

ILLINOIS POLLUTION CONTROL BOARD

February 15, 2007

IN THE MATTER OF:)
)
PETITION OF BP PRODUCTS NORTH) AS 07-1
AMERICA, INC. FOR RCRA WASTE) (Adjusted Standard - Land)
DELISTING UNDER 35 ILL. ADM. CODE)
720.122)

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On July 27, 2006, BP Products North America Inc. (BP) filed a petition for an adjusted standard from the Board's hazardous waste regulations. BP seeks a Resource Conservation and Recovery Act (RCRA) hazardous waste delisting for leachate generated from a landfill owned by BP, located at the former Amoco Wood River refinery, in Wood River, Madison County (Pond 1 Landfill). The property is bordered on the west by the Mississippi River, on the east by the Wood River Levee District (WRLD) levee, on the south by property owned by ConocoPhillips, and on the north by a former channel of Wood River.

BP seeks delisting for the leachate to reduce the costs and risk of any spill or release that could occur as a result of managing the leachate from the Pond 1 Landfill. BP believes the leachate is not hazardous and would not present a hazard to human health or the environment if it were to be delisted and discharged as described in the petition. For the reasons set forth below, the Board denies BP's petition for delisting on the merits.

In this opinion, the Board first addresses procedural matters before providing background on BP's request. Next, the Board discusses the regulatory framework, BP's petition, generally, and the Illinois Environmental Protection Agency's (IEPA) recommendation. The Board then analyzes BP's petition and sets forth the Board's reasons for denying the petition.

PROCEDURAL BACKGROUND

BP previously petitioned the Board for a RCRA hazardous waste delisting of the same waste on January 19, 2006, docketed as In re Petition of BP Products North America Inc. for an Adjusted Standard Pursuant to 35 Ill. Adm. Code 721.122, AS 06-2. The Board, however, did not accept the petition in AS 06-2 because BP failed to timely provide a certificate of publication. The Board found that timely proof of publication is a jurisdictional requirement and dismissed the January 19, 2006 petition.

On July 27, 2006, BP filed the adjusted standard petition that opened this docket, In re Petition of BP Products North America Inc. for an Adjusted Standard Pursuant to 35 Ill. Adm. Code 721.122, AS 07-1. On September 7, 2006, the Board granted BP's requests for a waiver to file a reduced number of copies of the petition and also to incorporate by reference appendices A through J from docket AS 06-2 into this petition.

Also on September 7, 2006, the Board found that BP had properly initiated the proceeding and met the notice requirements of the Act and the Board's procedural rules. *See* 415 ILCS 5/28.1 (2004); 35 Ill. Adm. Code 104.408(a), 104.410. BP's July 27, 2006 petition waived hearing on the petition. The IEPA filed a response recommending that the Board grant the adjusted standard on September 11, 2006 (Resp.). To date, BP has filed no response to the IEPA's recommendation.

BACKGROUND

BP, formerly known as Amoco Oil Company, owns the former Amoco Wood River Refinery and Riverfront Property in Wood River, Madison County, Illinois. Pet. at 1-1. The Riverfront Property is approximately 1,000 feet west of the former refinery. *Id.* The Pond 1 Landfill is located in the waste management area of the Riverfront Property, which covers approximately 40 acres and is located on the east side of the Riverfront Property. *Id.* The Riverfront Property is located in the American Bottoms, an area of the Mississippi River floodplain valley. *Id.* at 1-2.

"In 1977, Amoco started operation of an advanced design wastewater treatment plant containing a dissolved air flotation (DAF) unit." Pet. at 1-1. The waste from the DAF was considered a listed hazardous waste, K048, and was discharged to surface impoundments, known as Ponds 1 through 5. Ponds 1 through 4 were used for wastewater treatment from 1977 until 1981 when petroleum-refining operations ceased. *Id.* While closure activities took place in Ponds 1-5, a temporary surge basin (TSB) was built in 1983 to hold storm water and process wastewater streams. *Id.* "All sludges and underlying impacted soils in the impoundments were classified as hazardous waste according to the 'mixture rule' in 35 [Ill. Adm. Code] 721.103(a)(2)(D), because of the discharge of a listed hazardous waste into the impoundments." *Id.* at 4-1. In 1985, the United States Environmental Protection Agency (USEPA) and the Board delisted the sludges from the impoundments that were solidified by the Chemfix™ process. *Id.*, 50 Fed. Reg. 37364 (Sept. 13, 1985); Petition of Amoco Oil Co., R85-2 (Apr. 24, 1986); 35 Ill. Adm. Code 721.Appendix I. The delisted sludges from Pond 1 through 4 were placed in a permitted non-hazardous waste management unit or landfill (PNWL), which was constructed in the area formerly occupied by Pond 5. *Id.* at 1-1. By 1985 the PNWL was filled to capacity. *See Id.* For placement of the remaining sludges and soil liner from Ponds 1-4 and the TSB, BP constructed the Pond 1 Landfill. *Id.*

