

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
)	
RCH NEWCO II)	
)	
Petitioner,)	
)	PCB 24-66
)	(Permit Appeal - RCRA)
)	
v.)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY)	
)	
Respondent.)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Petitioner, RCH Newco II, LLC's Petition to Appeal Illinois EPA's Final Determination and Request for Stay with exhibits, a copy of which is herewith served upon you.

Dated: July 19, 2024

RCH NEWCO II, LLC

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Notice of Filing and Petitioner, RCH Newco II, LLC's Petition to Appeal Illinois EPA's Final Determination and Request for Stay with exhibits was electronically filed on July 19, 2024 with the following:

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and that copies were sent via e-mail on July 19, 2024 to the parties on the service list.

Dated: July 19, 2024

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PETITION TO APPEAL ILLINOIS EPA's FINAL DETERMINATION
AND REQUEST FOR STAY

Petitioner, RCH Newco II, LLC (RCH Newco), pursuant to Section 40(a) of the Illinois Environmental Protection Act (Act) 415 ILCS 5/40(a) and 35 Ill. Adm. Code 105.200 *et seq.*, submits its petition to appeal the Illinois Environmental Protection Agency's March 13, 2024 determination (Final Determination) that requires RCH Newco to extend the post-closure care period and financial assurance for a 2-acre closed RCRA Hazardous Waste Management Unit (Closure Unit) for an additional 30 years beyond the initial 30 year post-closure care period. On April 24, 2024, by order of the Board, the appeal period was extended until July 22, 2024. Having been filed within this extended period authorized by the Board, the instant Petition for Review is timely. (A copy of the Final Determination is attached as Exhibit A). Petitioner further requests that the Board stay the conditions of the Final Determination during the pendency of this Appeal. In support of this Petition, RCH Newco states as follows:

A. ISSUES ON APPEAL

1. Illinois EPA has no basis to extend the post-closure care period for an additional 30 years. Specifically, Illinois EPA relies on 35 Ill. Adm. Code 725.217(a)(1) and 725.218(g)(2) to extend the post-closure care period. However, these regulations do not grant Illinois EPA the authority to unilaterally extend the post-closure care period beyond the initial 30 years.

2. Illinois EPA's Final Determination was issued after the initial 30-year period ended, making any modification to the post-closure care period untimely.

3. Illinois EPA fails to establish a valid cause or risk to human health and the environment to justify extending the post-closure care period.

B. SITE HISTORY

4. An entity called Ceco Corporation (Ceco, and later Robertson-Ceco) historically owned and operated a 25-acre parcel at New Avenue and Ceco Road in Lemont, Illinois (the Property). Ceco used the Property during the 1960's, 1970's and 1980's in conjunction with a nearby steel mill to process scrap metal, and as part of its process reportedly generated electrical arc furnace dust (EAF dust). See IEPA Letter regarding RCRA Closure dated September 2, 2009 (September Letter), p. 1, attached as Ex. B; RCRA Facility Investigation Phase I Report, May 1996, pp. 4-8 (Phase I), attached as Ex. C; Supplemental RCRA Facility Investigation Phase I Report, November 1997, pp. 1, 3-4. (Supplemental Phase I), attached as Ex. D. On February 3, 1983, Ceco sold the steel mill operations but retained title to the Property. See Ex. C, Phase I, p. 5; Ex. D, Supplemental Phase I, p. 4.

5. As noted in historic reports concerning the Property, "When the RCRA hazardous waste management regulations became effective in late 1980, and EAF dust became a listed hazardous waste, Ceco applied for and received RCRA interim status to temporarily store EAF dust in a large

bermed storage area.” See Ex. C, Phase I. p. 4; Ex. D, Supplemental Phase I, p. 4. No EAF dust was deposited at the Property after November 19, 1980, the effective date of the RCRA regulations.

