BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
PETITION OF JO'LYN CORPORATION	)	
and FALCON WASTE AND RECYCLING,	)	AS 04-02
INC. for an ADJUSTED STANDARD from	)	(Adjusted Standard – Land)
portions of 35 Ill.Adm.Code 807.103 and	)	
35 Ill.Adm.Code 810.103, or in the	)	
alternative, A FINDING OF	)	
INAPPLICABILITY.	)	

NOTICE OF FILING

To: (See attached Service List.)

PLEASE TAKE NOTICE that on this 3rd day of September 2004, the following were filed with the Illinois Pollution Control Board: **Response to IEPA Recommendation** and **Renewed Motion for Expedited Decision,** which are attached and herewith served upon you.

JO'LYN CORPORATION and
FALCON WASTE AND RECYCLING, INC.

By: _____
Elizabeth S. Harvey
Attorney for Petitioners

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CERTIFICATE OF SERVICE

I, the undersigned non-attorney, state that I served a copy of the above-described documents to counsel of record in the above-captioned matter via U.S. Mail at One IBM Plaza, Chicago, IL 60611 on or before 5:00 p.m. on September 3, 2004.

_____
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.

6332-002

SERVICE LIST

AS 04-02
(Adjusted Standard – Land)

Mr. John J. Kim
Division of Legal Counsel, IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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RESPONSE TO IEPA RECOMMENDATION

Petitioners Jo'Lyn Corporation ("Jo'Lyn") and Falcon Waste & Recycling, Inc. ("Falcon") (collectively, "petitioners"), by their attorneys Swanson, Martin & Bell, hereby submit their response to the Illinois Environmental Protection Agency's ("Agency") recommendation. This response is submitted pursuant to Section 104.416(d) of the Board's procedural rules. (35 Ill.Adm.Code 104.416(d).)

INITIAL MATTER

Initially, petitioners object to the late filing of the Agency's recommendation. The Board directed the Agency to file its recommendation within 30 days after petitioners filed their amended petition with the Board. (See Board order, May 20, 2004, p. 3.) Petitioners' amended petition was filed on July 8, 2004, so that the Agency's recommendation was due on August 9, 2004.[1] The Agency did not mail its recommendation until August 20, 2004, 43 days after the filing of the amended petition.

[1] Petitioners disagree with the Agency's position that the 30-day period for filing its recommendation began on July 14, 2004, when petitioners filed a brief supplement to its petition. The Board's May 20, 2004, order specifically directed the Agency to file the recommendation within 30 days of the amended petition. Further, the July 14, 2004, supplement was short (less than three pages), and simply clarified information already contained in the petition and amended petition. There is no reason the Agency needed 30 days from the filing of the supplement in which to file its recommendation.

The Agency's delay violated the Board's direction that the recommendation be filed within 30 days, and prejudiced petitioners.

INTRODUCTION

Petitioners are disappointed in, and somewhat puzzled by, the Agency's recommendation that the Board find that the granulated bituminous shingle material (GBSM) is a waste, and that the Board deny the adjusted standard. Petitioners' process for using GBSM in its Eclipse Dust Control product is environmentally safe, and uses a material (GBSM) that might otherwise end up in a landfill (for lack of a market only) to produce a useful product. Petitioners met with the Agency in summer 2003 (prior to the filing of this adjusted standard petition) in an attempt to address any concerns the Agency had with the process. After the filing of this adjusted standard petition, petitioners' counsel offered several times to answer any questions the Agency may have, in an attempt to work with the Agency in securing a favorable recommendation. The Agency did not accept that offer. Instead, the Agency waited to file a recommendation based on speculation and conjecture, without identifying any legitimate environmental concern.

Petitioners fear that the Agency has lost sight of the Environmental Protection Act's "most basic purpose, protecting the environment of our state." (*Alternate Fuels, Inc. v. Director of the Illinois Environmental Protection Agency*, 337 Ill.App.3d 857, 786 N.E.2d 1063, 272 Ill.Dec. 229 (5th Dist. 2003), *leave to appeal allowed* 205 Ill.2d 575, 803 N.E.2d 479, 281 Ill.Dec. 75 (2003) (hereafter cited as *AFI*.) The Act specifically states that one of its purposes is to encourage recycling and reuse:

> It is the purpose of this Title to prevent the pollution or misuse of land, to promote the conservation of natural resources and minimize environmental damage by ...encouraging and effecting the recycling and reuse of waste materials...
>
> (415 ILCS 5/20(b).)

