

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

Please take notice that on July 24, 2024, I filed Respondents Responses to Frist Set of Petitioner’s Interrogatories and Request for Production of Documents, in the above referenced case with the Clerk of the Illinois Pollution Control Board via the “COOL” System, copies of which are attached and served upon you.

Respectfully Submitted,
BY: /s/ CHRISTOPHER GRANT
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., #1800
Chicago, Illinois 60602
(312) 814-5388
Christopher.grant@ilag.gov

Certificate of Service

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, July 24, 2024, I caused to be served on the individuals listed below, by electronic mail, a true and correct copies of Respondent's Responses to Petitioner's First Set of Interrogatories, Request for Production of Documents, and Notice of Filing. Production of Documents of IEPA 000001 -000977 was sent via file transfer to Petitioner.

/s/ CHRISTOPHER GRANT

Mr. Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
Brad.Halloran@illinois.gov

Mr. Don Brown
Clerk of the Pollution Control Board
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
Don.Brown@illinois.gov

Mr. Scott B. Sievers
ssievers@bhslaw.com
Counsel for Petitioner

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by KWAME RAOUL, Attorney General of the State of Illinois, and hereby submits its responses to Petitioner's First Set of Interrogatories, as follows:

1, *State the full name and title of each current or former Illinois EPA employee who participated in Illinois EPA's Final Decision.*

Response:

- Jacob Nutt, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Kelly Huser, Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Takako Halteman, P.E., RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit
- Jacqueline M. Cooperider, P.E., Deputy Chief of Bureau of Land; Bureau of Land Permit Section Manager

2. *For each individual identified in your answer to Interrogatory No. 1 above, describe in detail the manner by which the individual participated in Illinois EPA's Final Decision.*

Response:

- Jacob Nutt
 - o Drafted permit modification titled - B142R2M1-B142R2M2-B142R2M4-B142R2M6-B142R2M7
 - o Corrected any and all comments submitted by Takako and Jacki through the permit modification process.
- Kelly Huser
 - o Corrected any and all comments submitted by Takako Halteman and Jacki Cooperider through the permit modification process.
- Takako Halteman, P.E.
 - o Training of Jacob Nutt in how to draft RCRA permits.
 - o Review of permit modification throughout drafting process.
 - o Submitting comments for corrections.
 - o Approval of permit modification before final managerial approval.
- Jacqueline M. Cooperider, P.E.
 - o Review of permit modification titled B142R2M1-B142R2M2-B142R2M4-B142R2M6-B142R2M7
 - o Submitting comments for corrections.
 - o Final signature and issuance of permit modification B142R2M1-B142R2M2-B142R2M4-B142R2M6-B142R2M7

3. *State the full name and title of each person consulted by any person identified in your answer to Interrogatory No. 1 above in the course of participating in Illinois EPA's Final Decision.*

Response:

- Jacob Nutt, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Kelly Huser, Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Takako Halteman P.E., RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit.
- Jacqueline M. Cooperider P.E., Deputy Director of Bureau of Land; Bureau of Land Permit Section Manager

4. *Illinois EPA's Final Decision states, in pertinent part, "The Illinois EPA has reevaluated the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 and has determined the post-closure care estimate must reflect thirty (30) years of post-closure care as required by 35 Ill. Adm. Code 724.217." (See*

Final Decision at 2 ¶ 1). State the full name and title of each current or former Illinois EPA employee who participated in this reevaluation of the requirements for post-closure care estimates and financial assurance referenced in Illinois EPA's Final Decision.

