

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 RCH Newco II, LLC's Interrogatories and Document Requests to the Illinois Environmental Protection Agency, copies of which are herewith served upon you.

Dated: October 3, 2024

RCH NEWCO II, LLC

By: /s/Kristen L. Gale

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Interrogatories and Document Requests to the Illinois Environmental Protection Agency on behalf of Petitioner, RCH Newco II, LLC was electronically filed on October 3, 2024 with the following:

Don Brown, Clerk of the Board
Illinois Pollution Control Board
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Chicago, IL 60605
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and that copies were sent via e-mail on October 3, 2024 to the parties on the service list.

Dated: October 3, 2024

/s/Kristen L. Gale

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RCH NEWCO II'S INTERROGATORIES
TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

RCH NEWCO II, LLC ("RCH NEWCO") submits the following Interrogatories to the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") pursuant to the Hearing Officer Order dated September 9, 2024, 35 Ill. Adm. Code 101.620, and IL S. Ct. Rule 213.

DEFINITIONS

1. The "Closure Unit" shall mean the 2-acre closed RCRA Hazardous Waste Management Unit located at New Avenue and Ceco Road in Lemont, Illinois.
2. "Act" shall mean the Illinois Environmental Protection Act, 415 ILCS 5/ *et seq.*
3. "Communication" means any disclosure, transfer, or exchange of information or opinion, whether oral or in writing.
4. "Document" means any written, recorded, or graphic material of any kind, whether prepared by you or by any other person, in your possession, custody, or control. The term includes agreements; contracts; letters; inter-office communications; memoranda; reports; records; instructions; specifications; notes; notebooks; scrapbooks; diaries; plans; drawings; sketches; blueprints; diagrams; photographs; photocopies; charts; graphs; descriptions; drafts, whether or

not they resulted in a final document; minutes of meetings, conferences, and telephone or other conversations or communications; invoices; purchase orders; bills of lading; recordings; published or unpublished speeches or articles; publications; transcripts of telephone conversations; phone mail; electronic-mail; ledgers; financial statements; microfilm; microfiche; tape or disc recordings; and computer print-outs.

5. The term "document" also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers; any such document is to be produced in a reasonably legible and usable form. The term "document" includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations. Without limitation on the term "control" as used in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

6. "Identify" or "identity" means to state or a statement of:
- a. in the case of a person other than a natural person, its name, the address of its principal place of business (including zip code), its telephone number, and the name of its chief executive officer, as well as, if it has a person other than a natural person that ultimately controls it, that other person's name, the address of that person's principal place of business (including zip code), that other person's telephone number, and the name of that other person's chief executive officer;
 - b. in the case of a natural person, their name, business address and telephone number, employer, and title or position;
 - c. in the case of a communication, its date, type (e.g., telephone conversation or discussion), the place where it occurred, the identity of the person who made the communication, the identity of the person who received the

communication, the identity of each other person when it was made, and the subject matter discussed;

- d. in the case of a document, the title of the document, the author, the title or position of the author, the addressee, each recipient, the type of document, the subject matter, the date of preparation, and its number of pages; and
- e. in the case of a meeting, the date of the meeting, the place where it occurred, the identity of all persons who were present at the meeting, a general description of the substance of the discussions and decisions (if any) reached at or as a result of the meeting, the identity of each document concerning what occurred at the meeting, and the identity of each document concerning any of the subjects discussed at the meeting, including any agenda.

7. "Relating to" means containing, constituting, considering, comprising, concerning, discussing, regarding, describing, reflecting, studying, commenting or reporting on, mentioning, analyzing, or referring, alluding, or pertaining to, in whole or in part.

8. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office or other business or legal entity, whether private or governmental, and as it is defined in the Act, 415 ILCS 5/3.315.

9. "You," or "your" means the Illinois EPA.

10. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; and the past tense shall include the present tense where the clear meaning is not distorted. The term "or" shall mean "and" and vice-versa, as necessary to bring within the scope of the following interrogatories all information or documents that would be excluded absent this definition.

INSTRUCTIONS

1. Where knowledge, information, or documents are requested, such request encompasses knowledge, information or documents in your possession, custody or control, or in

the possession, custody or control of your staff, agents, employees, representatives and, unless privileged, attorneys, or any other person who has possession, custody or control of your proprietary knowledge, information or documents.

2. Per the Board's Procedural rule, 35 Ill. Adm. Code 101.100(b), when the Board's procedural rules are silent, look to the Illinois Code of Civil Procedure and the Supreme Court Rules for instruction.

3. If Illinois EPA finds the meaning of any term in these requests to be unclear, Illinois EPA should assume a reasonable meaning, state the meaning assumed, and respond and/or produce documents on the basis of that assumed meaning.

