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MAR 31 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF WESTWOOD LANDS)
INC. for an ADJUSTED STANDARD from)
portions of 35 Ill.Adm.Code 807.104 and)
35 Ill.Adm.Code 810.103, or)
in the alternative, A FINDING OF)
INAPPLICABILITY.)

AS 09-03
(Adjusted Standard – Land)

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Pollution Control Board

NOTICE OF FILING

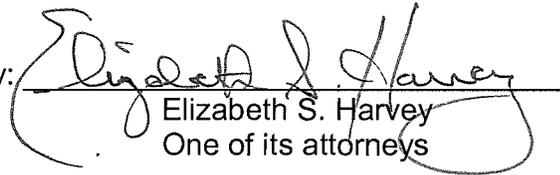
ORIGINAL

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 31st day of March 2009, the following were filed with the Illinois Pollution Control Board: **Westwood Lands, Inc.'s Appearance, Petition for Adjusted Standard or, in the alternative, a Finding of Inapplicability, and Motion for Expedited Consideration**, which are attached and herewith served upon you.

WESTWOOD LANDS INC.

By:


Elizabeth S. Harvey
One of its attorneys

Elizabeth S. Harvey
John P. Arranz
Swanson, Martin & Bell
330 North Wabash Avenue
Suite 3300
Chicago, IL 60611
312.321.9100
312.321.0990 (facsimile)

CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copies of the above-described documents to counsel of record via U.S. Mail at 330 North Wabash Avenue, Chicago, IL 60611, at or before 5:00 p.m. on March 31, 2009.


Jeanette M. Podlin

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

4376-001

SERVICE LIST

Westwood Lands, Inc. v. Illinois Environmental Protection Agency

AS 09-

(Adjusted Standard – Land)

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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STATE OF ILLINOIS
Pollution Control Board

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March 31, 2009

Mr. John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

ORIGINAL

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STATE OF ILLINOIS
Pollution Control Board

Re: ***Petition of Westwood Lands, Inc.***
AS 09- 03
Trade Secret Claim Letter

Dear Mr. Therriault:

Pursuant to the provisions of Sections 7 and 7.1 of the Environmental Protection Act ("Act") (415 ILCS 5/7 and 7.1), and Part 130 of the Board's procedural rules (35 Ill. Adm. Code Part 130), petitioner Westwood Lands, Inc. ("Westwood") hereby makes a claim for trade secret protection of two exhibits to its petition for adjusted standard. This letter is the claim letter required by Section 130.200(b) of the Board's rules, and triggers the protections from disclosure set forth in Part 130.

Westwood seeks trade secret protection of Exhibits A and C to its petition for adjusted standard. Portions of those documents are trade secrets, as that term is defined in Section 3.490 of the Act and in Section 101.202 of the Board's rules.

Exhibit A is the sales agreement between Westwood and U.S. Steel, for the purchase of the steelmaking slag fines that are the raw material for Westwood's process. Westwood claims trade secret protection for portions of Exhibit A (Sections 5, 6, 10, and 23) which contain confidential business information regarding price, billing and payment, royalties, and greenhouse gas credits. Exhibit C is a letter from Stein, Inc., another potential source of the slag fines. Westwood claims trade secret protection for the price provision of Exhibit C. Westwood notes that the provisions of Exhibits A and C for which it claims trade secret protection are business-related provisions, and do not include emissions data, environmental information, or other information directly relevant to the Board's consideration of Westwood's adjusted standard petition.

The listed portions of Exhibits A and C, for which Westwood claims trade secret protection, are trade secrets because they contain Westwood's "business plan which is secret in that it has not been published or disseminated or otherwise become a matter

SWANSON, MARTIN & BELL, LLP

Mr. John Therriault
March 31, 2009
Page 2

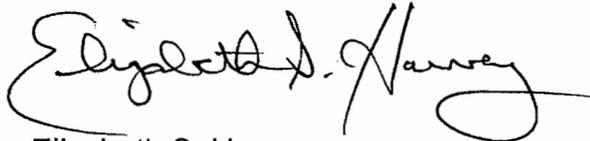
of general public knowledge, and which has competitive value.” (Section 3.490 of the Act and Section 101.202 of the Board’s rules.) Thus, Westwood claims trade secret protection for the enumerated and marked portions of Exhibits A and C. Pursuant to Section 130.200(c), Westwood will provide a further statement of justification upon request pursuant to Sections 130.201 and 130.202.

I have enclosed two copies of each exhibit, marked as required by Section 130.302. One copy of each exhibit is marked but unredacted, and the second copy is marked and redacted.

I will be happy to provide additional information or answer any questions the Board may have. Please protect these documents from disclosure, pursuant to Part 130 of the Board’s rules.

Very truly yours,

SWANSON, MARTIN & BELL, LLP



Elizabeth S. Harvey

ESH/jp

Enclosures

cc: IEPA Division of Legal Counsel
(w/out enc.)

4376-001

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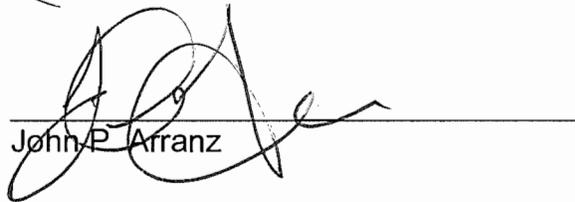
AS 09- **03**
(Adjusted Standard – Land)

ORIGINAL

APPEARANCE

The undersigned hereby submit their appearances on behalf of petitioner
WESTWOOD LANDS, INC.


