

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BFI WASTE SYSTEMS)
OF NORTH AMERICA, LLC,)
Petitioner,)
v.) PCB No. 2026-030
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING

TO: Senior Assistant Attorney General Christopher J. Grant
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Office of the Illinois Attorney General
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PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the
Pollution Control Board the attached Motion to Stay Conditions of September 25, 2025,
Renewed RCRA Post-Closure Permit, a copy of which is herewith served upon you.

DATED: January 7, 2026

Respectfully submitted,

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BFI WASTE SYSTEMS
OF NORTH AMERICA, LLC,

Petitioner.

BY:



Scott B. Sievers
Attorney for Petitioner

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v.) PCB No. 2026-030
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ILLINOIS ENVIRONMENTAL)
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MOTION TO STAY CONDITIONS OF
SEPTEMBER 25, 2025, RENEWED RCRA POST-CLOSURE PERMIT

NOW COMES the Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC (“BFI”), by and through its attorney, Scott B. Sievers of Brown, Hay + Stephens, LLP, and moves this honorable Board to stay the effectiveness of select conditions of the Renewed RCRA Post-Closure Permit pending review before this Board. In support, Petitioner states the following:

I. INTRODUCTION

On October 30, 2025, Petitioner BFI Waste Systems of North America, LLC (“BFI Waste Systems”) filed its Petition for Review of Illinois EPA Decision (“Petition”), which this Board accepted for review on November 6, 2025. In the instant action, Petitioner seeks this Board’s review of several conditions of the final renewed Resource Conservation and Recovery Act (RCRA) Hazardous Waste Management Post-Closure permit (hereafter “Renewed RCRA Post-Closure Permit”) issued by Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), on September 25, 2025. Petitioner now moves this Board to stay the effectiveness of the Renewed RCRA Post-Closure Permit conditions for which it

seeks review as well as additional permit conditions while allowing the remaining permit conditions to go into effect.

Petitioner moves this Board to stay the effectiveness of the post-closure care and financial assurance conditions set forth in Sections II.C.1, II.C.2, II.M, and V.D.3 and the groundwater detection monitoring conditions set forth in Sections III.D.2.b and III.I.10.b of the Renewed RCRA Post-Closure Permit, all of which are the subject of the instant permit appeal. (*See* Pet. at ¶¶ 17–35). In addition, Petitioner moves this Board to stay the effectiveness of conditions set forth in Sections V.D.1.b and V.D.1.c of the Renewed RCRA Post-Closure Permit for which it does not seek review by this Board but which would be affected by the groundwater detection monitoring conditions that are the subject of this permit appeal. Petitioner does not seek to stay the effectiveness of the remaining conditions of the Renewed RCRA Post-Closure Permit but instead seeks to comply with them.

II. ARGUMENT

Section 10-65(b) of the Illinois Administrative Procedure Act (“APA”) provides that, [w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

5 ILCS 100/10-65(b) (West 2025). The APA defines “license” as including “the whole or part of any agency **permit**, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes.” 5 ILCS 100/1-35 (West 2025) (emphasis added). Accordingly, while review by the Illinois Pollution Control Board of an Illinois EPA permit remains pending, the APA automatically

stays the effectiveness of that permit and the pre-existing permit continues in effect. *Borg-Warner Corp. v. Mauzy*, 100 Ill. App. 3d 862, 870–71 (3rd Dist. 1981).

While the APA provides for automatic stays of permit conditions, this Board also has authority to issue discretionary stays from permit conditions. *Community Landfill Co. v. Illinois EPA*, PCB Nos. 01-48, 01-49, at 4 (Oct. 19, 2000); *see also Hartford Working Group v. Illinois EPA*, PCB No. 05-74 (Nov. 18, 2004) (stay of special permit condition granted).

While Section 40.2 of the Illinois Environmental Protection Act concerns review of Clean Air Act Permit Program (CAAPP) decisions and thus is not directly applicable to the instant Resource Conservation and Recovery Act (RCRA) case, its language nonetheless provides guidance on staying the effectiveness of Illinois EPA permit conditions. *See* 415 ILCS 5/40.2. Subsection (f) of Section 40.2 provides as follows:

(f) If requested by the applicant, the Board may stay the effectiveness of any final Agency action identified in subsection (a) of this Section during the pendency of the review process. If requested by the applicant, the Board shall stay the effectiveness of all the contested conditions of a CAAPP permit. **The Board may stay the effectiveness of any or all uncontested conditions if the Board determines that the uncontested conditions would be affected by its review of contested conditions. If the Board stays any, but not all, conditions, then the applicant shall continue to operate in accordance with any related terms and conditions of any other applicable permits until final Board action in the review process.** If the Board stays all conditions, then the applicant shall continue to operate in accordance with all related terms and conditions of any other applicable permits until final Board action in the review process. Any stays granted by the Board shall be deemed effective upon the date of final Agency action appealed by the applicant under this subsection (f). Subsection (b) of Section 10-65 of the Illinois Administrative Procedure Act shall not apply to actions under this subsection.

