National Pollution Discharge System ("NPDES") permit program under the Federal Clean Water Act. The Agency's complaint claims that in 1996, Land and Lakes left uncovered stockpiles of bare clay and sewage sludge (approximately 50,000 to 70,000 cubic yards) that contaminated runoff and resulted in violations of the NPDES permits for the landfills.

The District believes that Land and Lakes Company alleged water quality violations of its NPDES permits for the landfills is a reason the Agency seeks to impose runoff and monitoring requirements for sewage sludge used as a final vegetative cover at landfills. As mentioned previously, the District sludge shipped to the Land and Lakes Landfills was for co-disposal. The District sludge was not AS 95-4 quality material, which has a lower ammonia nitrogen concentration. It is the responsibility of the landfill operator or owner to effectively manage the landfill with the appropriate daily cover and environmental controls regardless of the nature of the material being disposed. The Agency already has the opportunity to review the environmental controls and the potential environmental impacts for each landfill that is to receive AS 95-4 sludge as a final vegetative cover. The District is not aware of any water quality violations resulting from the use of AS 95-4 quality sludge in the final vegetative cover of landfills. The District feels very strongly that its AS 95-4 quality sludge should not have any monitoring requirements placed in the Board's Order as a result of Land and Lakes' alleged improper handling of District sludge.

The District recommends that the Board deny the Agency's request for inclusion in the adjusted standard of runoff and groundwater monitoring requirements for landfills using sludge under AS 95-4 to determine whether leachable constituents in the sludge pose a threat to human health and the environment. The Agency already has adequate controls to ensure that the environment is protected at AS 95-4 sites.

III. Proposed revised order

Simultaneous with the filing of this reply, the District is filing an Amended Petition pursuant to 35 Ill. Adm. Code 104.418. The Amended Petition seeks no additional or alternative relief, but simply withdraws the District's request to distinguish between sludge and biosolids, per the Agency's objections, and corrects the typographical error in paragraph 2 of the proposed order as noted by the Agency. Incorporating these changes, the proposed order now reads as follows:

PROPOSED ORDER

The Board hereby grants the District's motion to modify the adjusted standard that was adopted in the Board Order of August 24, 1995, pursuant to the authority of Section 28.1 of the Environmental Protection Act, and the Order shall now read as follows:

1. This adjusted standard applies only to the air-dried sludge product generated by the Metropolitan Water Reclamation District of Greater Chicago (District).
2. District sludge that complies with the conditions in paragraph 3 below is approved as an alternative to the soil material standard at the inert waste, the putrescible (MSWLF) and chemical waste landfills, or the steel and foundry industry potentially useable and low risk waste classes of landfills regulated at 35 Ill. Adm. Codes 810-815 and 817, for application as the final protective layer, as the final cover. The sections where the soil material standard is used are 35 Ill. Adm. Codes 811.204, 811.314(c)(3), 812.8313(d), 817.303 and 817.410(c)(2) and (c)(3).

3. When providing sludge for the applications enumerated in Paragraph 2, the District shall provide air-dried sludge as described in its petition for an adjusted standard (AS 95-4) and in its motion for modification and processing in accordance with the following conditions:
 - a. Anaerobic digestion: (1) at 95° ± 1°F 35 to 55 degrees Celsius, except when a digester temperature, lowered temporarily due to digester feedings, might occasionally and briefly fluctuate below the minimum, and (2) for a minimum of 15 days or longer, as necessary with digestion temperatures and times (i.e. "Values for the mean cell residence time and temperature shall be between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius") managed so as to ensure that the District's air-dried sludge anaerobically digested product is consistent with will meet the USEPA's Part 503 pathogen treatment requirements for a Class B sludge; (40 CFR Part 503, Appendix B(A)(3)); and
 - b. Storage in lagoons for a minimum of 1 and ½ years after the final addition of sludge; and
 - c. Air-drying for a minimum of 4 weeks, or as necessary to achieve a solids content of 60 percent.
4. When providing sludge for the applications enumerated in Paragraph 2, the District shall limit the sludge provided to amounts that are sufficient for a final depth of three feet as compacted using normal landscaping practices.
5. The District will report to the Agency the start up, discontinuance, and quality of sludge deliveries to each facility;
6. District sludge when used in compliance with this adjusted standard, is not a waste.

III. CONCLUSION

The District's Petition sought two minor modifications to the adjusted standard approved by the board in AS 95-4. The District has withdrawn its request to distinguish between sludge and biosolids, leaving only a request to amend the time/temperature requirements in order that they are consistent with USEPA guidance, and the site-specific certification for PFRP granted by USEPA, Region V. The Agency has expressed no objections to this part of the District's request, which resolves all issues in the District's Petition.

However, the Agency has chosen to interject two additional issues that were either not asserted in AS 95-4 or resolved to the Agency's satisfaction at that time. The first issue, which involves elevated ammonia levels from Land Lakes Landfills, is based upon a faulty premise because Land and Lakes did not use AS 95-4 sludge as final vegetative cover at the time these ammonia levels were recorded. As established herein, ammonia levels from sludge processed in accordance with AS 95-4 requirements is considerably lower than sludge not similarly processed.

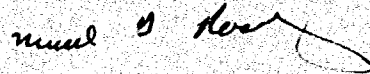
With respect to the Agency's request for imposition of runoff and groundwater monitoring requirements in the adjusted standard for landfills using sludge under AS 95-4, the Agency already has adequate controls to ensure that the environment is protected at AS 95-4 sites. The concerns raised by the Agency in this case arise not from a lack of monitoring requirements, but rather from Land and Lakes' apparent violation of the requirements in place.

To the extent the Board believes that additional data or testimony is necessary or useful in this proceeding, the District is prepared to present to the Board whatever further information that the Board deems necessary.

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago respectfully requests that the Board grant the District's petition for an adjusted standard.

Respectfully submitted,

Metropolitan Water Reclamation
District of Greater Chicago



Michael G. Rosenberg, its Attorney

DATED: May 2, 2003

Michael G. Rosenberg
Ronald M. Hill
Metropolitan Water Reclamation
District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
312.751.6583

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PETITION OF METROPOLITAN WATER)	
RECLAMATION DISTRICT OF GREATER)	
CHICAGO FOR AN ADJUSTED STANDARD)	
FROM 35 Ill. Adm. Code 811, 812 and 817, and)	AS 03-02
MODIFICATION OF AS 95-4)	(Adjusted Standard - Land)
(SLUDGE APPLICATION))	
)	
)	
)	

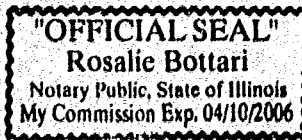
AFFIDAVIT OF RICHARD LANYON

I, Richard Lanyon, being first duly sworn, on oath, depose and state that I am the Director of Research & Development for the Metropolitan Water Reclamation District of Greater Chicago, and that to the best of my knowledge and belief, the facts contained in the District's Reply to Agency's Response to Petition for an Adjusted Standard are true and correct.

R Lanyon
 Richard Lanyon, Director of Research &
 Development, Metropolitan Water
 Reclamation District of Greater Chicago

Subscribed and Sworn to Before Me
 This 2nd day of May, 2003.

