

**RIVER CITIES DISPOSAL, LLC
BIG RUN LANDFILL
BOYD COUNTY, KENTUCKY
AGENCY INTEREST NO. 40319; ACTIVITY NO. APE20150006
RESPONSE TO COMMENTS
April 29, 2016**

Background: The Kentucky Energy and Environment Cabinet (“Cabinet”) received an application for the renewal of a permit for River Cities Disposal on June 9, 2015 (APE20150006). The Cabinet published a Notice in The Daily Independent on July 3, 2015 requesting public comments. The Cabinet conducted a Public Hearing on August 25, 2015 for purpose of accepting oral comments.

The Cabinet published a Second Notice on December 14, 2015 indicating that a draft permit had been prepared and established another comment period in order to allow comments on the proposed permit conditions. The Cabinet conducted a second Public Hearing on January 12, 2016.

The Cabinet received a notification on April 25, 2016 that River Cities Disposal’s Big Run Landfill (BRL) closed the transfer station (effective April 19, 2016) and is seeking termination of the transfer station activity.

The following are the responses to the comments received during the first comment period.

Comment 1. Multiple commenters said that the facility has ignored local laws and regulations.

Response: The enforcement of local laws and regulations is not within the regulatory authority of the Cabinet. All permits issued by the Division of Waste Management (DWM), Solid Waste Branch contain the statement that: “Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits, licenses or approvals required by this Division or other state and local agencies.”

Also, the draft permit issued on December 14, 2015 (“draft permit”) proposed the following condition: “The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al.” The condition remains in the final permit issued on February 24, 2016 (“final permit”).

Comment 2. Multiple commenters stated that the landfill should not be allowed to renew their permit due to a history of violations of the Clean Air Act, repeated violations of Kentucky’s Nuisance Standard (401 KAR 47:030, Section 12) and over 1200 complaints concerning air quality violations from area residents.

Response: KRS 224.40-330(3) provides that no permit may be issued when any waste site or facility owned by the applicant is currently in violation pertaining to environmental protection until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has issued the violation, or that the violation is under appeal. The Cabinet’s records do indicate a history of violations. However, some issues have been addressed and some are in the process of being corrected to the Cabinet’s satisfaction. The final permit was not changed in response to this comment.

Comment 3. Multiple commenters said that landfill fugitive odors negatively impact private landowner’s enjoyment of their property, property values, and sales as well as creating a negative impression on visitors and travelers on nearby public roads, including interstates. Additionally, multiple commenters said that BRL fugitive odors create a disincentive for economic development from local and non-local business that may be considering Boyd County for relocation or expansion.

Response: Property values or other economic development issues such as these are outside of the regulatory authority of the Cabinet. The Division for Air Quality (“DAQ”) regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 4. Multiple commenters said that fugitive odors and hydrogen sulfide gas cause runny noses, burning eyes, coughing, watery eyes, shortness of breath, nausea, headache, rash, upper respiratory illness and negatively impact students and staff of nearby schools.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Per the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al (“the Agreed Order”), BRL shall submit a hydrogen sulfide and methane monitoring plan to DAQ.

Furthermore, the draft permit proposed the following condition: “The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al.”

The condition remains in the final permit.

Comment 5. A commenter stated that management of the landfill entered into an agreement with the Commonwealth of Kentucky in January 2014 to address hydrogen sulfide gaseous odors within one (1) year. Due to persistent odors with continued complaints, it was not until March 2015, after an extension by the Commonwealth to resolve the issues that BRL management began to initiate a corrective action plan.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 6. A commenter stated that the odor from the landfill contains H₂S and other sulphur compounds that are very offensive and dangerous. The commenter requested that odor standard should be reduced in the operating permit from a 7x1 dilution limit to a 4x1 dilution limit at Big Run Landfill, the rail transfer station, and trash containers en route to the transfer station and landfill.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Per the Agreed Order, BRL

shall submit a hydrogen sulfide and methane monitoring plan to DAQ. The final permit was not changed in response to this comment.

Comment 7. A commenter said that there are no requirements that the technology being used by BRL to control fugitive odors actually does anything.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 8. Commenters stated the landfill is processing more waste than Boyd County citizens and elected officials were told it would by Big Run Landfill representatives in 2007 and that BRL has exceeded its capacity for proper management and control of waste.

Response: Waste volume agreements may be reached by the local governing body and the owner/operator of the landfill through a Host County Agreement. Furthermore, the draft permit proposed conditions pertaining to the maximum daily limit. The final permit contains the following modified condition:

“The owner or operator shall not exceed the maximum daily limit for all waste (including municipal solid wastes, industrial wastes, and special wastes) calculated on a 6-day week and averaged over a monthly period, based on the milestones outlined:

(a) The owner or operator shall not exceed 1,500 tons per day of all waste, with no more than 400 tons per day of that waste being municipal solid waste; or

(b) Upon completion of the final cap on all areas outlined in application APE20150016, and upon acceptance of the corresponding Cap Construction Progress Report, the owner or operator may increase the maximum daily limit up to 2,000 tons per day of all waste calculated on a 6-day week and averaged over a monthly period, with no more than 700 tons per day of that waste being municipal solid waste or any non-MSW putrescible wastes.

In either case, the owner or operator shall include in a quarterly operating compliance report a record of the daily tonnage summarized in a table which includes calculations in order to demonstrate compliance. [401 KAR 47:120 Section 2]”

Comment 9. A commenter stated that siting the landfill in a 100-year floodplain and wetlands has caused vast environmental damage.

Response: The landfill is not located in wetlands or in the 100-year floodplain and all runoff is directed to sedimentation basins before discharging through KPDES regulated outfalls. The final permit was not changed in response to this comment.

Comment 10. A commenter said that there is insufficient knowledge of the composition or long-term effects of chemicals being disposed of in the landfill.

Response: A contained landfill can accept for disposal the waste types pursuant to 401 KAR 47:080 Section 2(1). The facility’s liner and leachate collection systems are designed to

minimize releases to the environment. The final permit was not changed in response to this comment.

Comment 11. Multiple commenters said that burning of gases at the landfill releases unknown chemicals into the air breathed by area residents.

Response: The landfill is required to prevent the buildup of explosive gases pursuant to 401 KAR 48:090, Section 4. The flaring of landfill gas (methane) by the landfill is a method used at landfills to reduce the potential for methane to build to levels that would exceed the lower explosive limits. The final permit was not changed in response to this comment.

Comment 12. A commenter stated that leaching from the landfill of contaminants could possibly show up in drinking water for any community west of Ashland that gets its water from the Ohio.

