

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BFI WASTE SYSTEMS	)	
OF NORTH AMERICA, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 25-44
	)	
ILLINOIS ENVIRONMENTAL	)	(Permit Appeal -RCRA)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OBJECTION TO ILLINOIS EPA’S MOTION TO CONSOLIDATE

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 101.516, objects to Illinois EPA’s Motion to Consolidate. In support, Petitioner states the following:

1. The Respondent, Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), has moved to consolidate three (3) permit appeal cases pending before the Illinois Pollution Control Board: PCB Nos. 24-29, 25-12, and 25-44. The Board should deny the Agency’s motion, as consolidation at this stage of these cases would confuse distinct matters and unduly prejudice Petitioner.
2. On January 30, 2024, Petitioner filed its petition in PCB No. 24-29 for review of a September 25, 2023, Illinois EPA decision.
3. In the summer of 2024, the parties served written discovery requests and subsequent interrogatory answers and production request responses upon each other in PCB No. 24-29. However, that summer Illinois EPA served another permit decision upon Petitioner, which on December 4, 2024, filed a petition to review the Agency’s July 29,

2024, decision in PCB No. 25-12—months after the parties had conducted written discovery in PCB No. 24-29. The following month, on January 30, 2025, Petitioner filed its petition for review of a December 26, 2024, Illinois EPA, thereby giving rise to PCB No. 25-44.

4. While the aforementioned appeals how much in common, they do concern distinctly separate Agency decisions resting upon distinct factual and/or legal grounds. Consolidating these appeals will cause confusion about those grounds and the arguments concerning them.

5. Since the filing of these three permit appeals, counsel for Illinois EPA repeatedly has spoken of consolidation, including to the Hearing Officer, who repeatedly noted the topic in his Orders:

- a. In his January 6, 2025, Order in PCB 25-12, the Hearing Officer noted that “[t]he parties will discuss a possible motion to consolidate this appeal with PCB 24-29.”
- b. In his January 23, 2025, Order in PCB 24-29, the Hearing Officer noted, “A motion to consolidate this matter with PCB 25-12 may be in the offing.”
- c. In his February 6, 2025, Order in PCB 25-12, the Hearing Officer noted, “The parties are discussing a possible motion to consolidate this appeal with PCB 24-29 and PCB 25-44.”

Despite these discussions, no motion to consolidate had been filed—let alone ruled upon—when depositions of two Agency witnesses were taken on April 17, 2025, nor when two additional Agency witnesses were deposed on June 24, 2025.

6. Counsel for Illinois EPA raised the issue during the first deposition, that of Jacqueline M. Cooperider, as Petitioner's counsel began a line of questioning regarding the permit appeal decision at issue in PCB No. 24-29:

Q. Ms. Cooperider, I've handed you a package of documents that are stamped in the upper right-hand corner R000130 all the way until R000187. Do you see that package of documents?

A. Yes.

Q. You want to take a look at it and let me know whether you recognize it.

A. Yes.

Q. Do you recognize that package of documents to include the decision of September 25, 2023, at issue in this case?

A. Yes.

MR. GRANT: Can I ask a question, Scott?

MR. SIEVERS: Sure, Chris.

MR. GRANT: We've got three permit appeal cases that are related and I never did file a motion to consolidate.

Did you want to get into the record on all three of them or are you limiting it to just the '24 case?

MR. SIEVERS: Are we off the record?

MR. GRANT: Let's be off the record.

(Discussion off the record.)

(Ex. A (Cooperider Dep.) at 13–14). The parties' counsel agreed that Ms. Cooperider's deposition concerned the permit appeal decision in PCB No. 24-29 and not in the other permit appeal cases.

6. This agreement became significant when Petitioner's counsel attempted to impeach Ms. Cooperider's testimony regarding the Agency's decision in PCB No. 24-29 based upon an Agency decision in a subsequent appeal:

THE DEPONENT: My understanding was that this hearing was in reference to the September 20 – the September document. And this is a follow-up one that you said was going to be part of a following deposition.

MR. SIEVERS: Yes.

But in light of your testimony, I'll have that question to you about this document now.

THE DEPONENT: Okay. Does my question make sense?

MR. SIEVERS: You can object all you want. Go right ahead, if you wish.

MR. GRANT: No. This is why I wanted to talk to you about what we're going to use as far as documents for the other ones. "Do you recognize this document" is fine. But if you're going to use the document, now you're using a document from a different case that's not relevant to what we're doing. So you know, that's the problem.

(Ex. A (Cooperider Dep.) at 57). Thus, the transcript of Ms. Cooperider's deposition makes clear that the scope of that deposition was to be limited to the Agency's decision in PCB No. 24-29, and Petitioner's counsel only raised the topic of a decision in a subsequent appeal when he believed Ms. Cooperider testified in a manner that conflicted with that subsequent appeal decision.

7. Limiting the scope to the topic of PCB No. 24-29 did not just impact Ms. Cooperider's deposition; it applied to the three other Agency witnesses' depositions. Accordingly, those depositions spent significant time on the decision underlying PCB No. 24-29 and little, if any, time on the decisions underlying PCB Nos. 25-12 and 25-44. Consolidating these three cases now would be unduly prejudicial to Petitioner after substantial time and effort has been expended preparing for and taking these depositions with the understanding that they were limited to PCB No. 24-29.

8. Rather than further the interest of convenient, expeditious, and complete determination of these three claims, consolidation of these three permit appeals only will cause confusion over the distinct factual and legal issues asserted by the Agency in each decision as well as unduly prejudice Petitioner based upon the substantial effort and expense Petitioner has undertaken in pursuing written discovery and depositions in PCB No. 24-29 only to have their scope expanded to the two other permit appeals after the fact.

WHEREFORE, Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, objects to Illinois EPA's Motion to Consolidate.

DATED: July 29, 2025

Respectfully submitted,

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BFI WASTE SYSTEMS
OF NORTH AMERICA, LLC,

Petitioner.

BY: /s/Scott B. Sievers
Scott B. Sievers
Attorney for Petitioner

BFI Waste Systems of North America, LLC v. Illinois EPA
Pollution Control Board No. 25-44

CERTIFICATE OF SERVICE

Scott B. Sievers of the law firm of Brown, Hay + Stephens, LLP herein certifies that on July 29, 2025, from Springfield, Illinois, he electronically submitted for filing the foregoing **OBJECTION TO ILLINOIS EPA'S MOTION TO CONSOLIDATE** with the Pollution Control Board by using the Clerk's Office On-Line (COOL) eFile system. Scott B. Sievers further certifies that, on July 29, 2025, he served the other parties in this case with a copy of the foregoing document by transmitting the document by e-mail to the parties' representatives, who are identified below, at their designated e-mail addresses of record:

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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 this instrument are true and correct, except as to matters herein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

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BY: /s/Scott B. Sievers
Scott B. Sievers
Attorney for Petitioner

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NORTH AMERICA, LLC,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

)
)
)
)
) PCB NO. 24-29
) Permit Appeal - RCRA
)
)
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)

DISCOVERY DEPOSITION

Discovery deposition of **JACQUELINE M.**

COOPERIDER, taken at the instance of the Petitioner
on April 17, 2025, commencing at 8:58 a.m. at
Illinois Environmental Protection Agency, 2520 W.
Iles Ave., Springfield, Illinois, before Angela C.
Turner, a Certified Shorthand Reporter, pursuant to
notice and the stipulation attached hereto.

DAVIS REPORTING SERVICE

Angela C. Turner, CSR #084-004122
Certified Shorthand Reporters
3 Hickory Hills Drive
Springfield, Illinois 62707
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A P P E A R A N C E S

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S T I P U L A T I O N

It is stipulated and agreed, by and between the parties hereto, through their attorneys, that the deposition of **JACQUELINE M. COOPERIDER** may be taken for discovery purposes before Angela C. Turner, a Certified Shorthand Reporter, upon oral interrogatories, on April 17, 2025, A.D., at the instance of the Petitioner, commencing at 8:58 a.m. at Illinois Environmental Protection Agency, 2520 W. Iles Ave., Springfield, Illinois;

That the oral interrogatories and the answers of the witness may be taken down in shorthand by the Reporter and afterwards transcribed;

That all requirements of the Civil Practice Act and the Rules of the Supreme Court as to dedimus, and the reading over and signing of the deposition by the witness, are expressly waived;

That any objections as to competency, materiality or relevancy are hereby reserved, but any objection as to the form of the question is waived unless specifically noted;

That the deposition or any parts thereof may be used for any purpose for which discovery depositions are competent, by any of the parties hereto, without foundation proof;

That any party hereto may be furnished copies of the deposition at his or her own expense.

1 TRANSCRIPT OF DEPOSITION

2 (Whereupon the witness was
3 sworn by the court reporter.)

4 **JACQUELINE M. COOPERIDER**

5 called as a witness herein, at the instance of the
6 Petitioner, having been first duly sworn on her oath,
7 was examined and testified as follows:

8 EXAMINATION

9 BY MR. SIEVERS:

10 Q. Would you please state your full name and
11 spell it for the court reporter?

12 A. Jacqueline, J-A-C-Q-U-E-L-I-N-E, M.
13 Cooperider, C-O-O-P-E-R-I-D-E-R.

14 Q. Is it pronounced Cooperider?

15 A. Cooperider, yes.

16 Q. Ms. Cooperider, I'm an attorney for the
17 petitioner, BFI Davis Junction.

18 Have you ever had your deposition taken
19 before?

20 A. No.

21 Q. I'm going to pose questions to you.
22 Hopefully you'll be able to answer them. The court
23 reporter will be taking down a transcript of our
24 discussion. Because she's preparing a written

1 transcript, we need to make sure that when I say
2 something or when you respond to something that she's
3 able to jot that down. So consequently, hand
4 gestures and nods and the like doesn't really work.
5 So would you agree to answer verbally or respond
6 verbally to any question I pose to you?

7 A. Yes.

8 Q. I will sometimes -- we all speak this way
9 when we're talking in the normal world. We'll say
10 ums and ahs, and we all know what we're talking
11 about. But I can't let that happen in the
12 transcript, because it will be unclear as to how you
13 answered. So I might have to have you rephrase or
14 ask you if that's a yes or a no and so forth. So I
15 just want to preface that so you don't think I'm
16 trying to be rude or anything.

17 Would you agree to let me finish my question
18 before you answer it?

19 A. Yes.

20 Q. And I would like to think that my questions
21 are all competent and clear, but I often ask
22 boneheaded questions, as many attorneys do. If I
23 pose a question to you that you don't understand,
24 would you agree to not answer that question and to

1 tell me you don't understand it?

2 A. Yes.

3 Q. If at any point in this deposition you need
4 to take a break, maybe use the restroom, make a phone
5 call, what have you, just let us know. We can take a
6 break at any time. All I ask is that if I've got a
7 question posed to you that you answer it first before
8 we take that break. Is that agreeable?