Rosalie Bottari
 Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF METROPOLITAN WATER)
RECLAMATION DISTRICT OF GREATER)
CHICAGO FOR AN ADJUSTED STANDARD)
FROM 35 Ill. Adm. Code 811, 812 and 817, and) AS 03-02
MODIFICATION OF AS 95-4) (Adjusted Standard - Land)
(SLUDGE APPLICATION))
)
)
)

INDEX OF EXHIBITS FOR DISTRICT'S REPLY BRIEF

Copy of complaint filed in the case of *People of the State of Illinois ex rel. James E. Ryan, Attorney General of the State of Illinois v. Land and Lakes Company*, Case number 98 CH 01751Exhibit G

Letter dated February 23, 1995, to Melanie A. Jarvis, Assistant Counsel, Illinois Environmental Protection Agency, from Dr. Cecil Lue-Hing, Director, Research and Development, Metropolitan Water Reclamation District, on "Meeting of January 30, 1995, Concerning Adjusted Standard Petition by the Metropolitan Water Reclamation District of Greater Chicago (District).....Exhibit H

Letter dated March 21, 1995, to Dr. Cecil Lue-Hing, Director, Research and Development, Metropolitan Water Reclamation District, from Melanie A. Jarvis, Assistant Counsel, Illinois Environmental Protection Agency, on "Adjusted Standard Draft Petition".....Exhibit I

Excerpts from District contract with Land and Lakes Company, contract no. 95-945-11, entitled "Use of a Sanitary Landfill Site".....Exhibit J

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, CHANCERY DIVISION

93 DEC 17 AM 10:16

PEOPLE OF THE STATE OF ILLINOIS,)
 ex rel. JAMES E. RYAN, Attorney)
 General of the State of Illinois,)
)
 Plaintiff,)

CIRCUIT COURT OF COOK
 COUNTY, ILLINOIS
 DEPT. CHANCERY DIV.
 AMANDA T. ...

v.)

No.)

LAND AND LAKES COMPANY,)
 an Illinois corporation,)
)
 Defendant.)

010016-CH. 2.1 12/17/98 11:27
 REF AUTO REGISTRATION 95000 150.00
 REF CASE OF SCHOL 17510 0.00
 1 AUTOMETION 2.00
 1 DOCUMENT STORAGE 8.00
 1 LIBRARY 10.00
 1 ARBITRATION FEE 175.00 *
 CASE TOTAL

COMPLAINT FOR INJUNCTION AND CIVIL PENALTIES

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, ex rel. JAMES E. RYAN, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency, complains of the defendant, LAND AND LAKES COMPANY, an Illinois corporation, as follows:

COUNT I

OFFENSIVE DISCHARGES

1. This complaint is brought on behalf of the People of the State of Illinois by James E. Ryan, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA").

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/4 (1996), and is charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to administer and abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act, 33 U.S.C. Section 1342(b) (7).

3. This complaint is brought pursuant to Sections 42(d) and (e) of the Act, 415 ILCS 5/42(d) and (e) (1996), and is an action to restrain ongoing violations of the Act and for civil penalties.

4. At all times relevant to this complaint, defendant Land and Lakes Company ("Land & Lakes") has been and is an Illinois corporation in good standing.

5. At all times relevant to this complaint, Land & Lakes has operated a landfill for the disposal of nonhazardous waste ("#3 landfill" or "site"). The #3 landfill is located at 2000 East 122nd Street, Chicago, Cook County, Illinois.

6. From at least March 9, 1990 through the date of filing of this complaint, the landfill has discharged storm water from three outfalls. The receiving waters are Dead Stick Pond for Outfalls 001 and 003, and Lake Calumet for Outfall 002.

7. Dead Stick Pond and Lake Calumet are "waters" of the

state of Illinois, as that term is defined in Section 3.56 of the Act, 415 ILCS 5/3.6 (1996):

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

8. Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

9. Section 3.06 of the Act, 415 ILCS 5/3.06 (1996), defines "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

10. Pursuant to the authority granted by Sections 13 and 27 of the Act, 415 ILCS 5/13 and 27 (1996), the Illinois Pollution Control Board ("Board") has promulgated rules and regulations to control water pollution, which are codified as 35 Ill. Adm. Code Subtitle C: Water Pollution, Chapter I ("Water Pollution Regulations").

11. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, titled, *Violation of Water Quality Standards*, provides as follows:

In addition to other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard.

12. Section 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.106, titled, *Offensive Discharges*, provides as follows:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

13. On November 16, 1994, the Illinois EPA inspected the #3 landfill. On that date, erosion control in the Outfall 001 and 003 drainage areas was inadequate, with sediments, some possibly originating from the active landfill area, accumulating off the property in the ditch on the north side of 122nd Street.

14. On December 8, 1995, the Illinois EPA inspected the #3 landfill, at which time there was some improvement in vegetative cover. Only the west slope of the closed portion of the landfill was stabilized with vegetation. Two detention areas in line with Outfalls 002 and 003 appeared too small in size, trapping little

more than sand or coarser material during a rain event.

15. On October 17, 1996, the Illinois EPA again inspected the #3 landfill. On that date, the south and west portions of the site where vegetative cover had previously been established were now mostly covered with stockpiles of bare clay and sewage sludge. Approximately 50,000 to 75,000 cubic yards of stockpiled, uncovered sludge was in an area tributary to Outfall 003, which drains to Dead Stick Pond. The onsite ditch leading to Outfall 003 was filled with soil and sediments deposited by the passage of garbage and sludge delivery trucks at the site, as well as with compost material. Landfill gas bubbles were roiling the ditch waters at numerous locations.

16. Settleable materials consisting of sediments, clay, sewage sludge, soil and compost material are "contaminants" as that term is defined in Section 3.06 of the Act.

17. From at least November 16, 1994, and continuing through at least October 17, 1996, or until a date better known to Land & Lakes, Land & Lakes allowed or threatened to allow settleable materials from the #3 landfill to flow off site in its runoff discharges, in violation of Section 12(a) of the Act, 415 ILCS 12(a) (1996), and Sections 304.105 and 304.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105 and 304.106.

18. Plaintiff is without an adequate remedy at law.

Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after a trial, permanent injunctive relief.

WHEREFORE, plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court grant a preliminary injunction and, after trial, a permanent injunction, in favor of plaintiff and against the defendant, LAND AND LAKES COMPANY, on Count I:

1. Finding that the defendant has violated Section 12(a) of the Act and Sections 304.105 and 304.106 of 35 Ill. Adm. Code;
2. Enjoining the defendant from further violation of Section 12(a) of the Act and Sections 304.105 and 304.106 of 35 Ill. Adm. Code;
3. Ordering the defendant to take immediate action to correct the violations;
4. Assessing against the defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including attorney, expert witness and consultant fees, against the defendant; and
6. Granting such other relief as the court deems appropriate and just.

COUNT II

CREATING A WATER POLLUTION HAZARD

1-12. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 7, paragraph 9 and paragraphs 13 through 16 of Count I as paragraphs 1 through 12 of this Count II.

