

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1994

IN THE MATTER OF:)
)
PETITION OF ENVIRITE CORPORATION) AS 94-10
FOR AN ADJUSTED STANDARD FROM) (RCRA Delisting)
35 ILL. ADM. CODE 721 SUBPART D:)
LIST OF HAZARDOUS SUBSTANCES,)
APPENDIX I)

STEPHEN F. HEDINGER, OF MOHAN, ALEWELT, PRILLAMAN & ADAMI,
APPEARED ON BEHALF OF ENVIRITE CORPORATION;

JOHN J. KIM APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY;

ROBIN R. LUNN AND MICHAEL O'NEIL, OF KECK, MAHIN & CATE, APPEARED
ON BEHALF OF INTERESTED PERSON PEORIA DISPOSAL COMPANY.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board upon a petition for an adjusted standard filed by Envirite Corporation (Envirite) for its facility located in Harvey, Illinois. Certain wastes at Envirite's Harvey facility are currently subject to a site-specific rule¹ found at 35 Ill. Adm. Code 721. Appendix I. This site-specific rule effectuates the delisting² of fifteen separate waste residues at the Envirite facility. Part of the site-specific rule also establishes protocols for sampling and verification of the wastes in question. Envirite herein requests that these protocols be modified and updated.

The Board's responsibility in this matter arises from the Environmental Protection Act (Act) (415 ILCS 5/1 et seq.). The Board is charged therein to "determine, define and implement the environmental control standards applicable in the State of Illinois" (415 ILCS 5/5(b)), as well as to "grant *** an adjusted standard for persons who can justify such an adjustment" (415

¹ At several places in the petition and various of the pleadings, including some of the pleading captions, the existing site-specific rule is incorrectly characterized as the "existing adjusted standard" and Envirite's request is incorrectly characterized as a petition for a "revised adjusted standard".

² "Delisting" is a term of art that refers to the action of excluding a waste or treated waste residue from regulation as a hazardous waste.

ILCS 5/28.1(a)). More generally, the Board's responsibility in this matter is based on the system of checks and balances integral to Illinois environmental governance: the Board is charged with the rulemaking and principal adjudicatory functions, and the Illinois Environmental Protection Agency (Agency) is responsible for administering the Act and the Board's regulations.

The Act also provides that "the Agency shall participate in [adjusted standard] proceedings". (415 ILCS 28.1(d)(3).) In the instant matter the Agency has been an active participant throughout, including at hearing and within post-hearing comments. The Agency recommends that an adjusted standard be issued to Envirite, but with two added provisions not requested by Envirite.

Based upon the record before it and upon review of the factors involved in the consideration of adjusted standards, the Board finds that Envirite has demonstrated that grant of an adjusted standard in the instant matter is warranted. The adjusted standard accordingly will be granted.

PROCEDURAL HISTORY

The petition in this matter was filed on May 10, 1994. Notice of the petition was published in the Harvey-Markham Star on May 22, 1994. On July 27, 1994 the Agency filed its response to the petition (Agency Response).

Hearing was held in Harvey, Illinois, on August 26, 1994 before Hearing Officer Allen E. Shoenberger.

On September 26, 1994 Peoria Disposal Company (Peoria Disposal) filed post-hearing comments³. On October 13, 1994 Envirite filed its post-hearing comments and a response to Peoria Disposal's comments. On October 20, 1994⁴ the Agency filed its post-hearing brief and a response to Peoria Disposal's comments. Envirite's reply brief was filed on October 28, 1994⁵.

³ Any interested person may file post-hearing comments in an adjusted standard proceeding, as provided at 35 Ill. Adm. Code 106.807.

⁴ The apparently identical post-hearing brief and response was again filed on October 24, 1994 with the addition of proof of service upon attorneys for Peoria Disposal Company.

⁵ The filing was accompanied by a motion to file instant. The motion was granted by Board order of November 3, 1994.

REGULATORY HISTORY AND FRAMEWORK

The general processes by which wastes are determined to be hazardous for regulatory purposes may cause some wastes to be unnecessarily treated as hazardous wastes. The action of delisting is intended to rectify such circumstances.