415 ILCS 5/40.2(f) (West 2025) (emphasis added).

Consistent with Section 10-65(b) of the Administrative Procedure Act; with the guiding language of Section 40.2(f) of the Illinois Environmental Protection Act; and with this Board's precedent in *Community Landfill Co. v. Illinois EPA* and *Hartford Working*

Group v. Illinois EPA, *supra*, Petitioner moves the Pollution Control Board to stay the effectiveness of those conditions of the Renewed RCRA Post-Closure Permit that are contested in the instant permit appeal; to stay the effectiveness of conditions of that permit that are not contested in this permit appeal but are affected by the Board's review of the contested conditions; and to allow Petitioner to operate under the remaining conditions of the Renewed RCRA Post-Closure Permit.

A. POST-CLOSURE CARE AND FINANCIAL ASSURANCE

Petitioner seeks to stay the post-closure care and financial assurance conditions set forth in Sections II.C.1, II.C.2, II.M, and V.D.3 of the Renewed RCRA Post-Closure Permit.

Section II.C.1 of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION II: POST-CLOSURE

...

C. POST-CLOSURE CARE PERIOD

1. The post-closure care period for the closed Phase A landfill began February 10, 1998. Post-closure care of this landfill must continue until at least 30 years after that date.

Post-closure care shall continue to be extended for **an additional 30-year period or until such time as no unacceptable risks to human health and the environment are present in the Phase A landfill, as determined by the Illinois EPA**.

(Pet. Ex. A at Bates Nos. 028–031) (emphasis added).

Section II.C.2 of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION II: POST-CLOSURE

...

C. POST-CLOSURE CARE PERIOD

...

2. On or prior to February 10, 2027 (one year before February 10, 2028), the Permittee must submit a Class 2 permit modification request to the Illinois EPA in accordance with 35 IAC 703.241(a)(2) and 35 IAC 703, Appendix A, E.2, **to extend the post-closure care of the Phase A landfill for an additional 30-year period or until such time as no**

unacceptable risks to human health and the environment are present in the Phase A landfill, as determined by Illinois EPA, as specified in Condition II.C.1.

(Pet. Ex. A at Bates Nos. 028–031; *see also* Bates No. 090) (emphasis added).

Section II.M of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION II: POST-CLOSURE

...

M. FINANCIAL ASSURANCE FOR POST-CLOSURE CARE

1. The Permittee must maintain financial assurance for post-closure care of the Phase A landfill of at least \$4,571,652 (currently approved cost estimate in 2024 dollars) until such time as it is required to be modified pursuant to Condition V.D.3. This amount must be adjusted annually for inflation. Financial assurance meeting the requirements of 35 IAC 725, Subpart H must be maintained for post-closure care of the closed Phase A landfill.
2. Post-closure care costs are determined by multiplying annual costs by **the full 30-year post-closure care period**.

(Pet. Ex. A at Bates Nos. 028–046) (emphasis added).

Section V.D.3 of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION V: SPECIAL CONDITIONS

...

D. COMPLIANCE SCHEDULE

The following information must be submitted within 60 days of the effective date of this Permit.

...

3. Submit a revised post-closure cost estimate to reflect **a 30-year post-closure care period** in accordance with 35 IAC 724.244 and 724.217(a)(1) and provide the required financial assurance in accordance with 35 IAC 724.245, as a stand-alone Class 1* permit modification **request**.

(Pet. Ex. A at Bates Nos. 079–081) (emphasis added).

Because each of these conditions is contested in this permit appeal, Petitioner seeks to stay the effectiveness of the conditions set forth in Sections II.C.1, II.C.2, II.M, and V.D.3 of the Renewed RCRA Post-Closure Permit until final Board action in the review process.

B. GROUNDWATER DETECTION MONITORING

Petitioner seeks to stay the groundwater detection monitoring conditions set forth in Sections III.D.2.b and III.I.10.b of the Renewed RCRA Post-Closure Permit.

Section III.D.2.b of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION III: GROUNDWATER DETECTION MONITORING PROGRAM

...

D. MONITORING PARAMETERS

...

2. The Permittee must establish background values in accordance with the procedures specified in the approved permit application as well as the following procedures:

...

b. For those monitoring parameters or constituents not detected above the **Lower Limit of Quantitation** (LLOQ) during background gathering, the LLOQ must be the established background value.

(Pet. Ex. A at Bates Nos. 047– 053) (emphasis added).

Section III.I.10.b of the Renewed RCRA Post-Closure Permit provides as follows:

SECTION III: GROUNDWATER DETECTION MONITORING PROGRAM

...

I. REPORTING AND RECORDKEEPING

...

10. If the Permittee determines, pursuant to Condition III.E.4, that there is a statistically significant change for any of the parameters specified in Condition III.D.1 at any monitoring well at the compliance point, the Permittee must:

...

b. Sample the groundwater in all wells listed in Condition III.C.1 and determine the concentration of all constituents identified in 35 IAC 724, Appendix I, and **35 IAC Part 620** to determine whether constituents are present, and if so, at what concentration. The results will accompany the permit modification required by Condition III.I.10.d.

(Pet. Ex. A at Bates Nos. 047–057) (emphasis added).

