

Electronic Filing - Received, Clerk's Office, June 12, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF)
)
RCRA DELISTING ADJUSTED) AS 08-10
) (Adjusted Standard – Land)
STANDARD PETITION OF PEORIA) (Waste Delisting)
DISPOSAL COMPANY)

NOTICE OF FILING

To: Brian Meghinnes
Janaki Nair
Elias, Meghinnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, Illinois 61602-1611

Claire Manning
Brown, Hay & Stephens, LLP
205 S. Fifth Street, Suite 700
Springfield, Illinois 62701

Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

PLEASE TAKE NOTICE that on this date I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois the following instrument(s) entitled ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO RCRA DELISTING ADJUSTED STANDARD PETITION.

Respectfully Submitted,

William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

Dated: June 12, 2008

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE TO RCRA DELISTING ADJUSTED STANDARD PETITION

Now comes the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, William D. Ingersoll, Manager, Enforcement Programs, and, pursuant to 35 Ill. Adm. Code 104.416, hereby submits a response to the Illinois Pollution Control Board (“Board”) to the petition for adjusted standard (“Petition”) filed by Peoria Disposal Company (“PDC” or “Petitioner”). For reasons stated in detail below, the Illinois EPA has no objection to the granting of the requested RCRA delisting adjusted standard. In support of this position, the Illinois EPA states as follows:

I. INTRODUCTION

PDC is seeking an adjusted standard waste delisting for treated electric arc furnace dust, classified as hazardous waste K061. PDC treats K061 waste at its permitted waste stabilization facility (“WSF”) located in Peoria County, Illinois, pursuant to a RCRA Part B Permit. The delisting in this case would apply to treated residues following waste stabilization activities at the WSF.

To obtain a positive ruling from the Board, PDC must satisfactorily address all the factors set forth in Section 104.406 of the Board’s procedural regulations (35 Ill. Adm. Code 104.406), Section 28.1(a) of the Environmental Protection Act (“Act”)(415 ILCS 5/28.1(a)), and 35 Ill. Adm. Code 720.122(d). Since the primary hazardous property of K061 listed hazardous waste is Toxicity (See 35 Ill. Adm. Code 721.132), Section 720.122(d) is the relevant provision.

II. SECTION 104.406 FACTORS

For the reasons more fully set forth below, the Illinois EPA believes that PDC’s request for a RCRA waste delisting of treated K061 electric arc furnace dust will likely meet the required level of justification with some additional information, as noted below.

A. Section 104.406(a) – Statement describing the standard from which an adjusted standard is sought

The Illinois EPA does not take issue with PDC’s statement on this topic.

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B. Section 104.406(b) – Statutory basis of regulation of general applicability

The Illinois EPA does not take issue with PDC's statements on this topic.

C. Section 104.406(c) – Level of justification

The Illinois EPA does not take issue with PDC's statements on this topic.

D. Section 104.406(d) – Description of the nature of petitioner's activity

The Illinois EPA does not take issue with PDC's statements on this topic.

E. Section 104.406(e) – Efforts necessary to comply

The Illinois EPA does not take issue with PDC's statements on this topic.

F. Section 104.406(f) – Proposed adjusted standard

The Illinois EPA does not take issue with PDC's statements on this topic.

G. Section 104.406(g) – Quantitative and qualitative impact on the environment

The Illinois EPA does not take issue any specific statement by PDC on this topic, other than to note the concerns raised below in Subsection H of this Response.

H. Section 104.406(h) – Justification of the proposed adjusted standard

The Illinois EPA agrees that the treated K061 residue does not exhibit the characteristic of toxicity with respect to hexavalent chromium, cadmium, and lead. However, there are two concerns related to the Site Specific Model Assumptions used in the analysis of dioxins and furans, which is found in Appendix H.4 of Volume 1 of the Technical Support Document. These concerns will be addressed in turn below.

With regard to the Dioxin/Furan DRAS modeling, (Summary at Appendix H.4, p. 2), the fraction of fish intake is reduced from the generic input of 1.0 to a site-specific input of 0.5. The rationale given in the table is that it is assumed 50% of all freshwater fish consumption for an individual is taken from Indian Creek. Although Illinois EPA has no information to contradict the usage of the lower number, neither is any reference source given to justify this adjustment. Additional information should be submitted by PDC to support this point.

In the same Appendix H.4, Site Specific Model Assumptions table, the fish consumption rate is increased from the default input of 0.02 kg/day to the site-specific input of 0.06 kg/day. PDC indicates that this modification is intended to reflect the difference between recommended default model input for total fish consumption (marine and freshwater) and solely freshwater fish consumption. Illinois EPA has no objection to the use of the

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site-specific figure in this situation, because the freshwater fish number is more appropriate to any location within the State of Illinois. Additionally, as a higher number, it would result in a modeling output that would be more conservative with respect to human health. However, the apparent modeling input used, as indicated on the last page of Appendix H.4, was only 0.006 kg/day. This may be a typographical error, in which case, it should simply be corrected. However, the actual use of this incorrect value could result in lower DRAS Model recommendations for delisting of dioxins and furans, so PDC should be required to show the model as run with the correct 0.06 kg/day input.

I. Section 104.406(i) – Consistency with federal law

The Illinois EPA does not take issue with PDC's statements on this topic.

J. Section 104.406(j) – Hearing

The Illinois EPA does not take issue with PDC's statements on this topic.

K. Section 104.406(k) – Supporting documents

The Illinois EPA does not take issue with PDC's statement on this topic, except with regard to the issues raised in Subsection H of this Response.

III. SECTION 28.1 FACTORS

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

In promulgating regulations under this Act, the Board shall take into account the existing physical conditions, the character of the area involved, including the character of surrounding land uses, zoning classifications, the nature of the existing air quality, or receiving body of water, as the case may be, and the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution. 415 ILCS 5/27(a) (2006).

Pursuant to Section 28.1(b) of the Act, the Board has specified the level of justification for hazardous waste delistings in Section 720.122 of the Board's regulations.

The comments made above for the factors set forth in Section 104.406 apply to the Section 28.1 factors as well as the 720.122 factors.

IV. CONCLUSION

WHEREFORE, for the reasons stated above, the Illinois EPA hereby respectfully requests that the Board require PDC to address the issues noted above prior to granting any adjusted standard in this case.

Respectfully Submitted,

William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
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PROOF OF SERVICE

I hereby certify that I did on the 12th day of June, 2008, send by U.S. Mail with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instrument(s) entitled ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSE TO RCRA DELISTING ADJUSTED STANDARD PETITION

To: Brian Meginnis	Claire Manning
Janaki Nair	Brown, Hay & Stephens, LLP
Elias, Meginnis, Riffle & Seghetti, P.C.	205 S. Fifth Street, Suite 700
416 Main Street, Suite 1400	Springfield, Illinois 62701
Peoria, Illinois 61602-1611	
Bharat Mathur	
Acting Regional Administrator	
U.S. Environmental Protection Agency	
Region 5	
77 West Jackson Boulevard	
Chicago, Illinois 60604	

and the original and nine (9) true and correct copies of the same foregoing instruments on the same date by Certified Mail, Return Receipt Requested, with postage thereon fully prepaid

To: John Therriault, Acting Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

William D. Ingersoll
Manager, Enforcement Programs

Illinois Environmental Protection Agency
1021 North Grand Avenue East
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Springfield, Illinois 62794-9276
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