Elizabeth S. Harvey


John P. Arranz

Dated: March 31, 2009

Elizabeth S. Harvey
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ORIGINAL

**PETITION FOR ADJUSTED STANDARD OR, IN THE ALTERNATIVE,
A FINDING OF INAPPLICABILITY**

Petitioner WESTWOOD LANDS, INC. ("Westwood"), by its attorneys Swanson, Martin & Bell LLP, hereby petitions for an adjusted standard or, in the alternative, a finding of inapplicability. This petition is submitted pursuant to the provisions of Section 28.1 of the Environmental Protection Act ("Act") (415 ILCS 5/28.1) and 35 Ill.Adm.Code Part 104, Subpart D. Westwood seeks a determination that the raw material used in its production process is not a "waste" and, therefore, Westwood does not need waste permits pursuant to Parts 807 and 810 of the Illinois environmental regulations. In the alternative, if the Board disagrees that the material is not a "waste," Westwood seeks an adjusted standard from portions of Sections 807.104 and 810.103 (35 Ill.Adm.Code 807.104 and 810.103).

INTRODUCTION

Westwood owns a facility at 4 Caine Drive, Madison, Madison County, Illinois, that will process steelmaking slag fines into a usable product. Westwood currently purchases the steelmaking slag fines ("slag fines") from U.S. Steel's Granite City facility, pursuant to a contract between U.S. Steel and Westwood. (See the contract, attached

as Exhibit A.) Westwood will process the slag fines at its facility, and produce two products for sale: 1) a course metallic fraction, to be sold in bulk form; and 2) a fine metallic fraction that can be sold either in bulk form or processed into a briquette. Both products will then be sold for industrial use.

Westwood applied to the Illinois Environmental Protection Agency ("IEPA") for an air permit to construct and operate the necessary air pollution control equipment at the facility. IEPA found the application to be incomplete. In addition to questions about air emissions from the facility, IEPA found the permit application to be incomplete because Westwood had not included proof of local siting approval pursuant to Section 39(c) of the Act. (See attached Exhibit B, par. 3(b).) IEPA stated that local siting approval was required for a "new pollution control facility." Upon inquiry by Westwood, IEPA informed Westwood that the slag fines, Westwood's raw material, was "waste" and, therefore, triggered the pollution control facility provisions of the Act and regulations.

Westwood's raw material, the slag fines purchased from U.S. Steel, is not a "waste" and should not be regulated as a "waste." The steel slag is not discarded, but collected, processed, and returned to the economic mainstream as a product.

THE MATERIAL USED IS NOT A "WASTE"

The material used by Westwood in its process is not a "waste" and, therefore, the requirements of Parts 807 and 810 of the Board's regulations are inapplicable. The Board has previously recognized that an adjusted standard petition can, in the alternative, seek a finding of inapplicability. (*In the Matter of Petition of Illinois Wood Energy Partners, L.P. for an Adjusted Standard*, AS 94-1 (October 6, 1994); see also *Petition of Jo'Lyn Corporation and Falcon Waste and Recycling, Inc. for an Adjusted*

Standard, AS 04-2, (April 7, 2005).) Westwood seeks a finding that the material it uses is not a “waste” and, therefore, the requirements of Parts 807 and 810 do not apply.

It is clear that the slag fines do not fit the definition of “waste.” Section 3.53 of the Act defines “waste” as:

any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, *or other discarded material...*

415 ILCS 5/3.53 (emphasis added).

This same definition is used in Section 807.104. However, the slag fines are not “discarded” since it is a useful material which is sold for further use. Since the material is not “discarded” and does not fit any of the other items in the definition of “waste,” the slag fines are not a waste.

This interpretation is supported by the Illinois Supreme Court’s decision in *Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 215 Ill.2d 219, 830 N.E.2d 444, 294 Ill.Dec. 32 (2005). The facts of that case are very similar to this case. Alternate Fuels, Inc. (“AFI”) collects, separates, and processes plastic materials into alternate fuel. That alternate fuel is then sold to a power plant for use as fuel in producing electricity. This Board determined that the alternate fuel was not a waste. *Illinois Power v. IEPA*, PCB 97-35 and 97-36 (January 23, 1997). However, despite the Board’s determination, the Agency initiated an enforcement action against AFI. AFI then brought a declaratory judgment action against the Agency. Both the trial court and the appellate court agreed with AFI that the product was not a “waste.”

On appeal, the Illinois Supreme Court upheld the appellate court’s decision. The

supreme court reviewed the facts of the case, and then applied those facts to the statutory definition of waste. The court noted that the term “discarded” is not defined in the Act, but turned to the definition of “recycling, reclamation or reuse,” which also uses the word “discarded.” The court found that, pursuant to that definition, materials are “discarded” only if the materials are not returned to the economic mainstream. The court held:

We therefore reject the Agency’s contention that “discarded” is defined solely from the viewpoint of the supplier in that a material is putatively “discarded” as “any material which is not being utilized for its intended purpose” of the generator. There is nothing in the statute which would dictate this definition. Rather, the Act contemplates that materials that may otherwise be discarded by the supplier may be diverted from becoming waste and returned to the economic mainstream.

AFI, 830 N.E.2d at 457 (emphasis added).

This statement applies equally to the slag fines used by Westwood. Westwood purchases the slag fines, which might otherwise be discarded or stockpiled, and returns the slag fines to the economic mainstream. The supreme court’s opinion, affirming both the appellate and the trial courts, is clear and definite: a material is not a waste if it is returned to the economic mainstream.