Illinois EPA Response:

- Rob Watson P.E., Former RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit
- Takako Halteman, P.E., RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit
- Jacqueline M. Cooperider, P.E., Deputy Chief of Bureau of Land; Bureau of Land Permit Section Manager

5. *Illinois EPA's Final Decision states, in pertinent part, "The Illinois EPA has reevaluated the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 and has determined the post-closure care estimate must reflect thirty (30) years of post-closure care as required by 35 Ill. Adm. Code 724.217." (See Final Decision at 2 ¶ 1). Describe in detail why Illinois EPA reevaluated the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 as referenced in its Final Decision.*

Response:

The Illinois Environmental Protection Act (Act), states in Section 2(b) that the purpose of the Act is, "...to restore, protect, and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them." The Illinois EPA has an obligation and responsibility to evaluate, when necessary, existing conditions of a RCRA permit to ensure that all requirements in the permit are in compliance with the Act, 35 Illinois Administrative Code (35 Ill. Adm. Code) Subtitle G regulations, and any current guidance provided by USEPA to protect human health and the environment. This responsibility includes ensuring that any future costs to the State of Illinois (State) and the citizens of the State, is minimized by requiring sufficient funds be available to cover remedial costs at each RCRA hazardous waste management facility. The Illinois EPA is obligated to include conditions in a RCRA Permit necessary to achieve such compliance in accordance with 35 Ill. Adm. Code 703.241(a).

Historically, during the post-closure care period, the Illinois EPA has accepted the facility's proposal to reduce financial assurance liability based on the number of years of post-closure care that has been completed. However, this reduction did not take into

consideration the established long term environmental threats at facilities with hazardous waste remaining on site. The financial risk to the Illinois EPA and citizens of Illinois, should the Illinois EPA have to unexpectedly assume operation of the post-closure care at the facility, had not been appropriately accounted for. The Illinois EPA has evaluated the risk to the State and citizens of Illinois, based on current science, USEPA guidance, and in concurrence with requirements for post-closure care, cost estimates, and financial assurance for hazardous waste management unit(s) under 35 Ill. Adm. Code Part 724, and has determined that a rolling 30-year post-closure care cost estimate must be maintained by the facility, as required by 35 IAC 724.217(a)(1) and in 35 IAC 724.245.

6. *State the full name and title of each current or former Illinois EPA employee with personal knowledge of the “previous requirements” referenced in the statement, “Illinois EPA’s previous requirements for the number of years for the post-closure care cost estimate was 30 years OR prorated with a number of years completed with a minimum of 10-year” set forth at R. 000223 of the Record on Appeal.*

Response:

- Jacob Nutt, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
 - Kelly Huser, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
 - Rob Watson P.E., former RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit.
 - Takako Halteman, P.E., RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit.
 - Jacqueline M. Cooperider, P.E., Deputy Chief of Bureau of Land; Bureau of Land Permit Section Manager.
7. *State the full name and title of each current or former Illinois EPA employee who participated in the “Internal discussions” referenced in the statement, “Internal discussion with lead workers and co-workers in the RCRA unit determined that the ‘prorating’ of post-closure care which has been historically included in the RCRA permits is not the correct manner in which to require cost estimates of post closure care” set forth in Paragraph Two (2) of IEPA Reviewer’s Comments set forth at R. 000214 of the Record on Appeal.*

Response:

- Jacob Nutt, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Kelly Huser, Environmental Protection Engineer III, Bureau of Land/Permit Section/RCRA Unit.
- Rob Watson P.E., Former RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit.
- Takako Halteman, P.E., RCRA Unit Manager, Bureau of Land/Permit Section/RCRA Unit.
- Jacqueline M. Cooperider, P.E., Deputy Chief of Bureau of Land; Bureau of Land Permit Section Manager.

8. *Please provide the identities and addresses of your witnesses who will testify at trial and provide the following information:*

(a) Illinois Supreme Court Rule 213(f)(1) lay witnesses. Identify the subjects on which the witness will testify;

(b) Illinois Supreme Court Rule 213(f)(2) independent expert witnesses. Identify the subjects on which the witness will testify and the opinions the party expects to elicit;

(c) Illinois Supreme Court Rule 213(f)(3) controlled expert witnesses. Identify:

i) the subject matter on which the witness will testify;

ii) the conclusions and opinions of the witness and the bases thereof;

iii) the qualifications of the witness, and

(iv) any reports prepared by the witness about the case.