By continuing to insist that the GBSM is a "waste," and by recommending denial of the adjusted standard petition, the Agency is working at cross-purposes to those expressed intentions of the legislature. Petitioners' process takes a clean, consistent pre-consumer material (GBSM), engages in minimal processing (grinding only) of that material, and then applies the ground GBSM for dust control and paving applications. There is no environmental hazard with this process, and the Agency has not identified any legitimate environmental concern. Apparently the Agency would prefer that the otherwise useful GBSM be landfilled simply for lack of a market, taking valuable landfill space and preventing the production of a product useful to residential and business customers. The use of GBSM in Eclipse Dust Control is a "win-win" situation, which the Agency should support. Indeed, the process has widespread public support from individuals, groups, governmental entities (including the City of Woodstock, the McHenry County Board, and McHenry County College), and elected officials.[2] (See Exhibit G, and Public Comments #1 through #10.) Instead, the Agency objects. Petitioners ask the Board to see past the objections raised by the Agency, and approve this process.

THE GBSM IS NOT A "WASTE"

Petitioners' petition demonstrates that the GBSM is not a "waste." GBSM does not fit the definition of "waste." Additionally, the Agency has previously determined that

[2] The City of Woodstock has confirmed that petitioners' operation is properly located in a manufacturing district. The City does not consider GBSM to be a "waste." See Exhibit G.

the exact GBSM used by petitioners is not a waste. Further, the appellate court has found, in a similar circumstance, that a useful product is not a "waste." *AFI*, 786 N.E.2d at 1069.

The Agency should be held to its previous waste determination.

The Agency previously issued a waste determination to petitioners' supplier of GBSM (IKO Chicago), specifically finding that that the GBSM "is not a solid waste when utilized" to form a pavement surface after grinding of the GBSM. Thus, the Agency has already determined that the exact GBSM used by petitioners, and used as outlined by the Agency in its waste determination, is not a "waste." (See p. 4 of petitioners' petition; Exhibit D; and pp. 6, 8-9 of petitioners' amended petition.) In attempting to justify its decision to refuse to recognize its own 1993 decision, the Agency (in a footnote) asks the Board not to consider the waste determination. The Agency's reasons for that claim are baseless.

The Agency contends that the waste determination letter does not state that it is transferable from IKO Chicago (the entity which obtained the determination) to petitioners. However, the letter applies to the material at issue, not to an entity. The letter states:

> "The Agency has evaluated your request for a solid waste determination for the granulated bituminous shingle material (GBSM) generated by the Bedford Park facility and has determined that it is not a solid waste when utilized for the following applications":
>
> Exhibit D, page 1 (emphasis added).

The Agency's evaluation goes to the material itself, not to the name on the letter. The material that petitioners currently use is exactly the material analyzed by the Agency, which the Agency concluded is not a solid waste when used as outlined in the letter.

There is no indication that the material somehow becomes a waste if used by an entity other than IKO Chicago. In fact, the letter's reference to use of the product by an "end user" strongly implies that the Agency recognized that the letter is applicable to users other than IKO Chicago.

The Agency is incorrect in stating that petitioners do not process and use the GBSM in the same way as specified in the waste determination letter. As set forth at pages 8 and 9 of the amended petition, petitioners grind the GBSM to a size of 3 to 5 inches. This size is well within the letter's specifications of ½ by ½ to 5 by 5 as an acceptable size of the ground chips. Petitioners then apply the chips at a thickness of 4 to 6 inches, prior to compaction.[3] Petitioners go one step further in their process, and compact the chips to a finished 2 to 3 inch thickness. This compaction ensures a stable pavement, as required by the Agency's waste determination. All of these steps in petitioners' process comply with the requirements in the Agency's waste determination letter.

The Agency also asserts that the letter is inapplicable to petitioners because the letter qualifies the use of the GBSM to either on-site or at the end users' site. Apparently the Agency contends that, because the grinding of the GBSM is performed at petitioners' facility (an intermediate site between IKO Chicago and the location where the Eclipse Dust Control is applied), the material becomes a waste after leaving the IKO facility, even though it would not be a waste if the material went directly to the home or business of the person purchasing the Eclipse Dust Control product. This claim is illogical, and is at odds with the appellate court's decision in *AFI*. The *AFI* court found

[3] Petitioners recognize that the waste determination letter specifies a thickness of 5 to 6 inches. Petitioners are willing to apply the uncompacted chips at a minimum thickness of 5 inches.