Ponds 2, 3, and 4 were consolidated into one large impoundment called the East Surge Pond. Pet. at 1-1. The sludges have been removed and the consolidated impoundment lined with one foot of compacted clay. The East Surge Pond is operational and receives non-hazardous wastewater from the City of Wood River Publicly Owned Treatment Works (Wastewater Treatment Facility (WWTF)) and from the BP facilities in the main plant area. *Id.* at 1-2.

The Pond 1 Landfill now contains solidified sludge and associated soil and debris from the former wastewater treatment plant surface impoundments. Pet. at 5-1. Although some sludges in the Pond 1 Landfill were previously solidified through the Chemfix process using Portland cement; most were solidified with cement and lime kiln dust. *Id.* at 5-2. The solidified material was deposited in the Pond 1 Landfill between November 9, 1992 and January 31, 1994.

Id. Pond 1 Landfill was certified closed in 1995 and is currently in the thirty-year post-closure maintenance period. *Id.* at 5-5.

The leachate from the Pond 1 Landfill is considered a hazardous waste because it is a waste residual of hazardous waste according to the mixture rule in 35 Ill. Adm. Code 721.103(a)(2)(D). The leachate generated from the Pond 1 Landfill is listed as a K048 hazardous waste because dissolved air floatation (DAF) float was present in the surface impoundments from which the contents of the Pond 1 Landfill were derived. DAF from petroleum refining is a listed hazardous waste under federal and Illinois regulations (35 Ill. Adm. Code 721.132, Subpart D), waste number K048, because of the presence of hexavalent chromium and lead. *Id.* at 5-1.

The Pond 1 Landfill generated an average of 102,300 gallons per year of leachate from 1994 through 2003. “The leachate is currently collected and transferred via trucks to a wet-well in a domestic sewage system sewer upstream of the WWTF.” Pet. at 4-2. The leachate is pumped from the leachate collection system located at the south-center edge of the landfill to a 6,000-gallon tanker truck for delivery to the WWTF. *Id.* at 5-5.

BP seeks a determination from the Board that the leachate BP generates at the Pond 1 Landfill is excluded from 35 Ill. Adm. Code 721, Subpart D listed hazardous wastes. BP asks the Board to delist the leachate to reduce the costs associated with the management of the leachate as a “hazardous waste.” BP seeks this determination by way of an adjusted standard from 35 Ill. Adm. Code 721.132. Pet. at 4-1.

If delisted and treated as non-hazardous, BP would discharge the leachate into BP’s East Surge Pond and transfer it, along with a large volume of stormwater, through a series of existing stormwater retention basins to the WWTF. Pet. at 7-3. Thus, the only change in management of the leachate would be that the leachate would be pumped or gravity fed into the WWTF rather than transported by truck. *Id.* at 5-7.

REGULATORY FRAMEWORK

Section 22.4 of the Act requires the Board to adopt regulations that are identical in substance to federal RCRA regulations. 415 ILCS 5/22.4(a) (2004). The Board’s regulations identifying and listing hazardous wastes are found in 35 Ill. Adm. Code 721.

In accordance with Section 28.1(a) of the Act, persons seeking a RCRA waste delisting must justify the request consistent with Section 27(a). Section 27(a) provides:

In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a) (2004).

Pursuant to Section 28.1(b) of the Act, the Board has further specified the level of justification for hazardous waste delistings in Section 720.122 of the Board's regulations. 35 Ill. Adm. Code 720.122. Subsection 720.122(n) states that delistings that have not yet been adopted by the USEPA can be proposed to the Board by way of an adjusted standard pursuant to Sections 28.1 of the Act and Section 104, Subpart D. Subsection 720.122(n) also states that the justification for the adjusted standard "is as specified in subsections (a) through (g) of this Section, as applicable to the waste in question." 35 Ill. Adm. Code 720.122(n).