Response: The landfill is designed and constructed to minimize the possibility of releases of landfill contaminants into the groundwater and surface water. Further, groundwater and surface water will be monitored quarterly in accordance with all applicable regulations in order to determine whether a release of contaminants has occurred. In the event of a contaminant release, the permittee will be required to perform groundwater assessment and conduct corrective measures to ensure the protection of human health and the environment pursuant to 401 KAR 48:300. The final permit was not changed in response to this comment.

Comment 13. Multiple commenters said that BRL has shown no regard for public safety.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 14. Multiple commenters expressed concern that there is insufficient information on the concentration and long-term health effects of BRL's use of an odor "masker".

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto; remedial measures are also regulated by DAQ. The final permit was not changed in response to this comment.

Comment 15. Multiple commenters said that Big Run Landfill is getting blamed for odors originating off-site from nearby sites or businesses including a dog food plant, steel mill, petroleum company, culvert pipe processing plant, and individual septic systems.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 16. Multiple commenters suggested that the operating permit should incorporate CSX document CSXT 4048, Supplement 4, "Movement of Waste Shipments", and any new supplements and that any violation of the rules in this document should be considered a violation

to the landfill operating permit that triggers a mandatory incident investigation and an appropriate fine.

Response: The draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 17. A commenter stated that the operating permit should ban receiving baled garbage at Big Run Landfill.

Response: The landfill has ceased accepting baled waste via rail. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]

Comment 18. A commenter requested that the operating permit should require garbage that is stored overnight between collection and dumping be stored in a closed container with a disposable liner. This liner needs to be dumped with the garbage at the landfill. In Boyd County, garbage collected must be dumped the day it is collected to avoid odor issues.

Response: Pursuant to 401 KAR 48:090, Section 9, working face provisions require BRL to spread waste within two (2) hours of receipt. The final permit was not changed in response to this comment.

Comment 19. A commenter observed that railcar containers are not cleaned and requested that the operating permit should specify that containers have a one load, disposable liner.

Response: The draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the

owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 20. Multiple commenters said that noise from railcar operations occurs during nighttime sleeping hours causing disruption of sleep, negative health impacts, and annoyance to area residents.

Response: The draft permit proposed and the final permit contains the following condition: “The owner or operator shall limit the hours that the landfill is open to the public to no more than 6 a.m. to 4 p.m., Monday through Saturday, with no waste receipt or disposal on Sundays.” Furthermore, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 21. A commenter required that a Standard Operating Procedure manual be developed for the transfer station that reflects the requirements contained within the CSX Rules Circular (CSXT 4048 Supplement 4, effective July 1, 2015). A copy of this document shall be given to the County Judge’s office.

Response: The draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 22. A commenter stated that the groundwater and surface water monitoring plan should accurately monitor the activity at the transfer station location.

Response: The groundwater and surface water monitoring plan pursuant to 401 KAR 48:300 at the facility are site-wide. Furthermore, the draft permit proposed the following condition: “The

owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 23. Due to the poor operational performance over 10 years, the landfill should be required in the operating permit to fund an on-site state EPA employee and an on-site DWM employee. These state employees should have all of the enforcement rights allowed by their agencies.

Response: Item #30 of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 (“Agreed Judgement”), states the conditions for one (1) full-time equivalent (FTE) Department for Environmental Protection staff member.

Furthermore, the draft permit proposed the following condition: “The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al.”

The condition remains in the final permit.

Comment 24. The Boyd County code enforcement agents should be permitted in the operating permit. Their responsibility would be to monitor trash deliveries to the landfill and to the transfer station. They should be permitted to issue NOVs for noise, odor, and dust. This additional enforcement is necessary because the state EPA typically operates on a 40-hour work week. Big Run routinely schedules rail deliveries outside the EPA operating hours.

Response: Other enforcement agents (not associated with the Cabinet) are not prohibited from exercising their regulatory authority by the Division of Waste Management. It is not required that their authority be expressed in a permit issued by the Cabinet. Item #18 of the Agreed Judgment discusses the right of county officials to visit the landfill. The final permit was not changed in response to this comment.

Comment 25. A commenter stated that, as required by KRS 224.43-320, the Cabinet shall assign a full-time inspector at this facility.

Response: Item #30 of the Agreed Judgement, states the conditions for one (1) full-time equivalent (FTE) Department for Environmental Protection staff member. The final permit was not changed in response to this comment.

Comment 26. A commenter requested that because Boyd County government has encountered additional costs due to the poor performance at Big Run Landfill, the operating permit should raise the fees the county collects to \$3 per ton.

Response: The Cabinet does not have regulatory authority over fees for operation of the landfill that are collected by Boyd County. The final permit was not changed in response to this comment.

Comment 27. A commenter said that BRL's operation is inconsistent with the Boyd County Solid Waste Management Plan due to an unconstitutional 2005 amendment to said plan that granted BRL 42.9 million tons of total capacity for a 30 year period. Boyd County authorized resolutions permitting BRL expansion as the primary disposal facility for solid waste generated in Boyd County without competitive bid, in violation of Kentucky Constitution Section 164.

Response: The Cabinet received a determination from the local governing body that the landfill application was consistent with the area solid waste management plan. The comment refers to a legal matter that is outside the Cabinet's regulatory authority. The final permit was not changed in response to this comment.

Comment 28. A commenter requested that any variance from the siting restrictions must have approval from the Boyd County Fiscal Court before the variance is approved by the Cabinet.

Response: A variance from Kentucky Administrative Regulations is subject to public notice requirements pursuant to 401 KAR 47:130, Section 3. The Boyd County Fiscal Court would therefore have the same opportunity to comment on such a proposal that any other entity would have. The final permit was not changed in response to this comment.

Comment 29. A commenter said that the operating permit should require all garbage dumped to be covered with a minimum of 12 inches of soil each night because the additional soil is necessary to control odor.

Response: Pursuant to 401 KAR 48:090, Section 3, BRL shall place a minimum of six (6) inches of cover. The draft permit proposed the following condition: "The owner or operator shall only use on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) for daily cover; alternate daily cover is not permitted. Daily cover must be applied in accordance with 401 KAR 48:090 Section 3 no later than the end of each operating day. A synthetic cover material such as Belton 114 or equivalent may be used on the forward edge of the working face on the placed fluff layer when waste is placed on new liner in order to prevent potential damage to the liner system or compromise the drainage system. [401 KAR 48:090 Section 3(1)]" The condition remains in the final permit.

Comment 30. A commenter requested that the use of a tarp to cover garbage overnight should not be permitted in the operating permit to prevent odors.

Response: The draft permit proposed the following condition: “The owner or operator shall only use on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) for daily cover; alternate daily cover is not permitted. Daily cover must be applied in accordance with 401 KAR 48:090 Section 3 no later than the end of each operating day. A synthetic cover material such as Belton 114 or equivalent may be used on the forward edge of the working face on the placed fluff layer when waste is placed on new liner in order to prevent potential damage to the liner system or compromise the drainage system. [401 KAR 48:090 Section 3(1)]” The exception for the forward edge of the working face is necessary in order to protect the liner. The condition remains in the final permit.