no distinction between a material at the beginning of a process and the same material at the end of a process. *AFI*, 786 N.E.2d at 1069. Likewise, there is no distinction between the GBSM if ground at petitioners' facility, or if ground at the "end user."[4]

It is unclear why the Agency seeks to repudiate its own waste determination letter. That letter determined that the exact GBSM, from the identical source, used by petitioners is not a solid waste when used as outlined in the determination. Petitioners have demonstrated that their process uses the GBSM in the matter required by the waste determination. In fact, petitioners relied on that waste determination letter in beginning their business. Presumably, IKO Chicago also relied on that letter in contracting to sell that GBSM to petitioners. (See Exhibit A, purchase agreement between IKO Chicago and Jo'Lyn.) The Agency made its determination that this material is not a solid waste, and has not articulated a reasonable basis for its refusal to accept its own determination as to petitioners' process. The Agency has already determined that the GBSM is not a "waste," and it should be held to that determination.

The appellate court has found that a similar material is not a "waste."

The appellate court's recent decision in *AFI* supports a finding that the GBSM is not a "waste."[5] (See petition, pp. 5-6.) The Agency attempts to distinguish the *AFI* decision with a tortured interpretation of the appellate court's decision. The Agency also asserts that this case is factually different than *AFI*, but those supposed differences are based on conjecture and speculation.

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[4] Petitioners are indeed the "end user" of the GBSM, since they use the GBSM to make Eclipse Dust Control.

[5] Petitioners and the Agency have noted that the Supreme Court has accepted the *AFI* decision for review. The Agency states that it is possible that the *AFI* decision will be reversed. Petitioners note that it is equally possible that the Supreme Court will affirm the appellate court's decision.

First, it is important to note the context of the *AFI* decision, which is enlightening as to why the Agency is apparently so reluctant to accept the appellate court's decision. The petitioner in *AFI* is the "intermediary" in a recycling process. After collecting triple-rinsed plastic containers and processing them into small pieces (much like petitioners' grinding process), AFI sells the pieces to Illinois Power for use as a fuel at the Baldwin power plant. Illinois Power had previously received, from the Board, a determination that the plastic pieces are not "waste," so that the Baldwin Plant need not obtain local siting approval to use the plastic pieces. "Despite the Board's decision, the Agency continued to interpret the Act as requiring the facilities manufacturing the alternate fuel to comply with solid-waste-permitting and local-siting-approval procedures." *AFI*, 786 N.E.2d at 1065. The Agency attempted to enforce the waste rules against AFI, the producer of the plastic pieces, despite the Board's finding that those plastic pieces are not "waste." AFI then sought a declaratory judgment. In short, that declaratory judgment (which was upheld by the appellate court) was necessary only because the Agency refused to accept the Board's previous ruling.[6]

The Agency asserts that the facts in this case are different than the facts in *AFI*.[7] This is incorrect. The Agency states that the contract between AFI and its suppliers ensured quality control of the material, and asserts that petitioners do not have such quality control. This assertion is speculative and not based on fact. Petitioners have a contract with IKO Chicago for the purchase of GBSM (see Exhibit A). That contract

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[6] In this contextual sense, the *AFI* proceeding is reminiscent of *Grigoleit Co. v. Pollution Control Board*, 245 Ill.App.3d 337, 613 N.E.2d 371, 184 Ill.Dec. 344 (4th Dist. 1993), another case where the Agency refused to abide by a Board ruling.

[7] The Agency's implication that the appellate court's decision was based heavily upon the facts in *AFI* is incorrect. The appellate court based its decision on its interpretation of the statutory provisions of the Act.

allows petitioners to reject the GBSM if it contains contaminants.[8] Petitioners have stated, and reiterate, that they will only accept GBSM that meets the definition set forth in the pleadings.[9] Petitioners disagree with the Agency's claim that the definition of GBSM does not ensure uniformity. The definition is "clean and consistent post-production material generated at the end of the manufacturing of roofing shingles, such as tabs or punchouts, and miscolored or damaged shingles. GBSM excludes post-consumer material or shingle tear-offs." (Amended petition, p. 8.) That definition is clear and capable of application to any given load of GBSM.

The Agency also attempts a rather tortured interpretation of the *AFI* decision. Instead of discussing the appellate decision, the Agency attempts to focus on two Board decisions: the Board's *Illinois Power* decision underlying the appellate *AFI* decision, and the Board's unrelated decision in *IWEP*. The Agency apparently does this in an attempt to distract the Board from the simple holding of *AFI*, and its clear applicability to petitioners' process. The appellate court specifically found:

> We see no real distinction between the product at the time it enters AFI's facility and the product after it leaves, because the material is at all times destined to become alternative fuel that is not discarded. Regulating the process at the outset makes no more sense than regulating it at the end.
>
> *AFI*, 786 N.E.2d at 1069.