Id. Following Ceco’s excavation and off-site disposal of approximately 10,000 cubic yards of EAF dust from the large bermed storage area, Ceco determined that roughly 2,500 cubic yards of EAF dust remained on site. See Ex. C, Phase I. p. 1; Ex. D, Supplemental Phase I, p. 1.

6. In 1983, Ceco conducted an investigation to locate and remove the remaining (approx. 2,500 cubic yards) EAF dust deposits. *Id.* Under an Illinois EPA-approved RCRA Closure Plan (attached as Exhibit E), the remaining deposits were located and excavated in 1985 together with approximately 29,500 cubic yards of miscellaneous non-hazardous steel plant by product that was co-excavated with the EAF dust, to ensure that all EAF dust was removed. *Id.* at 1-2.

7. Because it was impossible to mechanically separate the EAF dust from the non-hazardous excavated material, Illinois EPA agreed, through an Amendment to Closure Plan (Amended Plan, attached as Exhibit F), to allow Ceco to consolidate the non-hazardous materials with traces of EAF dust into an on-site RCRA closure unit (Closure Unit). *Id.* at 9. The Closure Unit, the subject of the Final Determination at issue on appeal, was completed on or about August 1, 1988. *Id.* The Closure Unit reportedly contained approximately 2,500 cubic yards of EAF dust that remained on site together with approximately 29,500 cubic yards of miscellaneous non-hazardous steel plant by-products that was co-excavated with the EAF dust. *Id.* at 1-2. In other words, only about 8.5% of the material in the Closure Unit consists of EAF dust.

8. The Closure Unit is approximately 300’ x 220’ x 10’ in size (approx. 1.5 acres) within a parcel of land, now owned by RCH Newco, of approximately 2.7 acres (RCH Parcel). See Ex. C, Phase I. p. 13; Ex. D, Supplemental Phase I, p. 13. The Closure Unit is surrounded by a 10-foot-high chain link fence that is locked to prevent unauthorized access. See Ex. C, Phase I. p. 2; Ex.

D, Supplemental Phase I, p. 2. The Closure Unit has a final cover with a minimum 2-foot layer of compacted clay with 18 inches of select fill and six inches of topsoil with vegetation covering the clay layer. See Ex. F, Amended Plan, p. 2-3. The excavation has a 6-inch layer of non-hazardous material over the bottom and sides of the Unit, pursuant to the Illinois EPA-approved design. *Id.* at 2-2. The Closure Unit was certified as closed on January 1, 1993, in accordance with the specifications approved in the closure plan. See Ex. C, Phase I, Attachment E Certifications.

9. A quarterly groundwater sampling program was started by Ceco's consultant in April 1993 for the Closure Unit well network. See Ex. C, Phase I. p. 10; Ex. D, Supplemental Phase I, p. 9; 1988 CEI Groundwater Quality Assessment (1988 Groundwater Assessment), p. 4, attached as Ex. G. A subsequent consultant, Carlson Environmental, Inc. (Carlson), began sampling the groundwater beginning with Round 9. See RCRA Ground Water Monitoring Annual Reports 2016-2021 (Groundwater Monitoring Reports), p. 2, attached as Ex. H. In February 1996, with Illinois EPA's written approval, quarterly monitoring was changed to semi-annual monitoring. See Ex. G, 1988 Groundwater Assessment, p. 5; Ex. H, Groundwater Monitoring Reports; Groundwater Monitoring Reports, p. 2 (Showing no migration or exceedances in 28 years of monitoring).

10. The area surrounding the RCH Parcel is now owned by RLF I-C SPE, LLC and consists of three parcels totaling approximately 46.9 acres of industrial use property. See Comprehensive Site Investigation/Remediation Objectives/Remedial Action Plan (CSI), March 8, 2019, pp. ES-1, 1-1, 2-2, attached as Ex. I. Between 2005 and 2009, a 6-lane highway was constructed over the central portion of the area. *Id.* at 2-2. As of 2019, the area has been used as a distribution and logistics yard and truck and trailer storage. *Id.* at ES-1. The I & M Canal is located to the north and there are no significant water bodies, streams or wetlands nearby. See Ex. C, Phase I. p. 11; Ex. D,

Supplemental Phase I, p. 11. Further, there are no drinking waters sources downstream. See Ex. C, Phase I. p. 12; Ex. D, Supplemental Phase I, p. 13.