Comment 31. A commenter asked that when a cell is temporarily closed, the operating permit should require the cell to be covered with a horizontal well, membrane, and 3 feet of soil. The procedure used by American Environmental Group, Ltd. (AEG), in 2015 should be the minimum mandatory standard for Big Run Landfill. Before AEG was contracted, plumes of methane gas were being emitted from the temporarily closed cells.

Response: The draft permit proposed the following conditions:

1. “Once a disposal area of at least 4 acres has reached final grades, final capping (including landfill gas collection and control) shall commence over the area within thirty (30) days as described in 401 KAR 48:090, Section (3)4. [401 KAR 48:090, Section 3(4), 401 KAR 47:120 Section 2]”
2. “For any uncapped constructed waste disposal area(s) of the landfill that receives no additional deposits of waste within 365 days of the last placement of the waste and is not at permitted final grade, if the long term cover requirement pursuant to 401 KAR 48:090, Section 3(3) is not sufficient to adequately control landfill gases in the area(s), the owner or operator shall promptly submit to the cabinet a remedial plan to capture or contain such landfill gases; determination of whether adequate control of gases is sufficient is demonstrated if methane concentration is less than 500 parts per million above background at the surface of the landfill, as determined by surface scans conducted in accordance with 40 CFR 60.753(d). The gas collection and control system (GCCS) portion must be constructed to meet the standards of 40 CFR 60 Subpart WWW. [401 KAR 47:120 Section 2]”

The conditions remain in the final permit.

Comment 32. A commenter said that the operating permit should limit wastewater treatment plant sludge to 1% of the monthly garbage delivery because odor issues have been tracked to the increased biological activity of this sludge. Another commenter requested that wastewater treatment plant sludge intake not exceed 40 tons per day average.

Response: The draft permit proposed the following condition:

“The owner or operator shall only accept treated sewage wastes or residues, and such sewage wastes or residues shall be limited to those generated in Boyd, Greenup, Carter, Floyd, Johnson and Elliott Counties in Kentucky, and Cabell and Wayne Counties in West Virginia, and Scioto and Lawrence Counties in Ohio. The volumes of such wastes or residues from the stated counties shall not exceed the volumes of wastes or residues accepted by the landfill from the stated

counties during the past one year by more than 5% for any county during any year. In no event shall the percentage of sewage wastes or residues relative to total waste disposed in any year be more than 3%. Any sewage wastes or residues received by the facility shall have been solidified to satisfy applicable liquids standards prior to acceptance, or shall be solidified at the landfill in an enclosed, vented structure with air filtration to minimize odors. The owner or operator shall submit a quarterly report and include the volumes (cubic yards), tonnage, and percentage calculations, summarized in a table in order to demonstrate compliance specified herein. [401 KAR 47:120 Section 2]”

The condition remains in the final permit.

Comment 33. A commenter asked that the operating permit require that all deliveries to the landfill comply with the EPA odor limit. Any NOVs issued should trigger an incident investigation that will at a minimum identify the source of the odor. The garbage supplier should be warned the first time and then banned from dumping garbage for a minimum of 12 months at the second offense. The landfill should be fined an appropriate amount.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 34. Multiple commenters stated that the operating permit should require a state-approved fence monitoring system for odor. The fence line monitoring program should include but not be limited to the parameters of hydrogen sulfide, carbon dioxide, and methane. This will be at dedicated locations surrounding the landfill.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Item #8 of the Agreed Judgement discusses monitoring on a continuous basis. The final permit was not changed in response to this comment.

Comment 35. Commenters requested that the operating permit require the use of odor-reducing agents at the transfer station and at the landfill. If the landfill decides to operate with these systems inoperable, there should be an appropriate daily fine. Repeated offenses should result in suspension of the operating permit. This request is based on the landfill deciding to unload with the odor equipment not in operation resulting in an odor plume in 2015.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 36. A commenter stated that the bond required in the operating permit should be increased based on the \$10 million required to remediate the landfill following the cell slide in 2013 and the problems with gas plumes in 2015 from closed cells. DWM should re-examine the adequacy of existing financial assurance to comply with the requirements for closure and post-closure are fully funded, irrespective of the renewal or continued operation of the current permit.

Response: Item #23 of the Agreed Judgment states that BRL shall maintain a Commercial General Liability Policy or other insurance policy(s) with limits of liability no less than ten million dollars (\$10,000,000) during landfill operation and any applicable closure care period. Also, the agreement states that the Fiscal Court of Boyd County shall be made an additional insured on the policy.

Beyond the ten million dollars referenced above, BRL has submitted financial assurance to the cabinet in the amount of \$13,440,983.54 based on site conditions pursuant to 401 KAR 48:310. The final permit was not changed in response to this comment.

Comment 37. A commenter asked that deliveries to the landfill and transfer station be limited to daylight hours in the operating permit. This is based on train deliveries being scheduled after dark to hide odor violations. The late deliveries are annoying for local residents.

Response: The draft permit proposed the following condition which remains in the final permit: “The owner or operator shall limit the hours that the landfill is open to the public to no more than 6 a.m. to 4 p.m., Monday through Saturday, with no waste receipt or disposal on Sundays. [401 KAR 47:120 Section 2]”

Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 38. A commenter stated that the entry point of landfill (Route 60) is not being kept clean.

Response: The following condition can be found in the facility permit: “The owner or operator shall remove debris, mud, and waste from vehicles before leaving the site. In addition, the owner or operator shall remove the landfill debris, mud, and waste from off-site roadways. [401 KAR 48:090 Section 6(3)]” If violations are observed, the DWM Complaints Coordinator may be contacted at 502-564-6716 to receive the complaint. The final permit was not changed in response to this comment.

Comment 39. A commenter said that trash blowing onto neighboring properties is not being picked up.

Response: 401 KAR 48:090, Section 9(10) requires the permittee to prevent litter from blowing from the landfill. The following condition can be found in the facility permit: “The owner or operator shall not allow the grounds in or about the landfill to become a nuisance from blowing litter. All litter attributable to the site's operation shall be picked up within forty-eight (48) hours. [401 KAR 48:090 Section 9(10), 401 KAR 48:090 Section 9(11)]” If violations are observed, the DWM Complaints Coordinator may be contacted at 502-564-6716 to receive the complaint. The final permit was not changed in response to this comment.