BP states that Pond 1 Landfill leachate is classified as hazardous waste under the "mixture rule" (35 Ill. Adm. Code 721.103(a)(2)(D)) because a listed hazardous waste (dissolved air floatation (DAF)) was placed into the impoundments from which the contents in Pond 1 Landfill were derived. Pet. at 4-2. DAF from petroleum refining is a listed hazardous waste, number K048, under federal and Illinois regulations because of the customary presence of hexavalent chromium and lead. *See* 35 Ill. Adm. Code 721.132. For this reason, notes BP, the Pond 1 Landfill leachate carries the hazardous waste code K048, annotated "T" for toxic waste in 35 Ill. Adm. Code 721, Subpart D. 35 Ill. Adm. Code 721.103(e)(1). Therefore, pursuant to Section 720.122(b), the petitioner must make the same demonstration as required by Section 720.122(a).

Under Section 720.122, the petitioner must demonstrate: (1) the petitioned waste "does not meet any of the criteria under which the waste was listed as a hazardous . . . waste" (35 Ill. Adm. Code 720.122(a)(1), (c)(1), (d)(1), and (e)(1)); (2) the petitioned waste "does not exhibit the relevant characteristic for which the waste was listed, or . . . any of the other characteristics (35 Ill. Adm. Code 720.122(c)(1), (d)(3), and (e)(3)); and (3) that if "factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste" (35 Ill. Adm. Code 720.122(c)(2), (d)(2), and (e)(2)).

The Board's standard of decision for requests to delist hazardous wastes is found at Section 720.122. That section, adopted identically in substance to the federal regulation 40 C.F.R. 260.22, provides:

The petitioner must demonstrate that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed. 35 Ill. Adm. Code 720.122(a)(1)

Based on a complete petition, the Board will determine, if it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A Board determination will be made "by reliance on, and in a manner consistent with, 'EPA RCRA Delisting Program—Guidance Manual for the Petitioner'" (Guidance Manual). 35 Ill. Adm. Code 720.122(a)(2) and (c)(2).

The petitioner must demonstrate that the waste does not exhibit the relevant characteristic for which the waste was listed or any of the other characteristics, as

defined in 35 Ill. Adm. Code 721.121, 721.122, 721.123, or 721.124. 35 Ill. Adm. Code 720.122(c)(1)

Those petitioning for the delisting of a toxic waste must use “the appropriate test methods prescribed in ‘Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,’ USEPA Publication SW-846.” 35 Ill. Adm. Code 720.122(d)(1)(A). Alternatively, a petitioner may choose to demonstrate that the petitioned waste, if listed as a toxic waste, does not meet the criterion of 35 Ill. Adm. Code 721.111(a)(3) when considering the factors used in 35 Ill. Adm. Code 721.111(a)(3)(A) through (a)(3)(K) under which the waste was listed as hazardous. 35 Ill. Adm. Code 720.122(d)(1)(B).

BP’S PETITION

BP’s petition asserts “the leachate meets the delisting criteria as specified in EPA RCRA Delisting Program Guidance Manual for the Petitioner (U.S. EPA, 2000).” Pet. at 4-4. According to BP, the concentrations of chemicals in the leachate are below regulatory and health-based levels for hazardous waste. *Id.* at 7-3. BP claims that the leachate should be delisted because it is not a hazardous waste pursuant to 40 C.F.R. 261.24 and it is eligible for delisting. *Id.* at 7-2. In support of the petition, BP performed waste sampling and chemical analyses of the leachate. According to BP, “none of the [toxicity characteristic (TC)] constituent concentrations detected in the leachate exceed the TC regulatory level.” *Id.* at 7-3. BP admits, however, that the health-based levels for eight constituents of the leachate are considerably lower than can be detected by the routine laboratory analysis that it conducted. *See Id.* BP was unable to estimate delisting criteria for 2-methylnaphthalene. BP states that it is unlikely that 2-methylnaphthalene would be a concern because it was not detected in any leachate samples. *Id.*

In the petition, BP relied on the USEPA Composite Model for Landfill (EPACML) fate and transport model to determine potential chemical releases to groundwater and the corresponding delisting levels for the Pond 1 Landfill leachate. BP arrived at delisting levels using dilution attenuation factors that were calculated by EPACML and appear in the July 18, 1991 Federal Register. 56 Fed. Reg. 33000. BP selected a single dilution attenuation factor of 93 for surface impoundments with approximately 1500 cubic yards of waste volume per year. Pet. Table 7-1. BP calculated the delisting levels by multiplying the USEPA’s “Health-based Level”¹ for each constituent by 93. *Id.*

BP asserts that the comparison of leachate concentrations with the delisting levels indicated that no constituents were detected in the investigative and duplicate leachate samples at levels above the delisting levels. Therefore, BP contends that the leachate is suitable for delisting and can be managed as a non-hazardous waste as proposed in the petition. Pet. at 7-3.