11. In addition, the 46.9-acre area surrounding the RCH Parcel was fully investigated and remediated pursuant to Illinois' Site Remediation Program. The investigation concluded that “[b]ased on the groundwater sampling, inspection activities, and associated findings of the March 2008 RCRA Closure Documentation Report approved by the IEPA, the adjoining RCH Newco II LLC parcel was not identified as a REC [Recognized Environmental Condition] in connection with the Property.” See Ex. I, CSI, p. 1-9. The investigation determined the groundwater at the 46.9-acre property (and by extension the Closure Unit) does not qualify as Class I groundwater. *Id.* pp. 2-5 to 2-7.

C. PROCEDURAL HISTORY

12. Illinois EPA has inspected the Closure Unit on various occasions since 1993. In July 2000, Illinois EPA's inspection found no violations, and noted that Illinois EPA had not asked the facility to submit a Part B application (2000 Inspection attached as Ex. J). In January 2000, Robertson-Ceco submitted a revised RCRA Part A application (attached as Exhibit K) on Illinois EPA's request. A 2017 inspection noted no violations and stated that the results of 15 years of groundwater sampling showed that groundwater was suitable as a drinking water supply. See RCRA Inspection Report, June 26, 2017, attached as Ex. L. In August 2020, Illinois EPA's operation and maintenance inspection of the Closure Unit similarly found no violations. See RCRA Evaluation Report, August 3, 2020, attached as Ex. M.

13. In a letter dated February 7, 2022, Illinois EPA issued a technical violation notice to the Petitioner for alleged inadequate financial assurance.

14. In the Petitioner's response letter, dated March 24, 2022, the Petitioner submitted proof that the financial assurance was in surplus and not in shortage. See RCH Newco's Response the Violation Notice (VN Response), attached as Ex. N. Because the 30-year post closure period ended January 1, 2023, Petitioner requested a reduction in its Financial Assurance in its VN Response. *Id.* at 4.

15. On April 28, 2022, Illinois EPA agreed with Petitioner that there were no violations and effectively withdrew its Violation Notice but did not respond to Petitioner's request to reduce the Financial Assurance.

16. On July 11, 2022, Petitioner submitted a second request to reduce its Financial Assurance, along with updated cost estimates. See Modification Request, attached as Ex. O. Petitioner noted that the Closure Unit was closed in 1988 and groundwater monitoring began in 1993. *Id.* at 2. Petitioner's updated cost estimates to close out the 30-year RCRA post-closure period was estimated at \$81,781. *Id.* at 4. Petitioner explained that RCH Newco maintains a financial assurance trust well in excess of this amount, and requested, pursuant to 35 Ill Adm Code 725.245 (a)(7), that it be allowed to release excess funds. *Id.*

17. Instead of responding to Petitioner's request, Illinois EPA issued a letter on November 15, 2022, stating that Illinois EPA determined that the post-closure care period must be extended, without providing a time period for the extension, or any basis. See IEPA Notice Letter, attached as Ex. P.

18. On November 18, 2022, Illinois EPA published a public notice regarding its intent to extend RCRA post-closure care for the Closure Unit.

19. On December 19, 2022, Petitioner submitted its Public Comments in response to Illinois EPA's notice letter. See RCH Newco's Public Comments submitted on December 19, 2022 (the

Comments) (Submitting evidence of sampling and history showing there is no risk to human health and the environment), attached as Ex. Q.

20. On March 13, 2024, Illinois EPA issued its Final Determination stating that it determined RCRA post-closure care for the Closure Unit should be extended for “at least an additional thirty (30) years beyond January 1, 2023, including an increase in financial assurance.” See Ex. A, Final Determination, p. 1.