Because each of these conditions is contested in this permit appeal, Petitioner seeks to stay the effectiveness of the conditions set forth in Sections III.D.2.b and III.I.10.b of the Renewed RCRA Post-Closure Permit until final Board action in the review process.

In addition, the Renewed RCRA Post-Closure Permit contains two (2) groundwater detection monitoring conditions for which BFI Waste Systems does not seek review by this Board but that would be affected by the groundwater detection monitoring conditions that are pending review before this Board. Those conditions are set forth in Sections V.D.1.b and V.D.1.c of the Renewed RCRA Post-Closure Permit.

Sections V.D.1.b and V.D.1.c provide as follows:

D. COMPLIANCE SCHEDULE

The following information must be submitted within 60 days of the effective date of this Permit.

1. Approved Permit Application; Section C.6.4 Description of Sampling and Analysis Procedures
 - a. Revise Section C.6.4. The description of Sampling and Analysis Procedures states that, “groundwater purged from detection monitoring wells will be directed into the adjacent perimeter stormwater ditch and disposed of on the ground within the waste limits”. The statement must be revised to include “Purged groundwater will be collected, containerized, and upon receipt of groundwater analysis, disposed of properly.” The facility may expand upon how groundwater will be addressed following receipt of the results in the revisions to the Groundwater Sampling and Analysis Plan to indicate how uncontaminated and contaminated groundwater will be managed. Uncontaminated groundwater may be disposed of as described, while contaminated groundwater would need to be disposed in accordance with regulations.
 - b. To meet the requirements of 35 IAC 620.510(b)(4), the sampling and analysis plan must be revised to propose a methodology for analyzing constituents which complies with

the Lower Limit of Quantitation (LLOQ) instead of the Practical Quantitation Limit (PQL) and those values must be equal to or less than the groundwater standards of 35 IAC Part 620, Subpart D, effective March 28, 2025.

- i. The LLOQ (and PQL) are independent of any background or 35 IAC Part 620 value. The historical PQLs used by the laboratory are no longer adequate if they do not meet the LLOQ.
- c. Submit a Class 1 * permit modification request to propose sampling and development of new background values which meets 35 IAC Part 620 for all parameters, identified in Condition 111.D.1, and their respective standards based on the revisions to 35 IAC Part 620, effective March 28, 2025. Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods, Third Edition (SW-846) and finalized updates using the respective LLOQ must be used.

(Pet. Ex. A at Bates No. 080) (emphasis added).

The requirements of these conditions are affected by the contested groundwater monitoring permit condition set forth in Section III.D.2.b of the Renewed RCRA Post-Closure Permit because these uncontested conditions require development of groundwater background values using Lower Limit of Quantitation (LLOQ) as the reporting limits. Because the use of LLOQ as a reporting limit is being contested, there is no agreed-upon reporting limit to use in these calculations. Accordingly, Petitioner seeks to stay the effectiveness of the conditions set forth in Sections V.D.1.b and V.D.1.c of the Renewed RCRA Post-Closure Permit until final Board action in the review process.

III. CONCLUSION

WHEREFORE, Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, moves this honorable Board to stay the effectiveness of the post-closure care and financial assurance conditions set forth in Sections II.C.1, II.C.2, II.M, and V.D.3 and the groundwater detection monitoring conditions set forth in Sections III.D.2.b and III.I.10.b of the Renewed

RCRA Post-Closure Permit, all of which are the subject of the instant permit appeal; to stay the effectiveness of the conditions set forth in Sections V.D.1.b and V.D.1.c of the Renewed RCRA Post-Closure Permit for which Petitioner does not seek review by this Board but which would be affected by this permit appeal; and to allow Petitioner to operate under the remaining conditions of the Renewed RCRA Post-Closure Permit.

DATED: January 7, 2026

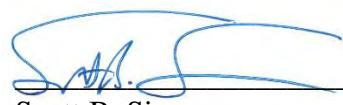
Respectfully submitted,

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BFI WASTE SYSTEMS
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BY:



Scott B. Sievers
Attorney for Petitioner

BFI Waste Systems of North America, LLC v. Illinois EPA
Pollution Control Board No. 2026-030

CERTIFICATE OF SERVICE

Scott B. Sievers of the law firm of Brown, Hay + Stephens, LLP herein certifies that on January 7, 2026, from Springfield, Illinois, he electronically submitted for filing the foregoing **MOTION TO STAY CONDITIONS OF SEPTEMBER 25, 2025, RENEWED RCRA POST-CLOSURE PERMIT** with the Pollution Control Board by using the Clerk's Office On-Line (COOL) eFile system. Scott B. Sievers further certifies that on January 7, 2026, he served the other parties in this case with a copy of the foregoing document by transmitting the nine (9) page document by e-mail to the parties' representatives, who are identified below, at their designated e-mail addresses of record:

Senior Assistant Attorney General Christopher J. Grant
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Assistant Attorney General Cara Sawyer
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Environmental Bureau
Office of the Illinois Attorney General
69 W. Washington Street, 18th Floor, Chicago, IL 60602

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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OF NORTH AMERICA, LLC,

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