

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BFI WASTE SYSTEMS)	
OF NORTH AMERICA, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB No. 2024-029
)	
ILLINOIS ENVIRONMENTAL)	(Permit Appeal -RCRA)
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Petitioner’s Motion for Summary Judgment, a copy of which is herewith served upon you.

DATED: March 3, 2026

Respectfully submitted,

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BFI WASTE SYSTEMS
OF NORTH AMERICA, LLC,

Petitioner.

BY:



Scott B. Sievers
Attorney for Petitioner

BFI Waste Systems of North America, LLC v. Illinois EPA
Pollution Control Board No. 2024-029

CERTIFICATE OF SERVICE

Scott B. Sievers of the law firm of Brown, Hay + Stephens, LLP herein certifies that on March 3, 2026, from Springfield, Illinois, he electronically submitted for filing the foregoing **PETITIONER'S MOTION FOR SUMMARY JUDGMENT** and **NOTICE OF FILING** with the Pollution Control Board by using the Clerk's Office On-Line (COOL) eFile system. Scott B. Sievers further certifies that on March 3, 2026, he served the other parties in this case with a copy of the foregoing document by transmitting the document by e-mail to the parties' representatives, who are identified below, at their designated e-mail addresses of record:

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VERIFICATION BY CERTIFICATION

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

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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 MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC (“BFI”), by and through its attorney, Scott B. Sievers of Brown, Hay + Stephens, LLP, and, pursuant to 35 Ill. Adm. Code 101.516, moves this honorable Board to enter summary judgment in its favor and against Respondent, Illinois Environmental Protection Agency (“Illinois EPA”). In support, Petitioner states the following:

I. INTRODUCTION

With its September 25, 2023, BFI Davis Junction Phase I permit modification decision, Illinois EPA staff chose to construe this Board’s post-closure care and financial assurance landfill regulations to require more than 30 years of both despite the absence of regulatory authority to do so. With its decision, the Agency rejected its prior decisions allowing financial assurance to be pro-rated based upon the amount of post-closure care remaining and instead imposed rolling, 30-year, post-closure care and financial assurance obligations that are perpetual. Because no genuine issue of material fact exists that no changes to site conditions or in applicable law prompted this reevaluation and that Illinois EPA exceeded its lawful authority with its September 25, 2023, decision, this Board should

find BFI is entitled to summary judgment as a matter of law and order Illinois EPA to approve the submitted permit modifications without the Agency's newly asserted post-closure and financial assurance requirements.

II. PROCEDURAL HISTORY

1. Petitioner BFI Waste Systems of North America, LLC ("BFI") owns, operates, and is permittee of the Davis Junction Landfill in Ogle County, Illinois. (R 000137).

2. Davis Junction Landfill comprises three units, two of which accepted only municipal solid waste (Phases II and III) and one of which was a combined municipal solid waste and RCRA Subtitle C hazardous waste disposal facility (Phase I). *In the Matter of: Petition of BFI Waste Systems of North America, Inc. for Waste Delisting*, 2008 WL 5156337, at *7 (PCB No. AS 08-55) (Dec. 4, 2008).

3. RCRA is the Resource Conservation Recovery Act. (Ex. 4 (Halteman dep.) at 13:22–14:1).

4. The facility at issue in this action, BFI Davis Junction Phase I, is a hazardous waste or RCRA landfill. (Ex. 4 (Halteman dep.) at 23:15–17, 27:6–8).

5. The other phases of BFI Davis Junction did not involve hazardous waste. (*See* Ex. 3 (Nutt dep.) at 26:18–22).

6. Waste was placed at BFI Davis Junction from 1973 through 1983. (Ex. 4 (Halteman dep.) at 68:13–14).

7. The Phase I unit of the Davis Junction Landfill operated from December 1976 to January 1983. *In the Matter of: Petition of BFI Waste Systems of North America, Inc. for Waste Delisting*, 2008 WL 5156337, at *7 (PCB No. AS 08-55) (Dec. 4, 2008).

8. Only approximately two (2) percent of the waste disposed in the Phase I unit of the Davis Junction Landfill was hazardous waste. (R 000140 ¶ (B)(1)).

9. Illinois EPA approved certification of closure of BFI Davis Junction on December 5, 1984. (R 000141 ¶ 2; *In the Matter of: Petition of BFI Waste Systems of North America, Inc. for Waste Delisting*, 2008 WL 5156337, at *7 (PCB No. AS 08-55) (Dec. 4, 2008)).

10. Post-closure care of BFI Davis Junction began December 5, 1984. (*E.g.*, R 000142 ¶ 2; Ex. 2 (Cooperider dep.) at 41:16–18; *see* Ex. 4 (Halteman dep.) at 27:9–12).

11. The last permit prior to the September 25, 2023, decision was a 2018 permit. (Ex. 2 (Cooperider dep.) at 41:4–15; Ex. 3 (Nutt dep.) at 25:11–21).

12. Before the agency in reaching its September 25, 2023, decision were five proposed modifications to BFI Davis Junction's 2018 permit. (Ex. 2 (Cooperider dep.) at 39:1–9; R 000131–000187).

13. On September 25, 2023, Illinois EPA issued a decision partially approving five (5) permit modification submissions, but the Agency conditioned and modified them in pertinent part as follows:

1. BFI's annual costs and one-time cost for post-closure care in the updated cost estimate can be approved by the Illinois EPA. However, the total postclosure care cost estimate cannot be approved by the Illinois EPA at this time. The Illinois EPA has reevaluated the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 and has determined the total post-closure care estimate must reflect thirty (30) years of post-closure care as required by 35 Ill. Adm. Code 724.217.
2. Within sixty (60) days of the receipt of this letter, BFI must submit a revised post-closure cost estimate (in 2023 dollars) and financial assurance to reflect thirty (30) years of post-closure care in

accordance with 35 Ill. Adm. Code 724.217. This revised cost estimate must include items required in Condition 3 and 4 below.

3. The Permittee must include costs associated with re-surveying the wells every five (5) years in accordance with Condition III.J.5 of the Permittee's RCRA Permit. In addition, copies of the latest well survey information must be provided to the Illinois EPA.
4. The table provided with the itemized cost estimates for post-closure care must be revised to provide a legible copy with a font size of no less than 12 pt.

(R 000132).

14. The financial assurance obligation set forth in the September 25, 2023, decision is that, at any time during the course of the existing post-closure care permit, there needs to be 30 years of financial assurance in place. (Ex. 3 (Nutt dep.) at 27:23–28:3, 28:15–21; Ex. 2 (Cooperider dep.) at 45:24–46:4).

15. When that 30 years is over, another application is filed, and another 30 years of financial assurance kicks in. (Ex. 2 (Cooperider dep.) at 46:5–9).

16. With the September 25, 2023, decision, Illinois EPA made the determination that a 30-year, rolling and perpetual post-closure care period and financial obligation were required. (Ex. 2 (Cooperider dep.) at 46:10–13, 67:7–14).

17. As a result of its decision, Illinois EPA revised the total post-closure care cost estimate of \$484,460 in the 2018 permit to \$2,589,796 in its September 25, 2023, decision. (R 000136).

18. Accordingly, the Agency's September 25, 2023, decision required Petitioner to maintain financial assurance for BFI Davis Junction "of at least \$2,589,796 in 2022 dollars." (R 000145 at ¶ (G)(1)).

19. On January 30, 2024, BFI filed its Petition for Review of Illinois EPA Permit Modification Decision (“Petition for Review”) in the instant action.

20. The Petition for Review appealed the conditions and modifications set forth in Paragraphs Nos. 1, 2, and 3 of Illinois EPA’s September 25, 2023, decision set forth in Paragraph 13 above. (Pet. at 5 ¶ 27).

21. On February 15, 2024, the Pollution Control Board accepted the petition for hearing. (Order of Feb. 15, 2024 at 1).

III. SUMMARY JUDGMENT STANDARD

The Pollution Control Board’s rules define “summary judgment” as meaning “the disposition of an adjudicatory proceeding without hearing when the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law.” 35 Ill. Adm. Code 101.202. Section 101.516(b) of the Board’s rules provides, in pertinent part, that, “[i]f the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.” Ill. Adm. Code 101.516(b).

Summary judgment is determined on examination of all submitted materials viewed in the light most favorable to the party opposing the motion. *People v. Demolition Excavating Group, Inc. et al.*, 2017 WL 1322284, at *1 (PCB No. 2017-46 April 3, 2017). Where no genuine issues of material fact exist, summary judgment is appropriate. *Chicago Coke Co. v. Illinois EPA*, 2013 WL 1890228, at *26 (PCB No. 10-75 May 2, 2013).

IV. ILLINOIS EPA'S DECISION REQUIRING MORE THAN 30 YEARS OF POST-CLOSURE CARE, INCLUDING FINANCIAL ASSURANCE, IS NOT SUPPORTED BY BOARD RULES.

In support of its September 25, 2023, decision to require “at least” 30 years of post-closure care, including financial assurance, Illinois EPA cited 35 Illinois Administrative Code Part 724. (*E.g.*, R 000132). Only one provision in Part 724 addresses a 30-year period, and that is 35 Ill. Adm. Code 724.217(a)(1), which states:

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:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, N, and X; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X.

35 Ill. Adm. Code 724.217(a)(1) (emphasis added). While the Agency cites this provision in support of its decision (*e.g.*, R. 000136 ¶ 11), this section does not provide for a post-closure care period of “at least 30 years,” but for “30 years”—no more and no less. *Id.* Section 724.217(a)(1) is the only provision within the Pollution Control Board’s hazardous waste disposal facility regulations specifying the length of the post-closure care period.

In addition to subpart (a)(1) of Section 724.217, Illinois EPA also cited subpart (a)(2)(B) in support of its September 25, 2023, decision. (*E.g.*, R 000136 ¶ 11). That provision states:

a) Post-Closure Care Period

...

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:

...

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).

35 Ill. Adm. Code 724.217(a)(2)(B) (emphasis added). While this provision allows for the extension of the post-closure care period, it only does so if the Pollution Control Board has found through an adjusted standard issue that the extended period is necessary to adequately protect human health and the environment; it does not authorize Illinois EPA to unilaterally extend the post-closure care period beyond the 30-year period set forth in 35 Ill. Adm. Code 724.217(a)(1).

Based upon logic and common sense, the legal maxim *expressio unius est exclusio alterius* provides that, where a statute or regulation lists things to which it refers, there is an inference that all omissions should be understood as exclusions. *See People v. Commonwealth Edison Company*, 1985 WL 21568, at *3 (PCB 83-218) (Oct. 24, 1985); *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151–52 (Ill. 1997); *City of St. Charles v. Illinois Labor Relations Bd.*, 395 Ill. App. 3d 507, 510 (2d Dist. 2009) (rule of construction applies to administrative regulations). Applying this rule of construction to 35 Ill. Adm. Code 724.217, the inclusion of a means in subsection (a)(2)(B) to extend the post-closure care period for hazardous waste management units or facilities after this Board has found, by an adjusted standard issue, that the extended period is necessary to adequately protect human health and the environment without setting forth any other means to extend

it gives rise to the inference that other means of so extending the post-closure care period, including Illinois EPA doing so unilaterally, are excluded.

This Board's regulations do use the term "perpetuity," and they do so in the post-closure context by requiring recording of a notation on a deed "that will in perpetuity notify any potential purchaser of the property" concerning the history and restricted use of a hazardous waste disposal unit. *See* 35 Ill. Adm. Code 724.219(b)(1). Thus, when it intended for a requirement to be perpetual, this Board said so. Again, the inclusion of this term in this regulation implies the exclusion of perpetual requirements elsewhere in this Board's regulations.

Illinois EPA is a statutorily created entity. 415 ILCS 5/4(a). The Environmental Protection Act ("the Act"), 415 ILCS 5/1 *et seq.*, established the Agency within the Executive Branch of Illinois State Government. The Act imposes upon the Agency the duty to administer permit systems, including issuing permits, and it authorizes Illinois EPA to require permit applicants to submit complete plans and specifications. 415 ILCS 5/4(g)–(h); *Landfill, Inc. v. Pollution Control Bd.*, 74 Ill. 2d 541, 560 (1978). However, administrative agencies such as Illinois EPA may only act pursuant to their statutory authority. *E.g.*, *Walsh v. Champaign Cnty. Sheriff's Merit Comm'n*, 404 Ill. App. 3d 933, 938 (4th Dist. 2010). Any action beyond that authority is void. *Id.*

No provision within Part 724 of this Board's regulations authorizes Illinois EPA to require more than 30 years of post-closure care, including financial assurance. Consequently, this Board's regulations provide no basis for Illinois EPA to unilaterally extend the post-closure care period for Petitioner's Phase I Landfill beyond an initial 30-year post-closure care period. As addressed below, Illinois EPA staff instead decided on their own to change

Agency policy to impose a rolling, 30-year post-closure care period and financial assurance obligation that they acknowledged may effectively be perpetual.

V. ALTHOUGH NO CHANGES IN APPLICABLE LAW OR IN THE SITE ITSELF PROMPTED THE SEPTEMBER 25, 2023, DECISION, ILLINOIS EPA STAFF NONETHELESS TOOK IT UPON THEMSELVES TO IMPOSE A NEW PERPETUAL REQUIREMENT UPON BFI DAVIS JUNCTION PHASE I.

Illinois EPA's Bureau of Land Permit Section reviews applications and issues permits for hazardous and non-hazardous facilities, including landfills, storage treatment disposal facilities, underground injection control wells, and transfer stations. (Ex. 2 (Cooperider dep.) at 9:11–18). The RCRA Unit is within the Permit Section of the Bureau of Land. (Ex. 4 (Halteman dep.) at 14:21–15:2).

Submittals concerning a landfill's permit are typical. (Ex. 2 (Cooperider dep.) at 16:2–4). Illinois EPA's September 25, 2023, decision involving multiple submittals over different time on one particular site is a typical kind of decision that the permit section would reach. (Ex. 2 (Cooperider dep.) at 15:20–16:1).

When a submittal is evaluated by the Permit Section, an engineer and a geologist typically are assigned to it. (Ex. 3 (Nutt dep.) at 13:9–12). Engineer Jacob Nutt and geologist Paula Stine were assigned to review the five permit modification requests BFI Davis Junction had submitted. (Ex. 2 (Cooperider dep.) at 22:12–14, 22:18–20; *see* Ex. 4 (Halteman dep.) at 20:5–12; Ex. 3 (Nutt dep.) at 13:13–19). Nutt works within the Agency's Bureau of Land Permit Section's hazardous waste unit. (Ex. 2 (Cooperider dep.) at 22:21–23; Ex. 3 (Nutt dep.) at 9:4–24). At the time of the September 25, 2023, decision, Halteman was Jacob Nutt's supervisor, and Cooperider was Halteman's supervisor. (Ex. 3 (Nutt dep.) at 10:1–20). Stine works in the Groundwater Unit within the Bureau of Land

Permit Section. (Ex. 2 (Cooperider dep.) at 22:15–17; *see* Ex. 4 (Halteman dep.) at 21:3–4). Her supervisor was Joshua Rhoades. (Ex. 2 (Cooperider dep.) at 23:15–19). Nutt and Stine simultaneously worked on the BFI permit modification submittals. (*See* Ex. 3 (Nutt dep.) at 14:15–21).

Illinois EPA issues a certification that a facility is closed based upon an applicant's submittal. (Ex. 2 (Cooperider dep.) at 27:5–8). After Illinois EPA has certified that a facility is closed post-closure care begins. (Ex. 2 (Cooperider dep.) at 27:9–11).

Post-closure care are activities conducted after a unit is closed, has waste in place, and long-term care is required to ensure that the waste and constituents included in the waste are not mobilized and cause concern in the future. (Ex. 4 (Halteman dep.) at 22:6–15; *see* Ex. 2 (Cooperider dep.) at 26:22–27:4). Nutt testified that post-closure care is “the actions taken by a site to eliminate any chance of having constituents of concern from affecting an area outside of a site after the site has stopped accepting new waste.” (Ex. 3 (Nutt dep.) at 15:9–13).

Post-closure care requirements or obligations include maintenance of the landfill cover to prevent precipitation from going into the unit. (Ex. 4 (Halteman dep.) at 22:16–24; *see* Ex. 5 (Watson dep.) at 24:23–25:11). They also include groundwater monitoring to ensure there are no constituents leaching into the groundwater; leachate management to determine if there is any leachate and, if so, that it is pumped out so constituents will not leach into groundwater; and in many sites, gas monitoring management to manage landfill gases. (Ex. 4 (Halteman dep.) at 22:16–23:11, 24:23–25:18; Ex. 5 (Watson dep.) at 24:23–25:11). Post-closure care also includes corrective action to correct any deficiency. (Ex. 4 (Halteman dep.) at 25:24–26:20).

Financial assurance is part of post-closure care. (Ex. 2 (Cooperider dep.) at 27:23–28:1, 37:7–9; Ex. 4 (Halteman dep.) at 25:21–23; Ex. 3 (Nutt dep.) at 15:22–24). Financial assurance is the mechanism of financial obligation required by regulation to ensure there is enough funding available for managing the hazardous or non-hazardous waste. (Ex. 4 (Halteman dep.) at 28:1–9). Financial assurance is there during post-closure care if there is a problem and the agency has to take on the operation and maintenance at the facility. (Ex. 2 (Cooperider dep.) at 27:15–22, 76:13–16). Nutt testified that financial assurance was “an amount of money that a site needs to maintain in the event that the site were to become bankrupt to ensure that the site is able to be adequately taken care of by the state in the event that, upon bankruptcy, that it has to be turned over to the state so that the post-closure care can continue without affecting taxpayers.” (Ex. 3 (Nutt dep.) at 15:14–21).

A. ILLINOIS EPA PREVIOUSLY USED A PRORATED METHOD FOR REQUIRING FINANCIAL ASSURANCE.

Prior to Illinois EPA’s September 25, 2023, decision, the method used to calculate financial assurance for BFI Davis Junction was a pro-rated method. (Ex. 3 (Nutt dep.) at 27:18–22; *see* Ex. 5 (Watson dep.) at 15:16–20). Prorating meant allowing a facility to decrease its financial assurance based upon the number of years left in post-closure care. (Ex. 2 (Cooperider dep.) at 44:20–45:8). Historically, Illinois EPA accepted the reduction of financial assurance liability based upon the number of years of post-closure care completed. (Pl.’s Ex. 1 (IPA’s Interrog. Answers) at 4). Nutt testified, “It’s my understanding that the previous manner in which these – that the financial assurance was calculated was a total amount of financial assurance at the beginning of post-closure care and over the course of the 30 years it would decrease on a manner of 1/30th a year until it ran out.” (Ex. 3 (Nutt dep.) at 24:15–24). Prior to the September 25, 2023, decision, if a

RCRA landfill had been certified closed, the permit would require 30 years of post-closure care and financial assurance initially, and then as time went by time was taken off the 30-year period up to a certain time. (Ex. 4 (Halteman dep.) at 31:2–10).

B. AGENCY STAFF CHOSE TO RE-EVALUATE BOARD RULES DESPITE NO CHANGES IN LAW OR SITE CONDITIONS.

The September 25, 2023, decision stated, in part, that “[t]he Illinois EPA has **reevaluated** the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 and has determined the total post-closure care estimate must reflect thirty (30) years of post-closure care as required by 35 Ill. Adm. Code 724.217.” (R 000132) (emphasis added). The current or former Illinois EPA employees who participated in this reevaluation were Nutt and his supervisor, Halteman; Stine and her supervisor, Rhoades; Cooperider; and Rob Watson. (Pl.’s Ex. 1 (IPA’s Interrog. Answers) at 3; *see* Ex. 2 (Cooperider dep.) at 26:8–21, 28:2–13; Ex. 4 (Halteman dep.) at 28:10–19).

Prior to September 25, 2023, BFI Davis Junction Phase I had a permit in place that provided for post-closure care and financial assurance. (Ex. 2 (Cooperider dep.) at 44:1–8). Nutt was unaware of any change in the law since 2018, when the last permit was issued, that was a basis he relied upon in making changes in the 2023 permit. (Ex. 3 (Nutt dep.) at 27:12–17). Cooperider testified that, since Illinois EPA approved the permit prior to the September 25, 2023, decision, there have been no changes in the Environmental Protection Act that would apply to this permit. (Ex. 2 (Cooperider dep.) at 42:17–24). Since the 2018 permit until the September 25, 2023, decision, there were no changes in Illinois Pollution Control Board regulations that affected the 2023 decision. (Ex. 2 (Cooperider dep.) at 43:1–9). Cooperider testified that, since the 2018 permit was in place until the September 25,

2023, decision, there were no changes in the law to her knowledge that would impact post-closure care or financial assurance obligations. (Ex. 2 (Cooperider dep.) at 44:9–14).

Cooperider testified that Illinois EPA was prompted to reevaluate the requirements for post-closure cost estimates and financial assurance when it received BFI Davis Junction's application. (Ex. 2 (Cooperider dep.) at 29:17–30:4). “[W]e evaluate based on the application by the facility. So the application coming in would have initiated our evaluation of the adequacy of the financial assurance.” (Ex. 2 (Cooperider dep.) at 29:10–16). Cooperider testified that “the application coming in would have caused us to evaluate it and look at the overall whether or not these were – the financial assurance was adequate given the risk at the facility if the agency were required to take over and have to continue operation and maintenance at that facility.” (Ex. 2 (Cooperider dep.) at 29:17–30:4).

Cooperider testified that the post-closure care period for BFI Davis Junction needed to be extended due to site conditions. (Ex. 2 (Cooperider dep.) at 52:1–2). With its September 25, 2023, decision, Illinois EPA changed the total post-closure care cost estimate from a six-year period in the 2018 permit to a 30-year period. (R000136; Ex. 2 (Cooperider dep.) at 31:12–16). During her deposition, Cooperider was questioned about this change:

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

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

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

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

Q. If the risk remained the same from 2018 until this decision, why would the – why would the regulations be reevaluated?

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

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

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

(Record read back by the reporter.)

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

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

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

A. Correct.

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

A. The facility – no. The risk – the risk remains the same.

(Ex. 2 (Cooperider dep.) at 31:17–33:5) (emphasis added).

Nothing about the risks at BFI Davis Junction Phase I changed since the pre-existing permit in 2018 and the decision of September 25, 2023. (Ex. 2 (Cooperider dep.) at 53:5–10). Cooperider was unaware of any changes at BFI Davis Junction Phase I since the 2018 permit was issued that factored into the agency's September 25, 2023, decision. (Ex. 2 (Cooperider dep.) at 70:24–71:5).

Nonetheless, Cooperider testified that she determined the financial assurance from the 2018 permit was insufficient based upon evaluation of the risks at the site. (Ex. 2 (Cooperider dep.) at 53:11–18). “We felt that, at this point in time, that it was inadequate

for us to issue this permit without having the adequate financial assurance.” (Ex. 2 (Cooperider dep.) at 42:6–8). Asked if the financial assurance in the pre-existing permit was inadequate, Cooperider answered, “I didn’t review the permit at that time. So the evaluation done at that time I can’t speak to.” (Ex. 2 (Cooperider dep.) at 42:9–12).

C. RATHER THAN RECOGNIZE THE NEED TO ADD OR REVISE EXISTING STATUTES OR REGULATIONS, ILLINOIS EPA STAFF CHOSE TO GIVE THEMSELVES THE AUTHORITY TO PROMULGATE NEW FINANCIAL ASSURANCE POLICY.

While Cooperider testified that receiving BFI Davis Junction’s five permit modification requests prompted the Agency’s reevaluation of post-closure care cost estimates and financial assurance requirements, in actuality the Agency had reevaluated those requirements long beforehand.

Nutt, the project engineer, testified that, through multiple internal meetings, he was told how Illinois EPA was reevaluating the applicable regulations. (Ex. 3 (Nutt dep.) at 20:2–24; R 000132). Asked if he recalled who the individuals were that participated in the reevaluation, Nutt testified, “I believe the main driving force behind that was Rob Watson.” (Ex. 3 (Nutt dep.) at 21:12–16). Nutt testified that, during the time he was assigned to review the BFI Davis Junction permit modification submittals and completed the draft decision, Watson had retired and Halteman had taken his position, and “I believe that the reevaluation of the 30 years of post-closure care had happened before Rob left.” (Ex. 3 (Nutt dep.) at 21:17–22). Nutt testified that Watson was working for Illinois EPA either full-time or on a contract when Watson was participating in the evaluation or reevaluation of the post-closure care and financial assurance discussion. (Ex. 3 (Nutt dep.) at 22:9–14).

Watson testified that “post-closure care had been a concern for a long time, because the 30 years of post-closure care was – I mean the clock was running out on a lot of

landfills, so that came up for a lot of different sites in a lot of different ways.” (Ex. 5 (Watson dep.) at 16:7–11). Asked what he meant by “the clock was running out,” Watson testified, “Well, 30 years would be approaching, and the question then is: What does that mean for each site. Conditions are different at each site. But if the 30 years runs out, what does that mean, how are you still protective of human health, the environment, if you reach the 30 years.” (Ex. 5 (Watson dep.) at 16:14–19).

Nutt recalled that the reason that the post-closure care time period and financial assurance were reevaluated was because

[s]ites that were under post-closure care that were approaching the end of the original 30 years of post-closure care were running out of financial assurance without completing post-closure care. And this conundrum led to a position where it appeared to the Illinois EPA that sites that still had to manage hazardous wastes were no longer going to have financial assurance ready. And that was how it was encapsulated through the discussion – the internal discussions during meetings.

But I know that Rob had mentioned discussions with other state agencies that were running into similar issues. And my understanding was that other states – other states['] EPAs had not done the prorating method that the Illinois EPA had done with the RCRA sites under post-closure care and instead were holding sites that needed to maintain post-closure care activities to hold a continual 30-year amount of financial assurance as necessary.

(Ex. 3 (Nutt dep.) at 22:15–23:13).

Illinois EPA staff, including Halteman and Watson, participated in conference calls with U.S. EPA and the Association of State and Territorial Solid Waste Management Officers, or ASTSWMO, on the issue of running out of time for post-closure care at hazardous waste landfills. (Ex. 4 (Halteman dep.) at 41:13–20, 42:21–43:6, 44:11–45:2, 46:9–47:10). Watson testified, “[I]ike I said, this was an issue that a lot of people and a lot of states, you know were concerned with.” (Ex. 5 (Watson dep.) at 22:7–24). Halteman participated in more than a dozen conference calls in which the issue of running out of time

for post-closure care at hazardous waste landfills was discussed by Illinois EPA staff and others, even attending a couple of ASTSWMO meetings in person. (Ex. 4 (Halteman dep.) at 42:4–7, 42:21–43:6). Watson had several meetings on the topic, and he even was appointed to an ASTSWMO post-closure care working group to discuss the issue with other states. (Ex. 4 (Halteman dep.) at 42:8–13).

Nutt heard of such discussions with Florida and Wisconsin’s versions of Illinois EPA. (Ex. 3 (Nutt dep.) at 23:14–21). Halteman discussed the issue with colleagues in Virginia as well as in Florida and Wisconsin. (Ex. 4 (Halteman dep.) at 45:10–15). In addition to Florida, Virginia, and Wisconsin, Watson conferred with Indiana, Minnesota, New York, North Dakota, and Ohio on the topic. (Ex. 5 (Watson dep.) at 23:1–6). Watson, though, acknowledged that, compared to Illinois’ post-closure care cost estimates and financial assurance regulations, other states’ “regs did vary and the way they interpreted them varied. I don’t recall exactly – some were more stringent, some were less stringent, some – yeah, it kind of varied.” (Ex. 5 (Watson Dep.) at 23:8–19).

In his review notes, Nutt stated that the September 25, 2023, permit conditions and requirements were developed based upon various statutory and regulatory provisions as well as upon reference materials, including U.S. EPA guidance and an ASTSWMO position paper on post-closure care beyond 30 years at RCRA facilities. (R 000224). The U.S. EPA guidance document, though, noted that it “does not impose any legally binding requirements, and the use of such phrases as ‘guidance,’ ‘recommend,’ ‘may,’ ‘should,’ and ‘can,’ are not intended to impose or connote any legal obligations. Accordingly, this document does not change or substitute for any law, regulation or any other legally binding requirement and is not legally enforceable.” (R 001628). The position paper, in turn,

effectively acknowledged that existing RCRA regulations might not be sufficient for post-closure care beyond 30 years: “The ASTSWMO Board of Directors recommends that EPA either revise the RCRA regulations for post-closure or issue supplemental guidance on the implementation of the post-closure regulations under Subtitle C of RCRA.” (R 001655). Thus, neither the U.S. EPA guidance document nor the ASTSWMO position paper provided Illinois EPA with a basis to read beyond the four corners of this Board’s regulations to find and impose new requirements as the Agency did with its September 25, 2023, decision.

When he participated in the decision to change from the prorated method of applying post-closure care costs and financial assurance to a 30-year rolling obligation, Watson did not think other alternatives to the financial assurance issue were addressed or contemplated. (Ex. 5 (Watson dep.) at 25:20–26:3). Watson testified that there was no change in regulations that brought him to the conclusion that there was a need to reevaluate the way post-closure care cost estimates and financial assurance were being implemented. (Ex. 5 (Watson dep.) at 20:3–8). Watson did not think that there were discussions about seeking to add new regulations or to amend the existing regulations to address the issue. (Ex. 5 (Watson dep.) at 26:8–11).

Further, while subpart (a)(2)(B) of Section 724.217 provides a means to extend post-closure care, *see supra*, Illinois EPA chose not to pursue that option. In his review notes, Nutt acknowledged this option: “The extension can be done through an adjusted standard issue by the Board pursuant to Section 28.1 of the Act and 35 IAC Parts 101 and 104.” (R. 000225). Yet Nutt did not know whether Illinois EPA considered petitioning the Pollution Control Board for an adjusted standard as contemplated in 35 Ill. Adm. Code

724.217 in the BFI Davis Junction matter prior to reaching its September 25, 2023, decision. (Ex. 3 (Nutt dep.) at 37:11–21). Watson was unaware at any time of Illinois EPA petitioning the Pollution Control Board for an adjusted standard concerning post-closure care cost estimates and financial assurance. (Ex. 5 (Watson dep.) at 26:18–22). Cooperider, though, acknowledge that Illinois EPA did not petition the Pollution Control Board for an adjusted standard for BFI Davis Junction Phase I. (Ex. 2 (Cooperider dep.) at 71:24–72:8, 72:17–21). She testified that there was no finding by the Board of an adjusted standard issue in this case. (Ex. 2 (Cooperider dep.) at 52:3–5). Accordingly, this Board has not found by an adjusted standard issue that BFI Davis Junction Phase 1 needed to have the post-closure care period extended to adequately protect human health and the environment. (*See* Ex. 2 (Cooperider dep.) at 52:8–14).

VI. ILLINOIS EPA ACTED WITHOUT LAWFUL AUTHORITY BY EXTENDING POST-CLOSURE CARE THROUGH A CLASS 1* PERMIT MODIFICATION RATHER THAN THE CLASS 2 PERMIT MODIFICATION SPECIFIED BY BOARD RULES.

Pollution Control Board regulations provide an extensive but not an exclusive list of permit modifications and their classifications. *See* 35 Ill. Adm. Code 703.280(d)(1); 35 Ill. Adm. Code 703.Appendix A. Board regulations governing permit modifications classify such modifications into three (3) general classes: Class 1, Class 2, and Class 3 modifications. 35 Ill. Adm. Code 703.280(a)–(d). Some Class 1 permit modifications are further denoted by an asterisk in the Board regulations, hence the designation of Class 1* permit modifications. *See* 35 Ill. Adm. Code 703.281(b). The three classes generally reflect the increasing impact of a modification upon a facility, with Class 1 modifications applying “minor changes that keep the permit current with routine changes to the facility or its operations,” Class 3 modifications “substantially alter[ing] the facility or its operations,”

and Class 2 modifications arguably falling somewhere in between the two. *See* 35 Ill. Adm. Code 703.280(a)–(d).

Each of the five permit modification submittals tendered by Petitioner to Illinois EPA included the title “Class 1* Permit Modification. (R 000131–R 000132). Illinois EPA subsequently reviewed each of Petitioner’s five submittals as Class 1* permit modifications “in accordance with 35 Ill. Adm. Code 703.280.” *Id.*

Board regulations provide for modifications concerning post-closure. *See* 35 Ill. Adm. Code 703.280(d)(1); 35 Ill. Adm. Code 703.Appendix A(E). For example, changes in the name, address, or telephone number of the contact in a post-closure plan are Class 1 permit modifications, whereas reduction in the post-closure care period are Class 3 permit modifications. 35 Ill. Adm. Code 703.Appendix A(E)(1), (3).

Board regulations explicitly list “[e]xtension of the post-closure care period” as a Class 2 permit modification, not the Class 1* permit modification submitted by BFI and reviewed by Illinois EPA. *See* 35 Ill. Adm. Code 703.Appendix A(E)(2). Class 2 permit modifications require substantially different procedures than Class 1 permit modifications, including newspaper publication of notice of a modification request, a public meeting, and consideration and a written response by Illinois EPA of all timely submitted public comments. *See* 35 Ill. Adm. Code 703.281, 703.282.

Significantly, BFI did not petition to modify its permit to extend post-closure care for at least another 30 years beyond the 40 years it would have already provided as of December 5, 2024; that is something the Agency imposed. But when the Agency did so, it could only do so as a Class 2 permit modification because Board regulations specify that extending the post-closure care period is a Class 2 permit modification.

Because BFI did not seek a Class 2 permit modification and Illinois EPA did not review BFI's submittals as Class 2 permit modifications, Illinois EPA failed to comply with the procedural requirements for Class 2 permit modifications and lacked lawful authority to extend the post-closure care period is a Class 2 permit modification.

VII. ILLINOIS EPA IS BOUND BY ITS PRIOR DECISIONS PROVIDING FOR FINANCIAL ASSURANCE TO BE CALCULATED USING A PRO-RATED METHOD.

As noted above, no change in law since the 2018 permit prompted Illinois EPA in its September 25, 2023, decision to reevaluate its method for determining a hazardous waste facility's post-closure care period or the financial assurance required of the facility. Further, nothing changed at the site of BFI Davis Junction Phase I since the 2018 permit was issued that warranted the Agency's reevaluation in the September 25, 2023, decision.

Administrative agencies do not have the authority to reconsider, change, or modify decisions once announced unless empowering statutes authorize it. *Panhandle E. Pipe Line Co. v. Illinois E.P.A.*, 314 Ill. App. 3d 296, 303 (4th Dist. 2000); *Reichhold Chemicals, Inc. v. Illinois Pollution Control Bd.*, 204 Ill. App. 3d 674, 677, 561 N.E.2d 1343, 1345 (3d Dist. 1990). Agencies may not reconsider such determinations even in the face of mistake or error. *Tnt Holland Motor v. Office of the State Fire*, 1995 WL 314418, at *1 (PCB No. 94-133 May 18, 1995).

Further, an administrative agency's interpretation of its regulations ordinarily is entitled to deference. *E.g.*, *Mercado v. S&C Electric Co.*, 2025 IL 129526, ¶ 21 (2025). However, in *Village of Fox River Grove v. Pollution Control Board*, a municipality had challenged Illinois EPA's decision to impose tighter restrictions upon a National Pollution Discharge Elimination System, or NPDES, permit than the Agency previously had

imposed for the same facility in two previous permits. 299 Ill. App. 3d 869, 870–73, 877 (2d Dist. 1998). An Illinois EPA permit section manager testified that the Agency had erred in issuing the two prior permits by misinterpreting regulations. *Id.* at 875–76. The Appellate Court held that an administrative agency’s interpretation of its own rules ordinarily should be given substantial weight by a reviewing tribunal unless that interpretation is plainly erroneous “or inconsistent with past interpretations.” *Id.* at 877. Because neither the facility nor the applicable regulations had changed since the second of the two previous permits had been issued and the Agency indicated that its past interpretation of the regulations was incorrect, the Appellate Court held that “IEPA’s interpretation of the regulations in this case is not entitled to deference.” *Id.* at 878.

The U.S. Court of Appeals for the Seventh Circuit has held that “[a]n agency may be bound by its own established custom and practice as well as by its formal regulations. The Board may not deviate from such prior rules of decision on the applicability of a fundamental directive without announcing in advance its change in policy.” *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970) (finding reinterpretation and application of rule to violate U.S. Constitution); *accord Gatica v. Illinois Dept. of Pub. Aid*, 98 Ill. App. 3d 101, 106–07 (1st Dist. 1981) (“An agency which has changed a previously existing construction, or application of a rule, or an informal practice, may be bound thereby as a result of the previous custom.”); *Burke v. Dep’t of Reg. & Ed.*, 83 Ill. App. 3d 647, 650 (1st Dist. 1980) (change in interpretation of licensure rule requires notice to those substantially affected before interpretation is binding).

In *Central Illinois Public Service Company (CIPS) v. Pollution Control Board*, Illinois EPA issued routine operating permits for an electrical power-generating plant in

central Illinois in 1980, 1982, and 1984 that contained no specific limitation on sulfur dioxide emissions. 165 Ill. App. 3d 354, 355, 358 (4th Dist. 1988). However, in 1986 the Agency imposed such a limitation upon the facility in another operating permit. *Id.* at 359. The plant operator petitioned the inclusion of the limitation in the 1986 permit to the Pollution Control Board, which affirmed Illinois EPA. *See id.* at 355. The operator appealed. *Id.*

The Appellate Court of Illinois, Fourth District, noted that Illinois courts have held that administrative agencies are bound by their long-standing policies and customs of which affected parties had prior knowledge. *Id.* at 363. The *CIPS* court found that Illinois EPA's long-standing practice in interpreting the applicable but ambiguous regulations was to not include the limitation in operating permits for the facility, and that no changes in circumstances or regulations had been identified. *Id.* at 362–63. The court held that, if “the meaning of a regulation is debatable, and circumstances have not changed, an administrative agency is bound by a long-standing interpretation of the regulation.” *CIPS v. Pollution Control Board*, 165 Ill. App. 3d 354, 363; *see also* 382. In reversing the Board and remanding, the Appellate Court held that,

[i]n view of the **lack of any changed circumstances** which would support the Agency's unprecedented decision to include the 6.0 pounds/mbtu sulfur dioxide emission limitation in CIPS' August 1986 operating permit for its Meredosia generating unit, we hold that **the Agency is bound by its prior policy** of not subjecting that facility to a 6.0 pounds/mbtu sulfur dioxide emission limitation.

Id. at 363–64 (4th Dist. 1988) (emphasis added).

In the case at bar, Illinois EPA apparently thought this Board's post-closure care and financial assurance regulations were ambiguous, as the Agency previously recognized a pro-rated method of calculating financial assurance over the 30-year post-closure care

period in prior permits only to reject that in its September 25, 2023, decision and read a rolling 30-year but perpetual obligation into those regulations. Illinois EPA is not authorized to reconsider its prior decisions; its construction of this Board's regulations is inconsistent with its prior interpretations and thus is not entitled to deference; and the Agency has identified no changes in site conditions or in law warranting its wholesale reevaluation of the post-closure care and financial assurance obligations. Thus, Illinois EPA is bound by its prior construction of this Board's regulations providing for a 30-year post-closure care period and financial assurance pro-rated based upon the time remaining in that period.

While Agency staff may have been well-intentioned in their concern that 30 years of financial assurance might not be sufficient to perpetually guard against problems at closed hazardous waste landfills, Illinois EPA's failure to pursue new or revised statutory or regulatory authority to address their concerns, or to petition this Board for authority based upon site-specific concerns, provides no lawful authority for the Agency unilaterally to impose new regulatory obligations through its September 25, 2023, decision.

Because no genuine issue of material fact exists that no changes to site conditions or in applicable law prompted the Agency's reevaluation and that Illinois EPA exceeded its lawful authority with its September 25, 2023, decision, this Board should find BFI is entitled to summary judgment as a matter of law and order Illinois EPA to approve the submitted permit modifications without the Agency's newly asserted post-closure and financial assurance requirements.

VIII. CONCLUSION

WHEREFORE, Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, moves this honorable Board to enter summary judgment in its favor and against Respondent, and for such other and further relief as the Board may deem appropriate.

DATED: March 3, 2026

Respectfully submitted,

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ssievers@bhslaw.com

BFI WASTE SYSTEMS
OF NORTH AMERICA, LLC,

Petitioner.

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

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

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

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

Response:

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

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

Response:

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

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

Response:

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

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

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

Illinois EPA Response:

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

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

Response:

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

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

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

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

Response:

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

7. *State the full name and title of each current or former Illinois EPA employee who participated in the “Internal discussions” referenced in the statement, “Internal discussion with lead workers and co-workers in the RCRA unit determined that the ‘prorating’ of post-closure care which has been historically included in the RCRA permits is not the correct manner in which to require cost estimates of post closure care” set forth in Paragraph Two (2) of IEPA Reviewer’s Comments set forth at R. 000214 of the Record on Appeal.*

Response:

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

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

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

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

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

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

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

iii) the qualifications of the witness, and

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

Response to All

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

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

Response

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

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

Respectfully submitted,

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

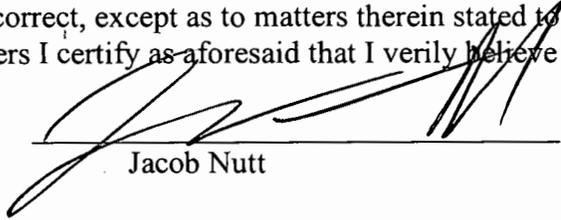
By: s/ Christopher Grant
Senior Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
(312) 814-5388
Christopher.Grant@ilag.gov

DATE: July 24, 2024

CERTIFICATION

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

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

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

Jacob Nutt

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



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

DISCOVERY DEPOSITION

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

DAVIS REPORTING SERVICE
 Angela C. Turner, CSR #084-004122
 Certified Shorthand Reporters
 3 Hickory Hills Drive
 Springfield, Illinois 62707
 (217) 546-6868

A P P E A R A N C E S

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2
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6 Springfield, Illinois 62701
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8 (Appearing on behalf of the Petitioner)

9 CHRISTOPHER GRANT
10 KEVIN GARSTKA
11 JUSTIN BERTSCHE (by phone)
12 Office of the Illinois Attorney General
13 69 W. Washington St., 18th Fl.
14 Chicago, Illinois 60602
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16 (Appearing on behalf of the Respondent)

17
18 RICHARD KIM
19 Illinois Environmental Protection Agency
20 2520 W. Iles Ave.
21 Springfield, Illinois 62704
22 Telephone: (217) 782-3397

23 (Appearing on behalf of the Respondent)
24

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S T I P U L A T I O N

1
2 It is stipulated and agreed, by and between
3 the parties hereto, through their attorneys, that the
4 deposition of **JACQUELINE M. COOPERIDER** may be taken
5 for discovery purposes before Angela C. Turner, a
6 Certified Shorthand Reporter, upon oral
interrogatories, on April 17, 2025, A.D., at the
instance of the Petitioner, commencing at 8:58 a.m.
at Illinois Environmental Protection Agency, 2520 W.
Iles Ave., Springfield, Illinois;

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

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

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

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

17 That any party hereto may be furnished
18 copies of the deposition at his or her own expense.
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1 transcript, we need to make sure that when I say
2 something or when you respond to something that she's
3 able to jot that down. So consequently, hand
4 gestures and nods and the like doesn't really work.
5 So would you agree to answer verbally or respond
6 verbally to any question I pose to you?

7 A. Yes.

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

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

19 A. Yes.

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

1 tell me you don't understand it?

2 A. Yes.

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

9 A. Yes.

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

12 A. Yes.

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

16 A. No.

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

19 A. Yes.

20 Q. Which documents did you review?

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

23 Q. Which guidance document?

24 A. The USEPA 2016 guidance document.

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

3 A. Yes.

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

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

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

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

14 Are you employed?

15 A. Yes.

16 Q. And where are you employed?

17 A. Illinois EPA.

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

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

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

24 A. Usually DLPC.

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

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

4 Q. And when did that change occur?

5 A. April of last year. April 2024.

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

8 A. Correct.

9 Q. Congratulations.

10 A. Thank you.

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

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

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

23 A. Yes.

24 Q. And who has that position now?

1 A. Joshua Rhoades.

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

6 A. Uh-huh.

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

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

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

17 A. Uh-huh, correct.

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

20 A. They're engineers and geologists.

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

23 A. Yes.

24 Q. Who was your supervisor then?

1 A. Greg Dunn.

2 Q. Has he since retired?

3 A. Yes.

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

7 A. Yes.

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

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

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

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

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

16 A. About a year and a half.

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

19 A. Yes.

20 Q. What was your position before that?

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

23 Q. And was that in the permit section?

24 A. Correct.

1 Q. And what were your job duties then?

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

7 Q. How long did you hold that position?

8 A. Four years.

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

11 A. Uh-huh.

12 Q. That's yes?

13 A. Yes. Sorry.

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

16 A. Yes.

17 Q. What was your position there then?

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

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

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

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

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

4 A. No. It was in the middle.

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

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

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

11 A. Yes.

12 Q. Promotions?

13 A. Uh-huh, yes.

14 Q. Do you hold any licenses or certifications?

15 A. Yes.

16 Q. Are you a licensed professional engineer?

17 A. Yes.

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

20 A. No.

21 Q. When were you first licensed?

22 A. 2010.

23 Q. And I trust you attended college?

24 A. Yes.

1 Q. Where did you attend college?

2 A. University of Notre Dame.

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

5 A. Correct.

6 Q. When did you graduate?

7 A. 2000.

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

10 A. No.

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

13 A. No.

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

17 Do you see that package of documents?

18 A. Yes.

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

21 A. Yes.

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

1 A. Yes.

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

3 MR. SIEVERS: Sure, Chris.

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

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

10 MR. SIEVERS: Are we off the record?

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

12 (Discussion off the record.)

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

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

1 A. Yes.

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

4 A. Yes.

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

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

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

14 A. Permit section, yes.

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

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

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

23 A. Yes.

24 Q. Is that a large portion of the materials

1 that are reviewed by the permit section?

2 A. No.

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

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

10 Are you saying commonly?

11 MR. SIEVERS: Let me rephrase that.

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

19 A. For the initial submittal, yes.

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

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

1 information.

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

6 A. Correct.

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

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

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

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

15 A. Correct.

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

20 A. Yes.

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

23 A. The unit manager.

24 Q. Are there meetings that are held with the

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

3 A. Yes.

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

7 A. Yes.

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

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

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

3 A. Uh-huh.

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

6 A. Uh-huh, yes.

7 Q. -- correct?

8 And then the groundwater unit manager?

9 A. Yes.

10 Q. Are those managing positions parallel?

11 A. Yes.

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

14 A. Yes.

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

17 A. Yes.

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

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

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

24 A. No.

1 Q. -- or the director?

2 A. No.

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

8 A. Yes.

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

12 A. I don't understand the question.

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

18 A. Yes.

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

22 Do you have that page in front of you?

23 A. Yes.

24 Q. Now, does that page have your signature

1 block in it?

2 A. Yes.

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

6 A. Correct.

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

9 A. Yes.

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

12 Who is Paula Stine?

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

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

17 A. Groundwater unit.

18 Q. And Jacob Nutt, who is he?

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

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

23 A. Correct.

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

1 you help me discern whose initials those are?

2 A. Yes.

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

5 MR. GRANT: Do you want the spelling?

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

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

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

11 A. Yes, that's Jacob Nutt.

12 Q. PS --

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

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

17 A. He's the groundwater unit manager.

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

19 A. Correct.

20 Q. And is it Takako?

21 A. Yes, that's correct.

22 Q. Would he be the hazardous waste unit?

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

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

4 A. Correct.

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

9 I trust that -- let me rephrase.

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

13 MR. SIEVERS: That's exactly right.

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

17 A. Correct.

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

19 A. Yes.

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

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

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

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

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

17 Q. Who's Emily Keener?

18 A. She too works for Region 5 USEPA.

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

22 A. No.

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

1 A. Yes.

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

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

6 Q. Just a matter of course?

7 A. Just a matter of -- yeah.

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

12 A. I'm finished.

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

20 Did I read that correctly?

21 A. Yes.

22 Q. What is post-closure care?

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

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

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

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

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

11 A. Begins.

12 Q. -- obligations begin?

13 A. Yes.

14 Q. And what is financial assurance?

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

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

1 A. Yes.

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

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

9 A. Yes.

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

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

14 Q. Any others?

15 A. We consulted with our attorneys.

16 Q. Anyone else?

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

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

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

1 bit. I'm unsure of the dates.

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

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

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

9 A. Yes.

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

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

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

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

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

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

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

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

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

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

16 MR. SIEVERS: Fair enough, Chris.

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

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

22 A. Correct.

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

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

3 A. Correct.

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

7 A. Yes.

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

11 A. Correct.

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

16 A. Correct.

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

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

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

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

24 Q. If the risk remained the same from 2018

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

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

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

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

15 (Record read back by the
16 reporter.)

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

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

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

24 A. Correct.

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

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

6 MR. GRANT: Are you okay?

7 THE DEPONENT: Yeah.

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

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

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

17 A. Correct.

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

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

24 A. Yes.

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

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

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

11 A. Yes.

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

14 A. Jacob Nutt's review notes.

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

19 A. Correct.

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

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

4 Did I read that correctly?

5 A. Yes.

6 Q. Were you part of those internal discussions?

7 A. Yes.

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

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

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

20 A. Correct.

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

24 A. Correct.

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

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

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

8 A. Yes.

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

12 A. Correct.

13 Q. What about that extension was improper?

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

20 Is that your recollection?

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

1 A. Yes.

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

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

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

9 A. Correct.

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

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

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

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

18 A. Right.

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

22 A. Right.

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

1 well?

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

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

6 A. Yes.

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

10 A. No.

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

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

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

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

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

3 A. Uh-huh.

4 Q. That's correct?

5 A. Correct.

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

9 A. Correct.

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

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

15 THE DEPONENT: 2015, yeah.

16 MR. GRANT: -- 2014 or something.

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

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

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

24 MR. SIEVERS: The witness is clearly quite

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

5 Can you read back my question, please?

6 (Record read back by the
7 reporter.)

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

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

13 A. Correct.

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

17 A. Correct.

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

19 MR. SIEVERS: R135 and R136.

20 MR. GRANT: Thank you.

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

24 A. Yes.

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

3 A. Yes.

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

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

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

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

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

15 A. Yes.

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

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

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

21 A. Correct.

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

24 A. Correct.

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

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

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

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

13 THE DEPONENT: May we take a break?

14 MR. SIEVERS: Sure.

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

16 to 9:57 a.m.)

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

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

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

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

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

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

16 But you can answer, if you can.

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

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

24 A. I'm unclear on the question.

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

4 A. Correct.

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

6 A. Correct.

7 Q. It also provided for financial assurance?

8 A. Correct.

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

14 A. Not to my knowledge.

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

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

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

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

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

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

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

8 A. On the permit, yes.

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

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

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

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

23 A. Correct.

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

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

4 A. Correct.

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

9 A. Yes.

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

11 A. Uh-huh.

12 Q. Is that yes?

13 A. Yes.

14 (Exhibit A was marked for
15 identification.)

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

20 Do you recognize Exhibit A?

21 A. I do.

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

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

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

2 A. Correct.

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

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

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

9 A. No.

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

14 A. Yes.

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

23 A. Yes.

24 Q. Is that the provision of this section that

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

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

8 Q. You were relying upon --

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

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

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

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

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

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

22 A. (So complied with request.)

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

1 obligation to create an exhibit during a deposition.

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

3 MR. GRANT: You can ask her verbally.

4 MR. SIEVERS: That's fine --

5 MR. GRANT: It's fairly short.

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

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

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

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

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

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

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

3 MR. SIEVERS: That's fine.

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

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

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

9 A. Like two minutes is fine.

10 MR. SIEVERS: Off the record.

11 (Discussion off the record.)

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

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

18 A. Yes.

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

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

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

1 it continues on. Did I read that correctly?

2 A. Uh-huh.

3 Q. Yes, that's correct?

4 A. Yes, that's correct.

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

9 A. Yes.

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

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

20 A. Can you repeat the question?

21 Q. Sure.

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

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

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

5 A. No.

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

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

14 A. No.

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

17 A. Correct.

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

19 A. Not in this particular provision.

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

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

1 30 years."

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

4 A. Yes.

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

10 A. Correct.

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

14 A. Correct.

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

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

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

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

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

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

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

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

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

23 A. In the permit itself?

24 Q. In the letter as a basis for partially

1 denying the five modifications that were submitted.

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

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

6 THE DEPONENT: 132.

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

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

15 MR. SIEVERS: You can answer.

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

21 (Exhibit B was marked for
22 identification.)

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

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

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

4 MR. SIEVERS: No.

5 MR. GRANT: No.

6 He just asked if you recognize it.

7 THE DEPONENT: I do recognize it.

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

10 MR. SIEVERS: What's the issue?

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

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

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

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

19 MR. GRANT: Did you answer that question?

20 MR. SIEVERS: She did.

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

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

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

6 MR. SIEVERS: Yes.

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

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

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

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

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

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

24 A. Yes.

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

3 A. Yes.

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

6 A. Uh-huh.

7 Q. Is that a yes?

8 A. Yes. Sorry.

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

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

15 A. Yes.

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

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

22 MR. GRANT: Which decision?

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

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

3 MR. GRANT: Exhibit B?

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

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

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

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

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

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

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

23 Q. Right.

24 But the September 25, 2023, decision is not

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

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

6 Q. Yes.

7 And it's still not answering my question.

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

10 (Record read back by the
11 reporter.)

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

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

16 A. Yes.

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

20 A. 132 you said?

21 Q. That's correct.

22 A. Yes, it does.

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

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

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

6 A. Can you repeat the question?

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

9 A. Correct.

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

12 A. Yes.

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

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

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

24 A. Yes.

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

4 A. Correct.

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

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

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

12 A. Yes.

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

16 A. Correct.

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

19 A. Correct.

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

22 A. Correct.

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

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

3 A. Yes.

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

6 A. Correct.

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

10 A. Correct. Yes, I do.

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

14 A. Yes.

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

19 A. Yes.

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

23 A. Yes.

24 Q. And the leachate management number also has

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

3 A. Yes.

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

7 A. Correct.

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

10 A. Roughly.

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

14 A. Yep.

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

17 A. Yes.

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

21 A. Uh-huh, yes.

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

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

3 A. Yes.

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

10 A. Correct.

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

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

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

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

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

9 A. Yes.

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

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

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

18 THE DEPONENT: Can you repeat the question?

19 MR. SIEVERS: I'll rephrase it.

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

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

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

3 A. Yes.

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

6 A. Yes.

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

11 A. Yes.

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

14 A. Yes.

15 Q. Has that application -- strike that.

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

20 A. Yes.

21 Q. Which other sites do you recall?

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

23 Q. Do you know how many other sites?

24 A. Not off the top of my head.

1 Q. Has it been more than one?

2 A. I believe so.

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

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

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

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

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

19 Q. Well, prior to this decision --

20 A. For BFI, yes.

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

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

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

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

5 MR. SIEVERS: I'll clarify that.

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

10 A. Yes.

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

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

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

22 A. Yes.

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

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

1 waste unit.