Like *AFI*, Westwood uses material (slag fines) that might otherwise be discarded, but can be returned to the economic mainstream by recycling. Simply because a material might be discarded for lack of a market does not mean that the material fits the definition of “waste.” Such an outcome would lead to a circular result: insistence that a recycling facility comply with the myriad requirements of Parts 807 and 810 (imposed on

“waste” facilities) could result in a lack of a market,¹ simply because no recycling facility could meet those requirements. In short, an insistence that a material is “discarded” could result in that material actually being discarded, thus “creating” a waste.

This Board has previously applied the *AFI* decision in finding that a material that might otherwise be discarded is not a “waste” when the material is returned to the economic mainstream. In *Jo’Lyn*, the petitioners used granulated bituminous shingle material (GBSM) to create a paving product known as Eclipse Dust Control. The GBSM was shredded and then applied to parking lots, driveways, paths, and other paving applications. IEPA took the position it has taken here: that Jo’Lyn’s raw material (the GBSM) was a waste and, therefore, Jo’Lyn’s facility must obtain local siting approval and follow all of the requirements for a pollution control facility.

The Board disagreed. The Board analyzed the *AFI* decision, and noted that the Illinois Supreme Court determined the raw material was not a “waste” because it could be returned to the economic mainstream. The Board then applied the statutory definition of “recycling, reclamation, and reuse,” and found that the GBSM used by Jo’Lyn is not “discarded” because Jo’Lyn processed the GBSM to return it to the economic mainstream. The Board concluded:

GBSM is not a discarded material, and therefore, not a waste when it is processed into [Eclipse Dust Control] and returned to the economic mainstream as a paving product.

Jo’Lyn, AS 04-02, at p. 14 (April 7, 2005).

The Board should follow the Illinois Supreme Court’s decision in *AFI*, and its own

¹ In this case, there is already a market for steelmaking slag fines, as evidenced by Westwood’s purchase of the fines from U.S. Steel. (See Exhibit A.)

decision in *Jo'Lyn*, and find that the steel slag fines used by Westwood are not a "waste."

PETITION FOR ADJUSTED STANDARD

If the Board finds that the material used by Westwood is indeed a "waste," Westwood seeks an adjusted standard from specific provisions of Parts 807 and 810. The remainder of this petition addresses the content requirements for adjusted standard petitions, as set forth in Section 104.406 of the Board's procedural rules.

Standard from which relief is sought (Section 104.406(a))

Because it is Westwood's position that the slag fines should not be treated as a "waste," petitioners hereby identify the definitions of "facility," "solid waste," "solid waste management," "waste," and "unit" contained in Section 807.104 as the specific section from which an adjusted standard is sought. The slag fines should not be treated as a "waste," and thus the facility is not a solid waste management site. If the Board grants an adjusted standard from those definitions of Section 807.104, the remaining provisions of Part 807 will not be applicable to petitioners' facility, as it will not handle "waste," and will not be a solid waste management site.

Westwood also seeks an adjusted standard from the definitions of "facility," "landfill," and "solid waste" contained in Section 810.103 of the Board's rules. The reasoning is the same as Westwood's request for an adjusted standard from the enumerated definitions in Section 807.104. The slag fines should not be treated as a "solid waste," and thus Westwood's facility is not a "landfill." If the Board grants an adjusted standard from the identified definitions of Section 810.103, the provisions of Parts 811 through 817 are not applicable to Westwood's facility.

Promulgation of the regulation of general applicability (Section 104.404(b))

Part 807 was promulgated to implement Sections 5, 21.1, and 22 of the Act. Part 810 was promulgated to implement Sections 7.2, 21, 21.1, 22, 22.17, and 22.40 of the Act.

Level of justification (Section 104.404(c))

The regulations of general applicability (Parts 807 and 810) do not specify a level of justification or other requirements for an adjusted standard.

Description of petitioners' activity (Section 104.404(d))

Westwood's facility is located at 4 Caine Drive, Madison, Madison County, Illinois. As discussed above, Westwood currently purchases slag fines from U.S. Steel.² The contract specifically allows Westwood to reject any fines which do not comply with the parameters necessary for Westwood's process. (Exhibit A, par. 4.2.) Thus, Westwood controls the quality of the slag fines it purchases. The slag fines will be transported to Westwood's facility, where they are unloaded within a building. The incoming fines are stored in that building, prior to processing.

The purpose of Westwood's process is to liberate the metallic iron and the iron oxides from the slag, for reuse. The slag fines are first put through three stages of size reduction, each stage with its own dust collection and related control equipment. Following size reduction, the fractions are classified as coarse, medium, fine, and very fine fractions. The coarse fractions are segregated and then sold in bulk form. The medium, fine, and very fine fractions are conveyed to individual magnetic drums, which

² While Westwood currently contracts only with U.S. Steel, there are other sources of steelmaking slag fines that are potential sources of Westwood's raw material. For example, Westwood has received a quote from Stein, Inc. for the sale of slag fines. (See Exhibit C.)

separate the predominately metallic particles from the non-metallic particles. The metallic particles are then pneumatically transported to separate silos, for storage of the high grade iron material. The product in these silos is subsequently fed to a briquetting operation, where the metallic fractions are combined with hydrated lime and molasses to create a briquette. The resulting briquette is an end product of Westwood's process, and is then sold. The advantage of the briquette created by Westwood is that it is easy to handle, and allows for use in a wide spectrum of furnace designs.