9 A. Yes.

10 Q. You understand you've been placed under
11 oath?

12 A. Yes.

13 Q. Do you have any reason to believe that you
14 are not physically or mentally well enough today to
15 answer or understand my questions?

16 A. No.

17 Q. Did you review any documents in preparation
18 for this deposition?

19 A. Yes.

20 Q. Which documents did you review?

21 A. I reviewed the permit that was issued, the
22 guidance document, and Jacob's review notes.

23 Q. Which guidance document?

24 A. The USEPA 2016 guidance document.

1 Q. Did you meet with anyone in preparation for
2 your deposition?

3 A. Yes.

4 Q. I don't want to ask about the content of
5 your discussion if it's with an attorney, so don't
6 tell me that.

7 But can you tell me who you met with at
8 least?

9 A. I met with Chris and Rich and Kevin.

10 Q. Because of the nature of the transcript, I'm
11 going to ask questions, many of which I know the
12 answer to, but for purposes of the transcript, I've
13 got to ask them in a clear way.

14 Are you employed?

15 A. Yes.

16 Q. And where are you employed?

17 A. Illinois EPA.

18 Q. What's your position here at Illinois EPA?

19 A. It's currently the deputy bureau chief for
20 the Division of Land Pollution Control in the Bureau
21 of Land.

22 Q. And Land Pollution Control is often
23 abbreviated just as LPC in EPA parlance?

24 A. Usually DLPC.

1 Q. So help me understand. Are you no longer
2 the permit section manager?

3 A. I'm no longer the permit section manager.

4 Q. And when did that change occur?

5 A. April of last year. April 2024.

6 Q. Am I correct in understanding that was a
7 promotion?

8 A. Correct.

9 Q. Congratulations.

10 A. Thank you.

11 Q. Can you tell me what the Bureau of Land
12 permit section does?

13 A. Bureau of Land permit section issues --
14 well, we review applications and issue permits for
15 hazardous and non-hazardous facilities, you know,
16 including landfills, hazardous waste facilities,
17 storage treatment disposal facilities, underground
18 injection control wells, transfer stations. If
19 there's anything having to do with disposal in the
20 state.

21 Q. Was your position as permit section manager
22 filled when you were promoted?

23 A. Yes.

24 Q. And who has that position now?

1 A. Joshua Rhoades.

2 Q. I believe that all the -- certainly, this
3 particular case concerns your time when you were
4 permit section manager. So I'm going to try to limit
5 my questions to that time period.

6 A. Uh-huh.

7 Q. As Bureau of Land permit section manager,
8 what were your job duties?

9 A. My job duties included overseeing the permit
10 section -- it was about 45 people -- and assigning
11 work as it was necessary. Reviewing applications,
12 reviewing permits that were going out the door.
13 Reviewing programmatic issues. Attending the managers
14 meeting. Dealing with the HR part of personnel.

15 Q. You mentioned you supervised about 45
16 people. Is that correct?

17 A. Uh-huh, correct.

18 Q. What kind of positions do those 45 people
19 have within the permit section?

20 A. They're engineers and geologists.

21 Q. When you were the permit section manager,
22 did you have a supervisor?

23 A. Yes.

24 Q. Who was your supervisor then?

1 A. Greg Dunn.

2 Q. Has he since retired?

3 A. Yes.

4 Q. When you were permit section manager and you
5 reported to Greg Dunn, did Greg Dunn have your
6 current position?

7 A. Yes.

8 Q. Who is the next in line after that position
9 on the way up towards the director of the agency?

10 A. Kyle Rominger. He's a bureau chief.

11 Q. And then after bureau chief is the director?

12 A. Well, deputy director and then the director,
13 yes.

14 Q. Referring back to your time as permit
15 section manager, how long did you hold that position?

16 A. About a year and a half.

17 Q. And were you employed with Illinois EPA
18 before that?

19 A. Yes.

20 Q. What was your position before that?

21 A. I was an Environmental Protection Engineer
22 4.

23 Q. And was that in the permit section?

24 A. Correct.

1 Q. And what were your job duties then?

2 A. Reviewing permit applications and being a
3 lead technical worker in the unit. And training,
4 mentoring. Filling in for the unit manager when they
5 were unavailable. So it was working supervisor, lead
6 technical worker.

7 Q. How long did you hold that position?

8 A. Four years.

9 Q. So about a year and a half as permit section
10 manager, then about four years in the prior position?

11 A. Uh-huh.

12 Q. That's yes?

13 A. Yes. Sorry.

14 Q. Prior to that position, were you also in the
15 permit section?

16 A. Yes.

17 Q. What was your position there then?

18 A. Environmental Protection Engineer 3. I
19 started in the agency in 2007 as an Environmental
20 Protection Engineer 1.

21 Q. Have you always been in the permit section
22 until your recent promotion?

23 A. I have been in the -- I was in the permit
24 section for the majority of my career here. I was in

1 the permit section in the Bureau of Air for about a
2 year and a half.

3 Q. Is that when you first joined the agency?

4 A. No. It was in the middle.

5 Q. So how long would you say your overall time
6 has been working in the permit section?

7 A. In the permit section, Bureau of Land,
8 16 years.

9 Q. Each time you left one of those positions,
10 am I correct in assuming that it was voluntary?

11 A. Yes.

12 Q. Promotions?

13 A. Uh-huh, yes.

14 Q. Do you hold any licenses or certifications?

15 A. Yes.

16 Q. Are you a licensed professional engineer?

17 A. Yes.

18 Q. Do you have any other licenses or
19 certifications?

20 A. No.

21 Q. When were you first licensed?

22 A. 2010.

23 Q. And I trust you attended college?

24 A. Yes.

1 Q. Where did you attend college?

2 A. University of Notre Dame.

3 Q. And you graduated with an engineering
4 degree?

5 A. Correct.

6 Q. When did you graduate?

7 A. 2000.

8 Q. As a licensed professional engineer, have
9 you ever had professional discipline?

10 A. No.

11 Q. Have you ever attended any trade schools or
12 served in the military?

13 A. No.

14 Q. Ms. Cooperider, I've handed you a package of
15 documents that are stamped in the upper right-hand
16 corner R000130 all the way until R000187.

17 Do you see that package of documents?

18 A. Yes.

19 Q. You want to take a look at it and let me
20 know whether you recognize it.

21 A. Yes.

22 Q. Do you recognize that package of documents
23 to include the decision of September 25, 2023, at
24 issue in this case?

1 A. Yes.

2 MR. GRANT: Can I ask a question, Scott?

3 MR. SIEVERS: Sure, Chris.

4 MR. GRANT: We've got three permit appeal
5 cases that are related and I never did file a motion
6 to consolidate.

7 Did you want to get into the record on all
8 three of them or are you limiting it to just the '24
9 case?

10 MR. SIEVERS: Are we off the record?

11 MR. GRANT: Let's be off the record.

12 (Discussion off the record.)

13 Q. (By Mr. Sievers) Now, Ms. Cooperider, I'd
14 like to just talk generally about the process for
15 permits in the permit section to be received,
16 considered, and decided upon. So even though I have
17 this permit in front of you, the September 25, 2023,
18 letter, I want to talk more broadly about it
19 initially.

20 First off, is this decision, the
21 September 25, 2023, generally a typical kind of
22 decision that the permit section would reach? That
23 is, multiple submittals over different time on one
24 particular site?

1 A. Yes.

2 Q. And submittals concerning a landfill's
3 permit, pretty typical?

4 A. Yes.

5 Q. How do you typically -- how does the permit
6 section typically receive a submittal?

7 A. Usually, submittals will come in by mail,
8 because we require hardcopies. They are received and
9 dated -- date stamped in and then assigned to the
10 permit reviewer. And that includes an engineer and a
11 geologist.

12 Q. Are the engineer and the geologist both
13 within the Bureau of Land?

14 A. Permit section, yes.

15 Q. Do those submittals -- are they typically
16 submitted voluntarily by an entity or at the
17 solicitation of the agency?

18 A. They are usually submitted due to regulatory
19 requirements.

20 Q. Are there times when the agency specifically
21 requests an entity to submit something for review by
22 the permit section?

23 A. Yes.

24 Q. Is that a large portion of the materials

1 that are reviewed by the permit section?

2 A. No.

3 Q. For the most part, when the permit section
4 receives something to be reviewed, it's being
5 voluntarily submitted by the entity, not being
6 solicited by the agency to do so. Would that be
7 correct?

8 MR. GRANT: I wonder if you can rephrase
9 that.

10 Are you saying commonly?

11 MR. SIEVERS: Let me rephrase that.

12 Q. (By Mr. Sievers) I think you mentioned that
13 solicitation of submittals is not so common by the
14 permit section. So for the most part, an entity is
15 -- like BFI Davis Junction is submitting something to
16 the permit section based on their understanding of
17 the act and regulations and so forth. Would that be
18 accurate?

19 A. For the initial submittal, yes.

20 Q. And by "initial submittal," that wouldn't
21 necessarily mean to get the very first permit,
22 correct?

23 A. Yes. For the initial submittal that comes
24 in. The agency often asks for additional

1 information.

2 Q. So if someone is seeking -- if an entity is
3 seeking a modification to a permit, there might be
4 subsequent requests for the agency for additional
5 information in evaluating that modification?

6 A. Correct.

7 Q. So submittal comes into the permit section,
8 it's assigned to an engineer and to a geologist.

9 Is there a timeframe placed on the
10 evaluation of that submittal?

11 A. That depends on the type of application that
12 comes in.

13 Q. Does that depend upon regulations and the
14 act?

15 A. Correct.

16 Q. Now, once it's assigned to an engineer and
17 geologist, is there tracking to see that there's
18 progress being made on the evaluation of that
19 submittal?

20 A. Yes.

21 Q. Who does the oversight to watch that
22 tracking?

23 A. The unit manager.

24 Q. Are there meetings that are held with the

1 engineer and geologist to see where a particular
2 submittal is in the process?

3 A. Yes.

4 Q. In that process, are there times when the
5 engineer and geologist may contact the applicant and
6 request additional information?

7 A. Yes.

8 Q. When the engineer and geologist are
9 satisfied that they have sufficient information to
10 make a decision, what is the process at that point
11 for them to make a decision and for the agency to
12 authorize a decision?

13 A. Once the engineer and the geologist --
14 throughout the process, they were making -- they've
15 been taking notes and making their own review notes
16 and evaluation along the way. So once they make a
17 final decision, they would complete their review
18 notes, then put together the permit and make any
19 changes and updates that are required in their
20 permit. Then review that. It would go for
21 signatures. It goes through the unit manager of
22 the -- in this particular case, the hazardous waste
23 unit manager, the groundwater unit manager, and then
24 would go to the section manager.