13. Section 3.55 of the Act, 415 ILCS 5/3.55 (1996), contains the following definition:

"WATER POLLUTION" is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

14. Section 12(d) of the Act, 415 ILCS 5/12(d) (1996), provides as follows:

No person shall:

* * *

d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

15. From at least November 16, 1994 through at least October 17, 1996, or until a date better known by Land & Lakes, Land & Lakes allowed the accumulation of erodible and settleable materials, which

are contaminants, at and upstream of the outfalls so that those materials were capable of flowing off site with rain, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (1996).

16. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court grant a preliminary injunction and, after trial, a permanent injunction, in favor of plaintiff and against the defendant, LAND AND LAKES COMPANY, on Count II:

1. Finding that the defendant has violated Section 12(d) of the Act;
2. Enjoining the defendant from further violation of Section 12(d) of the Act;
3. Ordering the defendant to take immediate action to correct the violations;
4. Assessing against the defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including attorney,

expert witness and consultant fees, against the defendant; and

6. Granting such other relief as the court deems appropriate and just.

COUNT III

SYSTEMS RELIABILITY

1-15. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 10 and paragraphs 13 through 16 of Count I, and paragraph 13 of Count II, as paragraphs 1 through 15 of this Count III.

16. Section 301.415 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.415, contains the following definition:

Treatment Works: Individually or collectively those constructions or devices (except sewers, and except constructions or devices used for the pretreatment of wastewater prior to its introduction into publicly owned or regulated treatment works) used for collecting, pumping, treating, or disposing of wastewaters or for the recovery of byproducts from such wastewater.

17. The system for discharging storm water from the site is a "treatment works", as that term is defined in 35 Ill. Adm. Code 301.415.

18. Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), titled, *Systems*

Reliability, provides as follows:

- a. Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

19. On November 16, 1994, December 8, 1995, October 17, 1996, and on such other dates better known to Land & Lakes, Land & Lakes failed to maintain, install new or replace existing runoff and erosion controls prior to or immediately after site runoff regimes had been altered, new areas were denuded of vegetation and/or rain had washed away existing controls, to the extent necessary to achieve compliance with applicable standards, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (1996), and Section 306.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a).

20. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, plaintiff, PEOPLE OF THE STATE OF ILLINOIS,

respectfully requests that this court grant a preliminary injunction and, after trial, a permanent injunction, in favor of plaintiff and against the defendant, LAND AND LAKES COMPANY, on Count III:

1. Finding that the defendant has violated Section 12(a) of the Act and Section 306.102(a) of 35 Ill. Adm. Code;
2. Enjoining the defendant from further violation of Section 12(a) of the Act and Section 306.102(a) of 35 Ill. Adm. Code;
3. Ordering the defendant to take immediate action to correct the violations;
4. Assessing against the defendant a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including attorney, expert witness and consultant fees, against the defendant; and
6. Granting such other relief as the court deems appropriate and just.

COUNT IV

VIOLATION OF NPDES PERMIT EFFLUENT LIMITS

1-13. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 7, paragraphs 9 and 10, and paragraphs 13 through 16 of Count I as paragraphs 1 through 13 of this Count IV.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (1996), provides as follows:

No person shall:

* * *

- f. Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

15. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), titled, *NPDES Permit Required*, provides as follows:

- a. Except in compliance with the provisions of the Act, Board regulations and the CWA (33 U.S.C. Section 1251 *et seq.*), and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

16. Section 304.141(a) of the Board Water Pollution

regulations, 35 Ill. Adm. Code 304.141(a), titled, NPDES Effluent standards, provides as follows:

- a. No person to whom an NPDES permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in his permit.

17. On March 9, 1990, the Illinois EPA issued to Land & Lakes NPDES Permit No. IL00067237.

18. NPDES Permit No. IL00067237 contains effluent limits for pH, copper, boron, iron, manganese ("mang"), five-day carbonaceous biochemical oxygen demand ("CBOD," or "BOD,"), total suspended solids ("TSS"), ammonia nitrogen ("NH₃-N"), lead, phenols and total dissolved solids ("TDS").

19. The following concentration limits for Outfalls 001, 002 and 003 were set forth in NPDES Permit No. IL00067237 issued on March 9, 1990:

. by
NPDES
of

		CONCENTRATION LIMITS (mg/l)	
		30 day avg.	daily max.
pH		6.0-9.0 standard units	
Copper			0.02
Boron			1.0
Iron			1.0
Manganese			1.0
BOD ₅		10	20
TSS		12	24
NH ₃ -N	Apr-Oct	1.5	
	Nov-Mar	4.0	
Lead			0.1
Phenols			0.1
TDS			1000

20. From at least May 1991, and continuing through at least March 1998, or until a date better known to Land & Lakes, Land & Lakes reported, on monthly discharge monitoring reports submitted by Land & Lakes to the Illinois EPA, violations of Land & Lakes' NPDES permit limits. Land & Lakes caused or allowed the discharge of effluent to exceed concentration limits as follows:

Excursions for Outfall 001

	pH	Cop- per	Iron	Mang	BOD ₅	TSS	NH ₃ - N*	Lead	Phenols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
12/91		0.15	3.40		16	600			1.00	
03/92		0.06								4000
04/92		0.45	24.00			400	2.71	0.65		
07/92		0.15	5.90		14	790		0.18		3000
08/92		0.03	23.00			66				
09/92		0.22	29.00	2.10	18	1220		0.36	0.14	
11/92		0.06	6.60		16	184				1560
01/93		0.06	8.10			240			0.17	
03/93		0.05	4.90		24	121		0.11	0.25	1630
04/93			2.30	1.10		70				1820
05/93				1.60		25				2120
06/93		0.05	4.20		14	110			0.12	
07/93	9.5				20	65				
08/93			1.70			28				1190
09/93			2.50		61	76				
10/93			2.10			96				1600
11/93			5.80		12	200	4.48			2580
01/94		0.05			69	56			5.53	1730
02/94		0.03	1.10		19	32			0.82	1280
04/94			1.80		12	72			0.34	
06/94		0.07	12.00			412	2.24			1260
08/94		0.04	4.40			241	1.68		1.00	1190

	pH	Cop- per	Iron	Mang	BCD ₅	TSS	NH ₃ - N*	Lead	Phenols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
11/94		0.05	12.00		37	4270				1570
12/94		0.06	23.00			1160				1270
01/95		0.19	20.00		33	1450				1420
03/95		0.05	1.80			92				1710
04/95			3.10			300	2.52			1390
05/95			1.70			116				2860
07/95			4.10			136				1390
08/95			3.20			523				1500
10/95		0.07	26.00			812	10.9			
11/95		0.06	19.00		15	660	6.92		0.11	1600
01/96		0.15	104.0	1.90		4270				1820
02/96			8.20		62	600				2500
03/96		0.03	3.20			129				1220
04/96		0.06				26			0.12	1930
05/96		0.10	2.90			85	6.55			2670
06/96		0.08				32	235			4960
09/96		0.10	5.85		27	884	2.66			2690
10/96		0.04	10.5			636	3.08			2170
11/96		0.07				53				3480
02/97		0.09	25.2			1285				1840
06/97		0.05	35.60			1870				1760
08/97		0.41	327	4.47		14, 700		0.41		
09/97		0.04				146			8.81	1360

	pH	Cop- per	Iron	Mang	BOD ₅	TSS	NH ₃ - N*	Lead	Phenols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
10/97		0.22	22			1950	2.8	0.26	0.87	
12/97		0.05	11.2			492				2360
01/98		0.05				18				3310
02/98		0.04				36				2170
03/98		0.05	9.22			632				1410

mg/l = milligrams per liter

S.U. = standard units

Max. = maximum

Avg. = average

*1.5 mg/l during the months of April through October,
4.0 mg/l during the months of November through March