There are no emissions, discharges or releases to the land directly from Westwood's activities. However, there is a small amount of material from the process that will be transported off-site to a landfill. The separation of the metallic from the non-metallic particles results in a non-metallic calcium magnesium silicate. That non-metallic silicate is conveyed to a hopper and then pneumatically transported to a silo. The non-metallic silicate is subsequently fed to a paddle mixer and blended with water to produce a moist cake. That moist cake will then be transported to an approved landfill.³

Compliance alternatives (Section 104.404(e))

Westwood believes, as discussed above, that the slag fines used in its process are not a "waste." If the Board finds that the material is indeed a "waste," the only compliance alternative available to Westwood is full compliance with the panoply of regulatory requirements imposed by the Act and by Parts 807 and 810. For example, Westwood would be required to seek local siting approval pursuant to Section 39.2 of

³ Westwood believes that in the future, it will be able to further process the non-metallic silicate, thus reducing or preventing the landfilling of the silicate. It is also possible that the silicate can be approved for use as landfill cover.

the Act (415 ILCS 5/39.2). Local siting approval is an expensive and lengthy process, and costs hundreds of thousands of dollars, including local filing fees. Even after local siting approval was obtained, compliance with the full set of requirements of Part 807, including financial assurance requirements, is cost-prohibitive.

These requirements should not be imposed upon Westwood, as its operation is not the type of operation contemplated by the Board in promulgating Parts 807 and 810. Those requirements are properly directed to facilities which treat, store, or dispose of waste, with the resulting environmental issues which can arise from such a facility. To treat Westwood's facility, which uses only one type of material, in the same way as a landfill or transfer station is unnecessary for the protection of the environment, and beyond the scope of facilities considered by the Board. As the Board noted in *Jo'Lyn*, "AFI shows that substantially different factors apply to [Jo'Lyn's] operation than the factors the Board relied upon in adopting the solid waste regulations at Parts 807 and 810 of the Board's rules." *Jo'Lyn*, at p. 13. The same is true in this case: different factors apply to Westwood's operation than the factors the Board relied upon in adopting Parts 807 and 810.

Description of the adjusted standard (Section 104.404(f))

Westwood proposes the following adjusted standard language:

Westwood Lands, Inc. is hereby granted an adjusted standard from the following definitions of 35 Ill. Adm. Code 807.104: "facility," "solid waste," "solid waste management," "waste," and "unit." Westwood Lands, Inc. is further granted an adjusted standard from the following definitions of 35 Ill. Adm. Code 810.103: "facility," "landfill," and "solid waste." These enumerated definitions do not apply to operations conducted by Westwood at the facility in Madison County, Illinois, so long as:

1. Westwood uses only steelmaking slag fines.

2. For purposes of this adjusted standard, “steelmaking slag fines” is defined as “slag fines generated from the processing of raw steelmaking slag.” “Raw steelmaking slag” means “the residual material produced in steelmaking operations.”
3. Westwood retains control of the quality of steelmaking slag fines, including the right to reject any steelmaking slag fines that do not comply with Westwood’s standards for fines.
4. Westwood operates the facility in compliance with other provisions of the Environmental Protection Act.

Quantitative and qualitative impact of petitioners’ activity (Section 104.404(g))

Westwood’s process produces no emissions, discharges or releases directly to the land. The processing operation will produce a small amount of non-metallic calcium magnesium silicate, in addition to the iron-rich briquettes. In the initial stages of operation, the calcium magnesium silicate will be properly disposed of at a permitted landfill facility.⁴ Thus, the qualitative and quantitative impact of compliance with the rule of general applicability is the same as compliance with the proposed adjusted standard.⁵ This is important to recognize, as issuance of the adjusted standard will not increase emissions, discharges or releases to the land by use of the recycling process. In fact, because the recycling process provides a beneficial use of the slag fines, producing a useful product, issuance of the proposed adjusted standard will actually decrease emissions and releases, in an overall sense.

⁴ As noted above, Westwood believes it will be able to reduce or eliminate the silicate which will need to be disposed of at a landfill.

⁵ Westwood will need an air permit from IEPA for air emissions. However, as this petition does not seek an adjusted standard from the air regulations, there is no difference in qualitative or quantitative air emissions between compliance with the air regulations or general applicability and the proposed adjusted standard.

Justification (Section 104.404(h))

As noted above, the rules of general applicability did not contemplate the issues pertaining to the processing of slag fines into a useful industrial product. Thus, those rules do not specify a level of justification for an adjusted standard. However, the proposed adjusted standard is justified by the environmental and economic benefits of recycling slag fines into a marketable product.

Westwood has received support and approval for its facility from the City of Madison, Illinois, where Westwood's facility is located. The facility would be an economic benefit to the community, as well making a useful product from the slag. (See Exhibits D and E.) It is also important to note that IEPA allows steel slag fines to be used as a soil amendment. In fact, IEPA has approved the use of slag fines from U.S. Steel's Granite City Works -- the same source of Westwood's slag fines -- as a soil amendment at abandoned mines. (See Exhibit F.) Thus, it is clear that the slag fines do not present an environmental threat.

Consistency with federal law (Section 104.404(i))

The Board may grant the proposed adjusted standard consistent with federal law.

Hearing (Section 104.404(j))

Westwood waives hearing on this petition.

Supporting documents (Section 104.404(k))

Documents supporting this petition are attached as Exhibits A through F.

SECTION 28.1(c) FACTORS

Section 28.1(c) of the Act (415 ILCS 5/28.1(c)) states that the Board may grant individual adjusted standards upon adequate proof that: 1) the factors relating to

Westwood are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation; 2) the existence of those factors justifies an adjusted standard; 3) the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and 4) the adjusted standard is consistent with any applicable federal law.