21. In Illinois EPA’s Final Determination, Illinois EPA relied on general regulations (35 Ill. Adm. Code 725.217(a)(1) and 35 Ill. Adm. Code 725.218(g)(2)) and the United States Environmental Protection Agency’s (USEPA) “Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA” (Guidance) to justify an extended post-closure care period for the Closure Unit. (A copy of the Guidance is attached as Exhibit R). The Final Determination also required the Company to “maintain its post-closure care financial assurance” for the Closure Unit “based on the Illinois EPA’s determination and basis for decision” in the Final Determination. See Ex. A, Final Determination, p. 1.

D. ARGUMENTS FOR APPEAL

I. Illinois EPA Erred in Construing a Board Regulation to Authorize Extending Post-Closure Care 30 Years Beyond the Initial 30 Year Period.

21. Illinois EPA relies upon general regulations that do not give it authority to extend post-closure care for an additional thirty years. The Final Determination relies on 35 Ill. Adm. Code 725.217(a)(1) which states in pertinent part:

- 1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 725.217 through 725.220 **must begin after completion of closure of the unit and continue for 30 years after that date.** It must consist of at least the following:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, and N; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, and N.

35 Ill. Adm. Code 725.217(a)(1) (emphasis added).

22. This provision provides for a post-closure care period of “30 years” after completion of closure of the unit. Illinois EPA’s Final Determination incorrectly states that post-closure care shall be “at least an additional (30) years beyond” closure of the unit as the Illinois EPA. See Ex. A, Final Determination, p. 1.

23. Section 725.217(a)(1) is the only provision within 35 Ill. Adm. Code Part 725 that mentions a 30-year period, and nothing in 35 Ill. Adm. Code 725.217(a)(1) authorizes Illinois EPA to require post-closure care beyond 30 years or to require that the total post-closure care cost estimate comprise post-closure care beyond 30 years.

24. In addition, 35 Ill. Adm. Code 725.217(a)(2) provides:

Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, **or any time during the post-closure period** for a particular hazardous waste disposal unit, **the Board will, by an adjusted standard** granted pursuant to Section 28.1 of the Act and Subpart D of 35 Ill. Adm. Code 104 **or by an order** in some other appropriate type of proceeding (e.g., an enforcement proceeding), do the following:

B) Extend the post-closure care period applicable to the hazardous waste management unit or facility, **if the Board finds that the extended period is necessary to adequately protect human health and the environment** (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment). (emphasis added)

25. While subsection (2)(B) of 35 Ill. Adm. Code 725.217(a) does allow for the extension of post-closure care period, it only does so if the Illinois Pollution Control Board by an adjusted standard or order, makes this determination based on protection of human health and the environment *during the post-closure period*. It does not authorize Illinois EPA to unilaterally

extend the post-closure care period beyond the 30-year period set forth in 35 Ill. Adm. Code 725.217(a)(1), and to attempt to do so after the initial post-closure period has ended.

26. Where a statute or regulation lists the things to which it refers there is an inference that all omissions should be understood as exclusions. See *People v. Commonwealth Edison Company*, 1985 WL 21568, at *3 (PCB 83-218) (Oct. 24, 1985); *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151–52 (Ill. 1997); *City of St. Charles v. Illinois Labor Relations Bd.*, 395 Ill. App. 3d 507, 510 (2d Dist. 2009) (rule of construction applies to administrative regulations).

27. Applying this rule of construction to 35 Ill. Adm. Code 725.217, the inclusion of a method in subsection (a)(2) to extend the post-closure care period for hazardous waste management units by an adjusted standard or order following a finding that the extended period is necessary to adequately protect human health and the environment, without describing any other means to extend post-closure care, gives rise to the inference that other means of attempting to extend the post-closure care period are excluded. Illinois EPA cannot unilaterally decide to issue a 30 year (or any) post-closure care extension when the method to do so is detailed in the regulations.