Excursions for Outfall 002

	pH	Cop- per	Boron	Iron	Mang	BOD ₅	TSS	NH ₃ -N	Lead	Phen- ols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
12/91		0.12		5.80		14	1600	6.60		1.00	
03/92		0.03				15		7.40			2800
04/92		0.43		25.00	2.40		1100	7.63	0.56		1400
07/92		0.64		140.0	5.90	230	19, 000		0.79	1.00	2600
08/92		0.08		37.00		12	1424		0.17		
09/92		0.14		78.00	1.20	35	4460	2.50	0.30	0.14	1340
11/92		0.04		10.00			382	4.62	0.15		3210

	pH	Cop- per	Boron	Iron	Mang	BOD ₅	TSS	NH ₃ -N	Lead	Phen- ols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
01/93		0.05		11.00		11	328				1220
03/93		0.05		3.70			124			0.20	
04/93		0.03	1.10	8.90		24	374	17.60			4070
05/93		0.09		23.00	1.20	18	1100	1.96	0.16		
06/93		0.12		43.00		45	724	5.00	0.21	0.32	1070
07/93				16.00		20	565	5.18		0.20	1480
08/93				2.90		21	128	2.50			2660
09/93				5.90		192	212	3.80			2420
10/93							21	2.94			2360
11/93				5.80			152				1610
01/94				2.40		28	56				1780
04/94		0.15		90.00			2350	1.54	0.16		2000
06/94		0.03		1.50			69				2660
08/94		0.09		11.00		71	12, 000	6.86		1.00	1020
11/94		0.11		11.00			6450				1380
12/94		0.03		6.00			253	8.82			1720
01/95		0.05		8.00		39	4090	18.50			5690
03/95		0.06		10.00		16	392	38.50			6760
04/95		0.08		17.00	1.10	26	1860	20.70		0.12	3000
05/95		0.05		9.10			668	17.60			5490
06/95				1.50			72	4.13			1560
07/95				1.60			60				2330
08/95				2.70			96	5.04			2280

	pH	Cop- per	Boron	Iron	Mang	BOD ₅	TSS	NH ₃ -N	Lead	Phen- ols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
10/95				2.80			113	4.90			2800
11/95		0.03		13.00			462	2.94			2400
01/96		0.06		14.00		26	560	24.90			3410
02/96	5.6	0.05		6.00			276	9.66			3090
03/96		0.07		3.60		15	156	12.00			2170
04/96				5.10			236	11.80		0.11	2110
05/96		0.64	1.90	7.10		11	144	33.10			3390
06/96		0.12	1.13	1.43			190	28.7			3360
07/96		0.10	1.85	3.15		12	112	22.70			3690
09/96		0.05		4.47		11	340	6.84			2220
10/96		0.05	1.84	5.16			304	23.00			3620
11/96		0.05	1.38	3.46			172	15.10			3290
02/97		0.04		2.31			68				1410
07/97		0.54		278	5.02	NR*	5720	4.34	0.88		1270
02/98		0.04					23				1900

*NR = not reported

Excursions for Outfall 003

	pH	Cop- per	Boron	Iron	Mang	BOD ₅	TSS	NH ₃ -N	Lead	Phen- ols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
05/91						11		105			1990
06/91								20.70			2532
08/91				8.80		243	354	80.00			5140
10/91				7.80		14	280	19.50	0.18		4254
03/92		0.20		4.30		84	110				5600
04/92		0.50		30.00	4.08	24	846	54.80	0.70		7900
05/92		0.07	1.80			184	33	63.10			11000
07/92		0.77	1.80	100.6	6.94		13, 856	3.21	1.23		9260
08/92		0.30	1.55	115.8	2.75		4298	19.10	0.52		1840
11/92		0.96		180.0	13	93	23, 800		3.40	0.60	
02/93		0.07	3.80	5.00		25	32	127			
06/93		0.08		13.00		134	313	15.50	.11		2140
07/93				6.40		100	196	14.40		0.37	1430
06/94		0.04		1.90			73				1770
08/94		0.08		7.80		34	398	2.38		1.00	2180
11/94		0.07		12.00			1630				1680
12/94		0.23		79.00	2.60	40	3760	7.98	0.52		1580
01/95		0.28		92.00	5.70	13	460	5.32	0.54		4330
03/95		0.04		12.00		13	884		0.11		2060
04/95	9.7	0.10		19.00	1.30	47	480	1.68		12.50	1200
05/95		0.03		6.30			260	1.68			2100

	pH	Cop- per	Boron	Iron	Mang	BOD ₅	TSS	NH ₃ -N	Lead	Phen- ols	TDS
Limits	S.U. 6-9	Max. 0.02	Max. 1.00	Max. 1.00	Max. 1.00	Avg. 10	Avg. 12	Avg. 1.5/ 4.0	Max. 0.1	Max. 0.1	Max. 1000
07/95		0.03		9.00			342				1550
08/95				3.00			210	1.54			1330
10/95		0.09		27.00		12	996	37.5			
11/95		0.21		53.00		22	1143	78.2	0.15		2010
01/96		0.49		12.00		200	520	83.4		0.20	2040
02/96	5.6	0.09		14.00		16	540	33.2			1580
03/96		0.03		3.20			129				1220
04/96		0.05		7.70			340	19.9		0.11	1560
05/96		0.04		11.00			129	7.42		0.12	1420
06/96		0.28		16.0			312	38.8			1790
07/96		0.08		2.79		20	120	36.3			1560
09/96		0.07	1.44	3.28		133	268	40.3			7540
10/96		0.03	1.03	5.6		48	168	66			3560
11/96		0.09		7.8		16	474	31.8			1290
02/97		0.28		83.9			1594	6.51			7010
05/97		0.03		1.09			56	7.63			1480
06/97		0.03		11.7		54.5	412	21.4			2150
08/97		0.08		40			1900	3.57			1050
09/97				4.76		62	176	1.82			
10/97		0.03		3.45		NR	132	73.1			3120
02/98		0.04		2.92			125	11.9			1760
03/98		0.03		3.37		46	84	51.8		0.196	2390

21. Defendant Land & Lakes, by its actions as alleged herein,

has caused or allowed violations of its NPDES permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (1996), and Sections 304.141(a) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(a) and 309.102(a).