BP claims that “continuing to manage the leachate as a hazardous waste presents an unnecessary cost and potential risk of spills and releases during truck loading, transport and unloading.” Pet. at 2-2. BP currently delivers the leachate by truck to the City of Wood River

¹ BP states that “[m]ost HBLs reported in Table 7-1 are obtained from ‘Docket Report on Health-Based levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR §260.20 and §260.22’ (U.S. EPA 1994).” Pet. at 7-2.

Publicly Owned Wastewater Treatment Facility for treatment. *Id.* The alternative of installing a pipeline to deliver the leachate to the WWTF would cost \$500,000. *Id.* at 4-2. BP states that with the requested relief, BP could discharge the leachate into the East Surge Pond and would expect to save approximately \$14,000 per year in transportation and discharge costs. *Id.* at 2-2. If the requested relief is granted, BP estimates the installation of a pipe to discharge the leachate directly into the East Surge Pond to cost \$25,000, and annual maintenance for the leachate pump to cost \$2,000 per year. *Id.* at 4-3.

Proposed Adjusted Standard Language

BP seeks to exclude the Pond 1 Landfill leachate from regulation as a listed hazardous waste under Section 721.132. BP requests that the exclusion apply at the point where the Pond 1 Landfill leachate exits the leachate collection system. BP proposed the following adjusted standard language:

Leachate generated from the Pond 1 Landfill at BP's former Wood River Refinery, Wood River, Illinois is not a listed hazardous waste. This delisting does not modify the facility's RCRA Permit conditions, including corrective action requirements. Pet. at 4-3.

IEPA RECOMMENDATION

The IEPA recommended granting BP's petition, stating that BP has provided the required level of justification. Resp. at 4; citing 35 Ill. Adm. Code 104.406(h). The IEPA's recommendation indicated that BP's petition satisfied all of the regulatory requirements of the Board's procedural rules. The IEPA, however, did not address the requirements for a waste delisting found at 35 Ill. Adm. Code 721.122.

The IEPA observed that BP calculated delisting levels by using the EPACML and explains that the EPACML is no longer the preferred model to use for delisting determinations. According to the IEPA, a different model used with the USEPA's Delisting Risk Assessment Software (DRAS)² "is a better model for purposes of delisting and is the preferred model of the Illinois EPA." Pet. at 3. The IEPA acknowledges that the USEPA Region 5 indicated that the DRAS contains errors and is currently being revised. *Id.* at 2. For that reason, the IEPA does not object to the petitioner's use of the EPACML. The IEPA did not, however, provide the Board with a critical analysis of BP's petition to assess the appropriateness of the model used or the validity of the results.

² The DRAS is a software program that calculates the potential risks associated with disposing a given waste stream to a landfill or surface impoundment. For a given waste stream, the DRAS calculates the waste's cumulative cancer risks and noncarcinogenic hazard indices as well as back-calculates each waste constituent's maximum allowable waste constituent concentration permissible for delisting. The DRAS can be found at: http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/midlo.htm#risk.

BOARD ANALYSIS

The Board finds that BP has not adequately addressed certain proof requirements under Section 720.122, the Board's waste delisting regulation. Under Section 720.122(c), the Board's determination must be made "by reliance on, and in a manner consistent with, 'EPA RCRA Delisting Program—Guidance Manual for the Petitioner.'" 35 Ill. Adm. Code 720.122(c). In this part of the opinion, the Board identifies how BP's petition is inconsistent with the Guidance Manual and otherwise fails to meet the required level of justification for receiving the requested adjusted standard.

Justification for the Proposed Adjusted Standard

Section 720.122, subsections (a) through (g), specifies the justification for the adjusted standard applicable to the Pond 1 Landfill leachate. 35 Ill. Adm. Code 720.122(n).

Under Section 720.122, the petitioner must demonstrate: (1) the petitioned waste "does not meet any of the criteria under which the waste was listed as a hazardous . . . waste" (35 Ill. Adm. Code 720.122(a)(1), (c)(1), (d)(1), and (e)(1)); (2) the petitioned waste "does not exhibit the relevant characteristic for which the waste was listed, or . . . any of the other characteristics (35 Ill. Adm. Code 720.122(c)(1), (d)(3), and (e)(3)); and (3) that if "factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste" (35 Ill. Adm. Code 720.122(c)(2), (d)(2), and (e)(2)).