1 Q. So in this case, hazardous waste unit
2 manager. Is that correct?

3 A. Uh-huh.

4 Q. After the engineer and the geologist agree
5 that this is --

6 A. Uh-huh, yes.

7 Q. -- correct?

8 And then the groundwater unit manager?

9 A. Yes.

10 Q. Are those managing positions parallel?

11 A. Yes.

12 Q. When they are in concurrence on a submittal,
13 is that when it goes up to the section manager then?

14 A. Yes.

15 Q. And then the section manager evaluates the
16 decision on the submittal and proposed decision?

17 A. Yes.

18 Q. If that section manager agrees to the
19 proposed decision, where does the decision go next?

20 A. The decision is issued. The permit is
21 issued at that point.

22 Q. So it doesn't need to go up to the bureau
23 chief --

24 A. No.

1 Q. -- or the director?

2 A. No.

3 Q. If the section manager or anybody between
4 the section manager and the engineer and geologist
5 has issues or concerns with the proposed decision,
6 can the process be paused and additional information
7 requested from the applicant?

8 A. Yes.

9 Q. Would it be fair to say that it is a fluid
10 process within the agency in trying to reach a
11 decision on a submittal?

12 A. I don't understand the question.

13 Q. Well, that is it's not purely linear. There
14 are times where additional information may be made.
15 There may be some discussion about whether the
16 decision is good or bad. And it may go up and down
17 the chain of command to reach the decision?

18 A. Yes.

19 Q. I'm going to call your attention to the
20 document in front of you. In particular, page
21 R000134.

22 Do you have that page in front of you?

23 A. Yes.

24 Q. Now, does that page have your signature

1 block in it?

2 A. Yes.

3 Q. And this is -- that's from the period in
4 which you were the permit section manager within the
5 Bureau of Land?

6 A. Correct.

7 Q. Now, there are some initials on that page
8 handwritten in. Do you see those?

9 A. Yes.

10 Q. Above your signature mentions two other
11 individuals. It mentions Paula Stine.

12 Who is Paula Stine?

13 A. Paula Stine was the geologist who reviewed
14 the application.

15 Q. Would she be part of the hazardous waste
16 unit or part of the groundwater unit?

17 A. Groundwater unit.

18 Q. And Jacob Nutt, who is he?

19 A. He was the engineer who reviewed the
20 application.

21 Q. And then would he be part of the hazardous
22 waste unit?

23 A. Correct.

24 Q. Looking at the initials on page 134. Can

1 you help me discern whose initials those are?

2 A. Yes.

3 JLR is Joshua Rhoades. TNH is Takako
4 Halteman.

5 MR. GRANT: Do you want the spelling?

6 COURT REPORTER: I marked it, but if you
7 want to spell it now, that's fine.

8 THE DEPONENT: T-A-K-A-K-O, H-A-L-T-E-M-A-N.

9 Q. (By Mr. Sievers) The JDN, would that be
10 Jacob Nutt?

11 A. Yes, that's Jacob Nutt.

12 Q. PS --

13 A. PS is Paula Stine. And Joshua Rhoades,
14 Rhoades is R-H-O-A-D-E-S.

15 Q. What was Joshua Rhoades' role in this
16 decision?

17 A. He's the groundwater unit manager.

18 Q. He would be Paula Stine's supervisor?

19 A. Correct.

20 Q. And is it Takako?

21 A. Yes, that's correct.

22 Q. Would he be the hazardous waste unit?

23 A. She is the hazardous waste unit manager,
24 yes. So she's Jacob Nutt's supervisor.

1 Q. So page 134 has your signature on it and has
2 the initials of both the geologist and the engineer
3 on it, as well their supervisors?

4 A. Correct.

5 Q. In the process of approving a decision like
6 this, what do those initials all indicate to you when
7 you look at this page? Where is it in the process of
8 approving the decision?

9 I trust that -- let me rephrase.

10 MR. GRANT: I think what you're asking for
11 is: What is the significance of the signatures or
12 initials?

13 MR. SIEVERS: That's exactly right.

14 Q. (By Mr. Sievers) I trust that this means
15 that everybody has signed off on this particular
16 decision?

17 A. Correct.

18 Q. Everybody that needs to sign off on it?

19 A. Yes.

20 Q. Is there an order to that sign-off process?
21 Does the engineer come before the geologist, so
22 forth?

23 A. Yes. The engineer will put together the
24 actual permit itself. You know, the -- in Microsoft

1 Word, go in and make any changes, make any -- write
2 the permit. And then the engineer will sign their
3 initials. It will go to the geologist who will
4 review it to make sure that any of their changes are
5 included. Then it would go to either the groundwater
6 unit manager or the hazardous waste unit manager. So
7 the engineer and geologist who are working on the
8 application would sign it first and then it would go
9 to the next level.

10 Q. There are four people that are carbon-copied
11 on the September 25, 2023, decision. I know the last
12 two. Who is Norberto Gonzalez?

13 A. Norberto Gonzalez is a USEPA Region 5 -- I
14 am not certain what his title was at this point in
15 time. But he worked in the -- with the RCRA
16 hazardous waste unit.

17 Q. Who's Emily Keener?

18 A. She too works for Region 5 USEPA.

19 Q. Was Norberto Gonzalez or Emily Keener
20 consulted by Illinois EPA in the course of making the
21 September 25, 2023, decision?

22 A. No.

23 Q. They were just provided a copy of the
24 decision after the fact?

1 A. Yes.

2 Q. Why were they provided a copy of this
3 decision?

4 A. With hazardous waste facilities, we often
5 copy the USEPA.

6 Q. Just a matter of course?

7 A. Just a matter of -- yeah.

8 Q. I'm going to call your attention back to
9 page 132, R000132. And paragraph number one in the
10 middle of the page, if you can take a moment to
11 review that. Let me know when you're finished.

12 A. I'm finished.

13 Q. The third sentence of paragraph number one
14 says, "The Illinois EPA has reevaluated the
15 requirements for post-closure care cost estimates and
16 financial assurance under 35 Ill. Admin. Code Part
17 724 and has determined the total post-closure care
18 estimate must reflect 30 years of post-closure care
19 as required by 35 Ill. Admin. Code 724.217."

20 Did I read that correctly?

21 A. Yes.

22 Q. What is post-closure care?

23 A. Post-closure care is the period of time
24 after which a facility is closed -- certified closed

1 and that they have to maintain the facility and
2 continue to do the required monitoring and analysis
3 and inspections of the facility to ensure its safety
4 and it's intact.

5 Q. You said "certified closed." Who does the
6 certification?

7 A. The agency issues the certification based on
8 a certification submittal by the applicant.

9 Q. And so after the agency has certified that a
10 facility is closed, then post-closure care --

11 A. Begins.

12 Q. -- obligations begin?

13 A. Yes.

14 Q. And what is financial assurance?

15 A. Financial assurance is a -- it's a mechanism
16 for the agency to have -- that the facility has to
17 have insurance on the site if there were -- the
18 facility were to default somehow in their obligations
19 or if the facility were to be unable to continue
20 providing that post-closure care that it -- financial
21 means that the agency would then assume to take over
22 maintenance at the facility.

23 Q. Is financial assurance part of post-closure
24 care?

1 A. Yes.

2 Q. Now, that paragraph uses the term
3 "reevaluated."

4 When you were the Bureau of Land permit
5 section manager, did you participate in the
6 reevaluation of the requirements for post-closure
7 care cost estimates and financial assurance
8 referenced in that paragraph?

9 A. Yes.

10 Q. Who else participated in that reevaluation
11 or these requirements?

12 A. Jacob Nutt, Takako Halteman, Paula Stine,
13 Joshua Rhoades.

14 Q. Any others?

15 A. We consulted with our attorneys.

16 Q. Anyone else?

17 A. Rob Watson, who has since retired, he was --
18 we consulted with him, but he was the RCRA unit
19 manager before Takako, so just in conversations we
20 talked to him.

21 Q. When you consulted him, was he still
22 employed at the agency?

23 A. I'm trying to think of the date when he
24 actually -- because he came back on contract for a

1 bit. I'm unsure of the dates.

2 Q. So either way, was he either full-time
3 regular employment or on a contract for the agency in
4 one of those two capacities?

5 A. September of '23? Not when this was issued.

6 Q. But when you consulted about reevaluating
7 those requirements, was he employed by the agency in
8 some capacity?

9 A. Yes.

10 Q. Who within Illinois EPA initiated the
11 reevaluation of these requirements?

12 A. The facility would have -- we evaluate based
13 on the application by the facility. So the
14 application coming in would have initiated our
15 evaluation of the adequacy of the financial
16 assurance.

17 Q. But paragraph one on page 132 says the
18 Illinois EPA has reevaluated the requirements for
19 post-closure cost estimates and financial assurance
20 under this regulatory provision.

21 So my question is: What prompted Illinois
22 EPA to reevaluate those requirements?

23 A. Well, as I said, the application coming in
24 would have caused us to evaluate it and look at the

1 overall whether or not these were -- the financial
2 assurance was adequate given the risk at the facility
3 if the agency were required to take over and have to
4 continue operation and maintenance at that facility.

5 Q. The prior permit construed this provision of
6 the regulations quite differently than this permit,
7 correct?

8 MR. GRANT: Can you -- is that referenced in
9 here? I guess, you know, if you're going to talk
10 about the prior permit, I would kind of like to see
11 it. It may be in the record. I didn't know if it
12 was an attachment or something like that.

13 MR. SIEVERS: Chris, I'll call the witness's
14 attention to page 135.

15 MR. GRANT: I'm not trying to argue.

16 MR. SIEVERS: Fair enough, Chris.

17 MR. GRANT: She's not going to remember the
18 prior permit.

19 Q. (By Mr. Sievers) Looking at page 135. This
20 is an attachment to that letter we were just looking
21 at, correct?

22 A. Correct.

23 Q. And on the next page, page 136, at the
24 bottom, it addresses total post-closure care cost

1 estimate. And you'll see that there are markings on
2 the typeface there, correct?

3 A. Correct.

4 Q. On these two pages, page 135 and 136, would
5 additions be underlined and deletions be stricken
6 through?

7 A. Yes.

8 Q. And this document reflects changes to the
9 existing permit of the 2018 permit. Would that be
10 correct?

11 A. Correct.

12 Q. So at the bottom of page 136, it shows that
13 the change is to go from total post-closure care cost
14 estimate for a six-year period to a 30-year period,
15 correct?

16 A. Correct.

17 Q. And that is a result of the reevaluation of
18 those administrative regulations, correct?

19 A. It was a reevaluation of the risk at the
20 site.

21 Q. What about the risk at the site changed
22 since the 2018 permit was issued?

23 A. The risk, I believe, has remained the same.

24 Q. If the risk remained the same from 2018

1 until this decision, why would the -- why would the
2 regulations be reevaluated?