22. Plaintiff is without an adequate remedy at law.

Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court grant a preliminary injunction and, after trial, a permanent injunction, in favor of plaintiff and against the defendant, LAND AND LAKES COMPANY, on Count IV:

1. Finding that the defendant has violated its NPDES permit, Section 12(f) of the Act and Sections 304.141(a) and 309.102(a) of 35 Ill. Adm. Code;

2. Enjoining the defendant from further violation of its NPDES permit, Section 12(f) of the Act and Sections 304.141(a) and 309.102(a) of 35 Ill. Adm. Code;

3. Ordering the defendant to take immediate action to correct the violations;

4. Assessing against the defendant a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of violation of

section 12(f);

5. Taxing all costs in this action, including attorney, expert witness and consultant fees, against the defendant; and

6. Granting such other relief as the court deems appropriate and just.

COUNT V

VIOLATION OF CONSENT DECREE

1. This count is brought on behalf of the People of the State of Illinois by James E. Ryan, Attorney General of the State of Illinois, on his own motion. The Attorney General is the chief legal officer of the State of Illinois, having the powers and duties prescribed by law (Ill. Const. Art. 5, Section 15 (1970)). This count is brought pursuant to the power of the Attorney General to institute an action to obtain complete compliance with court orders entered to protect the health, safety and welfare of the People of the State of Illinois.

2-32. Plaintiff realleges and incorporates by reference herein paragraphs 2 through 17 of Count I, paragraphs 13 through 15 of Count II, paragraphs 16 through 19 of Count III, and paragraphs 14 through 21 of Count IV as paragraphs 2 through 32 of this Count V.

33. On November 25, 1991, this court entered a Consent Decree signed by Land & Lakes, the Illinois EPA and the Office of the

Illinois Attorney General in the case People of the State of Illinois v. Land and Lakes Company, case number 90 CH 01171, filed in the Cook County Circuit Court. The Consent Decree required Land & Lakes to "cease and desist from all violations of the Act and Board regulations promulgated thereunder". (See page 2 of Consent Decree, attached to and incorporated into this complaint as Exhibit A)

34. The Consent Decree has not been modified or changed, and remains in full force and effect.

35. By failing to comply with Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d) and 12(f) (1996), and 35 Ill. Adm. Code 304.105, 304.106, 304.141(a), 306.102(a) and 309.102(a), Land & Lakes violated and continues to violate the terms and conditions of the Consent Decree entered November 25, 1991.

36. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and violations of the pertinent environmental statutes and regulations will continue unless and until this court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court grant a preliminary injunction and, after trial, a permanent injunction, in favor of plaintiff and against the defendant, LAND AND LAKES COMPANY, on Count V;

1. Finding that the defendant has violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d) and 12(f) (1996), 35 Ill. Adm. Code 304.105, 304.106, 304.141(a), 306.102(a) and 309.102(a), and this court's Consent Decree filed in the case People of the State of Illinois v. Land and Lakes Company, 90 CH 01171, filed in the Cook County Circuit Court;

2. Enjoining the defendant from further violation of Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d) and 12(f) (1996), 35 Ill. Adm. Code 304.105, 304.106, 304.141(a), 306.102(a) and 309.102(a), and this court's Consent Decree filed in the case People of the State of Illinois v. Land and Lakes Company, 90 CH 01171, filed in the Cook County Circuit Court;

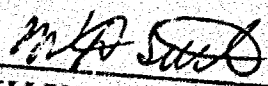
3. Finding the defendant in contempt for violating this court's Consent Decree filed in the case People of the State of Illinois v. Land and Lakes Company, 90 CH 01171, filed in the Cook County Circuit Court;

4. Taxing all costs in this action, including attorney, expert witness and consultant fees, against the defendant; and

5. Granting such other relief as the court deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN, Attorney
General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

REBECCA A. BURLINGHAM
Senior Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Floor
Chicago, Illinois 60601
(312) 814-3776
Atty No. 99000

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. Roland W. Burris,
Attorney General of the State of
Illinois,

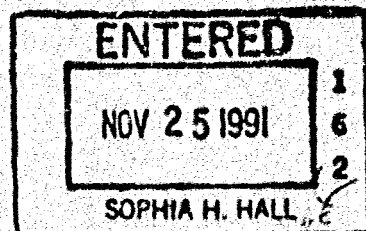
Plaintiff,

v.

LAND AND LAKES COMPANY, an
Illinois corporation,

Defendant.

No. 90 CH 01171



CONSENT DECREE

This action was commenced by the Attorney General of the State of Illinois, on behalf of the People of the State of Illinois, and at the request of the Illinois Environmental Protection Agency ("Agency") against LAND AND LAKES COMPANY ("L & L"), an Illinois corporation. The parties have agreed to this Consent Decree and submit it to the court for approval. The parties stipulate that the statement of facts herein is made exclusively for purpose of settlement and conditioned upon the court approving and disposing of this matter on each and every one of the terms and conditions set forth in this proposal for settlement.

JURISDICTION

The parties stipulate that this Consent Decree and all matters to which it refers, are within the jurisdiction of the Circuit Court of Cook County, Illinois.

STATEMENT OF FACTS AND CONCLUSIONS OF LAW

On February 5, 1990, the Plaintiff filed this cause of action against the Defendant alleging certain violations of the Illinois Environmental Protection Law, Ill. Rev. Stat., 1989, ch. 111 1/2, para. 1012, and the Rules and Regulations of the Illinois Pollution Control Board, Title 35 of the Illinois Administrative Code. On May 4, 1990, the Defendant filed its Verified Answer to the Complaint. The Defendant denied any liability for penalties or fines as a result of the allegations of the Complaint.

TERMS OF SETTLEMENT

The parties believe that the public interest will best be served by resolution of this enforcement action under the terms and conditions provided herein. This Consent Decree is expressly conditioned upon and effective only with approval thereof in all respects by the court.

1. Cease and Desist

Defendant shall cease and desist from all violations of the Act and Board regulations promulgated thereunder. This shall not be construed as an admission that Defendant has at any time engaged in any activity that would be a violation of the Act or Board regulations promulgated thereunder.

31961 700

2. Payment

In resolution of plaintiff's allegations in the complaint and the statement of facts herein, defendant, L & L, agrees to make a payment of thirty thousand dollars (\$30,000.00) into the Environmental Protection Trust Fund within thirty (30) days from the date of the entry of this Order. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Service Division
2200 Churchill Road
P. O. Box 19276
Springfield, Illinois 62794-9276

Land & Lake Company's Federal Employer Identification Number is 36-2650080, and shall also appear upon the certified check.

3. Right of Entry

The Agency, through its employees and representatives, and the Illinois Attorney General, through his agents and representatives, shall each have a right of entry to the L & L landfill at all reasonable hours, for the purpose of conducting investigations relating to the enforcement and performance under this Consent Decree. In conducting any inspection of said facilities, the Agency, its employees and representatives, and the Attorney General, his agents and representatives may take any photographs, review records, or take split samples as they

deem necessary in order to conduct their investigation. While conducting their investigation, all precautions shall be taken in order to avoid interference with the operations at the facilities.

The foregoing right of entry granted by L & L to the Agency and the Attorney General is in addition to any and all such rights that either the Agency or the Attorney General may have under the law and regulations of the State of Illinois and is not intended to restrict, modify or exclude any such right.

4. Parties Bound

The terms of this Consent Decree shall apply to and be binding upon Lake & Lakes Company, the State of Illinois, Illinois Environmental Protection Agency and Illinois Attorney General, their agents, successors, acting under or for Land & Lakes Company, the State of Illinois, Illinois Environmental Protection Agency and Illinois Attorney General.