EPACML v. EPACMTP/ DRAS

Besides the RCRA Delisting Program Guidance Manual, USEPA has issued additional guidance for delistings. According to the USEPA RCRA Delisting Technical Support Document (TSD) (EPA906-D-98-001), "[p]reviously, US EPA OSW delisting evaluations applied the EPACML fate and transport model for determining potential chemical releases to groundwater . . . [h]owever, the EPACML had limitations, such as the inability to predict [dilution attenuation factors] on a chemical-specific basis." TSD at 1-6. "Since the application of the EPACML to the TC Rule and to delisting, the [USEPA] has developed a number of improvements in the modeling method and the input data. The USEPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) is the product of the improvements incorporated into the EPACML fate and transport model." TSD at 1-5.

The EPACMTP improves on the EPACML model in several ways. EPACMTP includes additional fate and transport processes, uses enhanced flow and transport equations, and uses a revised Monte Carlo methodology. USEPA states, "EPACMTP replaces EPACML as the best available tool to predict potential exposure at a downstream receptor well . . . EPACMTP offers improvements to EPACML by considering: (1) the formation and transport of transformation products; (2) the impact of groundwater mounding on groundwater velocity; (3) finite source as well as continuous source scenarios; and (4) metals transport." EPA Composite Model for Leachate Migration with Transformation Products, USEPA, 1997 at p. iii.

Since 2000, the USEPA has paired the EPACMTP with the DRAS program for evaluating risks to groundwater in delisting petitions. *See* 65 Fed. Reg. 75637 (Dec. 4, 2000). The DRAS uses the more recent EPACMTP model to simulate the fate and transport of dissolved contaminants from a point of release at the base of a landfill, through the unsaturated zone and underlying groundwater, to a receptor well at an arbitrary downstream location in the aquifer. Petition of BMW Mfg. Corp., 66 Fed. Reg. 29, 9784 (Feb. 12, 2001) (proposed rule).

In its analysis of the Pond 1 Landfill leachate, BP did not rely on EPACMTP or the DRAS program, but rather the EPACML to select a dilution attenuation factor to calculate the delisting levels for constituents of concern. In the cover letter to the petition, BP states that DRAS has problems and that it is not recommended for use until the problems are resolved. For this reason, the IEPA, in its recommendation, did not object to BP's use of the EPACML.

USEPA has issued a user alert for DRAS Version 2, but the alert does not indicate that any errors make the EPACMTP model³ or the DRAS program unusable. The user alert identifies specific problems with the DRAS Version 2 and notes that the program "can still be used for its intended purpose by user over-rides to input variables and, in some instances, performing necessary correction calculations by hand." (<http://www.epa.gov/epaoswer/haswaste/id/f019/pdf/0038-2.pdf>). In the user alert, USEPA does not indicate the use of DRAS is "not recommended." BP has submitted no USEPA documentation to support its assertions that the use of EPACMPT or DRAS is not recommended.

The USEPA currently considers the EPACMTP model the best available tool to predict potential exposure at a downstream receptor well. Petitioners for delistings have argued with the USEPA in the past about the proper model to use to set delisting levels. The USEPA has consistently used EPACMTP as the basis for delisting levels since 2000 because it minimizes the risk to human health and the environment. *See e.g.*, Petition of Nissan North America, Inc., 66 Fed. Reg. 223, 57918-57930 (Nov. 19, 2001); *final rule issued* 67 Fed. Reg. 120, 42187-198 (June 21, 2002); *see also* Petition of BMW Mfg. Corp., 66 Fed. Reg. 29, 9781-9798 (Feb. 12, 2001) (proposed rule); *final rule issued* 66 Fed. Reg. 85, 21877-86 (May 2, 2001). The EPACMTP has been formally reviewed by the Science Advisory Board (SAB), a public advisory group that provides information and advice to the USEPA. Petition of Eastman Chemical Co., 65 Fed. Reg. 233, at 75639-40 (Dec. 4, 2000) (proposed rule). The SAB "commended the Agency [USEPA] for making significant enhancements to the EPACMTP's predecessor, the EPACML" *Id.* at 75640.

