

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

BFI WASTE SYSTEMS	)	
OF NORTH AMERICA, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 24-29
	)	
ILLINOIS ENVIRONMENTAL	)	(Permit Appeal -RCRA)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**PETITIONER’S RESPONSE TO**  
**ILLINOIS EPA’S REQUEST FOR PRODUCTION**

NOW COMES Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, by and through its attorney, Scott B. Sievers of Brown, Hay + Stephens, LLP, and, pursuant to 35 Ill. Adm. Code 101.614, hereby propounds upon Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), the following responses to Respondent’s First Request for Production to Petitioner BFI Waste Systems of North America, LLC:

**OBJECTION TO RESPONDENT’S INSTRUCTIONS AND DEFINITIONS**

Petitioner objects to the Definitions and Instructions set forth in Respondent’s First Request for Production to Petitioner BFI Waste Systems of North America, LLC to the extent they attempt to impose duties and obligations upon, and seek information and materials from, Petitioner that are irrelevant, not proportional to the needs of the case, and/or beyond the scope of 35 Ill. Adm. Code 101.614 and Illinois Supreme Court Rules 201 and 214. *See* 35 Ill. Adm. Code 101.100(b).

**REQUEST FOR PRODUCTION NO. 1:** Provide any and all documents which Petitioner intends to use or enter into evidence at trial or in any hearing of this case.

**RESPONSE:** At present Petitioner only intends to use or enter into evidence at trial or in any hearing of this case those documents within the Record on Appeal and any supplement to the Record on Appeal. However, Petitioner recognizes its duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to it and as its investigation continues.

**REQUEST FOR PRODUCTION NO. 2:** Provide any and all documents relating to the amount and composition of leachate produced by the Site from December 4, 2014 to the present.

**RESPONSE:** Petitioner objects to Request for Production No. 2 as seeking information that is neither relevant nor calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). While hearing in this matter affords Petitioner “the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit,” the Board hearing “will be based exclusively on the record before the Agency at the time the Agency issued its permit decision.” (Order of Feb. 15, 2024 at 1 (citing 35 Ill. Adm. Code 105.214(a)). The Board cannot consider additional evidence or testimony that might be disclosed through discovery or developed after the Agency’s decision. *Illinois EPA v. Illinois Pollution Control Bd.*, 386 Ill. App. 3d 375, 390 (3d Dist. 2008); *Community Landfill Co. v. Illinois EPA*, PCB No. 01-170, \*3 (Dec. 6, 2001). The amount and composition of leachate produced by the Site from December 4, 2014 to the present was not cited by Respondent as a basis for its September 25, 2023, final decision imposing

conditions and modifications upon Petitioner's permit modification submissions. As the requested information was not before Respondent at the time it issued its permit decision and it does not address any concerns raised by Respondent in its final decision, Respondent cannot go back in time and shore up its decision with such information, as it is neither relevant nor calculated to lead to admissible evidence.

Without waiving said objection, Petitioner responds to Request for Production No. 2 by producing the enclosed documents Bates-numbered 000001 through 000529.

**REQUEST FOR PRODUCTION NO. 3:** Provide any and all documents and communication relating to testing of the leachate produced by the Site, including the results of any and all tests, from December 4, 2014 to the present.

**RESPONSE:** Petitioner objects to Request for Production No. 3 as seeking information that is neither relevant nor calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). While hearing in this matter affords Petitioner "the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit," the Board hearing "will be based exclusively on the record before the Agency at the time the Agency issued its permit decision." (Order of Feb. 15, 2024 at 1 (citing 35 Ill. Adm. Code 105.214(a)). The Board cannot consider additional evidence or testimony that might be disclosed through discovery or developed after the Agency's decision. *Illinois EPA v. Illinois Pollution Control Bd.*, 386 Ill. App. 3d 375, 390 (3d Dist. 2008); *Community Landfill Co. v. Illinois EPA*, PCB No. 01-170, \*3 (Dec. 6, 2001). Documents and communications in Petitioner's possession, custody, or control related to testing of leachate produced at the Site were not in the record before Respondent on September 25, 2023,

when it issued its final decision partially approving five (5) permit modification submissions from Petitioner subject to certain conditions and modifications. Further, nowhere in its September 25, 2023, final decision does Respondent state that a reason for imposing those conditions and modifications upon Petitioner's permit modification submissions was due to concern regarding the testing of leachate at the Site or documents and communications regarding the same. As the requested materials were not before Respondent at the time it issued its permit decision and do not address any concerns raised by Respondent in its final decision, Respondent cannot go back in time and shore up its decision with such materials, as they are neither relevant nor calculated to lead to admissible evidence.

**REQUEST FOR PRODUCTION NO. 4:** Provide all documents and communications, including bills of lading, relating to the transport of leachate from the Site, including to any treatment centers or publicly owned treatment works.

**RESPONSE:** Petitioner objects to Request for Production No. 4 as seeking information that is neither relevant nor calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). While hearing in this matter affords Petitioner "the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit," the Board hearing "will be based exclusively on the record before the Agency at the time the Agency issued its permit decision." (Order of Feb. 15, 2024 at 1 (citing 35 Ill. Adm. Code 105.214(a))). The Board cannot consider additional evidence or testimony that might be disclosed through discovery or developed after the Agency's decision. *Illinois EPA v. Illinois Pollution Control Bd.*, 386 Ill. App. 3d 375, 390 (3d Dist. 2008); *Community*

*Landfill Co. v. Illinois EPA*, PCB No. 01-170, \*3 (Dec. 6, 2001). Documents and communications in Petitioner's possession, custody, or control, including bills of lading, related to the transport of leachate from the Site, including to any treatment centers or public owned treatment works, were not in the record before Respondent on September 25, 2023, when it issued its final decision partially approving five (5) permit modification submissions from Petitioner subject to certain conditions and modifications. Further, nowhere in its September 25, 2023, final decision does Respondent state that a reason for imposing those conditions and modifications upon Petitioner's permit modification submissions was due to concern regarding the transport of leachate from the Site or documents and communications regarding the same. As the requested materials were not before Respondent at the time it issued its permit decision and do not address any concerns raised by Respondent in its final decision, Respondent cannot go back in time and shore up its decision with such materials, as they are neither relevant nor calculated to lead to admissible evidence.

Petitioner further objects to Request for Production No. 4 as unduly burdensome.

Respectfully submitted,

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BFI WASTE SYSTEMS  
OF NORTH AMERICA, LLC,

Petitioner.

BY:



Scott B. Sievers  
Attorney for Petitioner

**AFFIDAVIT**

STATE OF Illinois )

) SS.

COUNTY OF Livingston )

***BFI Waste Systems v. Illinois EPA***  
**Illinois PCB No. 2024-065**

I, Megan Crowley, being first duly sworn on oath, depose and state that I am a duly authorized officer, employee, and/or agent of BFI Waste Systems of North America, LLC, the Petitioner in the above-captioned matter; that I have read the foregoing document; and the Plaintiff's production of the enclosed documents, objects, or tangible things is complete in accordance with Respondent's First Request for Production to Petitioner BFI Waste Systems of North America, LLC.

**VERIFICATION BY CERTIFICATION**

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in the foregoing affidavit are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

BY:

Megan Crowley  
Megan Crowley

DATE: July 25, 2024