28. Consequently, RCH Newco requests the Board to find that, with its Final Determination, Illinois EPA has erred in construing 35 Ill. Adm. Code 725.217 and has acted without lawful authority in requiring 30 years of additional post-closure care for the Closure Unit.

29. Illinois EPA's reliance on 35 Ill. Adm. Code 725.218(g)(2) is also without authority. 35 Ill. Adm. Code 725.218(g)(2) provides:

g) The post-closure care plan and length of the post-closure care period may be modified **at any time prior to the end of the post-closure care period** in either of the following two ways:

(2) The Agency must tentatively decide to modify the post-closure care plan if the Agency determines that it is necessary to prevent threats to human health and the environment. The Agency may propose to extend or reduce the post-closure care period applicable to a

hazardous waste management unit or facility based on cause or alter the requirements of the post-closure care period based on cause.

B) The Agency must base its final determination upon the same criteria as required for petitions under subsection (g)(1)(A). A modification of the post-closure care plan may include, where appropriate, the temporary suspension rather than permanent deletion of one or more post-closure care requirements. At the end of the specified period of suspension, the Agency would then determine whether the requirements should be permanently discontinued or reinstated to prevent threats to human health and the environment.

30. 35 Ill. Adm. Code 725.218(g) provides that the post-closure care period “may be modified any time *prior to the end of the post-closure care period.*” (emphasis added). Illinois EPA failed to comply with that requirement.

31. The post-closure care period for the Closure Unit ended on January 1, 2023. Illinois EPA issued its Final Determination on March 13, 2024 – which was *after* the post closure care period. As such, modification of the post-closure care period is untimely under both 725.217 and 218.

32. While the Final Determination purports to rely on Section 725.218, that Section inherently conflicts with Section 725.217. Section 725.217 provides the Board with the authority to assess whether an extension of the post-closure care period is required to protect human health and the environment. However, Illinois EPA apparently relies on Section 725.218 as authority for Illinois EPA to unilaterally make that decision. 35 Ill. Adm. Code 725.217(a)(2) would be rendered meaningless if the Agency could ignore it, as it does in its Final Determination.

II. There is No Justification for Post-Closure Care to be Extended for an Additional Thirty Years.

33. Even if the Board finds that Illinois EPA may rely on 725.217 or 218 to unilaterally extend, by an additional 30 years, the post closure care period for the Closure Unit, Illinois EPA still fails to establish that any extension, let alone one for 30 years, is required to protect human health and the environment. Section 725.217(a)(2)(B) provides that the Board may extend the post-closure

care period only if the Board finds that the extended period is necessary to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment). Similarly, section 725.218 requires “cause”, and its reference to (g)(1)(A) requires a determination that an extension is necessary to protect human health and the environment.

34. As RCH Newco detailed in its public comments, the Closure Unit on the Property contains only 8.5% of EAF dust mixed with non-hazardous materials, it is in the center of 25-acres of land used for industrial purposes (and protected by land use restrictions), has almost three decades of groundwater samples that are within acceptable limits, and can be adequately maintained with appropriate environmental land use controls. See Ex. Q, Comments, pp. 3-4; Ex. H, Groundwater Monitoring Reports.

35. Illinois EPA also relies on the 2016 RCRA Guidance to justify extending post-closure care for the Closure Unit by an additional 30 years. However, as the Guidance itself states, the Guidance “is solely intended to provide guidance ... this document does not impose any legally binding requirements ... and this document does not change or substitute for any law, regulation or legally binding requirement and is not legally enforceable.” See Ex. R, Guidance, p. 2, n. 2. “Indeed, in Illinois “[i]t is undisputed that administrative interpretations (as distinguished from administrative regulations) do not have the force and effect of law.” *La Throp v. Bell Fed. Sav. & Loan Ass'n*, 68 Ill. 2d 375, 387 (1977).