Response to All

As of the date of responding to these interrogatories, Respondent has not decided which witnesses it will call as 213(f)(1), 213(f)(2), or 213(f)(3) witnesses. Complainant notes that as of the date of responding to these interrogatories, no hearing is yet scheduled or contemplated. However, Respondent will supplement the answer to this Interrogatory as required to fully respond.

9. For each individual in any of your answers to Interrogatories Nos. 1,3,4,6,7, and 8 above who is a former Illinois EPA employee, state that individuals last known residential address, including street, city and state.

Response

Mr. Rob Watson, P.E
987 N. Koke Mill Road
Springfield Illinois 62711

NOTE: Responses to Interrogatories 8 and 9 were supplied by the undersigned.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

By: s/ Christopher Grant
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-5388
Christopher.Grant@ilag.gov

DATE: July 24, 2024

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE TO PETITIONER'S REQUEST FOR PRODUCTION TO ILLINOIS EPA**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by KWAME RAOUL, Attorney General of the State of Illinois, and hereby submits its responses to Petitioner's Request for Production to Illinois EPA, as follows:

General Objections

Respondent objects to Petitioner's Request to the extent that it seeks production of documents which are not specifically relevant to the September 25, 2023 Final Decision, as further defined in Petitioner's discovery request. Respondent further objects to requests to the extent that they are overbroad or overly burdensome.

Documents Produced

Respondent refers Petitioner to the Record, as supplemented in accordance with the Hearin Officer's direction, for documents responsive to the majority of Petitioner's requests.

Emails Produced

PDF's of emails are being produced in accordance with Petitioner's request. The email search was for the period April 27, 2023, when the permit application was received, through

September 24, 2023, the date of the final decision. Search terms used for the emails included BFI, BFI Ogle County, BFI Davis Junction Landfill, Site number 141820001, the permit number and included employees and supervisors of Illinois EPA, Bureau of Land, Permit Section, and the appropriate attorneys from the Division of Legal Counsel.

Texts

Illinois EPA Bureau of Land, Permit Section, RCRA Unit, does not communicate using text messages, and the personnel do not have work cell phones. Accordingly, no texts are available or produced.

Privilege Log

The search using the above referenced parameters did not result in the withholding of any privileged documents.

REQUESTED DOCUMENTS

1. *A copy of each record documenting the “previous requirements” referenced in the statement “Illinois EPA’s previous requirements for the number of years for the post-closure care cost estimate was 30 years OR prorated with a number of years completed with a minimum of 10-year” set forth at R 000223 of the Record on Appeal.*

Response:

Respondent objects on the basis of relevance, and notes that prior Permits issued to Petitioner are not relevant to the Final Decision in this matter. Further responding, See: Record as supplemented, and Response to Petitioner’s Interrogatory No. 5

2. *A copy of Illinois EPA’s proposed decision concerning the City of North Chicago site referenced at R 000220 of the Record on Appeal.*

Response:

Respondent objects on the basis of relevance, and notes that permits issued to the City of North Chicago have no relevance to the Final Decision in this Matter. Further responding, per the Hearing Officer’s Order, Respondent supplemented the Record to Include these documents, at R 001646-001653, R 001656.

3. *A copy of Illinois EPA's proposed decision concerning the RCH Newco site referenced at R. 000229 of the Record on Appeal.*

Response:

Respondent objects on the basis of relevance, and notes that permits issued to the RCH Newco site have no relevance to the Final Decision in this Matter. Further responding, per the Hearing Officer's Order, Respondent supplemented the Record to Include these documents, at R 001657-001660.

4. *A copy of all records-including but in no way limited to email at text messages-documenting the "internal discussions reference din the statement, "Internal discussion with lead workers and co-workers in the RCRA unit determined that the 'pro-rating' of post-closure care which has been historically included in the RCRA permits is not the correct manner in which to require cost estimates of post-closure " care set forth in Paragraph Two (2) of IEPA Reviewer's Comments set forth at R. 000225 of the Record on Appeal.*

Response:

See Record and emails produced herewith. Further responding, see response to Petitioner's Interrogatory No. 5.