Comment 40. Multiple commenters stated that BRL has made multiple changes in response to complaints including stopping acceptance of baled waste, agreeing to phase out all rail operations by the end of 2016, increasing gas capture to more than 3000 standard cubic feet per minute, and increasing daily landfill cover. Commenters cited this as evidence of improved operations and stated that the landfill should be allowed to continue operation.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 41. Commenters said that the Division of Waste Management (DWM) should establish enforceable deadlines for elimination of delivery of problematic wastes and restrict the size of the working face of the landfill.

Response: The permittee shall comply with 401 KAR 48:090, Section 2 in order to detect and prevent the disposal of hazardous waste. Moreover, the draft permit proposed the following condition, “The owner or operator shall manage the daily working face so that soil cover can be placed over any area of the working face immediately after waste disposal ceases in that area in order to minimize areas with exposed waste. Additionally, the owner or operator shall minimize areas that contain only daily cover to

the maximum extent practical. Interim soil cover depth shall be added over areas that will not receive waste within fifteen (15) days. [401 KAR 47:120 Section 2]”
The condition remains in the final permit.

Comment 42. Commenters (including a resolution from the Boyd County Fiscal Court) said that the BRL permit should only be renewed for a one year period, and then reviewed for compliance prior to any further renewals.

Response: KRS 224.40-330(3) provides that no permit may be issued when any waste site or facility owned by the applicant is currently in violation pertaining to environmental protection until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has issued the violation, or that the violation is under appeal. The Cabinet’s records do indicate a history of violations. However, some issues have been addressed and some are in the process of being corrected to the Cabinet’s satisfaction. Additionally, BRL has closed the transfer station since the issuance of the draft permit, and the Cabinet, at any time, has authority pursuant to KRS 224.10-105 regardless of the permit term. This includes the power “to issue, continue in effect, revoke, modify, suspend, deny, or condition permits for municipal solid waste management facilities as necessary...” and “to limit the amount, by weight or volume...to protect the environment and the health and welfare of the citizens of the Commonwealth.” The final permit was not changed in response to this comment.

Comment 43. A commenter requested that any and all correspondence, submittals, and other documents sent to regulatory agencies concerning the facility must simultaneously be sent to the Boyd County Judge’s office. It shall be the responsibility of the permittee to maintain documentation of proof of delivery to the Judge’s office.

Response: The draft permit proposed the following condition: “All permit applications, including both major and minor modifications, shall include a certification that written notification of such application has been or is contemporaneously being provided by the owner or operator to the Boyd County Judge Executive.”
The condition remains in the final permit.

Comment 44. A commenter said that any Notice of Violation received by the facility for failure to comply with environmental and operational standards should immediately be sent to the Boyd County Judge’s office. It shall be the responsibility of the permittee to maintain documentation of proof of delivery to the Judge’s office.

Response: Item #7 in the Agreed Judgment prescribes that BRL will keep current a complete copy of the permit file, including all testing, correspondence, NOVs or LOWs, to the Judge Executive of Boyd County. The final permit was not changed in response to this comment.

Comment 45. A commenter requested that the average fill rate should be reduced from 6,000 tons per day to no more than 2,000 tons per day, beginning January 1, 2017.

Response: The draft permit proposed conditions pertaining to the maximum daily limit. The

final permit contains the following modified condition:

“The owner or operator shall not exceed the maximum daily limit for all waste (including municipal solid wastes, industrial wastes, and special wastes) calculated on a 6-day week and averaged over a monthly period, based on the milestones outlined:

(a) The owner or operator shall not exceed 1,500 tons per day of all waste, with no more than 400 tons per day of that waste being municipal solid waste; or

(b) Upon completion of the final cap on all areas outlined in application APE20150016, and upon acceptance of the corresponding Cap Construction Progress Report, the owner or operator may increase the maximum daily limit up to 2,000 tons per day of all waste calculated on a 6-day week and averaged over a monthly period, with no more than 700 tons per day of that waste being municipal solid waste or any non-MSW putrescible wastes.

In either case, the owner or operator shall include in a quarterly operating compliance report a record of the daily tonnage summarized in a table which includes calculations in order to demonstrate compliance. [401 KAR 47:120 Section 2]”

Comment 46. A commenter requested that the permit be changed so that only soil can be utilized as a daily cover.

Response: The draft permit proposed the following condition: “The owner or operator shall only use on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) for daily cover; alternate daily cover is not permitted. Daily cover must be applied in accordance with 401 KAR 48:090 Section 3 no later than the end of each operating day. A synthetic cover material such as Belton 114 or equivalent may be used on the forward edge of the working face on the placed fluff layer when waste is placed on new liner in order to prevent potential damage to the liner system or compromise the drainage system. [401 KAR 48:090 Section 3(1)]”

The condition remains in the final permit.

Comment 47. A commenter asked that all incoming special waste, such as sewage sludge, auto fluff, and fly ash, shall have hazardous/non-hazardous characterization (TCLP testing) completed on a frequent basis. This frequency shall be proposed by the facility, but must have the approval of the Boyd County Fiscal Court.

Response: All permits issued by the Division of Waste Management (DWM), Solid Waste Branch contain the statement that: “Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits, licenses or approvals required by this Division or other state and local agencies.”

The draft permit proposed the following condition: “The owner or operator shall not accept listed or characteristic hazardous waste (excluding household hazardous waste and those from Conditionally Exempt Small Quantity Generators), nuclear waste, untreated medical waste, wastes or wastewaters from hydraulic fracturing operations, Naturally Occurring Radioactive Material, and any other waste prohibited by State or Federal Regulation. [401 KAR 47:120 Section 2]”

The condition remains in the final permit.

Comment 48. A commenter requested that all wastes other than municipal waste should be reviewed by the DWM for compatibility with other incoming waste streams.

Response: The draft permit proposed the following condition: “Within sixty (60) days following cessation of receipt of waste by rail, the owner or operator shall submit to the cabinet via a modification permit application, a plan summarizing the waste streams being accepted for disposal to assess the potential for increased gas and odor generation above normal industry standards. The plan shall include an assessment of the compatibilities of waste streams being accepted, and an assessment of the stability and characteristics of any organic waste streams (including, but not limited to, wastewater treatment sludge). Additionally, the owner or operator shall revise and resubmit the plan within thirty (30) days of receipt of any cabinet comments. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“By June 20, 2016, the owner or operator shall submit to the cabinet via a modification permit application, a plan summarizing the waste streams being accepted for disposal to assess the potential for increased gas and odor generation above normal industry standards. The plan shall include an assessment of the compatibilities of waste streams being accepted, and an assessment of the stability and characteristics of any organic waste streams (including, but not limited to, wastewater treatment sludge). Additionally, the owner or operator shall revise and resubmit the plan within thirty (30) days of receipt of any cabinet comments. [401 KAR 47:120 Section 2]”

Comment 49. Commenters asked that the total capacity of the unfilled permitted waste volume should be reduced to 12.48 million tons, and that the applicant submit engineering plans within 6 months of permit issuance that reflect this revision. Another commenter asked that the landfill capacity be reduced to a maximum of 25 million tons.