Pursuant to U.S. EPA rules, hazardous wastes are defined in two basic ways. A waste is hazardous either because it exhibits a hazardous characteristic, or because it is listed by name or by the name of the process that produces the waste. It is in the latter case that the listing may be over-inclusive. For example, U.S. EPA might determine that Process A produces Waste M which generally has hazardous constituents X, Y, and Z. U.S. EPA would then "list" "wastes from Process A" or "Waste M". Waste that met this description would be hazardous for regulatory purposes, regardless of whether constituents X, Y, or Z are actually present. Delisting would be appropriate if the generator demonstrated that X, Y, and Z are not actually present in its waste, and that the waste additionally exhibits no other characteristics warranting continued management as a hazardous waste.

Prior to 1990 waste delisting procedures in Illinois were premised on the theory that U.S. EPA would initially delist wastes, followed by an essentially ministerial Board action, in an identical-in-substance rulemaking, that would incorporate the delisting into Illinois law. The site-specific rule from which Enviro here requests an adjusted standard was adopted in this manner.

On March 1, 1990 Illinois was delegated authority by U.S. EPA to delist wastes directly⁶. After reviewing a large amount of public comment, including recommendations of U.S. EPA, the Board on February 28, 1991 in rulemaking R90-17⁷ put into place procedures under which Illinois waste delistings were henceforth to proceed. A fundamental provision of these procedures is that waste delistings are to be brought to the Board under the adjusted standard provisions found at Section 28.1 of the Act and within the Board's procedural rules at 35 Ill. Adm. Code 106.Subpart G⁸.

⁶ See 55 Fed. Reg. 7320, March 1, 1990.

⁷ In the Matter of: RCRA Delistings, R90-17, adopted rules, final order, February 28, 1991, 119 PCB 181; effective May 9, 1991.

⁸ "Delistings which have not been adopted by USEPA may be proposed to the Board pursuant to a petition for adjusted standard pursuant to 35 Ill. Adm. Code 106.Subpart G." (35 Ill.

As part of rulemaking R90-17 the Board also established the necessary contents of a delisting petition and the level of justification⁹ that must be shown for a successful delisting. These provisions are found at 35 Ill. Adm. Code 720.122. Section 720.122 is identical-in-substance to the federal waste delisting provisions at 40 CFR 260.22.

The instant petition differs from all previous delisting actions before the Board in that it does not propose an initial delisting; the wastes in question have already been delisted conditional upon their compliance with certain sampling and analytical protocols. Rather, the petition proposes a change in these sampling and analytical protocols. This difference notwithstanding, the Board finds that the delisting provisions at 35 Ill. Adm. Code 720.122 are applicable to the instant action.

ENVIRITE FACILITY

The facility at issue is located in Harvey, Cook County, Illinois. The facility, which has been in operation since 1981, employs 44 people and operates 24 hours per day. It has been operating under a RCRA Part B permit since November 1992. (Pet. at p. 4.) Envirite characterizes the activities at the facility as the application of "the best available treatment and recovery technologies to the management of industrial wastes". (Id.)

The Harvey facility has two process units, a Liquids Processing Unit (LPU) and Solids Processing Unit (SPU). Both units produce a semi-solid residue. That residue is the subject of the instant petition. The LPU also produces a water effluent that is discharged in the sanitary sewer system pursuant to regulations of the Metropolitan Water Reclamation District of Greater Chicago. The water effluent is not under consideration in the instant petition.

Adm. Code 720.122(n).)

⁹ The adjusted standards provisions at Section 28.1 of the Act provide for two varieties of adjusted standards. These are "rule-specific" and "generic" adjusted standards, provided for respectively at 28.1(b) and 28.1(c). In a "rule-specific" adjusted standard the level of justification necessary for grant of the adjusted standard is specified within the rule from which the adjusted standard is requested. In a "generic" adjusted standard the showings necessary for granting the adjusted standard default to those specified within the Act at Section 28.1(c). Waste delistings are of the "rule-specific" type, since the level of justification is provided for by rule, in this case at 35 Ill. Adm. Code 720.122.

The semi-solid process residue from both the LPU and SPU is retained on-site pending analytical verification. Thereafter it is transported off-site for disposal in a permitted land disposal facility. No wastes are disposed on-site. (Pet. at p. 5.)

The Harvey facility is totally enclosed, including storage and treatment tanks. (Pet. at p. 5.) Incompatible wastes are segregated in different areas of the plant.