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[8] It is unfortunate that the Agency did not take advantage of petitioners' repeated offers to address any concerns the Agency had. If the Agency had done so, perhaps the contract could have been revised to specifically address the Agency's concerns.

[9] The Agency notes several times that petitioners have expressed an intent to pursue contracts with GBSM suppliers in addition to IKO Chicago. The Agency is apparently concerned that the GBSM purchased from other suppliers might be "different" than the GBSM from IKO Chicago. Petitioners obviously prefer to have the opportunity to pursue GBSM from additional suppliers, to ensure a steady source of GBSM, and to possibly expand its operations. However, if required by the Board, petitioners would be willing to restrict their process to GBSM from IKO Chicago.

This language can be directly applied to petitioners' process. There is no distinction between the GBSM when it enters petitioners' facility, and the GBSM when it leaves. The GBSM is not discarded, and is at all times destined to become Eclipse Dust Control. The only action taken on the GBSM is the grinding process, which is similar to the shredding process used by AFI. In short, both AFI's process and petitioners' process involve obtaining the raw material (plastic containers or GBSM), shredding or grinding the raw material, and then using the shredded/ground material as a useful product (alternative fuel or Eclipse Dust Control).[10] The appellate court's statutory analysis is applicable to petitioners' process.

The Agency asserts that if the Board, in *Illinois Power*, had been asked to review the question of whether the material accepted by AFI was a waste, it may have decided that it was. In addition to being complete speculation, this argument is contrary to the finding made by the *AFI* appellate court. Since the Board held, in *Illinois Power*, that the alternative fuel used by Illinois Power is not a waste, how can it be a waste before it gets to Illinois Power? The appellate court noted that Board decision, and found that there is no real distinction between the material when it entered AFI's facility and when it left. Thus, the appellate court held that regulating the process at the outset (at AFI's facility) makes no more sense that regulating it at the end (at Illinois Power). *AFI*, 786 N.E.2d at 1069. The Agency's speculation is contrary to the appellate court's decision in *AFI*.

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[10] Petitioners' process arguably has less potential for environmental concerns, as the Eclipse Dust Control is applied and compacted, with no heat (except the heat of the sun) or sealant. In contrast, the alternative fuel is burned. Additionally, the material used by petitioners is pre-consumer, while the material used by AFI is post-consumer.

In sum, GBSM is not a "waste." It does not fit the definition of "waste." Additionally, the Agency has previously determined that the GBSM is not a "waste" when used for paving applications under specific circumstances. Further, the appellate court, in *AFI*, has clearly held that such a clean and consistent material is not a "waste," because that material is not discarded. Petitioners ask the Board to find that the GBSM used in petitioners' process is not a "waste."

PETITION FOR ADJUSTED STANDARD

If the Board finds that the GBSM is indeed a "waste," petitioners seek an adjusted standard. Petitioners hereby respond to the issues raised by the Agency.

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

The Agency questions whether an adjusted standard can be sought from regulatory definitions that incorporate statutory definitions. The Agency cites no case law in support of its claim. It has long been the Board's practice to incorporate statutory definitions into its regulations. If an adjusted standard cannot be granted from regulations that incorporate statutory definitions, no meaningful adjusted standard could ever be granted from the land regulations (and possibly from air and water regulations). The land regulations, in particular, are replete with definitions taken directly from the statute. If the Board lacked the power to grant adjusted standards where a definition (or other regulatory provision) incorporates a statutory provision, it would be impossible to obtain a meaningful adjusted standard for land. If the legislature had intended that no adjusted standard could be granted from a regulation which incorporates a statutory definition, it would have so stated.[11] It did not. Instead, the legislature granted the

[11] For example, the legislature required that an adjusted standard be consistent with federal law. (415 ILCS 5/28.1(c)(4).) The legislature could have added a similar provision if it had intended that the

Board broad powers to grant adjusted standards whenever the Board finds that the petitioner has demonstrated compliance with the factors in Section 28.1(c) (415 ILCS 28.1(c)).

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

The Agency believes that "certain questions still remain" as to the activities at the site. Once again, petitioners note that petitioners' counsel offered, on several occasions, to respond to any questions or concerns the Agency had after reviewing petitioners' pleadings. The Agency did not take advantage of that offer, but instead waited until filing its recommendation, thereby "sandbagging" petitioners. Petitioners would have been happy to address the issues raised by the Agency, if only the Agency had communicated with petitioners.