3 A. Because this is -- we considered that the
4 six years was inadequate given the risk at that
5 facility and that the interpretation shouldn't be
6 30 years.

7 Q. So is it your testimony that you did not
8 re-construe the regulations concerning post-closure
9 care and financial assurance obligations in reaching
10 this decision of September 25, 2023, but instead
11 evaluated the site differently, the site specific
12 conditions differently?

13 MR. GRANT: Can I ask -- can you repeat it
14 or ask her to read it back? Can you read it back?

15 (Record read back by the
16 reporter.)

17 Q. (By Mr. Sievers) Do you understand the
18 question?

19 A. Yes. The two were taken. And I would say
20 we considered both of those things in tandem when
21 making this decision.

22 Q. You considered both the regulations as well
23 as the risk specific to the site?

24 A. Correct.

1 Q. But I believe you testified earlier that the
2 risk had not changed at the site at all since 2018,
3 correct?

4 A. The facility -- no. The risk -- the risk
5 remains the same.

6 MR. GRANT: Are you okay?

7 THE DEPONENT: Yeah.

8 MR. GRANT: If you need a break, let us
9 know.

10 MR. SIEVERS: Absolutely. If you need a
11 break, no problem.

12 Q. (By Mr. Sievers) In the course of reaching
13 a decision like the one that we're looking at here
14 today, the September 25, 2023, decision, am I correct
15 in understanding your prior testimony that you would
16 review the reviewer's notes?

17 A. Correct.

18 Q. Ms. Cooperider, I've handed you a package of
19 documents -- a second package of documents today.
20 This one has got a marking in the upper right-hand
21 corner R000204 and then it goes on to R000230.

22 Do you have that package of documents in
23 front of you?

24 A. Yes.

1 MR. GRANT: Just for the record purposes,
2 these are the Bates stamped numbers from the first --
3 the 2024 permit appeal record, because we actually
4 did not start -- for the other ones, we didn't
5 continue the numbers. We started with one again. So
6 just that's what these numbers refer to is a 2024
7 permit record.

8 MR. SIEVERS: Yes, that's correct. Yeah.

9 Q. (By Mr. Sievers) So Ms. Cooperider, do you
10 recognize this package of documents?

11 A. Yes.

12 Q. What do you recognize this package of
13 documents to be?

14 A. Jacob Nutt's review notes.

15 Q. And you reviewed these in the course of
16 evaluating the proposed decision on -- that
17 ultimately resulted in the September 25, 2023,
18 decision of the agency?

19 A. Correct.

20 Q. I am going to call your attention to page
21 R000214. Under IEPA reviewer's comments, paragraph
22 two, it says, "Internal discussion with lead workers
23 and co-workers in the RCRA unit determined that the
24 prorating of post-closure care which has been

1 historically included in the RCRA permits is not the
2 correct manner in which to require cost estimates of
3 post-closure care."

4 Did I read that correctly?

5 A. Yes.

6 Q. Were you part of those internal discussions?

7 A. Yes.

8 Q. And what about that determination was not
9 the correct manner?

10 A. We determined that there was no basis for us
11 having allowed the 10 years of post-closure care
12 financial assurance and that that number was not
13 adequate for the risk at the facility and in line
14 with what the regulations would require us to
15 require.

16 Q. In reaching the September 25, 2023,
17 decision, the agency was aware that there had been a
18 prior 10-year extension of the post-closure care
19 obligation at the landfill, correct?

20 A. Correct.

21 Q. And prior to that 10-year extension, there
22 had already been completed 30 years of post-closure
23 care, correct?

24 A. Correct.

1 Q. At this point, there was 40 years of
2 post-closure care and financial assurance in place?

3 A. Well, there was 40 years of post-closure
4 care that had been -- that has occurred. And
5 currently in place was only six years of financial
6 assurance.

7 Q. Six years left on the 10-year extension?

8 A. Yes.

9 Q. And I believe you testified that the
10 determination was made that the 10-year permit
11 extension was improper. Would that be correct?

12 A. Correct.

13 Q. What about that extension was improper?

14 MR. GRANT: I'm going to object. Sorry. I
15 think you're mischaracterizing her testimony. I
16 don't think that she stated that -- if you don't mind
17 my speaking objection -- the 10-year extension was
18 improper. It was the financial assurance I think
19 that she said was improper.

20 Is that your recollection?

21 Q. (By Mr. Sievers) Let me ask you. Did you
22 have any issue with the 10-year extension of the
23 post-closure care and financial assurance obligation
24 imposed on BFI Davis Junction?

1 A. Yes.

2 Q. What was the issue you had with that
3 extension?

4 A. That the financial assurance was inadequate
5 for the risk at the facility and the ongoing risk at
6 the facility.

7 Q. And financial assurance is part of
8 post-closure care, correct?

9 A. Correct.

10 Q. Was there any other component of
11 post-closure care, besides financial assurance, that
12 you thought was not appropriate in that 10-year
13 extension? Let me rephrase.

14 You said that you took issue with the
15 10-year extension, correct?

16 A. The 10-year extension was the permit.

17 Q. Right. The 10-year permit extension.

18 A. Right.

19 Q. And that -- and you mentioned that, in
20 particular, an issue of that was the financial
21 assurance?

22 A. Right.

23 Q. Was there any other component of
24 post-closure care that you were concerned about as

1 well?

2 A. It's the financial assurance which is tied
3 to the length of post-closure care.

4 Q. Right. But post-closure care includes
5 obligations beyond financial assurance, correct?

6 A. Yes.

7 Q. Those other obligations, did you have any
8 concern with those as they were applied to that
9 10-year extension of the permit?

10 A. No.

11 Q. And so when you reached this September 25,
12 2023, decision, you had determined that the 10-year
13 permit extension should not have been granted. Would
14 that be correct?

15 A. Well, a permit can only be extended for 10
16 years. The actual permit itself. The permit is
17 different -- the permit length of time is different
18 from the length of post-closure care.

19 Q. But the 2018 permit, that should not have
20 been granted. Is that correct?

21 MR. GRANT: Can you give me a little more
22 information about the 2018 permit? Because you've
23 got a 10-year extension and -- do you mean the
24 financial assurance for --

1 MR. SIEVERS: Well, this decision before you
2 today is a September 25, 2023, decision.

3 A. Uh-huh.

4 Q. That's correct?

5 A. Correct.

6 Q. And what was before the agency in reaching
7 that decision were five proposed modifications to the
8 2018 permit, correct?

9 A. Correct.

10 Q. So in that 2018 permit included a 10-year
11 extension that included financial assurance, correct?

12 MR. GRANT: I'm going to just object. I
13 think maybe you're misstating it. The 10-year thing
14 happened, what, in like --

15 THE DEPONENT: 2015, yeah.

16 MR. GRANT: -- 2014 or something.

17 I mean, am I -- is there a part I'm missing
18 here?

19 MR. SIEVERS: No. But the talking
20 objections are getting a bit much, Chris.

21 MR. GRANT: I understand. I try to --
22 rather than say "form of the question" or something
23 like that, I try to be a little more specific.

24 MR. SIEVERS: The witness is clearly quite

1 intelligent and capable. If she doesn't understand
2 the question, she can tell me she doesn't understand
3 the question. If she doesn't know the answer, she
4 can tell me she doesn't know the answer.

5 Can you read back my question, please?

6 (Record read back by the
7 reporter.)

8 THE DEPONENT: It didn't include a 10-year
9 -- well, I'm sorry. I don't have the 2018 permit in
10 front of me.

11 Q. (By Mr. Sievers) But you do have R135
12 before you, correct?

13 A. Correct.

14 Q. And that shows the changes to the
15 pre-existing permit that were made in the
16 September 25, 2023, decision, correct?

17 A. Correct.

18 MR. GRANT: Can you give me a page?

19 MR. SIEVERS: R135 and R136.

20 MR. GRANT: Thank you.

21 Q. (By Mr. Sievers) On page R146, it shows
22 identification of approved permit application. There
23 are nine entries there. Do you see those?

24 A. Yes.

1 Q. The last five are the subject of the
2 September 25, 2023, decision, correct?

3 A. Yes.

4 Q. What do the first four tell you about what
5 was in place prior to the September 25, 2023,
6 decision?

7 A. They tell me about the previous -- when the
8 previous applications were issued.

9 Q. And the last application would have been
10 issued in 2018?

11 A. According to this, that's correct.

12 Q. So from this, do you understand that the
13 last permit prior to the September 25, 2023, decision
14 was a 2018 permit for the site?

15 A. Yes.

16 Q. And post-closure care began in 1984 in this
17 site?

18 A. Post-closure care, yes, began in 1984.

19 Q. And the initial permit's proposed closure
20 care said it was a 30-year period, correct?

21 A. Correct.

22 Q. And then an application was submitted to
23 extend that for an additional 10 years, correct?

24 A. Correct.

1 Q. And your review of that in reaching the
2 September 25, 2023, decision led you to the
3 conclusion that that was -- that there was something
4 incorrect about that 10-year extension. Is that
5 right?

6 A. We felt that, at this point in time, that it
7 was inadequate for us to issue this permit without
8 having the adequate financial assurance.

9 Q. Was the financial assurance inadequate in
10 the pre-existing permit?

11 A. I didn't review the permit at that time. So
12 the evaluation done at that time I can't speak to.

13 THE DEPONENT: May we take a break?

14 MR. SIEVERS: Sure.

15 (Break taken from 9:53 a.m.

16 to 9:57 a.m.)

17 Q. (By Mr. Sievers) Since Illinois EPA
18 approved the permit prior to the September 25, 2023,
19 decision, to your knowledge, has there been any
20 change in the Environmental Protection Act that would
21 apply to that permit?

22 A. Not off the top of my head do I know any
23 that would apply to this permit. There have been
24 changes to the act.

1 Q. Since the prior permit in 2018 until this
2 September 25, 2023, decision, do you know, were there
3 any changes in the Illinois Pollution Control Board
4 regulations that affected this decision, the 2023
5 decision?

6 A. There are usually annual updates to the
7 regulations. I can't speak to which -- what changes
8 were in every year. But I don't believe that there
9 would be any that would apply to this decision.

10 Q. Was there any -- were there any changes in
11 case law, to your knowledge, that would have affected
12 the September 25, 2023, decision compared to the
13 pre-existing permit?

14 MR. GRANT: Just for the record, objection
15 based on calls for a legal conclusion.

16 But you can answer, if you can.

17 THE DEPONENT: I am not a lawyer, so I don't
18 have knowledge of the case law.

19 Q. (By Mr. Sievers) No case law was brought to
20 your attention that would alter the way you analyze
21 the post-closure care obligation or financial
22 assurance that was evaluated in the September 25,
23 2023, decision?