EXISTING RULE

The site-specific rule at issue was generated in response to a petition to the Board filed by Envirite in 1987. Envirite had observed that certain of its treated waste residues had been granted delisting under federal law by the U.S. EPA¹⁰. Envirite accordingly petitioned the Board to adopt the same provisions into State law. The Board granted Envirite's petition, and on June 30, 1988¹¹ promulgated the requested delisting at 35 Ill. Adm. Code 721.Appendix I. The Envirite-related portion of Appendix I occurs within Tables A and B of Appendix I, as follows:

Section 721.Appendix I Wastes Excluded under Section
720.120 and 720.122

Table A Wastes Excluded From Non-Specific Sources

<u>Facility</u> <u>Address</u>	<u>Waste Description</u>
Envirite Corp., Harvey, Illinois	Dewatered wastewater sludges (EPA Hazardous Waste No. F006) generated from electroplating operations; spent cyanide plating solutions (EPA Hazardous Waste No. F007) generated from electroplating operations; plating bath residues from the bottom of plating baths (EPA Hazardous Waste No. F008) generated from electroplating operations where cyanides are used in the process; spent stripping and cleaning bath solutions (EPA Hazardous Waste No. F009) generated from electroplating operations where cyanides are used in the process; spent cyanide solutions from salt bath pot cleaning (EPA Hazardous Waste No.

¹⁰ See report of U.S. EPA action at 51 Fed. Reg. 41323.

¹¹ In the Matter of: Petition of Envirite Corporation, R87-30, Adopted rule, final order, June 30, 1988, 90 PCB 665; effective July 12, 1988. A typographical error in the text of June 30 was corrected in identical-in-substance docket R91-12, by Board order of December 19, 1991.

F011) generated from metal heat treating operations; quenching wastewater treatment sludges (EPA Hazardous Waste No. F012) generated from metal heat treating where cyanides are used in the process; wastewater treatment sludges (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid:

- 1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.
- 2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed 1.26 ppm, the waste must be retreated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.
- 3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm,

phenol exceeds 1,566 ppm,
tetrachloroethylene exceeds 0.188 ppm,
or trichloroethylene exceeds 0.592 ppm,
the waste must be managed and disposed
as a hazardous waste under 35 Ill. Adm.
Code 722 to 725 and the permitting
standards of 35 Ill. Adm. Code 702, 703,
and 705.

- 4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using gas chromatography, mass spectrometry analysis for the compounds listed in No.3 above as well as the remaining organics on the Priority Pollutant List (incorporated by reference, see 40 CFR 423 App. A (1983) (as adopted at 47 Fed. Reg. 52,309 (Nov. 19, 1982)), not including later amendments.
- 5) The data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator of USEPA by certified mail semi-annually. The USEPA will review this information and if needed will propose to modify or withdraw the exclusion. Should USEPA propose to modify or withdraw the exclusion, Envirote shall promptly provide notice thereof to the Board. The decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at Envirote's Harvey, Illinois facility applies only to the wastewater and solids treatment systems as they presently exist as described in the delisting petition submitted to the USEPA. The exclusion does not apply to the proposed process additions described in the petition submitted to USEPA as recovery including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange.

Table B Wastes Excluded From Specific Sources

Facility Address	Waste Description
Envirote Corp.,	Spent pickle liquor (EPA Hazardous Waste No. Waste No. K062) generated from steel

Harvey, finishing operations of facilities within the
Illinois iron and steel industry (SIC Codes 331 and 332); wastewater treatment sludge (EPA Hazardous Waste No. K002) generated from the production of chrome yellow and orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K003) generated from the production of molybdate orange pigments; wastewater treatment sludge (EPA Hazardous Waste No. K004) generated from the production of zinc yellow pigments; wastewater treatment sludge (EPA Hazardous Waste No. K005) generated from the production of chrome green pigments; wastewater treatment sludge (EPA Hazardous Waste No. K006) generated from the production of chrome oxide green pigments (anhydrous and hydrated); wastewater treatment sludge (EPA Hazardous Waste No. K007) generated from the production of iron blue pigments; oven residues (EPA Hazardous Waste No. K008) generated from the production of chrome oxide green pigments after November 14, 1986. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern, the facility must implement a contingency testing program for the petitioned wastes. This testing program must meet the following conditions for the exclusions to be valid:

- 1) Each batch of treatment residue must be representatively sampled and tested using the EP Toxicity test for arsenic, barium, cadmium, chromium, lead, selenium, silver, mercury, and nickel. If the extract concentrations for chromium, lead, arsenic, and silver exceed 0.315 ppm; barium levels exceed 6.3 ppm; cadmium and selenium exceed 0.063 ppm; mercury exceeds 0.0126 ppm; or nickel levels exceed 2.205 ppm, the waste must be re-treated or managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.
- 2) Each batch of treatment residue must be tested for reactive and leachable cyanide. If the reactive cyanide levels exceed 250 ppm; or leachable cyanide levels (using the EP Toxicity test without acetic acid adjustment) exceed

1.26 ppm, the waste must be retreated or managed and disposed as hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.

- 3) Each batch of waste must be tested for the total content of specific organic toxicants. If the total content of anthracene exceeds 76.8 ppm, 1,2-diphenyl hydrazine exceeds 0.001 ppm, methylene chloride exceeds 8.18 ppm, methyl ethyl ketone exceeds 326 ppm, n-nitrosodiphenylamine exceeds 11.9 ppm, phenol exceeds 1,566 ppm, tetrachloroethylene exceeds 0.188 ppm, or trichloroethylene exceeds 0.592 ppm, the waste must be managed and disposed as a hazardous waste under 35 Ill. Adm. Code 722 to 725 and the permitting standards of 35 Ill. Adm. Code 702, 703, and 705.
- 4) A grab sample must be collected from each batch to form one monthly composite sample which must be tested using gas chromatography, mass spectrometry analysis for the compounds listed in No. 3 above as well as the remaining organics on the Priority Pollutant List (incorporated by reference, see 40 CFR 423 App. A (1983) (as adopted at 47 Fed. Reg. 52,309 (Nov. 19, 1982)), not including later amendments).
- 5) The data from conditions 1-4 must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the USEPA Administrator by certified mail semi-annually. The USEPA will review this information and if needed will propose to modify or withdraw the exclusion. Should USEPA propose to modify or withdraw the exclusion, Envirote shall promptly provide notice thereof to the Board. The decision to conditionally exclude the treatment residue generated from the wastewater treatment systems at Envirote's Harvey, Illinois facility applies only to the wastewater and solids treatment systems as they presently exist as described in

the delisting petition submitted to the USEPA. The exclusion does not apply to the proposed process additions described in the petition submitted to USEPA as recovery, including crystallization, electrolytic metals recovery, evaporative recovery, and ion exchange.

CONTENT OF PROPOSED ADJUSTED STANDARD

In its main provisions, the instant proposed adjusted standard is identical to the existing site-specific rule. In particular, the delisting would apply to treatment residues from wastes in the same fifteen waste codes¹² identified in the site-specific rule. Moreover, Envirote would continue to be required to test and verify that all treatment residues do not contain hazardous constituents at levels of regulatory concern. These main provisions are spelled out at Section 2¹³ of the proposed adjusted standard.

All of the differences between the proposed adjusted standard and the existing site-specific rule are in the particulars. These are:

1. The amount of treatment residues allowed for disposal has been increased from 50,000 tons per year to 200,000 tons per year in Section 2. The increased disposal limit reflects the expected future generation rate of treatment residue. Envirote notes that updating the adjusted standard using higher generation rates will result in more stringent concentration limits.
2. The delisting levels of all the parameters listed at Sections 4(a) and 4(c) have been revised to reflect changes made since 1988 in federal human health standards, particularly the Safe Drinking Water Act's

¹² The waste codes in question are wastes F006 to F009, which are each wastes from electroplating operations; wastes F011, F012, and F019, which are wastes from metal treating operations; wastes K002 to K008, which are each wastewater treatment sludges from the production of pigments; and waste K062, which is spent pickle liquor from steel finishing operations. The basis for the listing of each of the fifteen wastes is the possible presence in the untreated wastes of one or more of cadmium, hexavalent chromium, nickel, lead, and cyanide. (Petition at Section 4.)

¹³ The sections identifications here noted are those used in today's order (see following Order).

maximum contaminant levels (MCLs) upon which delisting levels are based.