36. Even if the Guidance can serve as the basis for Illinois EPA’s analysis, Illinois EPA inexplicably ignores numerous criteria it should have considered when assessing potential risk to human health or the environment. Specifically, Illinois EPA’s Final Determination refers to the following Guidance factors as the reasons to extend the post-closure care period: (a) waste

treatment and the nature of the waste (listed as hazardous), (b) the landfill type/design (concerns about vegetation), (c) the possibility of leachate (potential impact to groundwater), and (d) the need to ensure long-term care. See Ex. A, Final Determination, pp. 3-4.

37. While USEPA's Guidance recommends weighing additional factors -- such as groundwater monitoring, site geology and hydrology, facility history, and integrity of the cover system -- to determine if post-closure care should be extended, it does not appear that Illinois EPA considered those additional factors. Instead, Illinois EPA's responses to RCH Newco's Comments simply assume that "[a]s long as hazardous waste remains in the landfill, there is an inherent risk that hazardous waste and hazardous constituents could find potential pathways into the groundwater and soil." See Ex. A, Final Determination, Attachment A response to Comments 2,3,4. Illinois EPA fails to address any mitigating factors that could eliminate or reduce the post-closure care period. See Ex. Q, Comments. Not only did Illinois EPA ignore additional factors in the Guidance, Illinois EPA also ignored the criteria for evaluating many of the factors.

38. Specifically, Illinois EPA ignores the criteria it should have applied when assessing the nature of the waste. See Ex. R, Guidance p. 5; Ex. A, Final Determination p. 3. The Guidance states that criteria to consider include the risk of migration, the toxicity of hazardous waste, the degradation of the waste into something more toxic, and the stability of the waste. When evaluated, these factors favor *ending* post-closure care. *Id.* at 2-3 (Illinois EPA does not account for the unique type of waste in the landfill, stability, degradation, etc.).

39. When evaluating leachate, Illinois EPA ignores the 30 years of Groundwater monitoring. According to the Guidance, "[g]roundwater monitoring serves as the primary means of detecting leachate releases and groundwater contamination." See Ex. R, Guidance, p. 6. "Groundwater should not exceed risk-based concentrations for a reasonable exposure scenario (or point of

exposure) using currently acceptable risk assessment methods and up-to-date risk-based levels and scenarios.” *Id.* The objective of the groundwater sampling is to collect data that would determine whether the Closure Unit is impacting the groundwater.

40. In fact, Illinois regulations allow for Illinois EPA to consider either leachate OR groundwater monitoring results in determining whether there is the potential for migration of hazardous wastes at levels that may be harmful to human health and the environment (725.218 (g)(1)(A)(i)). Illinois EPA effectively ignored the groundwater monitoring results.

41. Illinois EPA also failed to consider the location of the Closure Unit. As discussed above (paragraph 11), the 46.9-acres surrounding the RCH Parcel was fully investigated and remediated in 2018-2021, and Illinois EPA issued a No Further Remediation letter pursuant to Illinois’ Site Remediation Program in 2022. See No Further Remediation Letter, attached as Ex. S. The investigation concluded that groundwater at the 46.9 acres (and the Closure Unit) does not qualify as Class I groundwater, and the property is not located within a minimum or maximum setback zone of a water supply well. See Ex. I, CSI, pp. 2-5, 2-7.

42. RCH Newco continues to perform ongoing maintenance the landfill cover was mowed and cleared of vegetation. See Carlson Response to IEPA, December 5, 2022, p. 2, attached as Ex. T. Carlson reported to Illinois EPA that most of the scrub brush and large trees identified by Illinois EPA were located outside the landfill footprint. *Id.* Subsequently, in 2023 Carlson removed any dense brush from the landfill and reseeded several areas that required improved vegetation cover due to the removal of the dense weeds/brush. As shown in an aerial photo from May 2024, the area is maintained. See Aerial Photo, attached as Ex. U. Illinois EPA failed to fully consider the use of property controls and restrictions to allow for continued maintenance and restricting access. See Ex. Q. Guidance, pp. 10-11.

