

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 11 2006
STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:

Petition of BP Products North America, Inc.)	AS 07-01
for An Adjusted Standard)	RCRA Delisting Adjusted
Pursuant To 35 Ill. Adm. Code 720.122)	Standard
)	

NOTICE OF FILING

To: Dorothy M. Gunn, Clerk Illinois Pollution Control Board James R. Thompson Center 100 West Randolph Street Suite 11-500 Chicago, IL 60601	BP Products North America, Inc c/o BP America, Inc. Ronald J. Ganim Mail Code 4 West 4101 Winfield Road Warrenville, IL 60555
George Varela, Senior Env. Scientist URS Corporation 100 South Wacker Drive, Suite 500 Chicago, IL 60606	Carol Webb, Hearing Officer Illinois Pollution Control Board 1021 North Grand Avenue East P.O. Box 19274 Springfield, IL 62794-9274

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Pollution Control Board the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO THE PETITION FOR ADJUSTED STANDARD** and an **ENTRY OF APPEARANCE** in the above titled matter. Copies of these documents are hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Michael S. Roubitchek
Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

1021 North Grand Avenue East
P.O. Box 19276
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(217) 782-5544

THIS FILING SUBMITTED ON RECYCLED PAPER.

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Standard

PROOF OF SERVICE

I, Michael S. Roubitchek, an attorney, hereby certify that I caused the attached pleadings to be served upon all parties listed on the attached Notice of Filing via first class U.S. mail from 1021 North Grand Avenue East, Springfield, Illinois 62794-9276.



Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

Illinois Environmental Protection Agency
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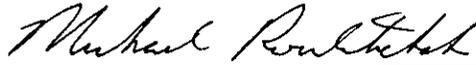
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)	

ENTRY OF APPEARANCE

I, Michael S. Roubitchek, hereby enter my appearance in the above-entitled action on behalf of the Illinois Environmental Protection Agency.



Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE
TO THE PETITION FOR ADJUSTED STANDARD

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Michael S. Roubitchek, Assistant Counsel, and for its response to the BP Products North America, Inc. ("Petitioner")("BP") Petition for an Adjusted Standard would respectfully state:

1. This response is filed pursuant to 35 Ill. Adm. Code 104.416.
2. The Petitioner filed its Petition for an Adjusted Standard with the Illinois Pollution Control Board ("Board") on July 27, 2006. This Petition was originally filed on January 19, 2006 in Docket Number AS 2006-002, but was dismissed on procedural grounds.
3. Petitioner seeks a RCRA Delisting Adjusted Standard pursuant to 35 Ill. Adm. Code Part 720.122.

PRELIMINARY DISCUSSION

The Illinois EPA believes the following information is relevant to the Board's consideration of the proposed Adjusted Standard:

4. The Pond 1 Landfill was created on BP's Riverfront Property when a series of wastewater treatment surface impoundments were undergoing RCRA closure. The

impoundments contained dissolved air flotation (DAF) fluff, which is a listed hazardous waste (K048) because of the presence of hexavalent chromium and lead.

5. In 1997, BP attempted to delist the wastes disposed of in the Pond 1 Landfill (AS 96-6), but the Board denied the Petition because sampling of the waste was insufficient. The current Petition is distinguishable in that BP now seeks only to delist the leachate generated from the Pond 1 Landfill, not the waste in the landfill.
6. BP developed a sampling and analysis plan for the leachate in the Pond 1 Landfill. The plan was developed based on BP's knowledge of the consistency and potential variability of the leachate. A total of 9 investigative samples and 12 quality control samples were collected during 3 separate events over a 6-month period.
7. A total of 24 constituents were detected in at least one investigative sample. These detected constituents were compared to various benchmarks, including the hazardous waste characteristics and "delisting levels" calculated using the EPA Composite Model for Landfills (EPA CML). The Petitioner found that all detected constituents were below all benchmarks.
8. The EPA CML is no longer the preferred model to be used for delisting determinations. The current and preferred model is known as the Delisting Risk Assessment Software (DRAS). However, according to USEPA Region 5, there are errors in the DRAS model and it is presently being revised. A new version of the DRAS Model will be published in the near future.

9. The DRAS model is a better model for purposes of delisting and is the preferred model of the Illinois EPA. However, until the errors in the current DRAS model are corrected, the Illinois EPA does not object to this Petition's use of the EPA CML.

REGULATORY REQUIREMENTS

10. **35 Ill. Adm. Code 104.406(a):** The Petition for an Adjusted Standard contains a statement describing the standard from which an Adjusted Standard is sought. This statement can be found on page 4-1 of the Petition.

11. **35 Ill. Adm. Code Section 104.406(b):** In order to implement the requirements of RCRA 42 U.S.C. Section 6901 et. seq., 35 Ill. Adm. Code 721.132 was adopted as an identical in substance rule to 40 CFR Section 261.32. This representation is stated on page 4-1 of the Petition.

12. **35 Ill. Adm. Code Section 104.406(c):** The Petition represents that the regulation of general applicability does not specify a level of justification and also represents the requirements necessary for an Adjusted Standard in 35 Ill. Adm. Code 720.122. This representation is stated on page 4-1 and 4-2 of the Petition. The State finds this representation to be satisfactory.

13. **35 Ill. Adm. Code Section 104.406(d):** As required, pages 5-1 through 5-5 of the Petition provide a description of the nature of the Petitioner's activity that is the subject of the Adjusted Standard. The State finds this description to be satisfactory.

14. **35 Ill. Adm. Code Section 104.406(e):** Pages 4-2 and 4-3 of the Petition provide a description of the efforts necessary if the Petitioner were to comply with the regulation of general applicability. The State finds this description to be satisfactory.

15. **35 Ill. Adm. Code Section 104.406(f):** The Petition provides a narrative description of the proposed Adjusted Standard as well as proposed language for a Board order. This

requirement is found on page 4-3 of the Petition. The State finds this description and language to be satisfactory.

16. **35 Ill. Adm. Code Section 104.406(g):** This requirement is fulfilled in the Petition on pages 4-3 through 4-4 and 7-1 through 7-4 by stating the quantitative and qualitative impact of the Village's proposed Adjusted Standard upon the environment. The State finds this description to be satisfactory.

17. **35 Ill. Adm. Code Section 104.406(h):** Pages 6-1 through 8-1 of the Petition sets forth the Petitioner's required statement of justification for the Adjusted Standard. The State finds this statement to be satisfactory.

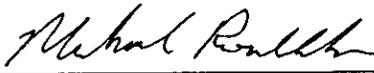
18. **35 Ill. Adm. Code Section 104.406(i):** The Petition, on page 4-4 states that the proposed Adjusted Standard is consistent with applicable federal law. The State finds this statement to be satisfactory.

19. **35 Ill. Adm. Code Section 104.406(j):** The Petitioner expressly waives their right to a hearing on page 4-4 of the Petition. If the Board deems a hearing necessary, the Illinois EPA will be in attendance.

WHEREFORE, the Illinois EPA recommends that the Illinois Pollution Control Board **GRANT** the Petitioner's Petition for an Adjusted Standard.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Michael S. Roubitchek
Assistant Counsel
Division of Legal Counsel

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