3. Derivation of the delisting levels from the MCLs at Section 4(a) is accomplished through the U.S. EPA's Composite Model for Landfills (CML), rather than the obsolete Vertical and Horizontal Spread (VHS) transport model.
4. Replacement is made of the defunct EP toxicity test with the Toxicity Characteristic Leaching Procedure (TCLP) at Sections 3 and 4.
5. Delisting levels for organic constituents are expressed as TCLP concentrations rather than as total mass in Section 4(c). Envirote notes that this change is consistent with the application of delisting standards at both, the federal and the state levels.
6. Some parameters from the list of organic and inorganic constituents for which daily monitoring is now conducted are deleted based on the record of their absence or low observed concentration (below delisting levels) over the years in which the site-specific protocols have been followed. Specifically, Envirote notes that the revision of monitoring parameters are supported by an extensive statistical evaluation of all delisting analytical data obtained over a twelve month period. The parameters which have been deleted from the monitoring list include arsenic, silver, barium, mercury, reactive cyanide, anthracene, 1,2-diphenyl hydrazine, methyl ethyl ketone, n-nitrosodiphenylamine and phenol. The parameters listed at Sections 4(a) and 4(c) reflect the revised list of constituents.

IMPACT ON ENVIRONMENT

Envirote opines the following regarding the environmental impact of a grant of the requested relief:

Allowance of the proposed adjusted standard will have no qualitative or quantitative impact on the environment. Envirote is currently in compliance with the rules of general applicability, and allowance of the adjusted standard would permit Envirote to utilize additional methods, process and standards to achieve the same results which are currently achieved -- the delisting of the relevant hazardous waste codes. No environmental cross-media will be impacted; none of the new methods, processes or standards requested by Envirote will result in any new or additional air or

water impacts, or land impacts not already addressed in the adjusted standard petition. (Pet. at p 6-7.)

The Agency agrees that the proposed adjusted standard would have no qualitative or quantitative impact on the environment. (Agency Response at p. 4.)

ENVIRITE'S AND THE AGENCY'S VIEW OF THE SCOPE OF RELIEF

Envirite and the Agency are in agreement that modifications of the existing site-specific rule are warranted and that an adjusted standard should be granted. Moreover, Envirite and the Agency are in agreement on all of the specific provisions requested by Envirite.

Nevertheless, the Agency believes that Envirite's proposal "could be improved upon". (Tr. at 10.) The Agency contends that, while "it is beneficial to have a delisting that allows for the potential of changes in permitted wastestreams over time" (Agency Response at p. 5), Envirite's proposal "stop[s] short of that goal" (Id.).

Accordingly, the Agency has requested that the Board consider granting Envirite an adjusted standard that contains two additional provisions, both of which are expansions of the relief requested by Envirite. (Tr. at 8.) The Agency believes that these provisions could lessen the likelihood of the adjusted standard having to be revisited in the future, and thereby "avoid taking the time of the Agency, of Envirite and of the Board" and avoid "having to, again, go through a regulatory process" (Tr. at 9).

Specifically, the Agency suggests that at Section 4(c) of the proposed adjusted standard there be added a provision that would allow Envirite to add or delete specific organic constituents from the batch testing protocols depending upon the history of those constituents in prior analyses. (Agency Response at p. 5-6.) Additionally, the Agency suggests that the adjusted standard allow Envirite to conduct pretreatment of wastes with any additional processes for which Envirite can make an effectiveness demonstration. (Agency Response at p. 6-7.)

Envirite's position is that it would rather not have the additional relief proposed by the Agency. Envirite believes that either of the Agency's suggested additions might result in a delisting that is less stringent than allowable under federal law, and hence be in violation of 35 Ill. Adm. Code 720.122(q)¹⁴

¹⁴ "The Board may not grant any [waste delisting] petition which would render the Illinois RCRA program any less stringent than if the decision were made by USEPA."

and of the General Assembly's findings in the Environmental Protection Act at 415 ILCS 5/20(a)(6)¹⁵. (Envirite Reply at p. 3, 6.) Envirite's concern is that provisions providing for "unilateral" decisions on the part of the treater may be rejected by the U.S. EPA.

Moreover, Envirite believes that it has no need for any additional relief. Envirite believes that its experience has allowed it to completely represent the variability in the wastestreams it processes, and hence that any additional flexibility in testing or pretreatment is unnecessary. (Envirite Reply at p. 4.)