5. Non-Admission

Nothing in this Order shall be construed as an admission of any fact or law, or the waiver of any rights, by any party hereto. This Order is not intended to expand or diminish the statutory or common law rights, responsibilities, or requirements applicable to either party.

deem necessary in order to conduct their investigation. While conducting their investigation, all precautions shall be taken in order to avoid interference with the operations at the facilities.

The foregoing right of entry granted by L & L to the Agency and the Attorney General is in addition to any and all such rights that either the Agency or the Attorney General may have under the law and regulations of the State of Illinois and is not intended to restrict, modify or exclude any such right.

4. Parties Bound

The terms of this Consent Decree shall apply to and be binding upon Lake & Lakes Company, the State of Illinois, Illinois Environmental Protection Agency and Illinois Attorney General, their agents, successors, acting under or for Land & Lakes Company, the State of Illinois, Illinois Environmental Protection Agency and Illinois Attorney General.

5. Non-Admission

Nothing in this Order shall be construed as an admission of any fact or law, or the waiver of any rights, by any party hereto. This Order is not intended to expand or diminish the statutory or common law rights, responsibilities, or requirements applicable to either party.

6. Release

In consideration of the payment of \$30,000 and compliance with the terms and conditions of this Consent Decree, including the commitment to cease and desist from violations of the Act, plaintiff releases, waives and forever discharges Land & Lakes Company, its officers, directors and employees from any further liability or penalties for the alleged violations of the Act and Board regulations which were the subject matter of the Complaint herein. Nothing in this Consent Decree shall be construed as a waiver by the State of Illinois of the right to redress future violations or obtain penalties with respect thereto.

7. Enforcement of Consent Decree

Upon the entry of this Consent Decree, any party hereto, upon motion, may reinstate these proceedings solely for purposes of enforcing the terms and conditions of this Consent Decree. This Consent Decree is binding and is an enforceable Order of the Court and may be enforced as such through any and all available means.

8. Authorization

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Decree, and to legally bind them to it.

Protecting Our Water Environment

BOARD OF COMMISSIONERS

Thomas S. Fuller
President
Kathleen Therese Meany
Vice President
Gloria Alitto Majewski
Chairman of Finance
Frank E. Gardner
Joseph E. Gardner
Terrence J. O'Brien
Nancy Drew Sheehan
Patricia Young
Harry "Bus" Yourell

PIETZ

Metropolitan Water Reclamation District of Greater Chicago

100 EAST ERIE STREET CHICAGO, ILLINOIS 60611 312/751-5600

Attachment #1

Cecil Ho-Hing
Director of R&D
312/751-5190

February 23, 1995

Ms. Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
Illinois Environmental
Protection Agency
2200 Churchill Road
Springfield, IL 62794-9276

Dear Ms. Jarvis:

Subject: Meeting of January 30, 1995, Concerning Ad-
justed Standard Petition by the Metropolitan
Water Reclamation District of Greater Chicago
(District)

The District appreciates having the January 30, 1995, meet-
ing in Springfield, Illinois, with you, Mr. Ed Bakowski, Ms.
Joyce Muncie, and Mr. Al Keller. We believe that the discussion
led to considerable clarification and resolution of a number of
key issues. At the meeting, the Illinois Environmental Protec-
tion Agency (Agency) raised the following issues:

1. Adjusted standard for intermediate cover.
2. Permitting authority of the Agency.
3. Composition of District sludge.
4. Use of District sludge as final cover.

As a result of our meeting on January 30, 1995, this letter
contains the District's position on these issues, and the Dis-
trict's current understanding of the Agency's position regarding
these issues.

Ms. Melanie Jarvis

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February 23, 1995

Subject: Meeting of January 30, 1995, Concerning Adjusted Standard Petition by the Metropolitan Water Reclamation District of Greater Chicago (District)

Adjusted Standard for Intermediate Cover

The Agency's concern was with surface runoff water quality from District sludge used as intermediate cover. The issue was whether the runoff had to be collected in the leachate collection system, or could be classified as storm water runoff and collected in detention basins adjacent to the landfill. Mr. Al Keller, in comments concerning use of District sludge as the final protective layer, indicated that he would consider surface runoff from final cover to be storm water runoff. Subsequently the Agency concluded that runoff from District sludge used as final cover could be safely managed as storm water runoff.

Since the Agency indicated that runoff from District sludge used as final cover could be managed as storm water runoff, Dr. David R. Zenz had a telephone conversation with Mr. Ed Bakowski on February 8, 1995, to discuss the Agency's concern about intermediate cover. Mr. Bakowski confirmed that the Agency would not require runoff from District sludge used as intermediate cover to be routed to the leachate collection system. Such runoff could be handled in the storm water management system used at the landfill site. The District concludes that the Agency's concern about runoff water quality from District sludge used as intermediate cover was resolved.

In light of the above discussion about intermediate cover, we conclude that the Agency's concerns have been satisfied about allowing the use of District sludge for intermediate cover when the operator so requests in a permit or permit modification application.

Permitting Authority of the Agency

With respect to permits in general, prior to the meeting the District perceived the Agency's concerns as challenging what it apparently believed as a District assertion that procedurally, the owner/operator would not have to apply for a permit or permit modification under 35 Ill. Adm. Code Part 813, procedural requirements for permitted landfill, after the grant of an adjusted standard by the Illinois Pollution Control Board (Board). In my December 23, 1994, letter to you, I indicated that the District did not make such an assertion in its draft, and that it would be inappropriate for the District's adjusted standard to include

Ms. Melanie Jarvis

3

February 23, 1995

Subject: Meeting of January 30, 1995, Concerning Adjusted Standard Petition by the Metropolitan Water Reclamation District of Greater Chicago (District)

Part 813, because Part 813 applies to the landfill owner/operator.

At the meeting, it became clear that the Agency wants the Board to address whether landfills that are permit-exempt under Section 21(d) of the Environmental Protection Act can be required to get permit modifications voluntarily if District sludge is used. The Agency expressed a concern that its resources dictate that it concentrate on reviewing permit-related applications, and not the reports required by the Board's Part 815 regulations. The Agency also questioned whether there is anything in the regulations to prevent permit-exempt and permitted landfills from increasing the height of the final protective layer above the minimum of three feet. Further discussion by Agency staff indicated that these concerns were not related to District sludge, but that the Agency wants to use the adjusted standard as a vehicle to request Board guidance on these questions.

The District does not believe that the issue requiring a 21(d) permit-exempt facility to voluntarily apply for a permit can be resolved without a statutory amendment. Consequently, the District is not in a position to resolve this issue with the Agency.

Composition of District Sludge

The District considers this issue to be resolved since the Agency had no further comments to make on District sludge composition.

Use of District Sludge as Final Cover

The Agency expressed concern on whether the runoff from District sludge used as final cover should go to a leachate collection system or be handled as storm water runoff. The issue was discussed by District staff, who described previous uses of District sludge as final cover in landfills and coal refuse piles at its Fulton County, Illinois, site. Mr. Al Keller stated that he would classify runoff from District sludge used as final cover as storm water runoff that can be captured in control structures built for a 25-year storm. He felt that suspended solids were the only constituent of concern. Mr. Edwin Bakowski, in a telephone conversation with Dr. David R. Zenz on February 8, 1995,

February 23, 1995

Subject: Meeting of January 30, 1995, Concerning Adjusted Standard Petition by the Metropolitan Water Reclamation District of Greater Chicago (District)

confirmed that runoff from the final cover would be classified as storm water runoff. The District feels that this issue has been resolved.