4. Responsive documents from any single file should be produced in the same order as they were found in such file. If copies of documents are produced, such copies should be legible and bound or stapled in the same manner as the original.

5. Pursuant to 35 Ill. Adm. Code 101.616(h), you are under a duty to seasonably amend any answer to these requests for which you learn that the answer is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to us during the discovery process or in writing.

6. With respect to any documents responsive to this request that you withhold or refuse to divulge on a claim of privilege, provide a statement signed by your attorneys setting forth as to each document:

- (a) the names of the sender, author and recipient of the document and of the persons to whom the document was shown;
- (b) the date of the document, or if no date appears, the date on which it was prepared;
- (c) a description of the nature and subject matter of the document sufficient to meet the requirements of S. Ct. Rule 201 (n).

- (d) the name of the person who has custody of the document; and
- (e) the statute, rule, or decision which is claimed to give rise to the privilege.

7. Answer each request fully. If you object to any request, state the reasons for objection and answer to the extent the request is not objectionable. If you are unable to answer a request fully, submit as much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.

8. For any record or document responsive or relating to these requests which is known to have been destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document.

9. Where a request contains a general question or questions, followed by a specific question or questions, the specific question or questions are to be read and interpreted as requesting additional information, not as limiting the general question or questions.

10. Whenever a request calls for information that is not available to you in the form requested but which is available in another form or can be obtained at least in part from other data in your possession, so state and either (i) supply the information requested in the form in which it is available or (ii) supply the data from which the information requested can be obtained.

INTERROGATORIES

1. Identify all persons and their title who prepared or assisted in the preparation of the responses to these Interrogatories and the Document Requests, indicating, for each person, to which interrogatory or requests for production of documents he or she assisted in responding.

ANSWER

2. Identify each person you intend to call or may call as a witness in this matter, state the subject of each person's expected testimony, and set forth the subjects of any lay opinion testimony you may elicit from each lay witness identified.

ANSWER:

3. Identify each person you intend to call or may call as an expert witness in this matter, state the subject of each person's expected testimony and set forth the subjects of any opinion testimony you may elicit from each expert witness identified.

ANSWER:

4. Identify the person(s) responsible for making Illinois EPA's final decision, as described in the Illinois EPA Letter to Mr. William J. Sawtiz, RCH Newco II, LLC, March 13, 2024 ("Final Decision") (R000025-R000029), that the post-closure care period for the two-acre Closure Unit had to be extended.

ANSWER:

5. Identify the person(s) responsible for developing, preparing, and/or finalizing each and every response in Illinois EPA's Response to Comments (R000030-R000036).

- a. If more than one person was responsible for preparing Illinois EPA's Response to Comments, identify each person who prepared each Response and which Response to Comments they prepared.
- b. If a person was consulted for one or more of Illinois EPA's Response to Comments in addition to the person (or people) that prepared the Response to Comments,

identify each person who was consulted and which Response to Comments they provided information on.

ANSWER:

6. Identify the “chain of command” described by Rob Watson on his email to Kelly Huser dated November 2, 2022. *See* R000023.

ANSWER:

7. Identify the participants in the internal meeting held on January 10, 2023 and described on R000099.

ANSWER:

8. Identify the full name of “Jacki”, “Kyle” and “Greg” identified as forwarding and receiving Kelly Huser’s email on February 16, 2023 on R000100.

ANSWER:

9. Identify how and when the Illinois EPA notified RCH Newco II of the public meeting held on April 20, 2023, as stated in the letter from Jacqueline M. Cooperider dated February 27, 2023 and located at R000155.

ANSWER:

10. Identify and explain the basis for including in the Record for the Closure Unit the documents related to the City of North Chicago located at R000130-R000136.

ANSWER:

11. State whether the Agency takes the position that RCH NEWCO asked the Agency to cease the post-closure care period for the Closure Unit and, if so, identify the Agency's basis for the Agency's position.

ANSWER

12. Identify and explain the basis for including the Association of State and Territorial Solid Waste Management Officials Position Paper "(ASTSWMO Position Paper)" (R000137-R000138) in the Record and, if asserting the ASTSWMO Position Paper is an applicable legal authority, identify the basis for that assertion.

ANSWER:

13. Identify and explain the basis for including the USEPA Memorandum, Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA updated December 15, 2016 ("USEPA Memorandum") (R 000111-000129) in the Record and, if asserting that the USEPA Memorandum is a legal authority, explain the basis for that assertion.

ANSWER:

14. The Record includes the Illinois EPA's March 27, 2023 violation notice (R00004-R000007). State whether the Agency reviewed RCH NEWCO's Response to Illinois EPA's March

27, 2023 violation notice “(VN Response””, and, if it did not review the VN Response, identify and explain why the Agency did not to review the VN Response in issuing the Final Decision.