COMMENT OF PEORIA DISPOSAL

Peoria Disposal has filed a comment in which it recommends several modifications to the adjusted standard proposed by Envirite. Like Envirite, Peoria Disposal operates a facility for the treatment of hazardous wastes. Peoria Disposal also holds a delisting adjusted standard granted by the Board on February 4, 1993¹⁶. Envirite appeared as an interested person in the proceeding which led to Peoria Disposal's adjusted standard.

The Board has reviewed Peoria Disposal's suggested changes. The Board is not persuaded that the suggested changes are necessary or advantageous.

DISCUSSION

The Board believes that Envirite has demonstrated that grant of an adjusted standard for delisting of the wastestreams at issue is warranted. An adjusted standard accordingly will be granted.

As regards the additional provisions recommended by the Agency, the Board declines to include these in today's grant. The Board does not itself here reach the conclusion that these provisions would cause the adjusted standard to be less stringent than provided for under federal law. However, the Board is concerned that such a finding by U.S. EPA might jeopardize the whole of Envirite's adjusted standard. The Board sees no merits

¹⁵ "[The General Assembly finds]...that it would be inappropriate for the State of Illinois to adopt a hazardous waste management program that is less stringent than or conflicts with federal law."

¹⁶ In the matter of: Petition of Peoria Disposal Company for an Adjusted Standard from 35 Ill. Adm. Code 721.Subpart B, AS 91-3.

in imposing this risk upon Envirite, particularly in view of Envirite's view that the provisions would provide relief that Envirite would have no occasion to invoke.

Except for some minor changes, today's order uses the same form and language as proposed by Envirite. The changes include expression at Section 2 of the limitation on the annual generation rate of treatment residue in units of total mass (200,000 tons per year) rather than total volume (200,000 cubic yards per year). The Board observes that the treatment residue generation rates presented and defended in Envirite's petition are presented as total mass (tons) (e.g., Petition at sections 3, 7, and 8). It is accordingly appropriate that this be the unit used in the language of the adjusted standard.

Additionally, the Board has made clarifying language changes to the verification and testing requirements at Section 3(b), 3(c), and 3(d) of the adjusted standard. These changes clarify that sampling and analysis of treatment residues for verification purposes must be performed on daily composite samples. The Board notes that these changes are consistent with the delisting verification sampling procedures contained in Envirite's petition at Section 5.

CONCLUSION

Based upon its consideration of the record presented in this action, the Board finds that Envirite has provided justification necessary for an adjusted standard to be granted with conditions.

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

ORDER

The Board hereby grants to Envirite Corporation an adjusted standard from 35 Ill. Adm. Code 721 Subpart D for Envirite's Harvey, Illinois, facility. This adjusted standard is granted subject to the following conditions:

1. This adjusted standard is effective on the date of this order. It supersedes the site-specific rule adopted by the Board by order of June 30, 1988 and found at 35 Ill. Adm. Code 721. Appendix I.
2. This adjusted standard is provided for the following waste codes:

F006	F011	K003	K007
F007	F012	K004	K008
F008	F019	K005	K062

F009

K002

K006

This adjusted standard is provided for disposal volumes of treatment residues up to 200,000 tons per year. Envirite Corporation's treated residues are non-hazardous as defined in 35 Ill. Adm. Code 721, provided that the treatment residues meet the verification and testing requirements prescribed in paragraphs 3 and 4 listed below to ensure that hazardous constituents are not present in the treatment residues at levels of regulatory concern. The treatment residues will no longer be subject to regulation under 35 Ill. Adm. Code Parts 722-728 and the permitting standards of 35 Ill. Adm. Code 703. Such wastes shall be disposed of pursuant to the Board's non-hazardous landfill regulations found at 35 Ill. Adm. Code 810-815.