The Agency also expressed concern about the compaction of sewage sludge used as final cover. District staff indicated that the applied sludge is a very stable product, and that it decomposes very little, as indicated in data supplied with the December 23, 1994, letter to the Agency. The District has a 1994 consulting report which describes the engineering properties of District sludge. A copy of this report titled "Geotechnical Study, MWRDGC Process Sludge Study, Various Facilities, Metropolitan Water Reclamation District of Greater Chicago, Cook County, Illinois," prepared by the Claude H. Hurley Company is attached. This report demonstrates that District sludge has excellent engineering properties and is similar to soil.

The Agency expressed concern about the lack of vegetative layer thickness restrictions above the three foot minimum in the Board regulations. The District appreciates the Agency's concern. There may be some merit, if the Agency is willing to join in a request asking the Board to determine in its opinion whether the regulations can be construed generally, not unique to sludge, as limiting the depth of any protective cover to three feet unless the land use plan requires greater depth.

The District is willing to consider adding a condition to its adjusted standard Proposed Order stating that the District would limit the amount of sludge sent to a facility to that required for a depth of three feet, or more if needed to protect the impermeable layer or otherwise necessary to comply with the final use land plan. In doing this, the District emphasizes that it is proposing such a condition not because its sludge uniquely requires it, but simply as a matter of good public policy in the absence of a Board interpretation or an amendment of the landfill regulations.

Finally, in the initial discussions, the Agency assumed that the District was seeking an adjusted standard for experimental practices, referring to 35 Ill. Adm. Code 813.110. This issue was resolved following the reference to specifics in the District's draft petition which made clear that the District is seeking an adjusted standard pursuant to Section 28.1(c) of the Act. We also referenced the petition throughout, which in no portion mentions the experimental provisions.

Ms. Melanie Jarvis

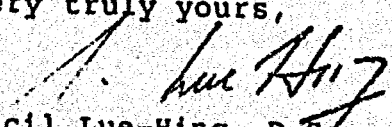
5

February 23, 1995

Subject: Meeting of January 30, 1995, Concerning Adjusted Standard Petition by the Metropolitan Water Reclamation District of Greater Chicago (District)

Please feel free to contact me at (312) 751-5190 if you have any questions or concerns.

Very truly yours,


Cecil Lue-Hing, D.S., P.E.
Director
Research and Development

CLH:RIP:lmf
Attachment
cc w/o att:

Dalton
DiVita
O'Connor
Rosenberg
Zenz
Child
Anderson
Park

← THIS COPY FOR →

130115



State of Illinois
ENVIRONMENTAL PROTECTION AGENCY

Mary A. Gade, Director

2200 Churchill Road, Springfield, IL 62794-9276

(217) 782-5544

March 21, 1995

Dr. Zony 3-23
For response.

CLH/R

Dr. Cecil Lue-Hing, D.Sc., P.E.
Director
Research and Development
Metropolitan Water Reclamation
District of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611

cc: Roseberg (Hill)
Lanyon

DIR. OF R & D
1995 MAR 23 AM 10:59
MWRD
OF GTR. CHGO.

RE: Adjusted Standard Draft Petition

Dear Dr. Lue-Hing:

Thank you for your letter dated February 23, 1995. The Agency agrees that all technical matters concerning the proposed adjusted standard have been resolved. However, the Agency and the District still seem to have a misunderstanding regarding the "permit" issue.

If the District's adjusted standard is granted by the Illinois Pollution Control Board ("Board"), the Agency will be given the task of administering it. The Agency will need Board guidance on certain procedural issues that pertain solely to the District's adjusted standard. The Agency is not trying use the District's petition to resolve issues created by a poorly written law. I wish to state unequivocally that the Agency would not try to subvert legislative channels in this manner. What the District needs to understand is that once the Board makes the decision to grant the adjusted standard, the Agency is then faced with procedural problems unique to their adjusted standard. The Agency plans to address these problems in the response they must file with the Board.

One such issue is what, if any, procedural requirements will be placed upon §21(d) permit-exempt facilities if they want to use District Sludge in place of soil material for final cover. The Agency may ask the Board to clarify the procedural requirements of permitted facilities also. The Agency does not expect the District to address these issues, however, we do want to make you aware that they exist, and that we will be addressing them.

The District also addressed the three foot minimum vegetative layer thickness issue. The condition that the District is considering adding would not be necessary for permitted facilities, as the Agency has the authority to regulate the amount of final cover used at a permitted facility. However, the condition requiring the District to send sludge in a quantity necessary to meet the minimum depth of three feet, or more if necessary to comply with a final land use plan, would be helpful to the Agency in working with permit-exempt facilities. We appreciate the District considering the addition of this condition to their adjusted standard.

Now that the Agency and the District agree on the technical issues involved in the adjusted standard, we may be at the point where the adjusted standard petition could be filed. If you have any questions or concerns regarding the issues discussed in this letter, please feel free to contact me.

Sincerely,

Melanie A. Jarvis

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel

DIR. OF R & D
1995 MAR 23 AM 10: 59
M. W. R. D.
OF GTR. CHGO.

cc: Susan Schroeder
Ed Bakowski
Joyce Munie

AGREEMENT
With
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO
For

USE OF A SANITARY LANDFILL SITE

CONTRACT 95-945-11

This AGREEMENT, made and entered into this 16th day of February
A.D., 1992, by and between the Metropolitan Water Reclamation
District of Greater Chicago, a municipal corporation organized and
existing under and by virtue of the laws of the state of Illinois,
party of the first part, hereinafter designated the Water
Reclamation District, and

Land and Lakes Company

party of the second part, hereinafter designated the Contractor.

WITNESSETH: That the said Contractor has covenanted, contracted
and agreed and by these presents does covenant, contract and agree
with the said Water Reclamation District, for and in consideration
of the payments made as provided for herein, to the Contractor by
the said Water Reclamation District, and under the penalty
expressed in the bond hereto attached, as his proper cost and
expense to do all the work and furnish all materials, tools,
equipment, labor and all appliances and appurtenances called for
by this Agreement (free from all claims, liens, and charges
whatsoever against monies due or to become due the Contractor), in
the manner and under the conditions hereinafter specified, that
are necessary for the work required as specified in the Contract
Documents.

LOCATION

The Lawndale Avenue Solids Management Area (LASMA) is located
between the Sanitary and Ship Canal and the Stevenson Expressway
and between the B&O CT Railroad and LaGrange Road.

DESCRIPTION OF WORK

The work consists of providing landfill disposal of sludge, rocks
and debris not suitable for processing at Metropolitan Water
Reclamation sites, and providing all necessary labor and
supervision, tools, equipment, materials and appurtenances,
including transportation, to do the required work as specified
herein. A more detailed description of the work is given in the
Detail Specifications attached hereto.