5. *A copy of all records-including but in no way limited to notes, memoranda, and email and text messages-documenting the advice provided by the Illinois EPA Division of Legal Counsel and referenced at R 000225 of the Record on Appeal.*

Response:

Respondent objects to the extent that Petitioner seeks documents covered by the attorney-client privilege, i.e. regarding legal advice of any kind being sought from attorneys employed by or consulted by Illinois EPA relating to any issue in this matter which were made in confidence by Illinois EPA Bureau of Land, Permit Section, Further Responding, Respondent has withheld no documents from the Record on the basis of attorney-client privilege and the email search referenced herein did not result in the withholding of any privileged communications.

6. *A copy of all records-including but in no way limited to notes and email and text messages-documenting the telephone call with Doug Coenen, P.E. of Wisconsin Department of Natural Resources referenced at R. 000229 to R. 000230 of the Record on Appeal.*

Response

See documents produced herewith.

7. [NUMBER 7 WAS A DUPLICATE OF NUMBER 6].

8. *A copy of all records-including but in no way limited to notes and email and text messages-documenting communications with Merline Russell, P.G. of Florida Department of Environmental Protection referenced at R.00230 of the Record on Appeal in this matter.*

Response:

See documents produced herewith.

9. *A copy of each document you intend to use as an exhibit, demonstrative or otherwise, at trial.*

Response:

Respondent will supplement this response, and produce all responsive documents prior to any trial or hearing in this matter.

10. *An affidavit attesting whether your production is complete in accordance with Petitioner's Request for Production to Illinois EPA.*

Response:

Attached

11. *If the production is not complete in accordance with Petitioner's Request for Production to Illinois EPA, a listing of those documents, object, or tangible things not produced stating the grounds for objection to their production and giving the name and address of the individual or entity having possession, custody, or control of said items.*

Response:

Production is complete

12. *For each document being withheld based on a claim of privilege, a log containing the following information with respect to each such document:*

- (a) The date upon which the document was prepared or finalized;
- (b) The name and last known address of the author of the document;
- (c) The name and last known address of the recipient of the document;
- (d) A description of the nature of the document, including its subject matter; and
- (e) The basis of the claim of privilege.

Response:

Respondent has not withheld documents on the basis of privilege.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. KWAME RAOUL,
Attorney General of the State of Illinois

By: s/ Christopher Grant
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-5388
Christopher.Grant@ilag.gov

DATE: July 24, 2024

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, July 24, 2024, I caused to be served on the individuals listed below, by electronic mail, a true and correct copies of Respondent's Responses to Petitioner's First Set of Interrogatories, Request for Production of Documents, and served Respondent's Production of Documents (IEPA 000001-000977) via file transfer link to those indicated below.

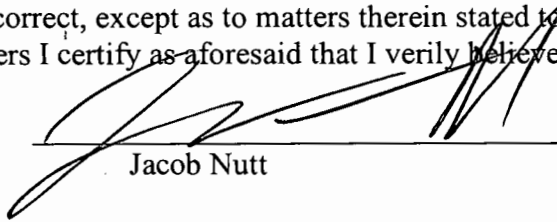
Mr. Scott B. Sievers
ssievers@bhslaw.com
Counsel for Petitioner

/s/ CHRISTOPHER GRANT

CERTIFICATION

I, Jacob Nutt, with the Illinois EPA, Bureau of Land, Permit Section, RCRA Unit, depose and state, at follows:

Under penalties as provide by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in the responses to interrogatories one through seven are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

A handwritten signature in black ink, appearing to read 'Jacob Nutt', is written over a horizontal line. The signature is stylized and somewhat cursive.

Jacob Nutt

CERTIFICATION

I, Melanie Jarvis, with the Illinois EPA, Division of Legal Counsel, depose and state, at follows:

Under penalties as provide by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that Illinois EPA's Response to Petitioner's Request for Production to Illinois EPA is true and correct, and that both documents already produced in the Permit Record and the additional documents provided herewith, are fully responsive to Petitioner's request, to the best of my knowledge and true belief.

A handwritten signature in black ink, appearing to read "Melanie Jarvis", written in a cursive style.

Melanie Jarvis