The factors relating to Westwood are substantially and significantly different

In adopting Part 807, the Board replaced and superseded the "Rules and Regulations for Refuse Disposal Sites and Facilities," adopted by the Illinois Department of Public Health in 1966. 35 Ill. Adm. Code 807.102. Also, the Board acted to implement Section 22 of the Act, which gives the Board authority to regulate, *inter alia*, waste disposal, storage, treatment, and disposal sites. 415 ILCS 5/22. The recycling activities conducted by Westwood are not refuse or waste disposal, and Westwood's facility is not a landfill or transfer station. Instead, Westwood's activities provide an environmental benefit by recycling slag fines into a useful product. This process actually reduces waste, as it returns a material that might otherwise be discarded, for lack of a market, to the economic mainstream and prevents it from being disposed of. Thus, the factors relating to Westwood's recycling activities are substantially and significantly different than those pertaining to activities regulated under Parts 807 and 810. See *Jo'Lyn*, at p. 13.

The existence of those factors justifies an adjusted standard

As discussed in this petition, these different factors justify an adjusted standard. Westwood processes steelmaking slag fines into a useful product. Compliance with the

extensive requirements of Parts 807 and 810 is economically unreasonable for Westwood. Coupled with the fact that compliance with Parts 807 and 810 does not provide any environmental benefit, the proposed adjusted standard is justified as the only possible means of compliance.

The adjusted standard will not result in adverse environmental or health effects

The adjusted standard will not result in adverse environmental or health effects substantially and significantly different from the factors relied upon by the Board in adopting Parts 807 and 810. As discussed, the adjusted standard will not have any negative environmental or health effect at all. In fact, the adjusted standard will result in positive environmental and health effects. The slag fines will be processed into a useful product, while preventing landfilling of the fines. Thus, the adjusted standard will provide environmental and health benefits.

The adjusted standard is consistent with federal law

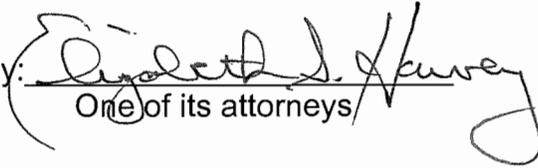
The proposed adjusted standard is consistent with federal law, and granting the adjusted standard will not violate federal law.

CONCLUSION

As demonstrated above, the steelmaking slag fines are not a “waste.” Thus, Westwood’s process is not subject to the Board’s solid waste rules, and no adjusted standard is necessary. However, in the alternative and without conceding, if the Board finds that the steelmaking slag fines are subject to the waste rules, Westwood seeks an adjusted standard from those rules. Compliance with the rules is economically unreasonable, and provides no environmental or health benefit.

Respectfully submitted,

WESTWOOD LANDS, INC.

By: 
One of its attorneys

Dated: March 31, 2009

Elizabeth S. Harvey
John P. Arranz
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312.321.9100
312.321.0990 (facsimile)

EXHIBIT A

**Filed separately as a trade secret, pursuant to 35
Ill.Adm.Code Part 130**

EXHIBIT B

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19506, SPRINGFIELD, ILLINOIS 62794-9506 - (217) 782-2113

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-2113

CERTIFIED MAIL
7007 0220 0000 0153 7028

NOTICE OF INCOMPLETENESS

August 25, 2008

Westwood Lands
Attn: Peter O'Dovero
110 Airport Drive
Negaunee, Michigan 49866

Application No.: 07100071
I.D. No.: 119465AAH
Applicant's Designation: Madison Plant
Received: July 28, 2008
Construction of: Slag Processing Facility
Location: 4 Caine Drive, Madison, Madison County

The Illinois EPA has determined the above referenced construction permit application to be incomplete pursuant to 35 Ill. Adm. Code 201.158 because information and data were not provided as required by 35 Ill. Adm. Code 201.152, 201.160 and 201.169.

Specifically, the following data and information must be supplied in order for the application to be considered complete:

1. Provide a completed, signed and dated APC-629 Illinois EPA Air Pollution Control permit application form, and if necessary, an authorization of authority to sign (authorized agent), in order to provide the signatures required by 35 Ill. Adm. Code 201.159. In addition, please indicate if commencement of on-site construction has begun on any of the emission units at the above location that an air permit is being requested since the October 2007 application was submitted?
2. Detailed narrative description and presentation of all the production/material handling processes, emission units, and pollution control equipment at the source that the permit will need to address, that includes but is not limited to the following:
 - a. A process flow diagram that at a minimum illustrates the location of all existing and proposed process equipment, emission units, pollution control equipment, emission points, and the process flow of materials handled/processed;
 - b. A detailed list and description of all existing and proposed process equipment, emission units, and pollution control equipment (indicate what emission unit(s) the equipment controls), including size and maximum manufacturer's rated capacity and date of construction/installation and modification of each;

EXHIBIT
B

RECEIVED
AUG 28 2008

Page 2

- c. A detailed description, quantification and justification of the anticipated maximum actual annual and short-term operating emissions (e.g., tons/year, pounds/hour, etc.) to be emitted from all the emission units at your source that you would propose to include as annual and short-term emission limits in your permit for the criteria pollutants (e.g., PM, PM₁₀, VOM, NO_x, CO, SO₂, HAP, etc.) to be emitted, including emission factors to be used to estimate emissions. The application needs to describe the physical and chemical characteristics of the slag to be received and processed. The application needs to provide emission factors for all material/waste processes including but not limited to the grinder, screening, conveying, and packaging/loading operations based upon the processing of the slag/waste that would result in the highest emissions of pollutants. Provide a list of materials to be processed in each of the emission units. Provide support documentation for each emission factor used. List each emission factor used for each emission unit and include SIC #, AP-42 Table #, and/or other information as necessary to locate and verify the emission factors used. Describe how the emission factor used for each emission unit is representative of each process emission unit (e.g. grinder, screen, conveyor, packaging/loading, etc). For each process emission unit that the permit is being requested for, provide information in a table similar to the table below that identifies the requested throughput and emission limits that Westwood Lands proposes as a permit condition in the construction permit.