24 A. I'm unclear on the question.

1 Q. Prior to September 25, 2023, there was a
2 permit in place for BFI Davis Junction Phase 1,
3 correct?

4 A. Correct.

5 Q. That permit provided for post-closure care?

6 A. Correct.

7 Q. It also provided for financial assurance?

8 A. Correct.

9 Q. Since that pre -- that 2018 permit was in
10 place, until the September 25, 2023, decision that
11 the agency made, to your knowledge, was there any
12 change in law that would impact post-closure care
13 obligation or financial assurance obligation?

14 A. Not to my knowledge.

15 Q. In the reviewer's notes we looked at on page
16 214, R000214, there's that discussion about -- an
17 internal discussion with lead workers and co-workers
18 in the RCRA unit determining the prorating of
19 post-closure care was not correct.

20 And by "prorating," what do you understand
21 that term to mean in the context of post-closure care
22 and financial assurance?

23 A. It means allowing the facility to decrease
24 their financial assurance based on an arbitrary

1 number of years that they have left in post-closure
2 care.

3 Q. Would it be an arbitrary number of years?

4 A. I'm -- I was not involved in the 2018
5 decision. Maybe I'm misunderstanding your question.

6 Q. Well, was the prorating based upon how many
7 years were left on the permit?

8 A. On the permit, yes.

9 Q. So it's not arbitrary. It's at any
10 particular time in the course of that permit, we look
11 to the permit and see how many years are left on it,
12 that's the proration?

13 A. Based on -- it was based on the permit. The
14 expiration of the permit, not the amount of
15 post-closure care required.

16 So that was our decision was -- it was an
17 incorrect -- it was not the correct interpretation to
18 allow for the post-closure care to be decreased.
19 Financial assurance for post-closure care to be
20 decreased in this case.

21 Q. And that's the determination that was
22 reached for the September 25, 2023, decision?

23 A. Correct.

24 Q. And the rule that is imposed here in this

1 decision then is that there needs to be 30 years of
2 financial assurance provided by the applicant for the
3 permit to be issued?

4 A. Correct.

5 Q. And when that 30 years is over, they, you
6 know, they file for another application. Does
7 another 30 years kick in as well of financial
8 assurance?

9 A. Yes.

10 Q. So the 30 years is rolling and perpetual?

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 (Exhibit A was marked for
15 identification.)

16 Q. (By Mr. Sievers) Ms. Cooperider, I handed
17 you what has been previously marked as Exhibit A.
18 Take a moment to look at that and let me know when
19 you've had a chance to look it over.

20 Do you recognize Exhibit A?

21 A. I do.

22 Q. What do you recognize Exhibit A to be?

23 A. A portion of the 35 Illinois Administrative
24 Code 724.

1 Q. It's 724.217. Is that right?

2 A. Correct.

3 Q. Do you understand that to be the complete
4 text of that section, 724.217?

5 A. I don't have the actual regulations in front
6 of me to verify it.

7 Q. Looking at it, do you have any reason to
8 believe it's incomplete?

9 A. No.

10 Q. Now, in reaching the September 25, 2023,
11 decision, this section of the Illinois Pollution
12 Control Board regulations was cited in support. Is
13 that right?

14 A. Yes.

15 Q. And this first portion of that, of Exhibit
16 A, is A, subpart 1. It says, "Post-closure care for
17 each hazardous waste management unit subject to the
18 requirements of Sections 724.217 through 724.220 must
19 begin after completion of closure of the unit and
20 continue for 30 years after that date and must
21 consist of at least the following." And then it has
22 subpart A and subpart B. Do you see that?

23 A. Yes.

24 Q. Is that the provision of this section that

1 you relied upon in reaching the decision on
2 September 25, 2023, that a rolling 30-year
3 post-closure care obligation including financial
4 assurance was required for this site?

5 A. We were relying on -- and this is -- I don't
6 have our documents in front of me. But I believe it
7 was (a) (2) (b) .

8 Q. You were relying upon --

9 A. And then -- and section -- and part B. I'm
10 sorry. Not part B. It's (a) (2) (b) .

11 Q. And that provision says -- the (a) (2) (b)
12 starts, "Extend the post-closure period applicable to
13 the hazardous waste management unit"?

14 A. Well, yes. I mean, that's not the complete,
15 because it starts with part two there.

16 Q. I think we might be looking at different
17 sections here.

18 A. Because you have to read part two first,
19 "Any time preceding."

20 Q. Why don't you mark the portion or highlight
21 the portions of that regulation that you relied upon?

22 A. (So complied with request.)

23 MR. GRANT: I'm going to object and ask her
24 not to do that. The reason is that she's under no

1 obligation to create an exhibit during a deposition.

2 MR. SIEVERS: Well, I'm asking her --

3 MR. GRANT: You can ask her verbally.

4 MR. SIEVERS: That's fine --

5 MR. GRANT: It's fairly short.

6 I've got a copy of this. Do you want me to
7 check so you're confident this is accurate or --
8 apology for interrupting.

9 THE DEPONENT: To make sure that this is
10 word-for-word the regulation?

11 MR. GRANT: Uh-huh. Is that what you're
12 questioning? Because I have no reason to doubt the
13 authenticity of what he's produced. We can
14 double-check it.

15 THE DEPONENT: I just wanted to make sure
16 that I was citing the correct regulation of what we
17 relied upon here.

18 MR. SIEVERS: Why don't we take a break and
19 you guys can take a look at that. As long as you're
20 not conferring about it, but if you can just take a
21 look -- take some time to look at that and give some
22 thought about what you relied upon. And we can come
23 back in five minutes or so. Is that okay?

24 MR. GRANT: Yeah, I'll try not no cheat. I

1 think she wants -- do you mind if she takes a look at
2 these other --

3 MR. SIEVERS: That's fine.

4 MR. GRANT: -- to find out --

5 THE DEPONENT: To make sure I'm referring to
6 the right reference.

7 Q. (By Mr. Sievers) Do you want to take a
8 five-minute break? Ten-minute break?

9 A. Like two minutes is fine.

10 MR. SIEVERS: Off the record.

11 (Discussion off the record.)

12 Q. (By Mr. Sievers) So we're looking at this
13 provision of the Pollution Control Board regulations,
14 35 Illinois Administrative Code 724.217.

15 Are there particular provisions of that
16 section that you relied upon in reaching your
17 September 25, 2023, decision?

18 A. Yes.

19 Q. What were those particular provisions that
20 you relied upon?

21 A. So we reference 724.217 (a)(1) and 724
22 (a)(2)(b).

23 Q. 724.217 (a)(1) says, "Post-closure care for
24 each hazardous waste management unit subject to" and

1 it continues on. Did I read that correctly?

2 A. Uh-huh.

3 Q. Yes, that's correct?

4 A. Yes, that's correct.

5 Q. And then 724.217 (a)(2)(b) begins, "Extend
6 the post-closure care period applicable to the
7 hazardous waste unit or facility." Did I read that
8 initial portion correctly?

9 A. Yes.

10 Q. Calling your attention to 724.217 (a)(2)(b).
11 That provision says, "Extend the post-closure care
12 period applicable to the hazardous waste management
13 unit or facility if the Board has found by an
14 adjusted standard issue pursuant to Section 28.1 of
15 the Act," and then it goes on.

16 To your knowledge, did the Board find by an
17 adjusted standard issue that extended period was
18 necessary to adequately protect human health and the
19 environment in this particular case?

20 A. Can you repeat the question?

21 Q. Sure.

22 Well, tell me why you think Section 724.217
23 (a)(2)(b) was one of the provisions you relied upon
24 in reaching your decision of September 25, 2023.

1 A. Because the post-closure care period needed
2 to be extended in this case due to site conditions.

3 Q. There was no finding by the Board of an
4 adjusted standard issue in this case, was there?

5 A. No.

6 Q. And the Board in this case has not found --
7 strike that.

8 The Board -- Illinois Pollution Control
9 Board has not found that BFI Davis Junction Phase 1
10 needed to have the post-closure period --
11 post-closure care period extended to adequately
12 protect human health and the environment to your
13 knowledge?

14 A. No.

15 Q. And 724.217 (a)(1) refers to a 30-year
16 period. Is that right?

17 A. Correct.

18 Q. Doesn't say "at least 30 years," correct?

19 A. Not in this particular provision.

20 Q. Is there another provision that does say "at
21 least 30 years"?

22 A. In most of the time, most of them -- and I
23 don't have it in front of me -- will say "at a
24 minimum" or something to that effect. Or "at least

1 30 years."

2 Q. Are you referring to Pollution Control Board
3 regulations?

4 A. Yes.

5 Q. I believe you testified that as to this
6 site, BFI Davis Junction Phase 1, nothing about the
7 risks at the site changed since the pre-existing
8 permit in 2018 and the decision of September 25,
9 2023, correct?

10 A. Correct.

11 Q. But you determined that the financial
12 assurance was insufficient from the 2018 permit,
13 correct?

14 A. Correct.

15 Q. What went into your evaluation that that was
16 insufficient?

17 A. It was mainly the evaluation of the risks at
18 the site.

19 Q. And what were the risks at the site that you
20 identified?

21 A. Well, this site was built -- started in the
22 '70s. And they took an unknown amount of hazardous
23 material. The bottom clay liner was just an in situ
24 clay liner. It doesn't have any of the protections

1 that are required today for the double liner. It
2 just has a clay liner and it was referred to as
3 an in situ, which means that I'm not even certain
4 that they compacted that clay liner. And today's
5 requirements, we require two geomembranes and a
6 compacted clay liner. So the protections in place
7 for the bottom liner are very inadequate.

8 Additionally, the leachate that is being
9 generated at the site is in the tens -- in the tens
10 of thousands of gallons every year, which means that
11 the -- you know, this site is by no means in a stable
12 situation. It is also still producing landfill gas.

13 And so all of those risks -- those are the
14 big risks combined that we have seen and didn't
15 see -- we don't see those -- there was no
16 demonstration by the applicant that those risks are
17 decreasing or going to near an end any time in the
18 near future.

19 Q. Now, you mentioned these three items: Clay
20 liner, leachate production, landfill gas production.

21 Those are not mentioned at all in the
22 September 25, 2023, decision, are they?

23 A. In the permit itself?

24 Q. In the letter as a basis for partially

1 denying the five modifications that were submitted.

2 A. I believe in the letter we reference the
3 administrative codes.

4 MR. GRANT: Give us a page number that
5 you're looking at.

6 THE DEPONENT: 132.

7 Q. (By Mr. Sievers) Nowhere in the
8 September 25, 2023, decision on page R000131 to
9 R000134 does that letter say that the partial denial
10 of the five current modifications is based at all on
11 behalf of any concern with leachate, landfill gas, or
12 clay liner, correct?

13 MR. GRANT: Object. That misrepresents the
14 document.

15 MR. SIEVERS: You can answer.

16 THE DEPONENT: We generally do not put the
17 technical evaluation in our letters. In our letters,
18 we will refer to the regulations that require us to
19 do the technical evaluation. So the technical
20 evaluation is part of the review.