IN WITNESS WHEREOF, on the day and year first above written, the Metropolitan Water Reclamation District of Greater Chicago, party of the first part, has caused these presents to be executed, in duplicate, by its duly authorized officers, and the party of the second part has caused these presents to be executed, in duplicate, by its duly authorized officer or officers.

Metropolitan Water Reclamation District of Greater Chicago

By *Chris Blitto*
Chairman of the Committee on Finance
Archibald
General Superintendent
Daniel A. Lolas
Purchasing Agent

Signed and Attested:

Mary C. West (Seal)
Clerk of the District

Name of Company or Corporation

Lord and Taylor Company

By *[Signature]*
Signature of Authorized Officer

JAMES S. COWLEY, JR. V.P. OPERATIONS
(Print Name and Title)

3.7.95
Date

Attest:

[Signature] (Seal)
Asst Secretary

APPROVED:

[Signature]
Assistant Chief Engineer of M&O Administration
[Signature]
Chief of Maintenance and Operations

APPROVED AS TO FORM AND LEGALITY:

[Signature] Asst Assistant Attorney
[Signature]
Attorney

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ORIGINAL

RECEIVED
CLERK'S OFFICE

MAY 02 2003

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PETITION OF METROPOLITAN WATER)
RECLAMATION DISTRICT OF GREATER)
CHICAGO FOR AN ADJUSTED STANDARD)
FROM 35 Ill. Adm. Code 811, 812 and 817, and)
MODIFICATION OF AS 95-4)
(SLUDGE APPLICATION))
)
)
)
)

AS 03-02
(Adjusted Standard - Land)

**DISTRICT'S MOTION TO CONFIRM THAT ITS AMENDED
PETITION FOR AN ADJUSTED STANDARD NEED NOT BE RE-NOTICED**

Petitioner, Metropolitan Water Reclamation District of Greater Chicago ("District"), by its Attorney, Michael G. Rosenberg, pursuant to 35 Ill. Adm. Code 104.418, requests that the Board confirm that the District need not re-notice its Amended Petition for an Adjusted Standard. In support hereof, the District states as follows:

1. The District filed a Petition for an Adjusted Standard ("Petition") on February 11, 2003. The District's Petition sought two minor modifications to AS 95-4, which is a prior adjusted standard considered and granted by the Board in August, 1995. One change requested an amendment of the time/temperature requirements in AS 95-4 in order that they are consistent with United States Environmental Protection Agency ("USEPA") guidance, and the site-specific certification for Process to Further Reduce Pathogens ("PFRP") granted by USEPA, Region V. The other amendment sought to incorporate the well accepted distinction between sludge and biosolids.

2. The Agency has filed a response objecting to the District's request to have the adjusted standard distinguish between sludge and biosolids. The Agency claims that "The use of

the term "biosolids" will also create uncertainty regarding the applicability of other statutes and regulations for sludge that do not make any reference to "Biosolids." (Agency's Resp. p. 3.) Although the District still believes that the distinction is fully warranted, the District appreciates the concerns of the Agency that the lack of uniform definitions in the statutes and regulations at this time could create uncertainty. The District has no desire to cause any confusion and therefore has filed an Amended Petition that withdraws that part of its Petition that sought to identify the product generated by the District under AS 95-4 as "biosolids."

3. In addition, the Agency notes a typographical error in paragraph 2 of the proposed order. The Agency correctly notes that the citation in paragraph 2 to "35 Ill. Adm. Code 812.813(d)" should instead read "35 Ill. Adm. Code 812.313(d)" as stated in the rest of the Petition. The District's Amended Petition also corrects this typographical error.

4. The following is the Proposed Order contained in the Amended Petition. This order simply reinserts the word sludge for biosolids as provided for in AS 95-4, and changes the typographical error. The District wishes to emphasize that the following highlighted sections of text are all of the proposed changes to the AS 95-4 order, not simply the changes in the order between the District's original Petition and the Amended Petition.

PROPOSED ORDER

The Board hereby grants the District's motion to modify the adjusted standard that was adopted in the Board Order of August 24, 1995, pursuant to the authority of Section 28.1 of the Environmental Protection Act, and the Order shall now read as follows:

1. This adjusted standard applies only to the air-dried sludge product generated by the Metropolitan Water Reclamation District of Greater Chicago (District).

2. District sludge that complies with the conditions in paragraph 3 below is approved as an alternative to the soil material standard at the inert waste, the putrescible (MSWLF) and chemical waste landfills, or the steel and foundry industry potentially useable and low risk waste classes of landfills regulated at 35 Ill. Adm. Codes 810-815 and 817, for application as the final protective layer, as the final cover. The sections where the soil material standard is used are 35 Ill. Adm. Codes 811.204, 811.314(c)(3), 812.8313(d), 817.303 and 817.410(c)(2) and (c)(3).
3. When providing sludge for the applications enumerated in Paragraph 2, the District shall provide air-dried sludge as described in its petition for an adjusted standard (AS 95-4) and in its motion for modification and processing in accordance with the following conditions:
 - a. Anaerobic digestion: (1) at 95° + 1°F 35 to 55 degrees Celsius, except when a digester temperature, lowered temporarily due to digester feedings, might occasionally and briefly fluctuate below the minimum, and (2) for a minimum of 15 days or longer, as necessary with digestion temperatures and times (i.e. "Values for the mean cell residence time and temperature shall be between 15 days at 35 to 55 degrees Celsius and 60 days at 20 degrees Celsius") managed so as to ensure that the District's air-dried sludge anaerobically digested product is consistent with will meet the USEPA's Part 503 pathogen treatment requirements for a Class B sludge; (40 CFR Part 503, Appendix B(A)(3)); and
 - b. Storage in lagoons for a minimum of 1 and ½ years after the final addition of sludge; and
 - c. Air-drying for a minimum of 4 weeks, or as necessary to achieve a solids content of 60 percent.
4. When providing sludge for the applications enumerated in Paragraph 2, the District shall limit the sludge provided to amounts that are sufficient for a final depth of three feet as compacted using normal landscaping practices.
5. The District will report to the Agency the start up, discontinuance, and quality of sludge deliveries to each facility;
6. District sludge when used in compliance with this adjusted standard, are not a waste.

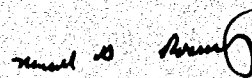
5. The changes made in the Amended Petition are not substantial in that they do not request additional or alternative relief. Rather, they simply withdraw part of the relief originally sought, and correct a typographical error. The District is requesting that the Board issue an order confirming that it is not necessary to re-notice its Amended Petition. See 35 Ill. Adm. Code 104.418(a).

6. The District also wishes to note that under the Board's rules, the District is not required to repeat the entire unchanged portion of its original filing in its Amended Petition. 35 Ill. Adm. Code 104.418(d). In order to avoid confusion, yet to avoid overburdening the record, the District has filed an Amended Petition without exhibits. The exhibits attached to the District's original Petition correspond to the Amended Petition.

WHEREFORE, the Metropolitan Water Reclamation District of Greater Chicago respectfully requests that the Board confirm that the District need not re-notice its Amended Petition for an Adjusted Standard.

Respectfully submitted,

Metropolitan Water Reclamation
District of Greater Chicago



Michael G. Rosenberg, its Attorney

DATED: May 2, 2003

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THIS FILING IS SUBMITTED ON RECYCLED PAPER