3. Verification and Testing.

- a) **Treatability Testing.** Envirite shall verify through bench-scale treatability testing that each waste stream received can be treated to meet the delisting levels of paragraph 4 prior to the operation of full-scale treatment of that waste stream.
- b) **Testing of Treatment Residues for Inorganic Parameters.** Envirite shall collect a representative grab sample of each treated batch and composite these samples together daily. These composite samples shall be analyzed for TCLP leachate concentrations for all the constituents listed in paragraphs 4(a) prior to disposal of the treated batch.
- c) **Testing of Treatment Residues for Cyanide.** Envirite shall collect a representative grab sample of each treated batch and composite these samples together daily. These composite samples shall be analyzed for leachable cyanide concentrations as described in paragraph 4(b).
- d) **Testing of Treatment Residues for Organic Parameters.** Envirite shall collect a representative grab sample of each treated batch and composite these samples together daily. These composite samples shall be analyzed for TCLP leachate concentrations for the organic constituents listed in paragraph 4(c).
- e) **Additional Testing.** Envirite shall collect a representative grab sample from each batch composite sample of treatment residue and prepare a monthly composite sample. This monthly composite sample shall be analyzed for the TCLP leachate concentrations for all the constituents listed at 40 C.F.R. Part 423

Appendix A (1991) except those numbered 089-113, 116, 118-119, 122, 125-125 and 129. Any compound which is found to be below detection limits for six months of continuous monthly testing shall be deleted from the monthly testing parameter list and shall instead be tested semi-annually. If the compound is detected in the semi-annual tests, it will again be tested monthly for six months as described above.

- f) All analyses shall be performed according to Third Edition SW-846 methodologies incorporated by reference in 35 Ill. Adm. Code 720.111. The analytical data shall be compiled and maintained on-site for a minimum of three years. These data must be furnished upon request and made available for inspection by any representative of the State of Illinois.

4. Delisting Levels.

- a) The metal concentration in TCLP leachate from the treatment residue must not exceed the concentrations shown below. These delisting limits are the lower of:
- i.) the RCRA BDAT Land Disposal Restriction limits for F006 treatment residues or,
 - ii.) the health-based-levels listed in the U.S. EPA MANUAL, "Petitions to Delist Hazardous Wastes - A Guidance Manual, Second Edition", multiplied by a dilution/attenuation factor (DAF) of 13.

Otherwise, such wastes shall be managed and disposed in accordance with 35 Ill. Adm. Code 703 and 722-728. The parameters to be analyzed and the delisting limits are as follows:

<u>Parameter</u>	<u>Delisting Level (mg/l)</u>
Cadmium	0.065
Chromium	1.3
Lead	0.195
Nickel	0.32
Selenium	0.13

- b) Cyanide. Total leachate cyanide in distilled water extractions from the treatment of all listed wastes must not exceed 2.6 mg/l, otherwise such wastes shall be managed and disposed in accordance with 35 Ill. Adm. Code 703 and 722-278.
- c) Organic Parameters. For all residues produced from the treatment of listed wastes, the concentration in TCLP leachate of the organic compounds shown below must not exceed the health-based-levels listed in the U.S. EPA

manual, "Petitions to Delist Hazardous Wastes - A Guidance Manual, Second Edition", multiplied by a dilution/attenuation factor (DAF) of 13. If the delisting levels for a batch are exceeded, a second composite sample of the same batch shall be prepared and analyzed within five days of the observed exceedence. If a second subsequent exceedence occurs, the batch shall be managed and disposed of in accordance with 35 Ill. Adm. Code 703 and 722-729. The parameters to be analyzed and the currently effective delisting limits are as follows:

<u>Parameter</u>	<u>Delisting Level (mg/l)</u>
Methylene	0.065
Tetrachloroethylene	0.065
Trichloroethylene	0.065

5. Data Submittal. All data must be submitted to the Manager of the Permit Section, Division of Land Pollution Control, Illinois Environmental Protection Agency, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794-9276 within the time period specified. Failure to submit the required data will be considered a failure to comply with the adjusted standard adopted herein and subject Envirite to an enforcement action initiated by the Agency. All data must be accompanied with the following certification statement:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or presentations (pursuant to the applicable provisions of the Illinois Environmental Protection Act), I certify that the information contained in or accompanying this document is true, accurate and complete.

In the event that any of this information is determined by the Board in its sole discretion to be false; inaccurate or incomplete, and upon conveyance of this fact to Envirite Corporation, I recognize that this exclusion of wastes will be void as if it never had effect to the extent directed by the Board and that Envirite Corporation will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

(Name of certifying person)

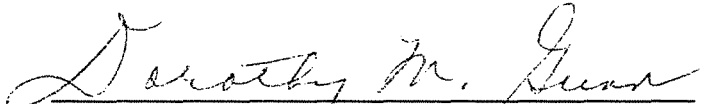
(Title of certifying person)

(Date)

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration".)

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 14th day of December, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board