21 (Exhibit B was marked for
22 identification.)

23 Q. (By Mr. Sievers) Ms. Cooperider, I handed
24 you what has been previously marked as Exhibit B.

1 Take a look at that and let me know if you recognize
2 that document.

3 A. Can I ask a clarifying question to Counsel?

4 MR. SIEVERS: No.

5 MR. GRANT: No.

6 He just asked if you recognize it.

7 THE DEPONENT: I do recognize it.

8 MR. GRANT: Is there -- can we go off the
9 record for a minute? Is that okay?

10 MR. SIEVERS: What's the issue?

11 MR. GRANT: I want you in the room. I don't
12 want to take her out in the hall.

13 MR. SIEVERS: I don't know what is unclear
14 about me asking, "Do you recognize this document?"

15 MR. GRANT: Well, she wanted to ask me a
16 question.

17 MR. SIEVERS: Right. She's the witness
18 testifying --

19 MR. GRANT: Did you answer that question?

20 MR. SIEVERS: She did.

21 THE DEPONENT: I can ask it on the record,
22 that's fine. If I can ask a question.

23 MR. GRANT: Sure. You can ask him a
24 question; not me.

1 THE DEPONENT: My understanding was that
2 this hearing was in reference to the September 20 --
3 the September document. And this is a follow-up one
4 that you said was going to be part of a following
5 deposition.

6 MR. SIEVERS: Yes.

7 But in light of your testimony, I'll have
8 that question to you about this document now.

9 THE DEPONENT: Okay. Does my question make
10 sense?

11 MR. SIEVERS: You can object all you want.
12 Go right ahead, if you wish.

13 MR. GRANT: No. This is why I wanted to
14 talk to you about what we're going to use as far as
15 documents for the other ones. "Do you recognize this
16 document" is fine. But if you're going to use the
17 document, now you're using a document from a
18 different case that's not relevant to what we're
19 doing. So you know, that's the problem.

20 MR. SIEVERS: Well, I think it is relevant.
21 And I'll demonstrate that here shortly.

22 Q. (By Mr. Sievers) So you do recognize this
23 document, correct?

24 A. Yes.

1 Q. And this also is a decision that you signed,
2 correct?

3 A. Yes.

4 Q. I'll call your attention to the third page
5 of this document, R00003.

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes. Sorry.

9 Q. Now, that sets forth detail about leachate,
10 nature of waste in the landfill, unit type and
11 design, landfill gas, and so forth.

12 So in this case, you did, in fact, actually
13 set forth quite a bit of detail as the reason for the
14 decision being made. Isn't that right?

15 A. Yes.

16 Q. Why is this decision different than the
17 September 25, 2023, decision where you think you can
18 only rely on citing to the administrative
19 regulations?

20 A. This decision was for the post-closure care
21 costs. So it was --

22 MR. GRANT: Which decision?

23 THE DEPONENT: The September 20, 2023,
24 decision was regarding the post-closure care cost

1 estimates, the financial assurance. And this letter
2 is regarding --

3 MR. GRANT: Exhibit B?

4 THE DEPONENT: Exhibit B is regarding the
5 extension of the post-closure care period, I believe.

6 MR. GRANT: I also note that we've got a
7 duplicate page. One and two appear to be the same.

8 THE DEPONENT: Maybe that's why I'm --

9 MR. GRANT: They're our numbers, so I'm
10 assuming we produced them that way. I was just
11 telling Scott.

12 THE DEPONENT: So this is requesting an
13 update to the post-closure care plan to provide for
14 the extension of the post-closure care period for
15 30 years. And in September, Exhibit -- this is not
16 an exhibit. The September document, it is regarding
17 the financial assurance.

18 Q. (By Mr. Sievers) It's not limited -- the
19 September 25, 2023, document is not limited just to
20 financial assurance though, is it?

21 A. Financial assurance is tied to the
22 post-closure care period, yes.

23 Q. Right.

24 But the September 25, 2023, decision is not

1 limited solely to financial assurance. Isn't that
2 right?

3 A. Financial assurance is tied to the amount of
4 post-closure care that is -- we foresee being
5 required at the facility.

6 Q. Yes.

7 And it's still not answering my question.

8 MR. SIEVERS: Could you read back the
9 question?

10 (Record read back by the
11 reporter.)

12 MR. GRANT: Do you want to take a look at
13 it?

14 Q. (By Mr. Sievers) I'll call your attention
15 to R000132.

16 A. Yes.

17 Q. Paragraph four takes issue with the font
18 size on a table that was submitted. Isn't that
19 right?

20 A. 132 you said?

21 Q. That's correct.

22 A. Yes, it does.

23 Q. And paragraph three concerns resurveying the
24 wells, right?

1 A. The cost associated with resurveying the
2 wells, yes.

3 Q. This decision approved permit language
4 revisions under the very first submittal on page one
5 of R000131?

6 A. Can you repeat the question?

7 Q. Well, R000131 is a decision based on five
8 different submittals, correct?

9 A. Correct.

10 Q. The first submittal is characterized by
11 Illinois EPA was for minor permit language revision?

12 A. Yes.

13 Q. So that doesn't have anything to do with the
14 cost of this -- of post-closure care or financial
15 assurance, correct?

16 A. I am not certain what the minor permit
17 language revisions were in that submittal, so I can't
18 accurately answer that question.

19 Q. I'll call your attention to page R000135,
20 paragraph four. Now, that permit petition -- in
21 addition to that permit petition is keeping a copy of
22 the operating record at a physical location in
23 Hanover Park, Illinois. Is that right?

24 A. Yes.

1 Q. So that has nothing to do with the
2 post-closure care cost and financial assurance,
3 correct?

4 A. Correct.

5 Q. So the September 25, 2023, decision is not
6 solely about post-closure care cost and financial
7 assurance, is it?

8 A. There are other minor revisions included in
9 this permit.

10 Q. I'm going to call your attention back to
11 pages 135 through 136; R000135, 136.

12 A. Yes.

13 Q. Those two pages reflect changes made in the
14 September 25, 2023, decision to the pre-existing
15 permit, correct?

16 A. Correct.

17 Q. And I believe you previously testified that
18 additional provisions are underlined. Is that right?

19 A. Correct.

20 Q. And eliminated or deleted provisions are
21 stricken through?

22 A. Correct.

23 Q. So provisions that are neither underlined
24 nor stricken through, those are provisions that

1 existed in the pre-existing permit prior to the
2 September 25, 2023, decision?

3 A. Yes.

4 Q. And they are unaltered by the September 25,
5 2023, decision?

6 A. Correct.

7 Q. On page R000136, call your attention to
8 paragraph 11. Subpart A has estimates of
9 post-closure care costs. Do you see that section?

10 A. Correct. Yes, I do.

11 Q. For post-closure inspections, the original
12 number is 7,421 and that's stricken through and the
13 addition is 8,143. Do you see that?

14 A. Yes.

15 Q. Do you understand that to mean that the
16 post-closure inspection cost from the 2018 permit has
17 been modified in the September 25, 2023, permit using
18 2022 dollars to be \$8,143?

19 A. Yes.

20 Q. And for groundwater monitoring, the number
21 there, 9,682, has been modified in the new permit to
22 10,636. Is that right?

23 A. Yes.

24 Q. And the leachate management number also has

1 been modified from its pre-existing number to the
2 2022 dollar number?

3 A. Yes.

4 Q. The total annual costs here are --
5 previously were 78,481 and now have been modified to
6 be 85,830. Is that right?

7 A. Correct.

8 Q. Would you agree that those numbers are
9 roughly a 10 percent increase of the 2018 numbers?

10 A. Roughly.

11 Q. And the one-time cost for well abandonment
12 that originally was 12,340 and now in this permit is
13 now 13,542. Do you see that?

14 A. Yep.

15 Q. So these are all changes to the 2018 permit
16 that are made in this 2023 permit. Is that right?

17 A. Yes.

18 Q. And so the changes in the post-closure care
19 costs on an annual basis here, from the 2018 numbers,
20 are roughly about 10 percent, that's correct?

21 A. Uh-huh, yes.

22 Q. At the bottom of that page, it has total
23 post-closure care cost estimate. And the total
24 post-closure care cost estimate has gone from the

1 2018 number of 484,460 to 2.5 -- 2,589,796. Did I
2 read that correctly?

3 A. Yes.

4 Q. So other than the 10 percent roughly annual
5 increase in post-closure costs that are reflected in
6 11(a)(1), the difference there is based on the
7 post-closure care period no longer being calculated
8 by a six-year period, but being calculated by a
9 30-year period. Is that correct?

10 A. Correct.

11 Q. When looking at those post-closure
12 inspections, groundwater monitoring, leachate
13 management costs on R000136, does that roughly 10
14 percent increase from the 2018 permit indicate --
15 strike that.

16 Do you understand that those numbers are,
17 however, revised based upon an estimate of inflation
18 or was there some other factor that was used in
19 determining the new 2023 numbers versus the 2018
20 numbers?

21 A. These numbers, I don't have the permit
22 application in front of me. They would be -- but
23 they would be -- usually our post-closure care cost
24 estimate increases are based on inflation. And they

1 are based on inflation and proposed -- and proposed
2 by the facility. So these were likely proposed by
3 the facility as accounting for inflation to the
4 current 2022 dollars.

5 Q. If you had reason to not agree with those
6 numbers that were proposed by the facility, would you
7 have the ability in evaluating a permit modification
8 request to reject those numbers?

9 A. Yes.

10 Q. And here, if those were the numbers that
11 were proposed by BFI Davis Junction, the agency did
12 not take issue with, would have just agreed with
13 them. Is that correct on that page?

14 MR. GRANT: Objection. Calls for
15 speculation.

16 You can answer the question if you
17 understand it.

18 THE DEPONENT: Can you repeat the question?

19 MR. SIEVERS: I'll rephrase it.

20 MR. GRANT: We don't know if that's what was
21 proposed, you know. That's why.

22 Q. (By Mr. Sievers) Am I correct in
23 understanding that in the September 25, 2023,
24 decision, Illinois EPA determined that a prorating

1 method of calculating financial assurance was no
2 longer determined to be correct?

3 A. Yes.

4 Q. And that prorating had been based upon how
5 many years were left on an existing permit?

6 A. Yes.

7 Q. And as a result of the September 25, 2023,
8 decision, the determination had been made that a
9 30-year post-closure care period and financial
10 obligation were required?

11 A. Yes.

12 Q. And that is rolling and perpetual, that
13 30-year period?

14 A. Yes.

15 Q. Has that application -- strike that.

16 Has the application of the 30-year rolling
17 and perpetual post-closure care period including
18 financial assurance been applied to other sites
19 beyond BFI Davis Junction?