Response: The Cabinet received a determination from the local governing body that the landfill application was consistent with the area solid waste management plan. The final permit was not changed in response to this comment.

Comment 50. A commenter suggested that frequent surface emissions monitoring scans be conducted on the landfill surface. Records of this monitoring should be maintained on the site, and copies shall be available for designated DWM and Boyd County representatives to review.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 51. A commenter stated that odor controls such as neutralizing fans, misting lines, and flare operations should be operated continuously.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 52. A commenter asked that a neutralizing spraying station to treat returning containers shall be in operation.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 53. A commenter requested that staff employed at the facility should include at least one environmentally-trained professional who deals exclusively with odor compliance issues.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 54. A commenter asked that all controls and monitoring equipment must be in place and functioning before commencing operations each day.

Response: The permittee shall comply with the equipment requirements in 401 KAR 48:070, Section 6, groundwater monitoring structures pursuant to 401 KAR 48:300, and explosive gas monitoring equipment pursuant to 401 KAR 48:090, Section 4. For controls and equipment related to odors, DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 55. A commenter requested that the written Standard Operating Procedure (SOP) for the transfer station and landfill shall be modified to include a detailed approach to operations, environmental monitoring, and the response to violations encountered in the monitoring program.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Item #9 in the Agreed Judgment states the SOPs shall be reviewed and modified. The final permit was not changed in response to this comment.

Comment 56. A commenter asked that the bond calculation must be revised to include the environmental restoration of the transfer station property, and that a more detailed cost analysis of the final cover and monitoring should be submitted.

Response: The closure and post-closure care cost estimates are based on current site conditions and are based on the cost of hiring a third party to close and maintain the facility pursuant to 401 KAR 48:310. The current estimate provided includes a line item for the transfer station activity. The final permit was not changed in response to this comment.

Comment 57. A commenter requested that beginning January 1, 2017, all waste accepted shall have an origin point within a 100 mile radius of BRL. A transfer station does not constitute an origin point for the purposes of this condition.

Response: The draft permit proposed the following conditions:

1. “County Sources – For non-rail waste, the owner or operator may only accept waste as authorized by the cabinet pursuant to KRS 224 and/or 401 KAR Chapter 47 from the following counties:

Kentucky: Bath, Boyd, Bracken, Breathitt, Carter, Elliot, Fleming, Floyd, Greenup, Johnson, Knott, Lawrence, Lee, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Pike, Powell, Robertson, Rowan, and Wolfe

Ohio: Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, and Vinton

West Virginia: Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wood, and Wyoming”

2. “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following conditions:

1. “County Sources – The owner or operator may accept waste as authorized by the cabinet pursuant to KRS 224 and/or 401 KAR Chapter 47 from the following counties:

Kentucky: Bath, Boyd, Bracken, Breathitt, Carter, Elliot, Fleming, Floyd, Greenup, Johnson, Knott, Lawrence, Lee, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Nicholas, Pike, Powell, Robertson, Rowan, and Wolfe

Ohio: Adams, Athens, Brown, Gallia, Highland, Hocking, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, and Vinton

West Virginia: Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Raleigh, Roane, Wayne, Wood, and Wyoming”

2. “The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 58. A commenter asked that all waste be delivered to BRL the same day it is picked up from its origin point. The transfer station must sign an agreement not to store garbage overnight.

Response: The draft permit proposed the following conditions:

1. “Any waste delivered by rail, and acceptable for disposal, shall be unloaded and sent to the landfill for disposal prior to the end of that work day, and for weekend shipments received, by the end of the next working day. [401 KAR 47:120 Section 2]”
2. “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 59. A commenter suggested that a condition be added to the permit stating that BRL will have no detectible sulfur compound odors past its fence line. If there is a detectible odor, the problem will be rectified within 7 days or BRL will bring in a consultant, agreed to by the Fiscal Court, to correct the problem.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 60. A commenter requested that the permit include a condition that BRL not accept regulated medical wastes, hazardous wastes, or radioactive wastes.

Response: The draft permit proposed the following condition: “The owner or operator shall not accept listed or characteristic hazardous waste (excluding household hazardous waste and those from Conditionally Exempt Small Quantity Generators), nuclear waste, untreated medical waste, wastes or wastewaters from hydraulic fracturing operations, Naturally Occurring Radioactive Material, and any other waste prohibited by State or Federal Regulation. [401 KAR 47:120 Section 2]”

The condition remains in the final permit.

Comment 61. A commenter asked that BRL be required to operate odor control fans 24 hours a day at the active dump area and at the transfer station.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit

proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 62. A commenter requested that daily cover shall be a minimum of 6 inches.

Response: Pursuant to 401 KAR 48:090, Section 3, BRL shall place a minimum of six (6) inches of cover. The draft permit proposed the following condition: “The owner or operator shall only use on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) for daily cover; alternate daily cover is not permitted. Daily cover must be applied in accordance with 401 KAR 48:090 Section 3 no later than the end of each operating day. A synthetic cover material such as Belton 114 or equivalent may be used on the forward edge of the working face on the placed fluff layer when waste is placed on new liner in order to prevent potential damage to the liner system or compromise the drainage system. [401 KAR 48:090 Section 3(1)]”

The condition remains in the final permit.

Comment 63. A commenter suggested that BRL establish a recycling drop-off area within its property boundary.

Response: Item #28 of the Agreed Judgment reflects that the landfill will provide a drop-off location for recycling. The final permit was not changed in response to this comment.

Comment 64. A commenter asked that BRL establish a profit-sharing plan for Boyd County to fund grants, projects, and scholarships. These donations will be made in the name of Big Run Landfill.

Response: The DWM does not have regulatory authority over this matter. Any such agreement would be primarily between the facility and the county through a Host Agreement. The final permit was not changed in response to this comment.

Comment 65. Multiple commenters stated that closing Big Run Landfill will result in the loss of good-paying jobs (employees, vendors, contractors), and increased unemployment in the area.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 66. Several commenters said that closing Big Run Landfill will result in reduced revenue and economic hardship to Boyd County and higher taxes for every Boyd County resident.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 67. Commenters stated that closing Big Run Landfill will remove a disposal site in the event of area disaster.

Response: Pursuant to 401 KAR 47:150, Section 2, an emergency permit may be issued. The final permit was not changed in response to this comment.

Comment 68. Multiple commenters expressed concern that closing Big Run Landfill will reduce competition (create a monopoly) and increase disposal fees and waste collection rates.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 69. Several commenters said that closing Big Run Landfill will result in increased illegal dumping.