43. Illinois EPA's Final Determination fails to establish "cause" or risk to human health and the environment that would justify an additional 30 years of post-closure care.

E. REQUEST FOR STAY OF THE FINAL DETERMINATION

44. RCH Newco respectfully requests the Board stay the application of the Final Determination pending a final decision of the Board. Specifically, RCH Newco should not be required to provide an application for a RCRA post-closure permit within 180 days of March 13, 2024. Any modification to the post-closure care plan should be stayed, including requirements for recalculating financial assurance.

45. Pursuant to the Illinois Administrative Procedure Act ("IAPA"), an agency decision is stayed in its entirety during the appeal when an Agency decision on a permit references activity of a continuing nature. See 5 ILCS 100/10-65(b). The Agency procedures described in Sections 725.212 through 725.219, including an amendment of a post-closure care plan under Section 725.217 and 725.218, are in the nature of permit amendments and are considered permit denials pursuant to 35 Ill. Adm. Code 105. 35 Il. Adm. Code 725.218(h). Also, because Petitioner has been operating under the post-closure care plan for thirty years, the post-closure is of a continuing nature and should be stayed under the IAPA.

46. The Board also has discretionary authority to grant a stay of a challenged permit where a petitioner has so requested. *Ameren Energy*, p. 7, n. 1. The factors the Board may consider are: (1) a certain and clearly ascertainable right needs protection; (2) irreparable injury will occur without the injunction; (3) no adequate remedy at law exists; and (4) there is a probability of success on the merits. See *Saint-Gobain Containers, Inc. v. IEPA*, PCB 04-47 (Nov. 6, 2003); *Bridgestone/Firestone Off-Road Tire Co. v. Illinois EPA*, PCB 02-31 (Nov. 1, 2001). Notably, the Board is not required to consider each of the four factors. *Bridgestone*, slip op. at 3.

47. Here, Petitioner's right to end ongoing post closure care, as anticipated by the regulations, requires protection, especially given that Illinois EPA can only speculate that there might be some unknown future harm. Petitioner is irreparably harmed by a requirement to extend post closure care requirements for an additional 30 years and by having to obtain substantial financial assurance to support another 30 years. Petitioner is likely to be successful on the merits of its claims that Illinois EPA's Final Determination is unjustified.

WHEREFORE, Petitioner requests that the Board:

1. Enter an order staying the terms of the Final Determination;
2. Conduct a hearing on the applicability of the Final Determination to the Closure Unit;
3. Reverse and remand the Final Determination to the Illinois EPA to delete or modify in accordance with Petitioner's objections and the Board's order; and
4. Such other relief as may be justified.

Respectfully submitted,

RCH NEWCO II, LLC
Petitioner

By: /s/ Jennifer T. Nijman
One of its Attorneys

Dated: July 19, 2024

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List of Exhibits

Exhibit A Final Determination, March 13 2024

Exhibit B IEPA Letter regarding RCRA Closure dated September 2, 2009

Exhibit C RCRA Facility Investigation Phase I Report, May 1996

Exhibit D Supplemental RCRA Facility Investigation Phase I Report, November 1997

Exhibit E RCRA Closure Plan, January 1995

Exhibit F Amended Closure Plan, March 1986

Exhibit G 1988 CEI Groundwater Quality Assessment

Exhibit H RCRA Ground Water Monitoring Annual Reports 2016-2021

Exhibit I Comprehensive Site Investigation/Remediation Objectives/Remedial Action Plan (CSI), March 8, 2019

Exhibit J 2000 Inspection

Exhibit K RCRA Part A Application

Exhibit L RCRA Inspection Report 2017

Exhibit M RCRA Evaluation Report 2020

Exhibit N Response to Financial Assurance, March 2024

Exhibit O Modification Request

Exhibit P IEPA Notice Letter

Exhibit Q RCH Newco II's Comments

Exhibit R Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA

Exhibit S NFR Letter

Exhibit T Carlson Letter

Exhibit U Aerial Photo