20 A. Yes.

21 Q. Which other sites do you recall?

22 A. I don't recall off the top of my head.

23 Q. Do you know how many other sites?

24 A. Not off the top of my head.

1 Q. Has it been more than one?

2 A. I believe so.

3 Q. As we've seen on this on page R000132,
4 paragraph one, it speaks about the Illinois EPA
5 having reevaluated the requirements for post-closure
6 care cost estimates and financial assurance.

7 Prior to this reevaluation, what was
8 Illinois EPA's process for evaluating post-closure
9 care cost estimates and financial assurance
10 requirements?

11 A. I was not part of the 2018 prior evaluation
12 for this. So I can't speak to the evaluation that
13 was done in 2018.

14 Q. The September 25, 2023, decision, was that
15 your very first decision interpreting post-closure
16 care and financial assurance?

17 A. I'm not sure in what order we had permits
18 issued.

19 Q. Well, prior to this decision --

20 A. For BFI, yes.

21 Q. I'm going to ask you specifically.

22 Any time prior to September 25, 2023, with
23 any site whatsoever, had you made a post-closure cost
24 estimate that included financial assurance?

1 MR. GRANT: I'm going to ask -- either
2 object or ask you to clarify.

3 Are you speaking specifically of hazardous
4 waste management units?

5 MR. SIEVERS: I'll clarify that.

6 Q. (By Mr. Sievers) Prior to September 25,
7 2023, had you made any determination on post-closure
8 cost estimates including financial assurance on a
9 hazardous waste management unit facility?

10 A. Yes.

11 Q. And prior to applying this rolling 30-year
12 post-closure care period, what was the methodology
13 used to determine post-closure care and financial
14 assurance in those instances?

15 A. Prior to when I became section manager, the
16 RCRA evaluation would be done based on yearly
17 inflation and period of time left in the post-closure
18 care period.

19 Q. Did you apply that methodology when you were
20 not the permit section manager, but you had a
21 position --

22 A. Yes.

23 Q. -- within -- that's correct you did?

24 A. But I worked in the non-hazardous solid

1 waste unit.

2 Q. So you did not work in the hazardous waste
3 unit section?

4 A. Correct.

5 Q. And remind me again who your predecessor was
6 for permit section manager.

7 A. Ken Smith.

8 Q. When Ken Smith left that position, did he
9 retire?

10 A. Yes.

11 Q. And that prorating methodology, was that the
12 methodology used when Ken Smith was permit section
13 manager?

14 A. Yes.

15 Q. Are you aware of any changes at BFI Davis
16 Junction Phase 1 since the issuance by the agency of
17 the 2018 permit that factored into Illinois EPA's
18 September 25, 2023, decision?

19 A. The change -- my review was based on the
20 review that Jacob Nutt and Takako, Paula Stine, and
21 Joshua Rhoades, their technical review. So I
22 reviewed their review. So I did not review the
23 applications themselves.

24 Q. But my question to you was: Were you aware

1 of any changes at the site at BFI Davis Junction
2 Phase 1 since the 2018 permit was issued that
3 factored into the agency's September 25, 2023,
4 decision?

5 A. No.

6 Q. And you relied upon review notes of Mr. Nutt
7 and Ms. Stine in providing -- in evaluating these --
8 this permit modification request?

9 A. Yes. Their notes and discussion.

10 Q. Are you aware of any reports of problems at
11 BFI Davis Junction Phase 1 since it received the 2018
12 permit, but prior to the September 25, 2023, permit
13 decision?

14 A. Well, I know they are still generating an
15 excessive amount of leachate. I know they are still
16 producing landfill gas. And as far as the
17 groundwater testing, I don't have the specifics in
18 front of me for that period of time. I know
19 currently there is one for dioxane exceedance.

20 Q. You don't have any reason to believe that's
21 changed though since the condition of the site when
22 the permit was issued in 2018, correct?

23 A. I do not know.

24 Q. The agency never petitioned the Pollution

1 Control Board for an adjusted standard for this site,
2 BFI Davis Junction Phase 1, correct?

3 A. Petitioned them for an adjusted standard for
4 what?

5 Q. For anything for this particular site.

6 A. Did the agency petition?

7 Q. Right.

8 A. No.

9 Q. So at no point did Illinois EPA petition the
10 Pollution Control Board for an adjusted standard
11 concerning BFI Davis Junction Phase 1, correct?

12 A. BFI petitioned for their -- to exclude their
13 leachate as hazardous waste.

14 Q. During the time between 2018 and 2025? I'm
15 sorry. 2023?

16 A. No. They're -- no.

17 Q. In the period from 2018 to 2023, Illinois
18 EPA did not petition the Pollution Control Board for
19 an adjusted standard for this particular site of any
20 sort, correct?

21 A. No.

22 Q. When we spoke about leachate, would that
23 have been something that Paula Stine would have
24 reported to you, the condition of the leachate, in

1 her review notes?

2 A. I believe it's in Jacob's. I don't have
3 Paula's in front of me. But I know that as far as --
4 that it was an evaluation that Jacob does have in his
5 notes. I don't have Paula's in front of me.

6 Q. Is it typically the geologist's job to
7 evaluate leachate or is it the engineer's?

8 A. Well, both.

9 Q. Leachate is not necessarily construed as
10 only a groundwater issue. Would that be correct?

11 A. Correct.

12 Q. So calling your attention back to page
13 R000132, paragraph one. When it said that Illinois
14 EPA has reevaluated the requirements for post-closure
15 care cost estimates and financial assurance, I
16 believe I understood your testimony to be that it
17 reevaluated it upon receipt or evaluation of the
18 permit modification request in this specific case.
19 Is that right?

20 A. Yes. The applications in this case would
21 have caused us to evaluate the adequacy of the cost
22 estimate.

23 Q. There wasn't an agency-wide determination or
24 even a bureau or section-wide determination about how

1 to construe post-closure care cost estimates and
2 financial assurance that occurred prior to receiving
3 and evaluating these permit modification requests?

4 MR. GRANT: Can you split that up or restate
5 it, please?

6 Q. (By Mr. Sievers) What I'm trying to get at
7 is: Was there at any point a system-wide -- strike
8 that.

9 When Illinois EPA reevaluated these
10 requirements, had it done so at any point prior to
11 this determination in BFI Davis Junction Phase 1?

12 A. For BFI, no.

13 Q. For anybody else?

14 A. We evaluate every application as it comes in
15 for that individual site.

16 Q. So prior to September 25, 2023, was there a
17 time where the permit section determined that the
18 prorated method of calculating post-closure care cost
19 estimates and financial assurance was no longer
20 correct?

21 A. I don't recall every application that we
22 discussed before this one came in.

23 Q. You don't recall whether that determination
24 had been made prior to this application?

1 A. For any other site that we have?

2 Q. Right.

3 A. No, I don't recall.

4 Q. I mean, some of these rules and regulations,
5 they apply to every site, correct?

6 A. Exactly, yes.

7 Q. And so when you're working with subordinates
8 about how to analyze or evaluate a permit
9 modification, there are things -- there's
10 methodologies you use that you apply to each and
11 every one, correct?

12 A. Correct.

13 Q. In this case, you looked at the means for
14 determining post-closure care costs and financial
15 assurance and determined that the pro rata way of
16 doing it before was incorrect?

17 A. Correct.

18 Q. And so now the thought was now we need to
19 have this rolling 30-year post-closure care
20 obligation?

21 A. Correct.

22 Q. That resulted in a substantial change in the
23 amount of financial assurance that was required in
24 this case, correct?

1 A. Correct.

2 Q. Do you recall whether that kind of
3 determination had been made to another site prior to
4 this decision at all?

5 A. I don't recall.

6 Q. That's fair.

7 I believe you testified that financial
8 assurance -- and I'm paraphrasing now. But the
9 financial assurance is there to provide the financial
10 means if something goes wrong at the landfill either
11 during or after post-closure care. Would that be
12 correct?

13 A. Not after post-closure care. It's for if
14 something -- if there's a problem during post-closure
15 care and the agency has to take on the operation and
16 maintenance at the facility.

17 Q. There's no -- is there any financial
18 assurance obligation after post-closure care has been
19 completed?

20 A. No. Not to the agency.

21 Q. And so if post-closure care was completed at
22 a landfill and a problem occurred afterwards,
23 leachate leaked out, cap was broken, waste got out,
24 got into groundwater, and this is after post-closure

1 care has been completed, the agency -- there's no
2 financial assurance obligation for the previous
3 permit holder to do anything about that. Is that
4 right?

5 A. The financial -- yeah, the previous permit
6 holder would be responsible. That's not a permit
7 section thing. That would be a field office in our
8 DLC. So it's not -- it wouldn't involve the permit.

9 Q. But when post-closure care is completed,
10 there's no financial assurance obligation?

11 A. To the agency.

12 MR. GRANT: I'm going to object because it
13 calls for legal conclusion, because I can't tell you
14 either. I know that future action enforcement or
15 something like that is a legal question.

16 THE DEPONENT: There's no permit obligation.

17 MR. GRANT: Well --

18 Q. (By Mr. Sievers) So once post-closure care
19 is completed, a facility does not need to submit any
20 requests for a permit -- there's no permit needed at
21 that point for the facility?

22 A. Correct.

23 Q. So because there's no permit that's
24 required, there's no financial assurance being

1 imposed through a permit?

2 A. Correct.

3 Q. But one way to keep financial assurance
4 obligation going perpetually is to -- strike that.

5 Was USEPA consulted by anybody at Illinois
6 EPA in reaching its September 25, 2023, decision?

7 A. We had discussions with the USEPA in a
8 general sense about things that were going on. We
9 have quarterly discussions with the USEPA and we say
10 things that are going on. It's usually a regional.
11 So Region 5. And so we have discussions where we
12 talk about things going on in the -- in our -- in
13 Illinois and, you know, Ohio, Indiana, everyone
14 discusses. So it was talked about as part of an open
15 discussion. And you know, this is -- has anyone else
16 run into this problem? And this is how we're
17 proceeding with it. So in kind of just an open
18 discussion, yes.

19 Q. So the problem posed by this facility and
20 this permit modification request was discussed on a
21 call with USEPA?

22 A. The general topic. I don't know that we
23 specifically said, oh -- I mean, we weren't talking
24 oh, we have this particular site. We were talking

1 about the issue as a general issue of financial
2 assurance and post-closure care with RCRA hazardous
3 waste facilities that have hazardous waste that are
4 in place and will be left in place in perpetuity, and
5 how other states were dealing with that.

6 Q. Do you recall what USEPA said about that
7 problem?

8 A. USEPA was -- they didn't say anything
9 specifically. They were just interested in how we
10 were looking at it and how the other states were
11 looking at it.

12 Q. Do you know of any other states that were on
13 that call that have either extremely similar or
14 identical regulations and statutes that apply to
15 post-closure care and financial assurance?