Emission Unit	Maximum Throughput Short Term	Maximum Throughput Annual	Emission Factor	Pollutant Short Term Emissions	Pollutant Annual Emissions

- d. A detailed listing, presentation and justification of proposed maximum actual operating limitations on the annual and short-term throughput or usage (e.g., gallons/year, tons/year, pounds/hour, etc.) of criteria pollutant-containing material(s) to be processed/produced at your source that you would propose to include in your permit, including proposed limitations on the criteria pollutant content (e.g., weight percent, pounds per gallon, pounds per ton, etc.) of the criteria pollutant containing material(s) to be processed/produced associated with your proposed maximum actual annual and short-term operating emissions. Please provide the number of tons per month and tons per year of slag /waste that the source will receive and the number of tons per month and tons per year that Westwood Lands will ship off-site as product and as waste.
- e. Please note that in order for the Illinois EPA to develop enforceable permit conditions related to emission limits, the application must provide/identify a measurable and verifiable

Page 3

methodology (e.g., use of appropriate emission factors, material pollutant-content characterization and throughput/usage record-keeping, recording durations of operations, etc.) to correlate the amount and rate of criteria pollutant-containing material throughput/usage and durations of operations proposed in (d) above to the emission limits proposed in (c) above; and

- f. A detailed listing and description of activities/equipment at the source that are claimed as being exempt from permitting pursuant to the permitting exemptions in 35 Ill. Adm. Code 201.146.
- 3a. Pursuant to 35 Ill. Adm. Code 201.160 and Section 39(a) of the Illinois Environmental Protection Act (Act), a clear and thorough presentation including information and data to either confirm non-applicability of or demonstrate compliance with potentially applicable regulatory requirements including, but not limited to, 35 Ill. Adm. Code Parts 201 and 212, and 40 CFR Part 60 Subparts LL and OOO, and Sections 39(c) and 39.2 (siting requirements) of the Illinois Protection Act (Act). This includes, but is not limited to, listing the sections of the regulations (e.g., 212.123, 212.301, 212.302, 212.304 through 212.310, 212.312, 212.316, 212.321, 212.324, etc. of the regulations, and Sections 39(c) and 39.2 of the Act.) that the source's activities/equipment are subject to and then submitting documentation necessary to demonstrate that the emission units or air pollution control equipment will not cause a violation of the applicable regulations. Pursuant to 35 Ill. Adm. Code 201.160 and Section 39(a) of the Act, the Agency shall not issue a construction or operating permit unless the applicant submits proof to the Agency that the emission unit(s) or air pollution control equipment has been constructed or modified to operate so as not to cause a violation of the Act or of regulations hereunder.
 - b. Proof of local siting approval as required by Section 39(c) of the Illinois Environmental Protection Act (Act) in accordance with the procedures of Section 39.2 of the Act (415 ILCS 5/39.2) for a new pollution control facility as defined in Section 3.330(b) of the Act. The letters provided with the application did not demonstrate compliance by holding a public hearing, along with other procedural requirements of Section 39.2 of the Act.
4. A clear and thorough presentation, including detailed calculations, of the potential to emit (PTE) for the entire source (including any proposed revisions) including, but not limited to, volatile organic materials (VOM), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM, PM₁₀), sulfur dioxide (SO₂), and hazardous air pollutants (HAP):
 - a. PTE shall be calculated based on the maximum potential usage of raw materials with the maximum allowable criteria pollutant content, at the maximum potential production rate, and year round (8,760 hours/year) operation of all processes and emission units at the source.

Page 4

- b. Be specific in describing the maximum content (e.g., weight percent, pounds per gallon, pounds per ton, etc.) and name and type of criteria pollutant (e.g., PM, PM₁₀, VOM, HAP etc.) in each of the raw materials, wastes and products handled and/or generated at the source when presenting your calculations.
- c. Provide documentation and references for emission factors and other input data to the PTE calculations that support their use as representative of activities to be conducted at this source.
- d. Please note that PTE calculations can not include emission reductions associated with pollution control equipment (e.g., baghouse, filters, scrubbers, etc.) unless the use of pollution control equipment is specifically required by regulations applicable to the subject process/activity, or if emission reductions are required to a certain percentage in order to comply with an applicable emission rate limitation such as 35 Ill. Adm. Code 212.321. If you believe emission reductions due to controls are applicable for your PTE calculations, please clearly identify those reductions and justify them by referencing the applicable regulations/requirements.
- e. Please note that emissions from emission units claimed to be exempt from permitting pursuant to 35 Ill. Adm. Code 201.146 need to be identified and included in the PTE calculations.

If it can not be demonstrated that the source is eligible for an operating permit pursuant to 35 Ill. Adm. Code 201.169(a), (e.g., PTE calculations result in potential emissions of criteria pollutants and/or HAPs exceeding major source threshold levels (i.e., 100 tons/year for criteria pollutants, 10 tons/year for a single HAP and 25 tons/year for total HAPs)), the Permittee shall apply for a Clean Air Act Permit Program (CAAPP) permit. To avoid the CAAPP permitting requirements, if applicable, you may want to consider applying for a Federally Enforceable State Operating Permit (FESOP). A FESOP is an operating permit that contains federally enforceable limits in the form of permit conditions, which effectively restrict the potential emissions of a source to below major source threshold, thereby excluding the source from the CAAPP.