The Board agrees with the IEPA that the more recent model EPACMTP paired with the DRAS program is the preferred method for evaluating delisting petitions. While the USEPA previously used the EPACML model, the EPACMTP model reflects many improvements and advances to the EPACML that may have a significant impact on the magnitude of dilution attenuation factors that are in turn used to calculate the delisting levels. Further, the DRAS program is usable with user over-rides to input variables and, in some cases, by performing necessary correction calculations by hand. For these reasons, the Board finds BP's petition

³ Version 2.0 of the EPACMTP is available at: <http://www.epa.gov/epaoswer/non-hw/industd/tools/cmt/epacmtp.htm>.

deficient because it did not use the EPACMTP model in calculating the dilution attenuation factors.

One-Time Delisting v. Multiyear Delisting

BP seeks a multiyear, or multiple-batch, delisting of its waste so that the delisting will apply to waste that will be generated in the future. Alternatively, delisting petitioners have the option of requesting a one-time delisting or single-batch exclusion to apply to discrete volumes of waste that were generated in the past. Guidance Manual at 7-8, App. H, Att. 5; TSD at 1-7, 1-8. Because future waste may exhibit variability in constituents and contaminant levels, the demonstration required for one-time delistings, and multiyear delistings differ.

DRAS produces two levels of analyses: screening-level analyses and cumulative risk and hazard level analyses. According to the TSD, multiyear delistings rely on the screening level analyses to “compute chemical specific exit values or ‘delisting levels’ . . .” TSD at 1-8, 1-9. These levels are then used to establish monitoring concentrations that must be met by each batch of waste to be managed under the adjusted standard. For a one-time, single-batch delisting, the cumulative risk and hazard analyses are used and the results may be used in lieu of delisting levels. TSD at 1-8, 1-9.

BP submitted 15 sample results of the leachate: 12 from 1998, 2 from 2003, and 1 from 2005. BP compared the sample results to the calculated delisting levels. Based on the comparison, BP determined that since none of the constituents are above the delisting levels, the leachate should be considered delisted without any further analysis.

The Board finds that BP has not met the requirements for a multi-year delisting. BP did not provide for ongoing sampling or comparison of the sampling results with delisting levels in the adjusted standard language. The adjusted standard language must include delisting levels in adjusted standard language for multiyear delistings so that the IEPA can verify on-going compliance. The adjusted standard language for a multi-year delisting must also include the frequency of sampling (*i.e.*, each time leachate is pumped from the collection system, or on an annual, semi-annual, or quarterly basis) and explain how BP will define a “batch” or “load” of leachate.

Constituents of Concern

The Guidance Manual directs petitioners to demonstrate that constituents of concern are not present in the petitioned waste at hazardous levels based on “analytical data, mass balance demonstrations, or other appropriate information.” Guidance Manual at 26. For the initial evaluation, the COCs are those listed in 40 C.F.R. 261, App. VIII as well as acetone, ethylbenzene, isophorone, 4-methyl-2-pentanone, styrene, and xylenes (total). Guidance Manual at 26, 30-31. The Guidance Manual states that after evaluating the initial list, “a final list of constituents can be prepared to include only the metals and organics from the 40 CFR 261.24 Toxicity Characteristics plus all additional constituents that were detected . . .” Guidance Manual, App. H, Att. 2.

The Board finds that BP has not adequately analyzed for all the delisting constituents of concern. BP's petition does not contain an initial analysis for the minimum constituent list that must be included in all delisting petitions.

Board Analysis

The Board's review identifies significant deficiencies in BP's petition. The Board finds that BP's use of the EPACML for evaluating the delisting petition instead of the more recent EPACMTP model paired with DRAS, may not have resulted in delisting levels consistent with the use of what USEPA considers the best available tools. Because the EPACMTP model and DRAS program were created and are maintained by the USEPA, the Board recommends consulting with the USEPA Region 5 on the use of the most current model and the DRAS program. In addition, BP's petition has not met the requirements for a multi-year delisting and does not follow the USEPA's guidance in completely identifying the constituents of concern. Because the deficiencies identified above are significant in nature, the Board denies BP's petition for an adjusted standard.

CONCLUSION

The Board finds that BP's request for a RCRA waste delisting of Pond 1 Landfill leachate does not meet the required level of justification. As discussed above, BP has not adequately addressed certain proof requirements under Section 720.122. The Board finds that BP's petition fails to meet the required level of justification for receiving the requested adjusted standard. Accordingly, the Board denies BP's petition on the merits and closes the docket.

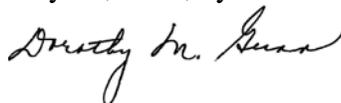
This opinion constitutes the Board's findings of fact and conclusions of law.

IT IS SO ORDERED.

Board Member T.E. Johnson concurred.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2004); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 15, 2007, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