16 A. I don't off the top of my head.

17 Q. Are you aware of situations where a
18 hazardous waste landfill during post-closure care had
19 problems beyond BFI Davis Junction that were not
20 covered by financial assurance?

21 A. I don't understand the question.

22 Q. Are you aware of any situation in which a
23 hazardous waste landfill that was in post-closure had
24 a problem arise and that problem was such that

1 financial assurance could not address it?

2 A. Are you referring to in the permit or
3 whether they had a physical activity at the site?

4 Q. A physical activity at the site.

5 A. Whether -- oh.

6 Can you clarify the question?

7 Q. I think the idea behind financial assurance
8 is to have the finances available if you actually
9 have an environmental problem at a closed landfill.
10 That's my understanding at least. And so if there is
11 a problem at a closed landfill, including a hazardous
12 waste landfill, are there situations where the
13 financial assurance has not been sufficient to
14 address that problem? Are you aware of any
15 situations like that?

16 A. We have had situations in which we have had
17 to -- in which we have had to take over the operation
18 and maintenance and there is not adequate financial
19 assurance, yes.

20 MR. SIEVERS: If we can have a couple of
21 minutes. I might be at the end here. Let me just
22 review things. Off the record.

23 (Break taken from 11:01 a.m.

24 to 11:06 a.m.)

1 Q. (By Mr. Sievers) Ms. Cooperider, we spoke
2 earlier about Mr. Nutt's reviewer's notes that spoke
3 about internal discussion with lead workers and
4 co-workers in the RCRA unit determining that
5 prorating a post-closure care which had been
6 historically included in RCRA permits -- excuse me --
7 was not the correct manner in which to require cost
8 estimates of post-closure care.

9 I think you identified some of the
10 individuals who were part of those internal
11 discussions. Do you recall whether those discussions
12 were in person or by phone? By electronic
13 correspondence? Or all of the above?

14 A. In person.

15 Q. So you met at some point?

16 A. Uh-huh.

17 Q. Was there more than one meeting?

18 A. We had -- I mean, yes.

19 Q. And would that have been specific as to
20 these permit modification requests that are on the
21 September 25, 2023, decision?

22 A. Yes.

23 Q. Multiple meetings. But would it be fair to
24 say you're not sure how many?

1 A. Yes.

2 Q. And correct me if I'm wrong, but I think you
3 said that was with Paula Stine, with Jacob Nutt, with
4 -- can you refresh my recollection what other people
5 were -- that were part of the internal discussions?

6 A. Joshua Rhoades, Takako Halteman, Rob Watson
7 was probably part of some of them, and we had legal
8 counsel at some of them.

9 Q. Do you recall any one of those people
10 disagreeing with the conclusion that prorating was
11 not the correct manner of calculating post-closure
12 care and financial assurance?

13 A. Can you just repeat it so I know whether yes
14 or no is my right answer?

15 Q. Fair enough.

16 During those discussions, did any one person
17 express their view that prorating was the correct way
18 to calculate post-closure care and financial
19 assurance?

20 A. No. It was unanimously agreed that it was
21 not the correct way of interpreting.

22 Q. Had any of those people that were part of
23 those discussions had experience actually reaching a
24 decision on a permit modification request using the

1 prorating method of calculating post-closure care and
2 financial assurance?

3 A. I'm not sure.

4 MR. SIEVERS: We've come to the conclusion
5 of the deposition.

6 Unless, Chris, do you have any follow-up
7 questions?

8 MR. GRANT: Yeah, I have a few. Sorry.

9 THE DEPONENT: That's okay.

10 Q. (By Mr. Sievers) Let me just say. Are you
11 aware of any answers you've given today to my
12 questions that you think may have been incorrect?

13 A. I don't -- no, I don't think so.

14 Q. Are you aware of any answers you gave me
15 today to my questions that were incomplete?

16 A. I don't think so.

17 Q. At this point, do you have any corrections
18 or additions to your answers?

19 A. No.

20 MR. SIEVERS: All right. I have nothing
21 further.

22 EXAMINATION

23 BY MR. GRANT:

24 Q. Ms. Cooperider, I'm Chris Grant with the

1 Attorney General's Office. I guess the first
2 question I'll ask is: Did you fully and truthfully
3 answer all the questions that were asked by
4 Mr. Sievers?

5 A. Uh-huh.

6 Q. I'm going to ask you to -- I'm going to see
7 if I can get Exhibit A.

8 A. Yes.

9 Q. Since I objected to that one, I'm going to
10 have you look at this one.

11 A. Okay.

12 Q. And Exhibit A, if you can look at the second
13 page.

14 A. Yes.

15 Q. We've talked about (a)(1), (2), (a) and (b).
16 If you can look at section C. Do you find that there
17 it says post-closure care -- I think I messed it up.
18 I made notes on that. If you want to use that.
19 (Document tendered.)

20 Do you see where it says post-closure care
21 of the property in which hazardous wastes remain
22 after partial or final closure must never be allowed
23 to disturb the integrity of the final cover, liners,
24 or other components to the containment system. Do

1 you see that?

2 A. Yes.

3 Q. Based on your knowledge of the liner system
4 at the BFI Davis Junction landfill, do you think that
5 there's a potential threat to groundwater in the
6 area?

7 A. The bottom liner or the top liner?

8 Q. The bottom liner.

9 A. The bottom liner, yes.

10 Q. And if you can look down to (c)(2). Let me
11 read it to make it a little more clear. Post-closure
12 care, etc. Reading, "Unless the agency finds, by way
13 of permit modification." And looking down two, "It
14 is necessary to reduce threat to human health or the
15 environment." Do you see that?

16 A. Yes.

17 Q. Has the agency taken action by way of a
18 permit modification for this facility?

19 A. Yes.

20 Q. And was that done because it was -- because,
21 in your belief, it was necessary to reduce a threat
22 to human health or the environment?

23 A. Yes.

24 (Exhibit C was marked for

1 identification.)

2 Q. (By Mr. Grant) I've got what I'm going to
3 have marked as Exhibit C. Exhibit C is 35 Illinois
4 Administrative Code 7 -- well, it's got a couple of
5 regulations, but specifically 724.410. Do you see
6 that?

7 A. Yes.

8 Q. Is it titled, "Closure and Post-Closure
9 Care"?

10 A. Yes.

11 Q. If you can look down to the second page to
12 -- this is 724.410(b)(2). Starting with B. After
13 final closure, the owner or operator must comply with
14 all post-closure requirements contained in 217
15 through 220, etc. The owner or the operator must do
16 the following. And then under two, continue to
17 operate the leachate collection and removal system
18 until leachate is no longer detected. Do you see
19 that?

20 A. Yes.

21 Q. To your knowledge, is leachate still being
22 generated at the BFI Davis Junction landfill?

23 A. Yes.

24 Q. Would you consider the pumping of leachate

1 to be a post-closure task?

2 A. Yes.

3 Q. And based on the continued generation of
4 leachate at the facility, do you believe that they
5 still have post-closure responsibilities?

6 A. Yes.

7 MR. GRANT: That's all I really had.

8 MR. SIEVERS: I just have a couple of
9 follow-ups from that.

10 THE DEPONENT: Uh-huh.

11 EXAMINATION

12 BY MR. SIEVERS:

13 Q. So looking back to Exhibit A, Mr. Grant
14 called your attention to the second page of that.
15 And it was subsection C, subpart two. Where it says
16 it is necessary to reduce a threat to human health or
17 the environment. Do you see that provision?

18 A. Yes.

19 Q. Does the September 25, 2023, decision at any
20 point say that the partial denial or the modification
21 of the submittal by BFI Davis Junction was necessary
22 to reduce a threat to human health and the
23 environment?

24 A. I would have to reread the whole thing to

1 see if those exact words were in there. But they do
2 refer to regulations. And that is the ultimate
3 mission of the agency.

4 Q. And does the September 25, 2023, decision at
5 any point say that the reason for the application of
6 a rolling 30-year post-closure obligation including
7 financial assurance had anything to do with leachate?

8 A. I would have to reread the permit that was
9 issued.

10 Q. The letter at R000131 through R000134,
11 doesn't mention anything about leachate, does it?

12 A. Do you want me to read it right now?

13 Q. Sure.

14 A. The letter does not mention leachate. I
15 think I stated before that the technical evaluation
16 usually is not part of our permit letter.

17 Q. And the changes in the permit that are set
18 forth at R000135, that also doesn't show any changes
19 in leachate -- or any concern about leachate, does
20 it?

21 A. No.

22 Q. And that also doesn't reflect any concern
23 about -- strike that.

24 It doesn't contain any language saying that

1 any of these modifications to the 2018 permit were
2 necessary to reduce threat to human health and the
3 environment, correct?

4 A. This isn't -- this is just an excerpt and
5 not a full copy. I mean, in the permit itself, the
6 whole letter that was issued, you're just referring
7 to those couple of pages?

8 Q. I'm referring to those couple of pages right
9 now, yes.

10 A. Because this entire application -- this
11 entire document is the whole permit. So it is
12 referred to -- those issues are referred to
13 throughout the permit. But in these first couple of
14 pages that you are referring to, it does not.

15 Q. The changes from the 2018 permit in the
16 September 25, 2023, permit are reflected in R000135
17 and R000136, correct?

18 A. Correct.

19 Q. Those changes say nothing about the need to
20 reduce a threat to human health or the environment?

21 A. These changes specifically addressed what
22 was asked in those permit modifications.

23 Q. Right.

24 And those permit modification requests were

1 not granted in full, correct?

2 A. Right.

3 Q. They were partially approved and partially
4 denied?

5 A. Yes. They were partially approved.

6 MR. SIEVERS: I have nothing further.

7 MR. GRANT: Just a couple.

8 EXAMINATION

9 BY MR. GRANT:

10 Q. Looking at R10032, which is the permit
11 letter. It's the second page of the permit letter.
12 Where there's four points that are made in the middle
13 letter. Do you see that?

14 A. Yes.

15 Q. In the first point, toward the end of the
16 paragraph, it says Illinois EPA has reevaluated
17 requirements under 35 Illinois Administrative Code
18 Part 724. Do you see that?

19 A. 217, yes.

20 Q. And Exhibit A, if you can look at that.

21 A. Yes.

22 Q. That's 35 Illinois Administrative Code
23 724.217. And my examination specifically asked about
24 subpart C.

1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. Is that part of 724?

5 A. 217, yes.

6 Q. And I'll ask the same question with regard
7 to 35 Illinois Administrative Code 724.410 regarding
8 closure and post-closure care. Is that also part of
9 724?

10 A. Yes.

11 MR. GRANT: That's all.

12 MR. SIEVERS: Nothing further.

13 COURT REPORTER: Signature?

14 MR. GRANT: Can we go off the record?

15 (Discussion off the record.)

16 (FURTHER DEPONENT SAITH NAUGHT.)

17 (Time concluded: 11:20 a.m.)

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