Response: The Cabinet has regulatory authority to enforce the prohibition of disposal of waste at unpermitted sites pursuant to KRS 224.40-100. If violations are observed, the DWM Complaints Coordinator may be contacted at 502-564-6716 to receive the complaint. The final permit was not changed in response to this comment.

Comment 70. A commenter remarked that the volume of complaints related to BRL reduces the ability of the DAQ to visit other local issues.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 71. A commenter suggested a neutralizing spray station should be set up for railcars returning to New Jersey.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]” Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 72. A commenter requested that the work face was fully covered daily and that this be documented.

Response: Many landfill permits (including the BRL permit) contain this standard condition: “The owner or operator shall submit a report quarterly, by the 15th of January, April, July, and October, containing the description of compliance with cover requirements. [401 KAR 47:190 Section 8(1)(c)]”

The draft permit proposed the following condition: “The owner or operator shall only use on-site soil uncontaminated by any underground storage tank (UST) residues, coal combustion residues or naturally-occurring radioactive material (NORM) for daily cover; alternate daily cover is not permitted. Daily cover must be applied in accordance with 401 KAR 48:090 Section 3 no later than the end of each operating day. A synthetic cover material such as Belton 114 or equivalent may be used on the forward edge of the working face on the placed fluff layer when waste is placed on new liner in order to prevent potential damage to the liner system or compromise the drainage system. [401 KAR 48:090 Section 3(1)]”

These conditions remain in the final permit.

Comment 73. A commenter requested that penalties be imposed on trains that enter the landfill premises with odor issues.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Additionally, the draft permit proposed the following condition: “The owner or operator shall not receive waste by rail after June 30, 2016. No later than November 1, 2016, the owner or operator shall (1) request termination of the transfer station activity, and (2) conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 74. A commenter remarked that designating Green Valley Landfill as the disposal facility for local waste will only move the problems from one facility to another.

Response: 401 KAR 47:136 outlines the provisions for the diversion of waste. Currently, Green Valley Landfill has an operating permit to receive municipal solid waste. The final permit was not changed in response to this comment.

Comment 75. A commenter asked who would tend the landfill if the operator closed and the bond were depleted.

Response: The financial assurance provided for closure of the facility cannot be depleted by the permittee closing their business. The financial assurance would be surrendered to the Cabinet in the event that the permittee does not complete closure or remediation activities. With Cabinet oversight, proceeds from forfeited financial assurance would be used to contract with third party vendors to close the landfill. The final permit was not changed in response to this comment.

Comment 76. A commenter asked if gases would be controlled and burned off once the landfill is closed.

Response: The owner or operator of a contained landfill is required to maintain the facility (including the explosive gas monitoring system) during the minimum two-year closure period pursuant to the approved closure plan and 401 KAR 48:090. After the closure period, the facility shall be maintained for an additional thirty-year post-closure period. The final permit was not changed in response to this comment.

Comment 77. Multiple commenters suggested that every state should have to dispose their own garbage.

Response: The DWM has regulatory authority over the proper disposal of all solid and special waste disposed of in Kentucky, regardless of the source of generation. Each county in Kentucky is required by law to have an approved plan for the disposal of waste generated in each county. Any such agreement would be primarily between the facility and the county through a Host Agreement. The final permit was not changed in response to this comment.

Comment 78. A commenter said that closure of the landfill will affect trash bills in surrounding counties in addition to affecting Boyd county residents.

Response: This comment has been added to the administrative record. The final permit was not changed in response to this comment.

Comment 79. A commenter stated that if the landfill were shut down, no one would be there to reduce the odors.

Response: The financial assurance provided for closure of the facility cannot be depleted by the permittee closing their business. The financial assurance would be surrendered to the Cabinet in the event that the permittee does not complete closure or remediation activities. With Cabinet oversight, proceeds from forfeited financial assurance would be used to contract with third party vendors to close the landfill. The final permit was not changed in response to this comment.

Comment 80. A commenter requested soil tests.

Response: Soil tests are conducted to ensure its appropriateness for borrow material. Otherwise, it is unclear what soil should be tested or for what parameters. The final permit was not changed in response to this comment.

Comment 81. A commenter said that complaint reports have come from areas upwind of the landfill or from multiple locations on different sides of the landfill at the same time.

Response: This comment has been entered into the administrative record. The final permit was not changed in response to this comment.

Comment 82. A commenter stated that he wished the landfill had implemented changes sooner, and that there had not been enough time elapsed from the changes that had been made at the landfill to properly evaluate their impacts.

Response: This comment has been entered into the administrative record. The final permit was not changed in response to this comment.

Comment 83. A few commenters stated that bad odors from garbage and at landfills are inevitable.

Response: This comment has been entered into the administrative record. The final permit was not changed in response to this comment.

Comment 84. A commenter stated that the railcar traffic blocked the normal flow of traffic as well as access by emergency response vehicles.

Response: The DWM does not have regulatory authority over this matter. Highway safety is regulated by the Kentucky Transportation Cabinet. The final permit was not changed in response to this comment.

Comment 85. A commenter said that the permit renewal should be denied because the determination of consistency sent to the Cabinet for expansion of the landfill and the 2005 amendment to the solid waste plan were not done correctly.

Response: The Cabinet received a determination from the local governing body that the landfill application was consistent with the area solid waste management plan. The final permit was not changed in response to this comment.

Comment 86. A commenter stated that closing the Big Run Landfill will end the twice yearly Boyd County waste cleanups.

Response: The DWM does not have regulatory authority over this matter. Any such agreement would be primarily between the facility and the county through a Host Agreement. The final permit was not changed in response to this comment.

Comment 87. A commenter suggested that an accumulation of toxic gases at the landfill could cause it to explode and alter the local geography.

Response: The facility is required to monitor for explosive gases pursuant to 401 KAR 48:090, Section 4. The owner or operator shall ensure that the concentration of methane gas generated by the facility does not exceed: twenty-five (25) percent of the lower explosive limits (LEL) for methane in facility structures (excluding gas control or recovery system components), or the lower explosive limit for methane at the facility property boundary. The final permit was not changed in response to this comment.

Comment 88. A commenter questioned whether the landfill's liner would break and release toxic waste into the groundwater, killing citizens.

Response: The landfill is designed and constructed to minimize the possibility of releases of landfill contaminants into the groundwater and surface water. Further, groundwater and surface water will be monitored quarterly in accordance with all applicable regulations (401 KAR 48:300) in order to determine whether a release of contaminants has occurred. In the event of a contaminant release, the permittee will be required to perform groundwater assessment and conduct corrective measures to ensure the protection of human health and the environment pursuant to 401 KAR 48:300 and the environmental performance standards of 401 KAR 47:030. The final permit was not changed in response to this comment.