ANSWER:

15. Does the Agency contend that the 30 year post-closure care period for a hazardous waste management unit regulated under Subpart 725, in which the waste is not removed, cannot end after 30 years under any circumstances? If yes, explain the basis for the contention and if no, explain the circumstances under which 30 years is sufficient.

ANSWER:

16. Identify the Agency’s legal authority to extend the post-closure care period for a hazardous waste management unit beyond 30 years.

ANSWER:

Dated: _____

Jennifer T. Nijman
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Respectfully submitted,
RCH NEWCO II, LLC
By: /s/ Jennifer T. Nijman
One of Its Attorneys

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**RCH NEWCO II, LLC’s DOCUMENT REQUESTS
TO ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**

RCH NEWCO II, LLC (“RCH NEWCO”) submits the following Document Requests to the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) pursuant to the Hearing Officer Order dated September 9, 2024, 35 Ill. Adm. Code 101.616, and IL S. Ct. Rule 214.

DEFINITIONS and INSTRUCTIONS

RCH NEWCO incorporates the Definitions and Instructions from its Interrogatories as if restated herein.

DOCUMENTS REQUESTED

1. Any documents relied upon, consulted, reviewed, related to, referred to or identified by the Agency in preparing responses to RCH NEWCO’s Interrogatories.

RESPONSE:

2. Provide all documents reviewed and identified in the “Detailed File Review 8-21-23” by Kelly Huser and located at R000018-R000022.

RESPONSE:

3. Provide the “review notes” described in No. 18 of the “Detailed File Review 8-21-23” which states: “In a 2/7/96 (C-68-M-4) letter, Illinois EPA approved a reduction in financial assurance and GW sampling event. The *review notes* for this application mentioned the groundwater monitoring wells were installed in 1993.” See R000020.

RESPONSE:

4. Provide any and all Agency review notes attached to each of the documents identified in the “Detailed File Review 8-21-23” by Kelly Huser and located at R000018-R000022.

RESPONSE:

5. Provide the “attached email strings with the review notes package for the RCH Newco site,” described on R000023.

RESPONSE:

6. Provide the documents identified in Section 1, “Site and Procedural History”, of Illinois EPA’s March 13, 2024 Letter. See R000025 – R000026.

RESPONSE:

7. Provide the “NOD that was sent to the facility regarding a cost estimate” described on R000093.

RESPONSE

8. Provide the “modification to the post-closure care plan (C-68-M-13)” submitted by RCH NEWCO to the Agency and described on R000093.

RESPONSE:

9. Provide the “detailed file review” described under the heading “File Review” as attached to the review notes as described on R000095.

RESPONSE:

10. Provide the emails attached to the review package and identified on R000097 – “The Bureau Chief’s Office, DLC and the Director’s Office (*see emails in this review package*)...”.

RESPONSE:

11. Provide the copies of emails and memoranda from Takako Halteman’s North Chicago site that were attached to the review package and identified on R000097.

RESPONSE:

12. Provide all documents, including participants’ notes, memoranda or minutes, of the internal meeting held on December 13, 2022 between Rob Watson, Kelly Huser, Takako Halteman, Tom Rivera, Charlene Thigpen, Anthony Guido, and Justin Meyers described on R000098.

RESPONSE:

13. Provide all documents, including participants' notes memoranda or minutes, of the internal meeting held on January 10, 2023 described on R000099 and R000150.

RESPONSE:

14. Provide the email from Nick San Diego to the Kelly Huser dated February 9, 2023 and described on R000100.

RESPONSE:

15. Provide a copy of the "draft reply letter to the 1/24/23 letter from Newco's lawyer" that Kelly Huser was working on February 9, 2023 and described on R000100.

RESPONSE:

16. Provide the email prepared and sent by Kelly Huser on February 16, 2023 and described on R000100.

RESPONSE:

17. Provide the email from Brad Frost sent to Kelly Huser on February 16, 2023 and described on R000100.

RESPONSE:

18. Provide the February 21, 2023 email exchanges and draft letters to Newco's 1/24/23 letter described by Kelly Huser on R000100.

RESPONSE:

19. Provide the emails between Kelly Huser, John McDonough, and Nick San Diego on February 21, 2023 and described on R000100.

RESPONSE:

20. Provide all documents, including participants' notes, memoranda or minutes, of the internal meeting held on September 18, 2023 between Kelly Huser, Jacki Cooperider and Takako Halteman described on R000101.

RESPONSE:

21. Provide a copy of "Rob's draft" of the final letter and response to comments described as having been prepared by September 18, 2023 on R000101.

RESPONSE:

22. Provide each of the documents identified under "Closure History" on R000109-R000110.

RESPONSE:

23. Provide the documents described as "FINAL DETERMINATION FILE: INTERNAL EMAILS" on R000151.

RESPONSE:

