

**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 March 3, 2026, Respondent, Illinois Environmental Protection Agency, filed its Motion for Summary Judgment with the Clerk of the Illinois Pollution Control Board via the “COOL” System, which is attached hereto and hereby served upon you.

Respectfully Submitted,

BY: /s/ Christopher Grant  
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Certificate of Service

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, March 3, 2026, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of Respondent's Motion for Summary Judgment, and Notice of Filing.

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**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S  
MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

Petitioner’s BFI-Davis Junction Landfill-Phase I (“Landfill”) generates on average nearly 100,000 gallons of leachate per year.<sup>1</sup> To prevent violations the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*, and regulations of the Illinois Pollution Control Board (“Board”) promulgated thereunder, it is reasonable and appropriate for Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) to modify the Landfill’s permit to require financial assurance for an additional 30 years of post-closure care.

This matter, the first-filed of Petitioner’s three appeals relating to the Landfill, relates solely to a September 25, 2023 Illinois EPA’ approval, *with modifications*, of five Class 1\* permit modifications submitted by Petitioner. Record (“R.”) 000131, *Petition for Review*, Exhibit A, p. 2. The challenged modifications required submission of cost estimates and financial assurance for an additional 30 years of post-closure care of the Landfill, based on Illinois EPA’s application of the post-closure and financial assurance regulations in 35 Ill. Adm. Code Part 724. (R. 000132). Because Illinois EPA properly applied the Part 703 and Part 724 provisions and

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<sup>1</sup> Petitioner’s Response to Respondent’s Interrogatories, Exhibit 1 hereto.

guidance from the United States Environmental Protection Agency (“USEPA”), and because of the existing condition of the Landfill, Illinois EPA’s September 25, 2023 decision was necessary to prevent violations of the Act and Board regulations and to prevent environmental harm, particularly from the threat to groundwater at and in the vicinity of the Landfill. Petitioner remains obligated to continue post-closure groundwater and landfill gas monitoring, leachate extraction and leachate disposal so long as post-closure requirements remain applicable. Petitioner cannot show that the Agency’s modification decision was not necessary to prevent violations of the Act or Board regulations. Therefore, the Board should grant summary judgement in Respondent’s favor.

## **II. BURDEN OF PROOF AND STANDARD OF REVIEW**

Section 40 of the Act, 415 ILCS 5/40 (2024), and Section 105.112 of the Board’s Procedural Rules, 35 Ill. Adm. Code 105.112, provide that the burden of proof in the appeal of an Agency decision is solely on the petitioner. *Browning-Ferris Indus. of Ill., Inc. v. Pollution Control Bd.*, 179 Ill. App. 3d 598, 601 (2d Dist.1989) (“In its opinion the Board discussed, as a preliminary issue, the burden of proof element of permit appeal proceedings and emphatically, and correctly, found that the burden was on BFI.”). As articulated in *Jersey Sanitation Corp. v. Illinois Environmental Protection Agency*, to successfully appeal the Agency’s determination on a motion for summary judgment the “Board must determine that as a matter of law [Petitioner] has proven that the application, as submitted to the Agency, demonstrated that no violations of the Act or Board rules would have occurred if the requested permit had been issued.” PCB 00-82 (June 21, 2001).<sup>2</sup> The standard of review applied by the Board to an Agency permitting decision is that of reasonableness. *Waste Mgmt. Inc. v. Ill. Environmental Protection Agency*, PCB 84-45,

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<sup>2</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-14127>.

84-61, 84-68 (Nov. 26, 1984) Slip op. at 18. In this case, the burden is on Petitioner to show that the modifications imposed by Illinois EPA were not necessary to accomplish the purpose of the Act and therefore unreasonable. *Browning-Ferris Indus. of Ill.*, 179 Ill. App. 3d at 603.

### **III. THE BFI DAVIS JUNCTION LANDFILL**

The Landfill has been and continues to be a serious threat to human health and the environment. The Landfill, which accepted waste from 1976 to 1983, has undergone 40 years of post-closure care, and Petitioner is still not remotely close to completion of its post-closure responsibilities. This is not the first time the Board has evaluated closure and post-closure care for the Landfill. In 1988, in the case *Browning Ferris Industries v. Illinois Environmental Protection Agency*, the Board upheld Illinois EPA's modification of Petitioner's closure plan, with detailed factual findings. PCB 84-136 (May 5, 1988) ("1988 Case"). The Board should take notice of its findings in that matter. Section 101.630 of the Board procedural rules, 35 Ill. Adm. Code 101.630, provides as follows:

#### **Section 101.630 Official Notice and Evidence Evaluation**

- a) Official notice may be taken of:
  - 1) Matters of which the circuit courts of this State may take judicial notice; and
  - 2) Generally recognized technical or scientific facts within the Board's specialized knowledge.

\* \* \*

In Illinois, courts are encouraged to invoke judicial notice when applicable, because doing so is an important aid in the efficient disposition of the litigation. *People v. Davis*, 65 Ill. 2d 157, 165 (1976). The doctrine specifically extends to public records and other judicial proceedings, *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (1st Dist. 2010). Accordingly, the Board may take notice of its prior decision.

In the 1988 Case, the Board noted that the Landfill had accepted 1,900,000 cubic yards of Waste, approximately 2% of which was hazardous waste. PCB 84-136 (May 5, 1988), Slip op. at

2. Petitioner BFI stated that the hazardous waste consisted of:

“... approximately 85% were in solid or semi-solid form, while approximately 15% were in liquid form. Approximately 96% of the hazardous waste handled were heavy metal sludges typically produced by Rockford area industry. Of the total hazardous waste receipts, approximately 60% were waste classification F006 (waste water treatment sludges from the electroplating industry), and 31% were waste classification D001-D011 (heavy metal EP toxicity)....”

PCB 84-136 (May 5, 1988), Slip op. at 17.

However, the Board also noted that Petitioner only kept detailed hazardous waste records from November 1980 through January 25, 1983, covering about 35% of its operating life. PCB 84-135 (May 5, 1998) Slip op. at 18. For purposes of this appeal, Illinois EPA has conceded that only 2% of the waste deposited into the landfill was hazardous waste, 96% of which consisted of heavy metal sludges, spent solvent still bottoms, spent solvent sludges, petroleum refining residues, rodenticides glycol, polystyrene, and phthalic anhydride. R. 000141. However, in the 1988 Case, the Board also found it likely that chlorinated solvents, including 1,1,1, trichloroethane, trichloroethylene, and methylene chloride had been disposed of in the Landfill. PCB 84-135 (May 5, 1988) Slip op. at 20. In any event, because of the lack of accurate reporting during the majority of the operating life of the Landfill, the Board should consider the 2% estimate to be very conservative.

Even if “only 2%” of the 1,900,000 cubic yards of the waste was hazardous, this still amounts to acceptance of 38,000 cubic yards of hazardous waste in the Landfill. Of this volume, 15%, or 5,700 cubic yards, was liquid hazardous waste, which is particularly concerning given the current status of the Landfill base liner, an antiquated design in-situ clayey soils liner directly exposed to groundwater, and the Landfill’s continued leachate generation. Also, because of the

legal effect of the “mixing rule”, *all of the waste* in the Landfill is considered to be hazardous waste and must be handled as hazardous waste. Section 721.103 of the Board’s Hazardous Waste Regulations, 35 Ill. Adm. Code 721.103, provides, in pertinent part, as follows:

**Section 721.103 Definition of Hazardous Waste**

a) a solid waste, as defined in Section 721.102, is a hazardous waste if the following is true of the waste:

\* \* \*

2) it meets any of the following criteria:

\* \* \*

D) It is a mixture of solid waste and one or more hazardous wastes listed in Subpart D....

The hazardous waste in the Landfill includes large quantities of waste listed in Section 721, Subpart D, which provides, in pertinent part, as follows:

**SUBPART D: LISTS OF HAZARDOUS WASTE**

**Section 721.130 General**

a) A solid waste is a hazardous waste if it is listed in this Subpart D....

\* \* \*

**Section 721.131 Hazardous Wastes from Nonspecific Sources**

a) The following solid wastes are listed hazardous wastes from non-specific sources....

\* \* \*

FOO6 Wastewater treatment sludges from electroplating operations...

As admitted by Petitioner BFI in the 1988 case, and as shown in R. 000141, the majority of the hazardous waste disposed of in the Landfill was wastewater treatment sludges from electroplating operations (“F006 electroplating sludge”) waste.

Section 721.102 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code

721.102 provides, in pertinent part, as follows:

**Section 721.102      Definition of Solid Waste**

a)      Solid Waste

1,      A solid waste is any discarded material....

2.      Discarded Material

A)      A discarded material is any material that is described as follows:

i)      It is abandoned, as described in subsection (b)

\*      \*      \*

b)      A material is a solid waste if it is abandoned in one of the following ways:

1.      It is disposed of;

\*      \*      \*

The municipal solid waste in the Landfill was disposed of and is therefore "solid waste" as that term is defined in Section 721.102 of the Board Hazardous Waste Regulations. The F006 electroplating sludge, which was disposed of in the Landfill is "solid waste", and also Subpart D-listed hazardous waste. The municipal solid waste was co-mingled with Subpart D-listed hazardous waste, and by application of Section 721.103 (a)(2)(D) of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 721.103(a)(2)(D), all of the deposited waste became hazardous waste. Accordingly, the Landfill contains approximately 1,900,000 cubic yards of hazardous waste, which must all be managed as hazardous waste in accordance with the Act, Federal Regulations, and the Board's Hazardous Waste Regulations.

Further, the leachate generated at the Landfill, the management of which was the main subject of the 1988 Permit Appeal, and which is of particular concern in this matter, is also hazardous waste. Section 721.103 of the Board Hazardous Waste regulations, 35 Ill. Adm. Code 721.103, provides, in pertinent part, as follows:

**Section 721.103 Definition of Hazardous Waste**

\* \* \*

(e) Specific Inclusions and Exclusions

- 1) Except as otherwise provided in subsection (e)(2), (g), or (h), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff), is a hazardous waste....

The Landfill contains approximately 1,900,000 cubic yards of hazardous waste and is continuously generating additional hazardous waste in the form of leachate.

Petitioner had two options for closure of the Landfill in 1983. It could have performed “closure by removal” by removing all hazardous waste and decontaminating the landfill in accordance with 35 Ill. Adm. Code Part 725 standards, or it could become fully permitted, leave the waste in place, apply for all necessary RCRA permits, and perform post-closure care in accordance with 35 Ill. Adm. Code Part 724. *See* Section 703.159 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 703.159. Surveys of the waste locations had been performed, and Petitioner knew where the hazardous waste was located. R. 000141. But Petitioner chose to leave the hazardous waste in place, presumably because of the higher cost of excavation and re-disposal at another hazardous waste location. Petitioner’s decision in 1983 to leave the hazardous waste in place is the reason for the issues it continues to be obligated to address.

**IV. PETITIONER IS OBLIGATED TO CONTINUE POST-CLOSURE CARE**

In this Permit Appeal, Petitioner complains of Illinois EPA's conditions of permit modification requiring ongoing post-closure financial assurance. Specifically, Petitioner argues that Illinois EPA erred in construing the Board Waste Disposal Regulations to authorize extending post-closure care beyond the 30 years provided in Section 724.217(a)(1). 35 Ill. Adm. Code 724.217(a)(1); *Petition* at 7-9. However, without question, and as a matter of law, Petitioner is obligated to continue post-closure care for the foreseeable future. That is because Petitioner's Landfill contains hazardous waste with no plan for removal, and that hazardous waste continues to generate significant quantities of leachate.

**A. The Act and Board Regulations Require the Landfill to Continue Post-Closure Care Until Leachate is No Longer Detected.**

The continued removal of leachate from the Landfill is a regulatory post-closure obligation. Section 724.410 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.410, provides, in pertinent part, as follows:

**Section 724.410 Closure and Post-Closure Care**

\* \* \*

- b) After final closure, the owner or operator must comply with all post-closure requirements contained in Section 724.217 through 724.220, including maintenance and monitoring throughout the post-closure period (specified in the permit under Section 724.217). The owner or operator must do the following:
  - 1) Maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;
  - 2) Continue to operate the leachate collection and removal system until leachate is no longer detected:

\* \* \*

The Petitioner's obligation to remove leachate from the Landfill continues as long as it continues to generate leachate.

**B. The Landfill Continues to Generate Significant Volumes of Leachate Annually.**

Petitioner's required Annual Hazardous Waste reports are found in R. 000931-001027. The report for 2021 shows Petitioner pumped 86,300 gallons of leachate that year. R. 0001027. For 2020 and 2019, Petitioner reports pumping of 112,146 gallons and 107,000 gallons respectively. R. 001016 and R. 001008.

In Response to Respondent's Interrogatories, Petitioner reported the following volumes of leachate between 2013 and 2023:

YEAR	GALLONS OF LEACHATE REMOVED
2013	100,000
2014	148,000
2015	119,000
2016	50,100
2017	93,000
2018	100,000
2019	107,000
2020	112,146
2021	86,300
2022	101,300
2023	79,400

See, *Exhibit 1*, pp 7-8.<sup>3</sup> The average annual leachate withdrawal for these 11 years is 98,940 gallons. All leachate was taken off site to an "approved treatment facility" *See, e.g.*, R. 000981.

As demonstrated by the Petitioner's own reports, the Landfill continues to generate enormous amounts of leachate with no indication of slowing or ceasing in the foreseeable future.

**C. The Act and Board Regulations Require Petitioner to Provide Financial Assurance for as long as Post-Closure Care Continues.**

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<sup>3</sup> The Responses were also filed, and may be viewed at <https://pcb.illinois.gov/documents/dsweb/Get/Document-110660>

As noted above, Petitioner is still obligated to perform post-closure care of the Landfill pursuant to Section 724.410(b)(2) of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.410(b)(2). Because of the ongoing hazardous waste leachate generation, averaging almost 100,000 gallons per year and showing no consistent downward trend, it is impossible to predict how long this post-closure obligation will continue. The Board's Hazardous Waste Regulations unequivocally require the Landfill to establish financial assurance for post-closure care without a specified time-limit.

Section 724.244 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code 724.244 requires Petitioner to have a detailed written estimate, in current dollars, of the annual cost of post-closure monitoring and maintenance of the facility in accordance with the applicable post-closure regulations in Section Part 724, including 724.410.

Section 724.245 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.245 provides, in pertinent part, as follows:

**Section 724.245 Financial Assurance for Post-Closure Care**

An owner or operator of a hazardous waste management unit subject to the requirements of Section 724.244 must establish financial assurance for post-closure care in accordance with the approved post-closure plan....

Petitioner has not complied with either Section 724.244 or Section 724.245 of the Board's Hazardous Waste Regulations, 35 Ill. Adm. Code Sections 724.244 and 724.245. It has not provided a "detailed written estimate" for the ongoing post-closure activities required under Section 724.410, which bind Petitioner until the leachate is no longer detected. Nor has it established financial assurance in accordance with Illinois EPA's approved 2023 modifications. As such, Petitioner cannot demonstrate compliance with the Board's Hazardous Waste regulations.

Petitioner seeks to short-circuit its post-closure obligations by eliminating its obligations to provide financial assurance for post-closure care, while continuing to manage hazardous waste in place, and generate significant quantities of leachate, a listed hazardous waste. Based on Petitioner's historical leachate reports for the Landfill, and its continued leachate generation, triggering the continued need for leachate removal and disposal, post-closure care could continue indefinitely. The Board cannot allow Petitioner to avoid post-closure financial assurance for necessary post-closure care obligations. The Board must find that Petitioner cannot prevail on a claim that it can reduce or eliminate financial assurance requirements, because where post-closure care must continue, the regulations also require that the cost of that post-closure care be secured by compliant financial assurance.

Petitioner, which has the burden of proof to show that Illinois EPA's modifications were not necessary to ensure compliance with the Act and regulations, cannot show that it is not required to continue post-closure care for the foreseeable future, and therefore cannot show that Illinois EPA's requirement of continued post-closure care financial assurance is not necessary to ensure compliance with the Act and regulations.

**V. PETITIONER CANNOT DEMONSTRATE THAT IT IS NOT CAUSING, THREATENING, OR ALLOWING WATER POLLUTION**

The leachate being generated poses a significant threat of groundwater pollution, even more so if Petitioner were to cease the leachate monitoring and extraction required under post-closure care while leachate is still present. BFI previously conceded that the Landfill's base liner would eventually fail, causing pollution of groundwater. In the 1988 Case, the Board noted that (under its original plan for a 14-foot leachate head), "BFI believes leachate will reach the lower aquifer in 164 years, and the Agency believes it will reach the aquifer in as little as about 55 years". PCB 84-136 (May 5, 1988) Slip op. at 13. It has now been 50 years since the Landfill

first was developed and 43 years since it was closed<sup>4</sup>. The current leachate collection system, installed after closure, consists of 15 leachate collection extraction points on 250-300' centers (radius). R. 000140-000141. As described in the Affidavit of Takako Halteman, RCRA Unit Manager for the Illinois EPA Bureau of Land, the Landfill has an "in-situ" base liner, which is an earthen liner constructed from native soil when the Landfill was excavated. See: Affidavit of Takako Halteman's, *Exhibit 2*, Pars 5-7. Current standards call for a significantly more protective base liner, including a double synthetic liner system, drainage layer, leachate collection system, and leachate detection system. *Exhibit 2*, par. 5, *see also* 724 Ill. Adm Code. 724.401(a).

Petitioner's reports disclose a very significant threat to groundwater at the Landfill. Pursuant to its Illinois EPA-issued permits, Petitioner is required to determine groundwater elevation at the Landfill and report results to Illinois EPA. R.000154. As noted by Ms. Halteman, groundwater reports submitted in 2022 and 2023 indicate that hazardous waste leachate was "in contact with or very close to groundwater" beneath the in-situ liner. *Exhibit 2*, par. 7. At minimum, the current status of the liner-groundwater interface presents a significant threat for the migration of hazardous waste leachate, exposed to both solid and liquid hazardous waste disposed of during the Landfill's period of operation, into waters of the State of Illinois. Petitioner cannot claim that it is not, at minimum, "causing, threatening, or allowing" water pollution at present, which is prohibited by Section 12(a) of the Act. 415 ILCS 5/12(a) (2024). As such, Illinois EPA's conditions for approval requiring extended financial assurance are reasonable as they are necessary to secure compliance with Board regulations. Therefore the Petition should be denied.

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<sup>4</sup> See PCB 84-136 (May 5, 1998) Slip op., at 2 (Landfill operated from December 1976 until January 1983).

Obviously, liner failure and groundwater contamination can never be an acceptable situation. Whether today, 164 years from now, or 1,000 years in the future, contamination of the groundwater with hazardous waste leachate can never be allowed. Particularly in light of the 2022 and 2023 reports showing imminent co-mingling of the Landfill clayey-soils base liner with groundwater, Petitioner cannot show that Illinois EPA's requirement of minimum increments of 30 years' worth of financial assurance for post-closure care, until post-closure care is completed, is not necessary to ensure compliance with Section 12(a) of the Act, 415 ILCS 5/12(a) (2024), which prohibits causing, threatening, or allowing water pollution.

**VI. ILLINOIS EPA HAS THE AUTHORITY TO MODIFY THE FINANCIAL ASSURANCE REQUIREMENTS**

Illinois EPA's decision to modify Petitioner's financial assurance is reasonable, and in keeping with the Act, Board Hazardous Waste Regulations, the Resource Conservation and Recovery Act ("RCRA"), and the RCRA regulations. Illinois EPA cannot grant a permit except upon proof from the applicant that doing so "will not cause a violation of the Act or of regulations [there]under". 415 ILCS 5/39 (2024). This includes the right to "impose such other conditions as may be necessary to accomplish the purposes of this Act, and as are not inconsistent with the regulations promulgated by the Board hereunder." *Id.*

The Act specifically identifies hazardous waste as among the most significant environmental dangers to public health and welfare. Section 2 of the Act, 415 ILCS 5/2 (2024) provides in pertinent part:

(a) The General Assembly Finds:

(i) That environmental damage seriously endangers the public health and welfare, as more specifically described in later sections of this Act....

\* \* \*

- (vi) That despite the existing laws and regulations concerning environmental damage there exist continuing destruction and damage to the environment and harm to the public health, safety, and welfare of the people of this State, and that among the most significant sources of this destruction, damage, and harm are the improper and unsafe transportation, treatment, storage, disposal, and dumping of hazardous wastes;

The Act recognizes the heightened dangers associated with hazardous waste and requires Illinois law to meet or exceed federal standards. Specifically with respect to hazardous waste disposal, Section 20 of the Act, 415 ILCS 5/20 (2024), provides, in pertinent part, as follows:

- (a) The General Assembly finds:

\* \* \*

- (4) that hazardous waste presents, in addition to the problems associated with non-hazardous waste, special dangers to health and requires a greater degree of regulation of the treatment, storage and disposal, transportation and generation of hazardous waste;
- (5) that Subtitle C of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580), as amended, provides for comprehensive regulation of the treatment, storage, disposal, transportation and generation of hazardous waste;
- (6) That it would be inappropriate for the State of Illinois to adopt a hazardous waste management program that is less stringent than or conflicts with federal law;

\* \* \*

Section 39 of the Act, 415 ILCS 5/39 (2024), harmonizes these provisions into Illinois EPA's permitting responsibilities:

**Section 39. Issuance of permits; procedures**

\* \* \*

- (d) The Agency may issue RCRA permits exclusively under this subsection to persons owning or operating a facility for the treatment, storage, or disposal of hazardous waste, as defined in this Act;

All RCRA permits shall contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act. The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act (P.L 94-580), as amended, and regulations pursuant thereto....

As shown by the express language of the Act, Illinois EPA is directed to apply both State and federal regulations and guidance in making its landfill permitting decisions. In contrast, Petitioner relies on a very limited interpretation of Section 724.217 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 724.217, that is read entirely out of its wider context (*Petition* at 7-9). However, Illinois EPA is required by law to harmonize the entire statutory and regulatory ecosystem governing hazardous waste in making its permitting decisions. Moreover, Section 724.217 cannot apply to Illinois EPA's extension of the post-closure care period. Section 724.217, 35 Ill. Adm. Code 724.217, provides, in pertinent part:

**Section 724.217 Post-Closure Care and Use of Property**

- a) Post-Closure Care Period
  - 1) Post-closure care for each hazardous waste management unit subject to the requirements of Sections 724.217 through 724.220 must begin after completion of closure of the unit and continue for 30 years after that date and must consist of at least the following:
    - \* \* \*
  - 2) Any time preceding partial closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure care period for a particular unit, the Board may, in accordance with the permit modification procedures of 35 Ill. Adm. Code 702, 703, and 705, do either of the following:
    - A) Shorten the post-closure care period applicable to the hazardous waste management unit or facility if all disposal units have been closed and the Board has found by an adjusted standard issue pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 101 and 104 that the reduced period is sufficient to adequately protect human health and the environment (e.g., leachate or groundwater

monitoring results, characteristics of the waste, application of advanced technology or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or

- B) Extend the post-closure care period applicable to the hazardous waste management unit or facility if the Board has found by an adjusted standard issue pursuant to Section 28.1 of the Act and 35 Ill. Adm. Code 101 and 104 that the extended period is necessary to adequately protect human health and the environment (e.g., leachate or groundwater monitoring results indicate a potential for migration of hazardous wastes at levels that may be harmful to human health and the environment).

First, Section 724.217(a)(2)(B) of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.217(a)(2)(B), requires an adjusted standard, in other words a deviation from a rule of general applicability, typically sought by the regulated community, not the Agency. Second it conflicts with Section 702.108, of the Board Hazardous Waste Disposal Regulations, which provides, in pertinent part, as follows:

**Section 702.108 Variances and Adjusted Standards**

- a) The Agency has no authority to issue any permit that is inconsistent with Board regulations. If an *applicant* seeks a permit that would authorize actions that are inconsistent with Board regulations, including delayed compliance dates, the *applicant* should file for either of the following two forms of relief:
  - 1) A petition for a variance pursuant to Title IX of the Environmental Protection Act (Act) and Subtitle B of 35 Ill. Adm. Code 104. Or,
  - 2) A petition for an adjusted standard pursuant to Section 28.2 of the Act and Subtitle D of 35 Ill. Adm. Code 104

35 Ill. Adm. Code 702.108 (emphasis added). Clearly, the provision for an adjusted standard in Section 724.217 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.217, applies solely to permit applicants, and not to the Agency, the permitting authority.

Further Petitioner's interpretation conflicts directly with the federal RCRA regulations. 40 C.F.R. § 265.117 provides, as follows

**§ 265.117 Post-closure care and use of property**

- (1) Post-closure care for each hazardous waste management unit subject to the requirements of §§ 265.117 through 265.120 must begin after completion of closure of the unit and continue for 30 years after that date....

\* \* \*

- (2) Any time preceding closure of a hazardous waste management unit subject to post-closure care requirements or final closure, or any time during the post-closure period for a particular hazardous waste disposal unit, the *Regional Administrator* may:
- (i) Shorten the post-closure care period applicable to the hazardous waste management unit, or facility, if all disposal units have been closed, if he finds that the reduced period is sufficient to protect human health and the environment (e.g., leachate or ground-water monitoring results, characteristics of the hazardous waste, application of advanced technology, or alternative disposal, treatment, or re-use techniques indicate that the hazardous waste management unit or facility is secure); or
  - (ii) Extend the post-closure care period applicable to the hazardous waste management unit or facility, if he finds that the extended period is necessary to protect human health and the environment (e.g., leachate or ground-water monitoring results indicate a potential for migration of hazardous wastes at levels which may be harmful to human health and the environment).

40 C.F.R. § 265.117 (emphasis added).

Thus, the federal RCRA regulations delegate the authority to unilaterally extend the post-closure period to the Administrator. Under its delegation agreement with USEPA, Illinois EPA stands in the shoes of USEPA's Administrator.<sup>5</sup>

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<sup>5</sup> Section 3006 of RCRA, 42 USC 6926(d), provides: (d) Effect of State permit: Any action taken by a State under a hazardous waste program authorized under this Section shall have the same force and effect as action taken by the Administrator under this subchapter.

The Board Hazardous Waste Regulations were promulgated in an “identical in substance” rulemaking process (*see, e.g.* R-82-19). Section 7.2 of the Act, 415 ILCS 5/7.2 provides, in pertinent part, as follows:

**Section 7.2 Identical in substance rulemaking**

- (a) In the context of a mandate that the Board adopt regulations to secure federal authorization for a program, regulations that are “identical in substance” means State regulations which require the same actions with respect to protection of the environments by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois....

The interpretation urged by Petitioner conflicts with both Section 7.2 of the Act, 415 ILCS 5/7.2(2024), and the General Assembly’s direction in Section 20(a)(6) of the Act, 415 ILCS 5/20(a)(6) (2024), that “it would be inappropriate for the State of Illinois to adopt a hazardous waste management program that is less stringent than or conflicts with federal law.” It is unlikely that a regulated entity, such as Petitioner, would seek an adjusted standard to extend its post-closure care responsibilities. The federal regulations allow the Administrator to extend the post-closure care period (subject of course to review), and the Board should interpret the federal regulations to give Illinois EPA the same authority.

Further, the Board should look to other regulations that it adopted in the same series of rulemakings. For example, Section 703.241 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 703.241, provides:

**Section 703.241 Establishing Permit Conditions**

- a) General conditions:
  - 1) In addition to the conditions established pursuant to 35 Ill. Adm. Code 702.160(a), each RCRA permit must include permit conditions necessary to achieve compliance with each of the applicable requirements specified in 35 Ill. Adm. Code 724 and 726 through 728. In satisfying this provision, the Agency may incorporate applicable requirements of 35 Ill.

Adm. Code 724 and 726 through 728 directly into the permit or establish other permit conditions that are based on these Parts;

- 2) Each RCRA permit issued pursuant to Section 39(d) of the Environmental Protection Act [415 ILCS 5/39(d)] must contain terms and conditions that the Agency determines are necessary to adequately protect human health and the environment; and
- 3) If, as the result of an assessments [*sic*] or other information, the Agency determines that conditions, in addition to those required under subpart EEE of 40 CFR 63 or 35 Ill. Adm. Code 724 or 726, are necessary to ensure adequate protection of human health and the environment, the Agency must include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

\* \* \*

Interpreting Section 703.241 of the Board Hazardous Waste Regulations to allow Illinois EPA the authority to determine “that conditions ... are necessary to ensure protection of human health and the environment” and therefore *must* be included (again subject to review), and the requirement that a permit include conditions necessary to achieve compliance with Part 724, would be in harmony with the authority specified in 40 C.F.R. § 265.117.

**VII. ILLINOIS EPA’S EXTENSION OF FINANCIAL ASSURANCE IS NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT.**

Although this matter solely addresses Illinois EPA’s modification of Petitioner’s proposed financial assurance, and despite opposing consolidation with PCB 25-44, in which Illinois EPA directed Petitioner to extend post-closure care by an additional 30 years, Petitioner argues that there is no applicable authority allowing Illinois EPA to extend post-closure care. Petitioner’s argument is unavailing.

At the outset, even Petitioner notes that under the permit at issue, Illinois EPA required post closure care for “at least” 30 years. Petition, ¶ 18, *Petition* Exhibit B, 000001. Further Petitioner ignores established statutory provisions and case law.

Section 22.3 of the Act, 415 ILCS 5/22.3 (2024), provides, in pertinent part, as follows:

**Section 22.3.** The owner and operator of a hazardous waste disposal site shall, without limitation, be responsible for the site for a period of 20 years after closure of the site, *or such longer period* as required by federal Resource Conservation and Recovery Act of 1976, P.L. 94-580, or regulations issued thereunder, or by Board regulations adopted pursuant to subsection 22(a) or (f) of this Act. The owner and operator shall ... take whatever remedial action is necessary to solve any such problems which occur at the site during the period of responsibility....

415 ILCS 5/22.3 (emphasis added).

As noted in Section VI of this Motion, federal regulations allow for the imposition of a longer post-closure care period by the “Administrator” (and by implication Illinois EPA).

Further, pursuant to Section 724.218 Petitioner should have, on its own, sought to extend the post-closure care period because of the continued generation of and obligation to remove leachate. Section 724.218 of the Board Hazardous Waste Regulations, 35 Ill. Adm Code 724.218 provides, in pertinent part:

**Section 724.218 Post-Closure Plan: Amendment of Plan**

\* \* \*

- d) Amendment of Plan. The owner or operator must submit a written notification or request for a permit modification to authorize a change in the approved post-closure care plan....

\* \* \*

- 2) The owner or operator must submit a written notification of or request for a permit modification to authorize a change in the approved post-closure care plan whenever any of the following occurs:

\* \* \*

- C) Events occur during the active life of the facility, including partial and final closures, that affect the approved post-closure care plan....

The continued generation of hazardous waste leachate, requiring additional post-closure care, constitutes an event affecting the approved post-closure plan. Petitioner should have on its own requested an extension of post-closure care, secured by financial assurance, until leachate is no longer being detected.

Illinois EPA's extension of the financial assurance requirements is consistent with precedent allowing Illinois EPA to extend the post-closure care period as necessary to prevent violations of the Act and Board regulations. In *D&L Landfill v. Illinois Environmental Protection Agency*, PCB 15-137 (January 21, 2016),<sup>6</sup> the Board granted the Agency's Motion for Summary Judgment, affirming the denial of post-closure certification, thereby extending post-closure care at the subject landfill. Although that case dealt with a municipal solid waste landfill governed by Part 807, the operative provision of the Act in that case closely mirrors Section 22.3 of the Act, applicable in our case. Section 22.17 of the Act, 415 ILCS 5/22.17 (2024), provides in pertinent part:

- (a) The owner and operator of a sanitary landfill site that is not a site subject to subsection (a.5) of (a.10) of this Section shall monitor gas, water and settling at the completed site for a period of 15 years after the site is completed or closed, or such longer period as may be required by Board or federal regulation.

In *D&L Landfill*, the Board held that, despite there being no specific regulation or amendment stating that post-closure care extends beyond 15 years, the clause "or such longer period as may be required by Board or federal regulations" meant *any* regulation that would require further monitoring beyond 15 years, and it was clear that the 15-year period was a *minimum* period. PCB 15-137 (January 21, 2016) Slip op. at 29. Accordingly, the Board found for the Agency on its denial of post-closure certification and required additional post-closure

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<sup>6</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-91650>.

groundwater monitoring. The Board's decision was subsequently affirmed by the Appellate Court. *D&L Landfill, Inc. v. Ill. Pollution Control Bd.*, 2017 IL APP (5th) 160071.

Our case is strikingly similar to *D&L Landfill*. As in *D&L*, the operative statute (in our case 415 ILCS 5/22.3), allows for extension of the post-closure care period for “*such longer period* as required by the federal Resource Conservation and Recovery Act of 1976, P.L 94-580, or regulations issued thereunder, or by Board regulations”. 415 ILCS 5/22.3 (emphasis added). As in the *D&L Landfill* matter, this case involves an *ongoing* post-closure care requirement in accordance with 35 Ill. Adm. Code 724.410. The Board should find that the 20-year period in Section 22.3 of the Act, and the 30-year period in the Board regulations, also operate as a “minimum” period for post-closure care and that it must continue while a regulatory requirement continues to apply to ensure that no threat to human health and the environment exists.

**VIII. PETITIONER CANNOT SHOW THAT 30 YEAR PERIODS OF FINANCIAL ASSURANCE ARE NOT NECESSARY TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT.**

**A. Post-Closure Financial Assurance Protects State Resources.**

Financial assurance provides a guarantee to the State that funds will be available in the event the owner or operator of a waste management operation, including landfills, fails to perform needed closure and post-closure care, or fails to address other problems that may occur after the operating life of a landfill. *People v. Community Landfill Co. et al.*, PCB 03-191 (February 16, 2006) Slip op. at 15<sup>7</sup>, citing *People v. ESG Watts, Inc. (Viola Landfill)*, PCB 96-233 (April 16, 1998), Slip op. at 11. Appropriate financial assurance is essential to protect the State of Illinois from potential liability to care for landfills that may be abandoned. *People v. Wayne Berger*, PCB 94-373 (May 6, 1999) Slip op. at 20-21<sup>8</sup>. Guarantees of financial assurance

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<sup>7</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-51632>.

<sup>8</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-2881>.

for post-closure care assures that the State will not have to pay substantial costs for correcting environmental harm created by insolvent owners or operators of landfills. *People v. ESG Watts Inc.* (Sangamon Valley Landfill), PCB 96-237 (February 19, 1998) Slip op. at 7<sup>9</sup>.

**B. USEPA Guidance Encourages the Extension of Post-Closure Care.**

The benchmark period for financial assurance after completion of closure for hazardous waste landfills is 30 years. This is the period used in the federal regulations, 40 CFR 265.117, and the Board regulations at 35 Ill. Adm. Code 724.217. As discussed herein, the Board should view this period as the *minimum* requirement for financial assurance.

In 2016, USEPA issued guidance on the extension of the 30 years post-closure care period. R. 001627. Although the guidance does not have the force of law, the Board should consider it an important and persuasive document to ensure that Illinois' hazardous waste management is not "less stringent than" or in conflict with federal law. 415 ILCS 5/20(a)(6). Also, Section 39(d) of the Act, 415 ILCS 39(d) (2024), provides, in pertinent part:

...The Agency may include among such conditions standards and other requirements established under this Act, Board regulations, the Resource Conservation and Recovery Act of 1976 (94-580), as amended, and regulations pursuant thereto....

While the 2016 USEPA guidance does not have the force of law, and is not itself a RCRA regulation, it provides the appropriate interpretation of the RCRA regulations, which Illinois EPA is directed to consider in its permit decisions under Section 39(d) of the Act, 415 ILCS 5/29(d) (2024).

In the 2016 guidance, USEPA states that:

...the regulations' identification of a default 30-year post-closure care period does **not** reflect a determination by EPA that 30 years of post-closure care is necessarily sufficient to eliminate potential threats to human health and the environment in all cases. The regulations provide that the decision to alter the length of the post closure can be made at any time preceding final closure ... or at any time during the post-closure period for a

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<sup>9</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-4135>.

particular unit. For permitted facilities, such a decision must be made through permit renewal or modification procedures.... (emphasis in original).

\* \* \*

Because many hazardous wastes degrade slowly or do not degrade under containment in these units, the continued presence of hazardous waste in the unit (i.e., any case other than clean closure) indicates the potential for unacceptable impacts on human health and the environment in the future if post-closure care is not maintained.

R. 001629-001630.

Because the 30-year post-closure care period is a “benchmark” period, renewal of post-closure care for an additional 30-year period is reasonable. In the event of insolvency or abandonment, the State will have at least 30 years’ worth of resources to continue post-closure responsibilities, in this case the continued maintenance of final cover, and pumping, treatment and disposal of hazardous waste leachate and taking any necessary corrective action. The financial assurance requirements the Agency allowed previously, gradually reducing financial assurance by the remaining years left in a fixed post-closure period, which is urged by Petitioner, does not serve that function. The financial assurance available at the end of the (once extended by 10 years) post-closure care period would have expired, despite the continuing post-closure responsibilities. Further, the 30-year period is supported by the plain language of the applicable regulations. Section 724.244 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.244, 35 Ill. Adm. Code 724.244, provides, in pertinent part:

**Section 724.244 Cost Estimate for Post-Closure Care**

a) the owner or operator of a ... landfill unit ... must have a defined written estimate, in in current dollars...

\* \* \*

2) the post-closure cost estimate is calculated by multiplying the annual post-closure cost estimate by the number of years of post-closure care required under Section 724.217

Section 724.217 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.217 provides, in pertinent part:

**Section 724.217 Post-Closure Care and Use of Property**

- a) Post-Closure Care Period
  - 1) Post-closure care for each hazardous waste management unit ... must begin after completion of closure of the unit and continue for 30 years....

Read together, Sections 724.244 and 724.217 of the Board Hazardous Waste Regulations fully support Illinois EPA's reasonable selection of additional 30-year periods of post-closure care.

Moreover, should a landfill owner or operator complete post-closure care in a fashion such that it can demonstrate to the Board that a reduced period is "... sufficient to adequately protect human health and the environment", it may seek to reduce the 30-year post-closure period. 35 Ill. Adm. Code 724.217(a)(2)(A). With the Landfill currently posing an imminent threat to groundwater contamination, Petitioner should be required to make such a demonstration before ceasing any post-closure activities, secured by financial assurance.

Illinois EPA's extension of the post-closure care period, and the obligation for continued financial assurance is reasonable, and protective of human health and the environment as well as the State of Illinois' interests. *All* business entities eventually cease operations. Continuation of financial assurance in a case, such as ours, where post-closure care obligations continue prevents the risk to State resources and is in keeping with the General Assembly's direction that "... adverse effects on the environment are fully considered and borne by those who cause them." 415 ILCS 5/2(b) (2024).

**IX. PETITIONER CANNOT SHOW THAT ILLINOIS EPA IMPROPERLY REVIEWED PETITIONER'S PERMIT MODIFICATION REQUESTS AS A CLASS 1\* MODIFICATION.**

This permit appeal stems from five permit modification requests that Petitioner submitted to Illinois EPA between 2018 and 2022. *Petition*, ¶ 48. Petitioner submitted each of those modification requests to Illinois EPA as Class 1\* modifications. *Id.* Illinois EPA properly reviewed four of Petitioner's modification requests as Class 1\* modifications because annual updates to the post-closure care cost estimates meet the Board's criteria for Class 1 modifications as "minor changes that keep the permit current with routine changes to the facility or its operation" and "do not substantially alter the permit conditions or reduce the capacity of the facility to adequately protect human health or the environment." 35 Ill. Adm. Code 703.280(d)(2)(A). Moreover, Illinois EPA properly reviewed Petitioner's fifth permit modification request as a Class 1\* modification because the minor language revisions qualify as "[a]dministrative and informational changes" and "[c]orrection of typographical errors", both Class 1 modifications fall under the Section 703.Appendix A. 35 Ill. Adm. Code 703.Appendix A.A.1 and 2.

Following its counterpart in the federal regulations,<sup>10</sup> the Board's Waste Disposal Regulations provide three classes of permit modifications: Class 1, Class 2, and Class 3 modifications. *See* 35 Ill. Adm. Code Sections 703.280, 703.281, 703.282, and 703.283. Section 703.280 is tellingly titled "Permit Modifications *at the Request of the Permittee*." 35 Ill. Adm. Code 703.280 (emphasis added).<sup>11</sup> Class 1 modifications can be subdivided into two types, Class 1 modifications (modifications permittees may put into effect without prior written approval by Illinois EPA, *see* 35 Ill. Adm. Code 703.281(a)) and Class 1\* modifications (modifications that require Illinois EPA's prior written approval, *see* 35 Ill. Adm. Code 703.281(b)). The classes

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<sup>10</sup> *See* 40 C.F.R. § 270.42.

<sup>11</sup> This Board regulation title is identical to the title of the corresponding federal regulation. *See* 40 C.F.R. § 270.42.

correspond to the magnitude of the requested permit change and therefore the public participation required in Illinois EPA's permitting decision, with Class 1 modifications requiring the least amount of public involvement and Class 3 requiring the most.<sup>12</sup> Part 703 of the Board Waste Disposal Regulations includes a non-exhaustive appendix of permit changes and their corresponding permit modification class. *See* 35 Ill. Adm. Code Part 703, Appendix A. Because Appendix A is non-exhaustive, the Board also includes criteria for Illinois EPA to consider when determining the appropriate class for modifications that are absent from Appendix A. *See* 35 Ill. Adm. Code 703.280(d). The Board instructs Illinois EPA to review modifications that "substantially alter the facility or its operations" as Class 3 modifications. 35 Ill. Adm. Code 703.280(d)(2)(C). Additionally, the Board instructs Illinois EPA to review modifications that involve either (1) "[c]ommon variations in the type and quantity of wastes managed under the facility permit;" (2) "[t]echnological advances;" and (3) "[c]hanges necessary to comply with new regulations" as Class 2 modifications. 35 Ill. Adm. Code 703.280(d)(2)(B). The Board also instructs that "Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to adequately protect human health or the environment." 35 Ill. Adm. Code 703.280(d)(2)(A).

Between 2018 and 2022, Petitioner submitted five permit modification requests to Illinois EPA which gave rise to this permit appeal. Petition, ¶ 48. Petitioner submitted Submittal No. 1

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<sup>12</sup> Treatises on the federal analogue to the Board Waste Disposal Regulations have noted that "[t]he level of public participation involved in the permit modification procedure initiated at the request of the permittee depends on the significance of the proposed change." 1 Environmental Law in Real Est. & Bus. Transactions § 7.06. Moreover, "obtaining a Class 2 or 3 modification to a permit can be as difficult and time-consuming as obtaining the initial permit. Like the initial permitting process, the Class 2 and 3 modification procedures require a substantial amount of public participation." 4A Environmental Law Practice Guide § 29.09.

(B-142R2-M-1) as a Class 1\* permit modification. *See Petition* Exhibit A at 1. Illinois EPA's Final Decision characterizes Submittal No. 1 as "minor permit language revisions." *Petition* Exhibit A at 1; *see also Petition* Exhibit A at 5-6 (showing the language revisions to Petitioner's post-closure care permit). These minor language revisions include, among other things, correcting the date Illinois EPA certified closure of the landfill and clarifying that the permitted facility is a landfill rather than an impoundment. *Id.* Minor language revisions are classified as Class 1 Modifications in Part 703, Appendix A. *See* 35 Ill. Adm. Code Part 703, Appendix A.A.1 and 2 ("A. General Permit Provisions 1. Administrative and informational changes. 2. Correction of typographical errors"). Because Part 703, Appendix A instructs permittees to submit administrative and informational changes and corrections of typographical errors as Class 1 modifications, Petitioner rightly submitted and Illinois EPA rightly reviewed Submittal No. 1 as a Class 1\* modification.

Petitioner also submitted Submittal Nos. 2 through 5 (B-142R2-M-2; B-142R2-M-4; B-142R2-M-6; and B-142R2-M-7) as Class 1\* permit modifications. *See Petition* Exhibit A at 1-2. Illinois EPA's Final Decision characterizes all four submittals as "updated cost estimate for Post-Closure Care." *Petition* Exhibit A at 1-2. Pursuant to Section 724.244 of the Board Waste Disposal Regulations, owners and operators of hazardous waste landfills, such as BFI Davis Junction, are required to prepare an estimate of the cost of complying with all post-closure care regulations for the post-closure care period, in this case 30 years, and submit revised estimates to Illinois EPA annually as permit modifications. 35 Ill. Adm. Code 724.244. Appendix A contains no classification for post-closure care cost estimates. *See generally*, 35 Ill. Adm. Code Part 703, Appendix A. Instead, Illinois EPA looked to the Board's criteria in Section 703.280(d). Routine updates to post-closure care cost estimates are not substantial alterations to the facility or its

operations warranting a Class 3 modification. 35 Ill. Adm. Code 703.280(d)(2)(C). Neither are routine updates to post-closure care cost estimates “[c]ommon variations in the type and quantity of wastes managed under the facility permit” or “[t]echnological advances”. 35 Ill. Adm. Code 703.280(d)(2)(B)(i) and (ii). Moreover, Section 724.244, the section requiring post-closure care cost estimates, has not substantively changed since the regulation was promulgated in 1989, *see* 13 Ill. Reg. 18527, so, Petitioner’s submittals were not “[c]hanges necessary to comply with new regulations” warranting Class 2 modification. 35 Ill. Adm. Code 703.280(d)(2)(B)(iii).

By process of elimination, following the criteria under Section 703.280 of the Board Waste Disposal Regulations, Petitioner rightly submitted and Illinois EPA rightly reviewed Petitioner’s post-closure care cost estimates as a Class 1\* modification. Indeed, Section 703.280(d)(2)(B) instructs that “Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to adequately protect human health or the environment.” 35 Ill. Adm. Code 703.280(d)(2)(A). Petitioner’s annual updates to its post-closure care cost estimate are precisely the sort of “minor” and “routine” changes that neither “substantially alter the permit conditions” nor “reduce the capacity of the facility to adequately protect human health and the environment.” *Id.* By submitting its five permit modification requests as Class 1\* modifications, Petitioner tacitly acknowledged that routine updates to the post-closure care cost estimate require the smallest level of public involvement, and Petitioner has failed to show how “Illinois EPA[’s] reevaluat[ion of] the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724” changes which permit modification class is appropriate. Petition Exhibit A at 2.

The standard of review applied by the Board to an Agency permitting decision is that of reasonableness. *Waste Mgmt. Inc. v. Ill. Environmental Protection Agency*, PCB 84-45, 84-61, 84-68 (Nov. 26, 1984) Slip op. at 18. Because Illinois EPA reasonably interpreted the Board Waste Disposal Regulations, the Board should affirm Illinois EPA's decision to review Petitioner's submittals as Class 1\* modifications.

**A. Even if the Board Finds that Illinois EPA Improperly Reviewed Petitioner's Permit Modification Requests as Class 1\* Modifications, the Appropriate Remedy is to Remand and Order Petitioner to Satisfy Class 2 Modification Requirements Under Section 703.282.**

Even if the Board were to find that Illinois EPA's decision to review Petitioner's Class 1\* modification submittals as Class 1\* modifications was unreasonable, the appropriate remedy would be to remand the permitting decision and require Petitioner to resubmit its five modification requests as Class 2 modifications in accordance with the procedures set forth in Section 703.282 of the Board Waste Disposal Regulations, because Petitioner's proposed remedy would deprive the public of an opportunity to participate in Illinois EPA's permitting decision. Section 703.282 imposes requirements on permittees for Class 2 modifications, many of which are aimed at informing the public of the proposed permit modification and providing the public with an opportunity to weigh in on the permitting decision. *See, e.g.*, 35 Ill. Adm. Code 703.282(b) (permittee must notify all persons on the facility mailing list and appropriate governmental units of the proposed modification and publish notice of the proposed modification in a newspaper); 35 Ill. Adm. Code 703.282(d) (permittee must hold a public meeting); and 35 Ill. Adm. Code 703.282(e) (public must have sixty days to comment on permittee's modification request). By their very terms, Section 703.282 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 703.282, and their federal parallel, 40 C.F.R § 270.42(b), show the importance of public participation in Agency permitting decisions.

The irony at the heart of its argument is that Petitioner would deprive the public of its opportunity to participate in Illinois EPA's permitting decision on the basis that Illinois EPA failed to provide the public an opportunity to participate in the underlying permitting decisions. Petitioner urges the Board to grant its permit modifications –without the conditions it finds objectionable – without giving the public an opportunity to participate in Illinois EPA's decision. That result flies in the face of the purpose of Sections 703.280 and 703.282 of the Board Waste Disposal Regulations. 35 Ill. Adm. Code 703.280 and 703.282. Further, Petitioner cites no source of law in support of its proposed remedy. *Petition*, ¶ 56. Even more, Petitioner asks the Board to grant its permit modifications without Illinois EPA's conditions despite never having availed itself of the procedures for identifying the appropriate class of permit modification described in Section 703.280(d) of the Board Waste Disposal Regulations.

Under Section 703.280, where a modification is not explicitly listed in Appendix A, as with post-closure care cost estimates, “the permittee may submit a Class 3 modification request to the Agency, or the permittee may request a determination by the Agency that the modification be reviewed and approved as a Class 1 or Class 2 modification.” 35 Ill. Adm. Code 703.280(d)(1). Petitioner followed neither of these steps. Petitioner submitted its revised post-closure care cost estimates as Class 1\* modifications, not Class 3 modifications, even though such modifications are not explicitly listed in Appendix A. Petitioner also submitted its revised post-closure care cost estimate as a Class 1\* modification without requesting Illinois EPA's determination of the appropriate classification. Instead, Petitioner submitted its updated post-closure care cost estimate as a Class 1\* modification and Illinois EPA, following the Board's criteria, *see* 35 Ill. Adm. Code 703.280(d)(2), approved Petitioner's modification with the contested conditions. *See Petition*, ¶¶ 48, 49. Petitioner failed to avail itself of regulatory

mechanisms for determining the appropriate modification class as described in Section 703.280. For the foregoing reasons, if the Board concludes that Illinois EPA wrongly reviewed Petitioner's modification submittals as Class 1\* modifications, the Board should remand and require Petitioner to follow the Class 2 modification procedures and allow meaningful public participation in Illinois EPA's permitting decision.

Petitioner's challenge of Illinois EPA's handling of the subject permit applications is without merit, and it cannot obtain the relief it seeks. The Board should grant summary judgement to Illinois EPA on this issue.

#### **X. CONCLUSION**

Petitioner cannot meet its burden of proof in this matter, and Respondent is entitled to Summary Judgment. In this case, Petitioner must show that the modifications imposed by Illinois EPA in response to its permit application were not necessary to accomplish the purpose of the Act and therefore unreasonable. *Browning-Ferris Indus. of Ill.*, 179 Ill. App. 3d 598, 603.

Petitioner cannot show that Illinois EPA's modifications were not in accordance with the purposes of the Act and Board regulations. Illinois EPA has the duty, in accordance with 35 Ill. Adm. Code Section 703.121 and 703.241, to ensure that RCRA permits are written to achieve compliance with the 35 Ill. Adm. Code Part 724 regulations. The plain language of 35 Ill. Adm. Code 724.410 shows that Petitioner is still required to conduct post-closure care so long as leachate is detected. In accordance with 35 Ill. Adm. Code 724.244, Petitioner is obligated to provided post-closure financial assurance in accordance with the approved post-closure plan. Under Section 39(a) of the Act, Illinois EPA cannot grant a permit except upon proof from the applicant that doing so "will not cause a violation of the Act or of regulations [there]under". 415

ILCS 5/39 (2024). As Petitioner did not make such a demonstration, Illinois EPA was obligated to extend the post-closure care period.

Illinois EPA's decision to require financial assurance in 30-year increments is also in accordance with federal and State regulations, Section 22.3 of the Act, and USEPA guidance. Further, it protects Illinois taxpayers for a reasonable period in the event Petitioner becomes insolvent or abandons its responsibilities. The imminent threat to groundwater created by the outdated Landfill clayey-soil liner and its proximity to groundwater, a serious threat to causing water pollution, only emphasizes the need for sufficient protection and an appropriate amount of financial assurance.

Based on the facts of this case, the Act, and federal and Illinois RCRA regulations, it is clear that Petitioner cannot prove that Illinois EPA's permit modification is not necessary to prevent violations of the Act and Regulations. As such, the Board should grant Respondent's motion for summary judgment.

Respectfully submitted,

Illinois Environmental Protection Agency  
by KWAME RAOUL,  
Attorney General of the  
State of Illinois

BY: /s/ Christopher Grant  
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**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  
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

PETITIONER'S ANSWER TO IEPA INTERROGATORIES

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**PETITIONER’S ANSWERS TO ILLINOIS EPA’S INTERROGATORIES**

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 101.620, hereby propounds upon Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), the following answers to Respondent’s First Set of Interrogatories to Petitioner:

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

Petitioner objects to the Definitions and Instructions set forth in Respondent’s First Set of Interrogatories to Petitioner to the extent they attempt to impose duties and obligations upon, and seek information and materials from, Petitioner that are irrelevant, not proportional to the needs of the case, and/or beyond the scope of 35 Ill. Adm. Code 101.620 and Illinois Supreme Court Rules 201 and 213. *See* 35 Ill. Adm. Code 101.100(b).

**INTERROGATORY NO. 1:** Please identify all Persons answering or supplying information used in answering these interrogatories and, for each Person identified, state what information the Person provided.

**ANSWER:** (1) James Hitzeroth  
Environmental Manager  
Republic Services  
c/o Scott B. Sievers  
Brown, Hay + Stephens, LLP  
205 S. Fifth Street, Suite 1000  
P.O. Box 2459  
Springfield, IL 62705

Mr. Hitzeroth provided information regarding the undue burden that would be imposed upon Petitioner if it were compelled to answer or respond to some of Respondents' discovery request.

(2) John Bossert  
Senior Project Manager  
Weaver Consultants Group  
c/o Scott B. Sievers  
Brown, Hay + Stephens, LLP  
205 S. Fifth Street, Suite 1000  
P.O. Box 2459  
Springfield, IL 62705

Mr. Bossert provided information and documentation regarding the amount of leachate generated, the removal of leachate, and the shipping of leachate and locations to which it was shipped.

**INTERROGATORY NO. 2:** 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.

**ANSWER:**

(1) Jacqueline M. Cooperider, P.E.  
Permit Section Manager  
Bureau of Land  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

Ms. Cooperider is expected to testify regarding her duties and responsibilities as Permit Section Manager for Respondent's Bureau of Land. Ms. Cooperider also is expected

to testify regarding the process, resources, and authorities used by Respondent in evaluating proposed permit modifications and reaching a decision on the same, including her personal involvement in Respondent's decision of September 25, 2023.

- (2) Jacob Nutt  
Project Manager  
Corrective Action Reviewer  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

Mr. Nutt is expected to testify regarding his duties and responsibilities as a Project Manager within Respondent's Bureau of Land, including those duties and responsibilities specific to the project that is the subject of this action. Mr. Nutt also is expected to testify regarding the process, resources, and authorities used by Respondent in evaluating proposed permit modifications and reaching a decision on the same, including his personal involvement in Respondent's decision of September 25, 2023.

- (3) Paula Stine  
Groundwater Unit Reviewer  
Geologist, Groundwater Unit  
Bureau of Land, Permit Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

Ms. Stine is expected to testify regarding her duties and responsibilities as a Geologist and as a Groundwater Unit Reviewer, including those duties and responsibilities specific to the project that is the subject of this action. Ms. Stine also is expected to testify regarding the process, resources, and authorities used by Respondent in evaluating proposed permit modifications and reaching a decision on the same, including her personal involvement in Respondent's decision of September 25, 2023.

- (4) Kyle Janusick  
Groundwater Unit Reviewer  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

Mr. Janusick is expected to testify regarding his duties and responsibilities as a Groundwater Unit Reviewer, including those duties and responsibilities specific to the project that is the subject of this action. Mr. Janusick also is expected to testify regarding the process, resources, and authorities used by Respondent in evaluating proposed permit

modifications and reaching a decision on the same, including his personal involvement in Respondent's decision of September 25, 2023.

- (5) William T. Sinnott  
RCRA Unit  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P.O. Box 19276  
Springfield, IL 62794-9276

Mr. Sinnott is expected to testify regarding his duties and responsibilities within the RCRA Unit, including those duties and responsibilities specific to the project that is the subject of this action. Mr. Sinnott also is expected to testify regarding the process, resources, and authorities used by Respondent in evaluating proposed permit modifications and reaching a decision on the same, including his personal involvement in Respondent's decision of September 25, 2023.

(6) Investigation continues. Petitioner recognizes its duty to seasonably supplement or amend any prior answer or response whenever new or additional information subsequently becomes known to it and as its investigation continues.

(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.

**ANSWER:** None at this time. Investigation continues.

(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 therefor;

- (iii) the qualifications of the witness; and
- (iv) any reports prepared by the witness about the case.

**ANSWER:** None at this time. Investigation continues.

**INTERROGATORY NO. 3:** With regard to leachate at the Landfill:

- a. For each year from 2013 to the present, state the amount of leachate generated at the Landfill on an annual basis;
- b. For each year from 2013 to the present, state the amount of leachate removed by Petitioner from the Landfill property;
- c. For each year from 2013 to the present, identify the location to which each shipment of leachate was taken;
- d. For each year from 2013 to the present, state the cost expended by Petitioner for leachate collection at the Landfill, leachate testing and analysis, leachate removal or transportation from the Landfill, leachate treatment prior to discharge or disposal, and leachate discharge and disposal Identify the Identify

With regard to IFI's activities at the Site, identify:

**ANSWER:** Petitioner objects to Interrogatory No. 3 as seeking information that is neither relevant nor calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). While hearing in this matter affords Petitioner “the opportunity to challenge the Agency’s reasons for denying or conditionally granting the permit,” the Board hearing “will be based exclusively on the record before the Agency at the time the Agency issued its permit decision.” (Order of Feb. 15, 2024 at 1 (citing 35 Ill. Adm. Code 105.214(a)).

The Board cannot consider additional evidence or testimony that might be disclosed through discovery or developed after the Agency's decision. *Illinois EPA v. Illinois Pollution Control Bd.*, 386 Ill. App. 3d 375, 390 (3d Dist. 2008); *Community Landfill Co. v. Illinois EPA*, PCB No. 01-170, \*3 (Dec. 6, 2001). The annual amount of leachate generated, removed, and shipped as well as the cost expended for leachate collection, testing, analysis, removal, transportation, treatment, discharged, and/or disposal was not in the record before Respondent on September 25, 2023, when it issued its final decision partially approving five (5) permit modification submissions from Petitioner subject to certain conditions and modifications. Further, nowhere in its September 25, 2023, final decision does Respondent state that a reason for imposing those conditions and modifications upon Petitioner's permit modification submissions was due to concern regarding the volume of leachate at the site and the cost to Petitioner of managing it. As the requested information was not before Respondent at the time it issued its permit decision and it does not address any concerns raised by Respondent in its final decision, Respondent cannot go back in time and shore up its decision with such information, as it is neither relevant nor calculated to lead to admissible evidence.