Comment 89. A commenter stated that the gas wells at the landfill have flooded and continue to flood and are not performing to the required standards.

Response: Item #7r of the Agreed Order stipulates that Big Run shall report monthly on gas collection well liquid levels to DAQ. The final permit was not changed in response to this comment.

Comment 90. A commenter stated that NOV's issued by the state were invalid.

Response: Some of the Notices of Violation previously issued by the Cabinet have been re-evaluated. However, the majority of the Notices of Violation were confirmed when the facility remanded its various appeals of those Notices pursuant to the Agreed Judgment. The final permit was not changed in response to this comment.

Comment 91. A few commenters questioned how the landfill's gas management system would be maintained if ESI were gone or if the facility's bond were depleted.

Response: The financial assurance provided for closure of the facility cannot be depleted by the permittee closing their business. The financial assurance would be surrendered to the Cabinet in the event that the permittee does not complete closure or remediation activities. With Cabinet oversight, proceeds from forfeited financial assurance would be used to contract with third party vendors to close the landfill. The final permit was not changed in response to this comment.

Comment 92. A commenter stated that odors are coming from the Cooksey Brother's Landfill and not Big Run Landfill.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

The following are responses to comments received during the second comment period.

Comment 93. Several commenters requested the permit be issued for one year.

Response: KRS 224.40-330(3) provides that no permit may be issued when any waste site or facility owned by the applicant is currently in violation pertaining to environmental protection until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has issued the violation, or that the violation is under appeal. The Cabinet's records do indicate a history of violations. However, some issues have been addressed and some are in the process of being corrected to the Cabinet's satisfaction. Additionally, BRL has closed the transfer station since the issuance of the draft permit, and the Cabinet, at any time, has authority pursuant to KRS 224.10-105 regardless of the permit term. This includes the power "to issue, continue in effect, revoke, modify, suspend, deny, or condition permits for municipal solid waste management facilities as necessary..." and "to limit the amount, by weight or volume...to protect the environment and the health and welfare of the citizens of the Commonwealth." The final permit was not changed in response to this comment.

Comment 94. A commenter stated that the final permit must reflect the verbiage and thresholds of the Agreed Order of Judgment, including the maximum daily limit of 2000 tons per day of waste be granted only upon agreement by parties of the Agreed Judgment that odor problems have been resolved.

Response: The draft permit proposed conditions pertaining to the maximum daily limit. The final permit contains the following modified condition:

"The owner or operator shall not exceed the maximum daily limit for all waste (including municipal solid wastes, industrial wastes, and special wastes) calculated on a 6-day week and averaged over a monthly period, based on the milestones outlined:

(a) The owner or operator shall not exceed 1,500 tons per day of all waste, with no more than 400 tons per day of that waste being municipal solid waste; or

(b) Upon completion of the final cap on all areas outlined in application APE20150016, and upon acceptance of the corresponding Cap Construction Progress Report, the owner or operator may increase the maximum daily limit up to 2,000 tons per day of all waste calculated on a 6-day week and averaged over a monthly period, with no more than 700 tons per day of that waste being municipal solid waste or any non-MSW putrescible wastes.

In either case, the owner or operator shall include in a quarterly operating compliance report a record of the daily tonnage summarized in a table which includes calculations in order to demonstrate compliance. [401 KAR 47:120 Section 2]"

Furthermore, the draft permit proposed and the final permit contains the following condition:

"The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al."

Comment 95. A commenter requested that the permit should be reissued for a term of 2 years in order to properly assess any impacts of agreed work prior to the next renewal.

Response: KRS 224.40-330(3) provides that no permit may be issued when any waste site or facility owned by the applicant is currently in violation pertaining to environmental protection until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the agency that has issued the violation, or that the violation is under appeal. The Cabinet's records do indicate a history of violations. However, some issues have been addressed and some are in the process of being corrected to the Cabinet's satisfaction. Additionally, BRL has closed the transfer station since the issuance of the draft permit, and the Cabinet, at any time, has authority pursuant to KRS 224.10-105 regardless of the permit term. This includes the power "to issue, continue in effect, revoke, modify, suspend, deny, or condition permits for municipal solid waste management facilities as necessary..." and "to limit the amount, by weight or volume...to protect the environment and the health and welfare of the citizens of the Commonwealth." The final permit was not changed in response to this comment.

Comment 96. A commenter said that the surface emission monitoring scan (SEMS) as it stands will be insufficient to detect fugitive odors.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 97. A commenter stated that treated sewage sludge should have a hazardous/non-hazardous analysis conducted more frequently than once per year from all facility sources.

Response: The permittee shall comply with 401 KAR 48:090, Section 2 in order to detect and prevent the disposal of hazardous waste.

The draft permit proposed the following condition: "The owner or operator shall not accept listed or characteristic hazardous waste (excluding household hazardous waste and those from Conditionally Exempt Small Quantity Generators), nuclear waste, untreated medical waste, wastes or wastewaters from hydraulic fracturing operations, Naturally Occurring Radioactive Material, and any other waste prohibited by State or Federal Regulation. [401 KAR 47:120 Section 2]" The condition remains in the final permit.

Comment 98. A commenter suggested that all NOV's should have their resolution documented, trended, and reviewed periodically by the Cabinet and County to ensure the resolution is working.

Response: Notices of Violation and their resolution(s) are documented by the Cabinet and may be obtained according to the Kentucky Open Records Act. The final permit was not changed in response to this comment.

Comment 99. A commenter asked about installing meteorological stations around and near the landfill to report wind speed and direction to ascertain sources of fugitive odors.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 100. A commenter suggested having a County employee assigned to Big Run to be trained by KDEP inspector(s) to assist with monitoring duties.

Response: Item #18 of the Agreed Judgment outlines an agreement between BRL and the county for the county to visit and tour BRL. Item #30 of the Agreed Judgment, states the conditions for one (1) full-time equivalent (FTE) Department for Environmental Protection staff member. The final permit was not changed in response to this comment.

Comment 101. A commenter asked that KDEP conduct unannounced inspections at other nearby landfills to ensure that fugitive odors are not emanating from these landfills and that everyone is complying with the required regulations.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 102. A commenter stated that the landfill has exceeded the 131 degrees Fahrenheit temperature permitted under New Source Performance Standards for solid waste, with some areas exceeding 170 degrees Fahrenheit. This exceeds the 140 degree Fahrenheit limit that the geomembrane liner manufacturer has indicated is suitable.

Response: The temperature readings stated in the comment are from temperature readings taken at the top of certain landfill gas wells. The gas well design specifies a minimum separation of 15 feet between any gas well bottom and top of liner. Moreover, there is a 12 inch protective cover (sand) placed over the liner system to protect the liner from damage during the initial placement of waste. This protective layer also serves to insulate the liner from temperatures that may develop in the waste mass. The final permit was not changed in response to this comment.