The Agency's articulated concerns are based only on speculation and apparent misinterpretations of petitioners' statements. For example, the Agency believes that there are two different sites at use in petitioners' process. There are not. Petitioners began their operations (storage of GBSM in containers) at a location on Kennedy Drive in Harvard, Illinois, in winter 2000-2001 (which is their first test section site). Petitioners then moved their operations to their current facility at 1200 North Rose Farm Road, Woodstock, Illinois, in February 2001. Petitioners do not operate at the Kennedy Drive address: operations occur only at 1200 North Rose Farm Road.

The Agency also asserts that petitioners have not provided information on a range of other matters. Again, these concerns are based on speculation, and an apparent misunderstanding of petitioners' process. Petitioners' process is quite simple.

Board not grant adjusted standards where one or more of the regulatory provisions incorporated a statutory provision.

GBSM is purchased (currently from IKO Chicago), inspected at IKO Chicago, and transported to petitioners' facility in Woodstock. There, the load of GBSM is visually inspected again to ensure that it contains only GBSM. (As noted above, petitioners' contract with IKO Chicago gives petitioners the right to refuse any load which contains contaminants.) It is not necessary to perform physical testing, since all of the GBSM comes directly from the manufacturing process.[12] After the visual inspection, the GBSM is ground. As noted on page 5 of the amended petition, the only air emissions at the facility are minimal emissions from the muffler on the grinder.[13] The grinding process itself uses a light mist of water, so there is no dust from the grinding.

The Agency also complains that petitioners have not provided a comparison of ASTM or DOT specifications to petitioners' product characteristics. Petitioners assume that the Agency is referring to ASTM or DOT specifications for recycled asphalt pavement (RAP). While similar in some ways to RAP, the Eclipse Dust Control process is different: most importantly, no heat is applied in the Eclipse Dust Control process, unlike the RAP process, making the Eclipse process superior. There are no specifications from any "recognized" entity (such as ASTM or DOT) for the Eclipse Dust Control process, nor has the Agency pointed to any such specifications. It is unclear how comparing the GBSM used in Eclipse Dust Control to specifications for a different process would be useful. [14]

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[12] Roofing shingles, which are the only source of GBSM, are on most residential roofs in the state of Illinois, and are not in any way inherently "dangerous" or toxic.

[13] Petitioners will, of course, obtain any required air permit for the grinder.

[14] Petitioners have already provided the specific breakdown of the composition of GBSM. (See supplement, p. 2.) Additionally, petitioners provided results, over the last two to three years, of two test applications of Eclipse Dust Control. (See amended petition, pp. 6-7.) Those test applications have proven the durability and usefulness of Eclipse Dust Control.

The Agency also complains that petitioners have not provided information as to possible adverse health impacts to cattle fed on feed lots paved with Eclipse Dust Control, or to people using biking or walking paths. Once again, this is pure and utter speculation. Petitioners have provided the composition of GBSM: asphalt, filler (usually limestone), granules (rock), and mat. The Agency has not pointed to any of those ingredients as raising a specific health concern. Nothing is added to the GBSM, and no heat or sealant is applied to the Eclipse Dust Control.[15] Petitioners recognize that they have the burden of providing sufficient information to enable the Board to make its decision. However, petitioners object to the Agency's repetitive raising of speculative issues, without any support for those issues.

Compliance alternatives (Section 104.406(e))

As noted in the petition, petitioners' only compliance alternative (if the Board finds that the GBSM is a waste) is full compliance with all applicable regulatory requirements in Parts 807 and 810, including local siting approval. The siting process itself can cost hundreds of thousands of dollars. Compliance with the regulatory requirements, even if local siting was obtained, would be cost-prohibitive to a small business such as petitioners. In essence, petitioners have not provided capital and operating costs for full compliance because they would not be able to operate their business if required to comply with all provisions. It would be illogical and short-sighted to require petitioners, who use a single, clean, and consistent pre-consumer material to

[15] The Agency's mention of "inhalation of particles or vapors" by people using walking or bicycle paths is baseless. The product is tightly compacted, so that there are no particles arising from the pavement. (In fact, a person walking on a gravel path would be much more likely to be exposed to particles.) As for vapors: there is no evidence that the compressed GBSM issues any vapors, at least beyond any vapors which might theoretically be emitted from a residential roof.

produce a useful product, to comply with regulations intended for operations which treat, store, or dispose of waste.

Proposed adjusted standard (Section 104.406(f))

Petitioners reiterate their arguments that the Board can appropriately grant an adjusted standard from a regulatory provision that incorporates a statutory provision.

Impact on the environment (Section 104.406(h))

The Agency has raised only speculative "questions and concerns" about the impact on the environment. Petitioners have addressed those questions, above. There is no evidence in the record of this proceeding that shows any environmental concerns relating to petitioners' process. In fact, the Agency itself previously approved the use of GBSM for exactly the process used by petitioners. Presumably, the Agency would not have issued such an approval if there were environmental concerns.

Supporting documents (Section 104.406(k))

Petitioners refer the Board to their demonstration, above, that the Agency's inexplicable attempt to prohibit consideration of the 1993 waste determination should be rejected. The 1993 waste determination is indeed relevant and applicable. Additionally, the documents related to the receipt of the state grant from DCEO (see Exhibit F) are indeed relevant. DCEO's grant demonstrates that it found the operation worthy of funding as a recycling operation. Additionally, DCEO personnel have actually viewed the two test sections and petitioners' facility at 1200 North Rose Farm Road, and have been favorably impressed with the results.

Section 28.1(c) factors

The Agency asserts that petitioners have not sufficiently demonstrated three of the factors set forth in Section 28.1(c) of the Act. The Agency's assertions on these issues are simply disagreements with petitioners' demonstrations, or speculation. Petitioners believe that their petition, amended petition, supplement, and this response demonstrate that: 1) the factors relating to petitioners are substantially and significantly different (a recycling operation using a single clean material to produce a useful and valuable product, as opposed to a facility that treats, stores, or disposes of waste); 2) the existence of those factors justifies an adjusted standard (compliance with the waste regulations will not provide any environmental benefit, and allowing the adjusted standard will allow the process of recycling the clean GBSM into a useful paving product); and 3) there are no adverse environmental or health effects (petitioners have shown that the Agency's possible adverse scenarios are simply speculation: even the Agency admits that its scenarios are "potential" concerns which "may" relate to adverse effects).

CONCLUSION

It is unclear why the Agency does not support petitioners' request for a finding of inapplicability, or an adjusted standard. Petitioners' process is a simple yet effective use of GBSM, which is a clean and consistent pre-consumer material, to make a useful and effective paving product. This process utilizes the GBSM, which might otherwise be landfilled due only to lack of market, and does not create any "pollution" or adverse environmental impacts. Petitioners' request is supported by a number of citizens, groups, governmental entities, and elected officials. (See Exhibit G and Public

Comments #1 through #10.) Not a single person or entity, other than the Agency, has objected to this request, and no one requested a hearing. The appellate court has ruled, in a similar case, that the material at issue is not a "waste." Despite petitioners' demonstrations, public support, and appellate direction, the Agency inexplicably refuses to support petitioners' request. Petitioners ask the Board to grant petitioners' request for a finding of inapplicability, or, in the alternative, an adjusted standard.

Respectfully submitted,

JO'LYN CORPORATION and
FALCON WASTE AND RECYCLING, INC.

By: _____
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RENEWED MOTION FOR EXPEDITED DECISION

Petitioners Jo'Lyn Corporation and Falcon Waste and Recycling, Inc., by their attorneys Swanson, Martin & Bell, hereby renew their motion for expedited decision of their petition for adjusted standard or, in the alternative, for a finding of inapplicability:

1. Petitioners have filed their petition for adjusted standard or, in the alternative, a finding of inapplicability. Petitioners have also filed an amended petition and a supplement. The Illinois Environmental Protection Agency (Agency) has filed its recommendation, and petitioners have filed a response to that recommendation. Petitioners have waived hearing, and no member of the public requested a hearing. Thus, this matter is ripe for decision.

2. As previously noted, application of petitioners' paving product to the surface requires compaction and the heat of the sun.

3. Petitioners' business is, by its nature, a seasonal business. For optimal results, the process needs the heat of the sun to set the paving. Petitioners are small businesses which need to operate in order to survive.

4. Petitioners respectfully renew their previous motion for expedited decision, and request that the Board reach a determination on this matter as soon as possible to allow petitioners to operate yet this season.

WHEREFORE, petitioners respectfully ask this Board to act upon its petition as soon as possible.

Respectfully submitted,
JO'LYN CORPORATION and FALCON WASTE AND RECYCLING, INC.

By: _____
One of its attorneys

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