Petitioner further objects to that portion of Interrogatory No. 3(d) that states, "Identify the Identify" and then states "With regard to IFI's activities at the Site, identify:" as vague and inscrutable and as it is unclear what is meant by "IFI."

Petitioner further objects to Interrogatory No. 3(d) as unduly burdensome. To answer Interrogatory No. 3(d), Petitioner would need to contact its corporate accounting office and request copies of invoices from Davis Junction Landfill, which includes not only the Phase I unit at issue in this action but also the Phase II and III units which are not.

Corporate accounting them would need to search for and identify all invoices that were submitted manually or electronically through its E-pro and Oracle systems. Corporate policy is to retain records for eight years, so older records such as those dating back to 2013 are unlikely to exist. Each manual invoice would need to be scanned in, and then all scanned-in manual invoices along with all electronic invoices then would need to be put on a shared drive. Next, all invoices would need to be reviewed and leachate invoices separated from non-leachate invoices, most likely by a third-party consultant and then reviewed by executive management. Once the leachate invoices were identified, they would need to be reviewed, and the invoices or line items on the invoices for Phase I (RCRA) leachate would need to be separated from Phase II and III (non-RCRA) leachate—again, most likely by a third-party consultant and then reviewed by executive management. All Phase I (RCRA) cost information then would need to be compiled by the third-party consultant, reviewed internally for accuracy, then submitted to counsel for review and subsequent production in response to Respondent's discovery requests. Petitioner estimates this process would take at least three to four weeks.

Without waiving said objection, Petitioner answers Interrogatory No. 3(a) by reference to the enclosed documents Bates-numbered 000001 through 000529.

Without waiving the aforementioned objections, Petitioner answers Interrogatory No. 3(b) as follows:

In 2013, 100,000 gallons of leachate were removed.

In 2014, 148,000 gallons of leachate were removed.

In 2015, 119,000 gallons of leachate were removed.

In 2016, 50,100 gallons of leachate were removed.

In 2017, 93,000 gallons of leachate were removed.

In 2018, 100,000 gallons of leachate were removed.

In 2019, 107,000 gallons of leachate were removed.

In 2020, 112,146 gallons of leachate were removed.

In 2021, 86,300 gallons of leachate were removed.

In 2022, 101,300 gallons of leachate were removed.

In 2023, 79,400 gallons of leachate were removed.

Without waiving the aforementioned objections, Petitioner answers Interrogatory No. 3(c) as follows:

In 2013, leachate was shipped to Interstate Pollution Control Treatment Facility in Rockford, Illinois.

In 2014, leachate was shipped to CID Facility in Calumet City, Illinois.

In 2015, leachate was shipped to Waste Management CID Facility in Calumet City, Illinois.

In 2016, leachate was shipped both to Waste Management CID Facility in Calumet City, Illinois, and Rock River Water Reclamation District in Rockford, Illinois.

From 2017 through 2020, leachate was shipped to Rock River Water Reclamation District in Rockford, Illinois.

From 2020 through 2023, leachate was shipped to Four Rivers Sanitation Authority in Rockford, Illinois.

**INTERROGATORY NO. 4:** Does Petitioner claim that leachate generated at the Landfill complies with the 35 Ill. Adm. Code Part 620 groundwater standards? If so state every fact which supports Petitioner's belief.

**ANSWER:** No.

**INTERROGATORY NO. 5:** State the estimated date on which Petitioner estimates that leachate in the Landfill will penetrate the liner and enter groundwater under or adjacent to the Landfill.

**ANSWER:** Petitioner objects to Interrogatory No. 5 as seeking information that is neither relevant nor calculated to lead to relevant information. *See* 35 Ill. Adm. Code 101.616(a). While hearing in this matter affords Petitioner "the opportunity to challenge the Agency's reasons for denying or conditionally granting the permit," the Board hearing "will be based exclusively on the record before the Agency at the time the Agency issued its permit decision." (Order of Feb. 15, 2024 at 1 (citing 35 Ill. Adm. Code 105.214(a)). The Board cannot consider additional evidence or testimony that might be disclosed through discovery or developed after the Agency's decision. *Illinois EPA v. Illinois Pollution Control Bd.*, 386 Ill. App. 3d 375, 390 (3d Dist. 2008); *Community Landfill Co. v. Illinois EPA*, PCB No. 01-170, \*3 (Dec. 6, 2001). The estimated date on which Petitioner might estimate that leachate in the Landfill might penetrate the liner and enter groundwater under or adjacent to the Landfill was not in the record before Respondent on September 25, 2023, when it issued its final decision partially approving five (5) permit modification submissions from Petitioner subject to certain conditions and modifications. Further,

nowhere in its September 25, 2023, final decision does Respondent state that a reason for imposing those conditions and modifications upon Petitioner's permit modification submissions was due to concern regarding if and when leachate might penetrate the landfill liner and enter groundwater under or adjacent to the landfill. As the requested information was not before Respondent at the time it issued its permit decision and it does not address any concerns raised by Respondent in its final decision, Respondent cannot go back in time and shore up its decision with such information, as it is neither relevant nor calculated to lead to admissible evidence.

Without waiving said objection, Petitioner responds that it has no information responsive to Interrogatory No. 5, as Petitioner has not conducted any such calculation or made any such estimation nor had cause to do so.

**INTERROGATORY NO. 6:** Identify all remedial action that would be required to address contamination of groundwater upon discharge of leachate from the Landfill into groundwater.

**ANSWER:** Petitioner has no information responsive to Interrogatory No. 6, as Petitioner has not made such an estimation nor had cause to do so.

**INTERROGATORY NO. 7:** State the cost of closure of the hazardous waste disposal portions of the Landfill by removal of all hazardous waste in accordance with 35 Ill. Adm. Code 724.328.

**ANSWER:** Petitioner has no information responsive to Interrogatory No. 7, as Petitioner has not conducted any such calculation or made any such estimation nor had cause to do so.

Scott B. Sievers  
Ill. Atty. Reg. No. 6275924  
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(217) 544-8491 (telephone)  
(217) 544-9609 (facsimile)  
ssievers@bhslaw.com

Respectfully submitted,

BFI WASTE SYSTEMS  
OF NORTH AMERICA, LLC,

Petitioner.

BY:



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Scott B. Sievers  
Attorney for Petitioner

**ATTESTATION**

STATE OF Illinois )  
 ) SS.  
COUNTY OF Livingston )

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

I, Megan Crowley, being first duly sworn on oath, depose and state that I am a duly authorized officer, employee, and/or agent of BFI Waste Systems of North America, LLC, the Petitioner in the above-captioned matter, that I have read the foregoing document, and the answers to Respondents First Set of Interrogatories to Petitioner made herein are true, correct, and complete to the best of my knowledge and belief.

**VERIFICATION BY CERTIFICATION**

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

BY: Megan Crowley  
Megan Crowley

DATE: July 25, 2024

**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  
MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 2

AFFIDAVIT OF TAKAKO HALTERMAN

**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.	)	

**AFFIDAVIT OF TAKAKO HALTEMAN**

I, Takako Halteman, certify under penalty of perjury pursuant to Section 1-109 of the Illinois Code of Civil Procedure, 735 ILCS 5/1-109 (2024), that the statements set forth in this Affidavit are true and correct, and further state that if called upon to testify in this matter, I would competently testify as follows:

1. I am a RCRA Unit Manager with the Illinois Environmental Protection Agency (“Illinois EPA”), Bureau of Land, Permit Section.
2. I have been employed with the Illinois EPA Bureau of Land since 1998. I am familiar with the federal and Illinois regulations regarding the identification, storage, treatment and disposal of hazardous waste.
3. I have a degree in Civil Engineering from the University of Illinois, and am a Licensed Professional Engineer in the State of Illinois.
4. I am familiar with the BFI Davis Junction Landfill-Phase I Landfill (“Landfill”), that is the subject matter of this case. I worked with other members of the Illinois EPA RCRA

unit on evaluation of conditions at the Landfill and the financial assurance conditions that are at issue in this matter.

5. The Landfill, which was developed in the 1970's, has an "in-situ" liner, which is a liner which was constructed solely from native soil at the time the Landfill was developed. Pursuant to 35 Ill. Adm. Code 724.401(a), hazardous waste landfills are now required to have a double liner system, consisting typically of high-density polyethylene, a drainage layer and a leachate collection/detection system.

6. In-situ liners provide less protection against leachate migration to groundwater than the currently required liner systems.

7. Information and reports reviewed by the RCRA Unit indicate that the bottom of the in-situ liner at the Landfill is possibly already in contact with groundwater at the Landfill. Specifically, groundwater potentiometric maps provided by the Landfill in 2022 and 2023 indicate that groundwater was in contact with or very close to groundwater underneath the Landfill.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Takako Halteman