Comment 103. A commenter said there should be a requirement that waste quantities be reported with identified waste types consistent with the waste types referenced within the Special Condition 8 of the contained landfill.

Response: The draft permit outlines waste quantity reporting requirements consistent with the regulations, Agreed Order, and Agreed Judgment. Moreover, if the Cabinet requests additional information pertaining to waste quantities accompanied with the waste type designation, the permittee shall provide the information pursuant to 401 KAR 47:120, Section 1(8); the Cabinet may request this information in order to determine if cause exists for modifying, revoking, or terminating the permit, or determining compliance with the permit or any provision of KRS Chapter 224, 401 KAR Chapters 47 and 48. It is not required for this provision to be specifically referenced in the final permit. The final permit was not changed in response to this comment.

Comment 104. A commenter asked that the permit should include the definition of normal industry standards and should establish specific measured standards to be met for gas and odor generation. The current language is vague and undefined.

Response: The draft permit proposed the following condition:

“Within sixty (60) days following cessation of receipt of waste by rail, the owner or operator shall submit to the cabinet via a modification permit application, a plan summarizing the waste streams being accepted for disposal to assess the potential for increased gas and odor generation above normal industry standards. The plan shall include an assessment of the compatibilities of waste streams being accepted, and an assessment of the stability and characteristics of any organic waste streams (including, but not limited to, wastewater treatment sludge). Additionally, the owner or operator shall revise and resubmit the plan within thirty (30) days of receipt of any cabinet comments. [401 KAR 47:120 Section 2]”

This condition referencing “normal industry standards” is consistent with Item #7f of the Agreed Order. DAQ and DWM will co-review the plan; DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. Since the issuance of the draft permit, BRL has closed the transfer station. The final permit condition was modified to “By June 20, 2016, the owner or operator shall submit to the cabinet via a modification....”

Comment 105. A commenter requested that ACTV0003, Special Condition 4 should include a requirement that reported waste quantities be identified by waste type and source location of waste.

Response: The draft permit outlines waste quantity reporting requirements consistent with the regulations, Agreed Order, and Agreed Judgment. Moreover, if the Cabinet requests additional information pertaining to waste quantities accompanied with the waste type designation, the permittee shall provide the information pursuant to 401 KAR 47:120, Section 1(8); the Cabinet may request this information in order to determine if cause exists for modifying, revoking, or terminating the permit, or determining compliance with the permit or any provision of KRS Chapter 224, 401 KAR Chapters 47 and 48. It is not required for this provision to be specifically referenced in the final permit. Furthermore, since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]”

Comment 106. A commenter requested that ACTV0003, Special Condition 6 should include a requirement that reporting should include the dates each week that waste is received at the transfer station.

Response: The draft permit proposed the following condition (consistent with Item #K3 of the Agreed Judgment):

“Beginning January 1, 2016, the owner or operator shall not receive more than 96,000 tons per calendar month via rail and may only receive rail shipments up to five (5) days per week. [401 KAR 47:120 Section 2]”

Since the issuance of the draft permit, BRL has closed the transfer station. The final permit contains the following condition:

“The owner or operator shall no longer receive waste by rail. No later than August 22, 2016, the owner or operator shall conduct any removal of the rail transfer station and remediation as directed by the cabinet consistent with KRS Chapter 224 and regulations promulgated thereto. [401 KAR 47:120 Section 2]

Comment 107. A commenter suggested that groundwater sampling frequency should increase from quarterly to monthly due to fears of degradation of the liner from reported extreme heat temperatures.

Response: The landfill is designed and constructed to minimize the possibility of releases of landfill contaminants into the groundwater and surface water. Further, groundwater and surface water will be monitored quarterly in accordance with all applicable regulations (401 KAR 48:300) in order to determine whether a release of contaminants has occurred. In the event of a contaminant release, the permittee will be required to perform groundwater assessment and conduct corrective measures to ensure the protection of human health and the environment pursuant to 401 KAR 48:300 and the environmental performance standards of 401 KAR 47:030. The final permit was not changed in response to this comment.

Comment 108. A commenter stated that the air quality permit needed to be reviewed and modified to impose landfill gas system monitoring collection of data to ensure that elevated parameters occurring in significant areas of the landfill are not causing conditions conducive of fires and inhibiting anaerobic decomposition by killing methanogens. The reporting for all landfill gas wells should be required on a monthly basis from each well; CO be monitored weekly using a draeger tube, temperature monitored weekly; CO and H samples collected monthly and analyzed via laboratory; liquid levels in all wells measured weekly.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The final permit was not changed in response to this comment.

Comment 109. A commenter suggested that the new permit should require the installation of equipment capable of automated fence line monitoring of hydrogen sulfide and methane on a continuous basis, as required in the Agreed Judgment.

Response: DAQ regulates odors pursuant to the standards in KRS Chapter 224, Subchapter 20 and the administrative regulations promulgated pursuant thereto. The draft permit proposed the following condition: “The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al.” The condition remains in the final permit.

Comment 110. A commenter stated that the new permit should require the installation of a facility capable of capturing and converting methane to a beneficial purpose, as required in the Agreed Judgment.

Response: The DWM does not have regulatory authority over this matter. The draft permit proposed the following condition: “The issuance of this permit does not supersede, and shall not negate, any term of the Agreed Judgment in Boyd Circuit Civil Action 15-CI-00618 and the Agreed Order in Energy and Environment Cabinet, Division of Enforcement, DWM-150210, et al.” The condition remains in the final permit.

Comment 111. A commenter asked that the new permit identify a maximum area that can ever be used as a landfill.

Response: The Cabinet received a determination from the local governing body that the landfill application was consistent with the area solid waste management plan. The final permit was not changed in response to this comment.

Comment 112. A commenter requested that the outfall that runs into Williams Creek and also Warren Branch should be measured and monitored.

Response: The Division of Water regulates KPDES outfalls. The final permit was not changed in response to this comment.

Additional pending permitting actions

In addition to the permit renewal (APE20150006), the Division of Waste Management reviewed three additional permitting actions for the Big Run Landfill facility.

The final permit incorporates these actions:

- Final Cap Construction Progress Report, APE20150011 (approximately 12 acres)
- Groundwater Monitoring Well Construction Progress Report, APE20150015
- Closure Plan Modification, APE20150016 (approved on February 29, 2016)

Additional changes

The Cabinet received a notification on April 25, 2016 that River Cities Disposal's Big Run Landfill (BRL) closed the transfer station (effective April 19, 2016) and is seeking termination of the transfer station activity. Additional changes were made to the final permit to account for the closed status of the transfer station.

-END-