The Illinois EPA will be pleased to review a reapplication for this permit that includes the necessary information and documentation to correct the deficiencies noted above. This reapplication may incorporate by reference the data and information submitted to the Illinois EPA in the original permit application, provided that you certify that the data and information previously submitted remains true, correct and current. The reapplication will be considered filed on the date it is received by the Illinois EPA and will constitute a new permit application for purposes of Section 39(a) of the Act. Two copies of this information must be submitted and should reference the Application and I.D. numbers assigned above.

Page 5

The Illinois EPA welcomes and in fact encourages discussions, either in person or by telephone, with persons proposing projects which may be subject to the above regulations. Such discussions may explain and resolve issues much more effectively than written correspondence, to the benefit of both the Illinois EPA and an applicant. Please contact us if you believe such discussions would be helpful.

If you have any questions on this, please call Mike Dragovich at 217/782-2113.



Edwin C. Bakowski, P.E.
Acting Manager, Permit Section
Division of Air Pollution Control

Date Signed:

8-25-2008

ECB:MJD:jws

cc: Region 3
Ray Pilapil, CES

EXHIBIT C

**Filed separately as a trade secret, pursuant to 35
Ill.Adm.Code Part 130**

EXHIBIT D

The City of Madison



John W. Hamm III - Mayor

July 10, 2008

RECEIVED
JUL 11 2008

Westwood Lands
110 Airport Drive
Negaunee, MI 49866

BY:.....

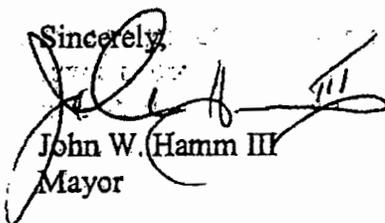
Dear Mr. O'Dovero:

Having had the opportunity to have representatives from Westwood Lands provide Madison with a thorough overview of the proposed facility that is to be located at 4 Caine Drive, we feel that the establishment of such a facility in the Madison Industrial Park, adjacent to the existing rail spurs and acreage on which the slag may be stored, would be viewed as beneficial to the community. The presentation offered considerable insight into the nature of the technology that will be used to process slag products from various facilities, while providing assurance that sufficient measures have been taken to see that any fines generated will either be contained in the process or captured by a central dust collection system and thus prevented from becoming airborne.

Concerns were also raised about the potential generation of fugitive dust as a result of the truck traffic in the vicinity of the proposed Westwood Lands facility. Although it is zoned commercial, concerns were raised about locating such a facility on Caine Drive. With the existing flow of commercial traffic being quite extensive, questions regarding the additional traffic and the nature of the material being transported arose. In response, those from Westwood pointed out that the intent was to have the trucks carrying both the material that is to be processed as well as the resulting products access the facility from the Southeast corner of the property, crossing the rail spurs, and thus minimizing the use of the existing roads and in turn not traveling through the community. It was also noted that the transfer of material from the trucks used for haulage to the plant will take place inside the facility and thus prevent the release of any fugitive dust that may be generated.

As a result of the presentation made by Westwood Lands personnel to the Council, as well as others from the community that were in attendance for the public meeting, we would like to offer our approval of the request for local siting approval for this new processing facility that is to be located in the Madison Industrial Park. While most of the slag produced at the various steel making plants, located in the vicinity of Madison, is used to produce aggregate and other granular base products, we want to welcome Westwood and hope that the process provides the means needed to produce additional value added products from the slag generated by the various steel manufacturing facilities in our region of the country.

Sincerely,



John W. Hamm III
Mayor

615 Madison Avenue,
(618) 876-6268

Madison, IL 62060
(618) 451-4838

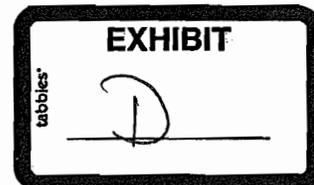


EXHIBIT E

CITY OF MADISON
615 MADISON AVENUE • MADISON, ILLINOIS 62060



618-876-6268 • 618-451-4838

Mayor
John W. Hamm III

City Clerk
Alexis Lux

Alderman
Jeffery Bridick
Ward 1

Eleanor Armour
Ward 1

Ron Grzywacz
Ward 2

Ted Ostranga
Ward 2

Steve Hampsey
Ward 3

Michael Vrabec
Ward 3

Roshelle Williams-Gardner
Ward 4

Tyrone Treadway Jr.
Ward 4

July 1, 2008



BY:

Mr. Peter E. O'Dovero
Westwood Lands, Inc.
110 Airport Road
Negaunee, MI 49866

Re: Madison, Illinois Facility

Dear Mr. O'Dovero:

This will advise that the City Council for the City of Madison, Illinois voted to approve the plans of Westwood Lands Inc. to locate a manufacturing/process facility of the kind described in your presentation before the council on June 24, 2008 at 4 Caine Drive in the Madison Industrial Park.

Of course, compliance with building, zoning and environmental ordinances, statutes and regulations will be required as your project goes forward.

Please contact me with any questions.

Thank you for your time and consideration.

Very truly yours,

John T. Papa
City Attorney

JTP/set

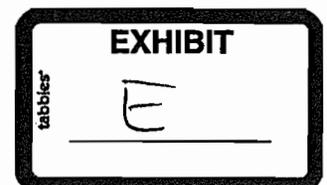


EXHIBIT F



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/524-3300

Granite City Works
United States Steel
Attn: Mr. Larry Siebenberger, Manager - Environmental Control
20th and State Streets
Granite City, Illinois 62040

Re: Steel Slag Fines as Soil Amendment
Log No. PS07-059
Permit File

Dear Mr. Siebenberger:

This is in reply to your letter, dated April 3, 2007, regarding the use of steel slag fines as a soil amendment in mine reclamation projects at "Florida Little Dog" in Gillespie and "Consol 7" in Staunton. The proposal is to place steel slag fines over the top of the mine refuse to help neutralize the surface refuse and eliminate the acidic water seeps and runoff.

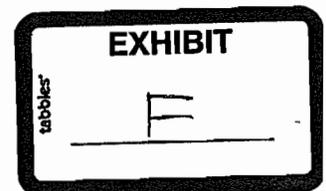
The requirements of 35 Illinois Administrative Code (IAC) 817.101 are not applicable for this proposed use of steel slag fines. However, the notification requirements in 35 IAC 817.203 would apply for management of beneficially usable steel and foundry industry waste.

If you have any questions regarding this letter, please contact Greg Morris at 217/782-5174.

Sincerely,

Stephen F. Nightingale, P.E.
Manager, Permit Section
Bureau of Land

SFN:GEM:bjh\072593s.doc





Granite City Works
United States Steel
20th & State Streets
Granite City, Illinois 62040
(618) 451-3456

April 3, 2007

CERTIFIED MAIL NO. 7004 1350 0003 0490 3964
RETURN RECEIPT REQUESTED

Mr. Chris Liebman
Solid Waste Unit Manager
Bureau of Land
Illinois Environmental Protection Agency
1021 Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Mr. Liebman:

United States Steel Corporation – Granite City Works (GCW) has been working with the Illinois Department of Natural Resources Offices of Mines and Minerals Division of Abandoned Mine Land Reclamation (INDR) to find a solution to abandoned mines refuse at two Illinois sites.

As you know, IDNR is proposing to use steel slag fines from GCW as a soil amendment in mine reclamation projects at "Florida Little Dog" in Gillespie and "Consol 7" in Staunton. The proposal is to place steel slag fines over the top of the mine refuse to help neutralize the surface refuse and eliminate the acidic water seeps and runoff. The steel slag fines are alkaline and are ideal for this project.

GCW believes the use of steel slag fines as a soil amendment is a not otherwise prohibited use under 817.101(c), and there is no bar to using the steel slag as a soil amendment for the mine land reclamation as planned.

GCW is requesting agency concurrence that the above soil amendment projects are not an otherwise prohibited use of the steel slag fines.

I hope you agree that the IDNR proposed projects will have a significant positive impact on the environment at these abandoned mine refuse areas.

Should you have questions or require additional information, please contact Carl Cannon at (618) 451-3013.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Siebenberger".

Larry Siebenberger
Manager – Environmental Control
Granite City Works
United States Steel Corporation

Jm

ORIGINAL

RECEIVED
CLERK'S OFFICE

MAR 31 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PETITION OF WESTWOOD LANDS)
INC. for an ADJUSTED STANDARD from)
portions of 35 Ill.Adm.Code 807.104 and)
35 Ill.Adm.Code 810.103, or)
in the alternative, A FINDING OF)
INAPPLICABILITY.)

AS 09-03
(Adjusted Standard – Land)

MOTION FOR EXPEDITED CONSIDERATION

Petitioner WESTWOOD LANDS, INC. ("Westwood"), by its attorneys Swanson, Martin & Bell, LLP, hereby moves the Board for expedited consideration of its petition for adjusted standard or, in the alternative, for a finding of inapplicability:

1. Westwood has filed a petition for adjusted standard from specific provisions of Parts 807 and 810 or, in the alternative, a finding of inapplicability.

2. Westwood owns a facility in the City of Madison, Madison County, Illinois, which will process steelmaking slag fines into a usable product. The facility and required equipment have been purchased, and are ready to operate upon obtaining the necessary environmental permits.

3. Westwood's petition seeks a determination that its raw material -- the steelmaking slag fines -- is not a "waste" and, therefore, its facility does not need local siting approval or waste permits. In the alternative, Westwood's petition seeks an adjusted standard from specific portions of the waste regulations.

4. Westwood has made a substantial financial investment in the facility and the necessary equipment, but cannot operate until its petition for adjusted standard is

resolved. This delay is causing financial hardship to Westwood, which is a business seeking to survive in these difficult economic times.

5. Westwood's facility will be an economic benefit to the community in and around Madison, Illinois. At a time when new business initiatives are particularly important, that economic benefit is delayed until after the resolution of this petition.

6. Further, the delay in beginning operations means that the raw material -- the steelmaking slag fines -- remains stockpiled at the U.S. Steel facility in Granite City, Illinois, from which Westwood will purchase the fines. As soon as Westwood obtains the necessary permissions, it can begin operating and transforming the fines into a useful product.

7. Westwood has waived hearing on its petition.

8. The Westwood facility will provide both environmental and economic benefits. Based on the above, Westwood seeks expedited consideration of, and decision on, its petition.

WHEREFORE, petitioner Westwood respectfully asks this Board to act upon its petition as soon as possible, and for such other relief as the Board deems appropriate.

Respectfully submitted,

WESTWOOD LANDS, INC.

By: 
One of its attorneys

Dated: March 31, 2009

Elizabeth S. Harvey
John P. Arranz
Swanson, Martin & Bell, LLP
330 North Wabash Avenue
Suite 3300
Chicago, IL 60611
312.321.9100
312.321.0990 (facsimile)