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

4 A. Correct.

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

7 A. Ken Smith.

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

10 A. Yes.

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

14 A. Yes.

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

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

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

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

5 A. No.

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

9 A. Yes. Their notes and discussion.

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

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

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

23 A. I do not know.

24 Q. The agency never petitioned the Pollution

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

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

5 Q. For anything for this particular site.

6 A. Did the agency petition?

7 Q. Right.

8 A. No.

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

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

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

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

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

21 A. No.

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

1 her review notes?

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

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

8 A. Well, both.

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

11 A. Correct.

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

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

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

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

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

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

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

12 A. For BFI, no.

13 Q. For anybody else?

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

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

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

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

1 A. For any other site that we have?

2 Q. Right.

3 A. No, I don't recall.

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

6 A. Exactly, yes.

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

12 A. Correct.

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

17 A. Correct.

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

21 A. Correct.

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

1 A. Correct.

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

5 A. I don't recall.

6 Q. That's fair.

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

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

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

20 A. No. Not to the agency.

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

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

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

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

11 A. To the agency.

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

16 THE DEPONENT: There's no permit obligation.

17 MR. GRANT: Well --

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

22 A. Correct.

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

1 imposed through a permit?

2 A. Correct.

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

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

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

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

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

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

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

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

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

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

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

21 A. I don't understand the question.

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

1 financial assurance could not address it?

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

4 Q. A physical activity at the site.

5 A. Whether -- oh.

6 Can you clarify the question?

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

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

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

23 (Break taken from 11:01 a.m.
24 to 11:06 a.m.)

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

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

14 A. In person.

15 Q. So you met at some point?

16 A. Uh-huh.

17 Q. Was there more than one meeting?

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

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

22 A. Yes.

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

1 A. Yes.

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

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

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

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

15 Q. Fair enough.

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

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

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

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

3 A. I'm not sure.

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

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

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

9 THE DEPONENT: That's okay.

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

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

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

16 A. I don't think so.

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

19 A. No.

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

22 EXAMINATION

23 BY MR. GRANT:

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

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

5 A. Uh-huh.

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

8 A. Yes.

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

11 A. Okay.

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

14 A. Yes.

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

19 (Document tendered.)

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

1 you see that?

2 A. Yes.

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

7 A. The bottom liner or the top liner?

8 Q. The bottom liner.

9 A. The bottom liner, yes.

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

16 A. Yes.

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

19 A. Yes.

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

23 A. Yes.

24 (Exhibit C was marked for

1 identification.)

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

7 A. Yes.

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

10 A. Yes.

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

20 A. Yes.

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

23 A. Yes.

24 Q. Would you consider the pumping of leachate

1 to be a post-closure task?

2 A. Yes.

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

6 A. Yes.

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

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

10 THE DEPONENT: Uh-huh.

11 EXAMINATION

12 BY MR. SIEVERS:

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

18 A. Yes.

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

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

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

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

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

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

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

13 Q. Sure.

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

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

21 A. No.

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

24 It doesn't contain any language saying that

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

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

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

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

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

18 A. Correct.

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

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

23 Q. Right.

24 And those permit modification requests were

1 not granted in full, correct?

2 A. Right.

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

5 A. Yes. They were partially approved.

6 MR. SIEVERS: I have nothing further.

7 MR. GRANT: Just a couple.

8 EXAMINATION

9 BY MR. GRANT:

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

14 A. Yes.

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

19 A. 217, yes.

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

21 A. Yes.

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

1 A. Yes.

2 Q. Do you see that?

3 A. Yes.

4 Q. Is that part of 724?

5 A. 217, yes.

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

10 A. Yes.

11 MR. GRANT: That's all.

12 MR. SIEVERS: Nothing further.

13 COURT REPORTER: Signature?

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

15 (Discussion off the record.)

16 (FURTHER DEPONENT SAITH NAUGHT.)

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

18

19

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23

24

1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF SANGAMON)

4
5 C E R T I F I C A T E

6 I, Angela C. Turner, a Certified Shorthand
7 Reporter, do hereby certify that prior to the taking
8 of the deposition herein, and on April 17, 2025, the
9 Deponent JACQUELINE M. COOPERIDER was, by me, sworn
10 to testify to the truth in relation to the matter in
11 controversy herein. That on said date the foregoing
12 deposition was taken down in shorthand by me and
13 afterwards reduced to typewritten form by me, and
14 that the foregoing transcript contains a true and
15 accurate translation of all such shorthand notes.

16 Given under my hand this 28th day of April,
17 2025, at Springfield, Illinois.

18 *Angela C. Turner*

19 _____
20 Certified Shorthand Reporter
21 License No. 084-004122

#	20 [2] - 57:2, 58:23	47:10, 48:2, 50:17, 51:24, 53:8, 54:22, 55:8, 58:17, 59:19, 59:24, 62:5, 62:14, 63:2, 63:4, 63:17, 66:23, 67:7, 68:14, 68:22, 69:6, 70:18, 71:3, 71:12, 74:16, 78:6, 81:21, 87:19, 88:4, 89:16	7	Act [3] - 4:9, 42:20, 51:15
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



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

DISCOVERY DEPOSITION

Discovery deposition of **JACOB NUTT**, taken at the instance of the Petitioner on April 17, 2025, commencing at 1:32 p.m. at Illinois Environmental Protection Agency, 2520 W. Iles Ave., Springfield, Illinois, before Angela C. Turner, a Certified Shorthand Reporter, pursuant to notice and the stipulation attached hereto.

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I N D E X

JACOB NUTT

Page

Examination by Mr. Sievers

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E X H I B I T S

No.

Description

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35 Ill. Adm. Code 724.217

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S T I P U L A T I O N

1
2 It is stipulated and agreed, by and between
3 the parties hereto, through their attorneys, that the
4 deposition of **JACOB NUTT** may be taken for discovery
5 purposes before Angela C. Turner, a Certified
6 Shorthand Reporter, upon oral interrogatories, on
7 April 17, 2025, A.D., at the instance of the
8 Petitioner, commencing at 1:32 p.m. at Illinois
9 Environmental Protection Agency, 2520 W. Iles Ave.,
10 Springfield, Illinois;

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

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

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

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

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

1 like that for a bit.

2 The key thing here is a written transcript
3 is being prepared about the question and answering.
4 Consequently, when I pose a question to you, I need
5 you to be able to audibly respond to it so the court
6 reporter can write it down and not through hand
7 gestures, nods, and so forth.

8 A. Okay.

9 Q. And if we were in a bar or if we were out at
10 lunch, we would be talking using ums and ahs and so
11 forth. It's a very common thing. We'd completely
12 understand each other. But this doesn't translate
13 very well in a transcript. So there may be times
14 where you'll respond a certain way. And I'll have to
15 back up and ask for clarification whether that was a
16 yes or no or what have you. Not trying to be rude.
17 Just trying to keep the transcript clear.

18 A. Okay.

19 Q. Also, to keep the transcript clear, when I
20 pose a question to you, would you agree to wait for
21 me to finish my question before you answer it?

22 A. Yes.

23 Q. And attorneys, including me, often ask
24 confusing questions. I asked a whole bunch of

1 confusing questions this morning. I'll try better
2 this time. But if I do ask you a confusing question
3 and you don't understand it, will you agree to tell
4 me you don't understand the question --

5 A. Yes. Sorry.

6 Q. And do you agree not to answer it in that
7 case?

8 A. Yes.

9 Q. If at any point in the course of this
10 deposition you need to take a break, need to use the
11 restroom, make a phone call, what have you, just let
12 us know and we can take a break at any time. All I
13 ask is that if I posed a question to you that you
14 answer that question before we take that break. Is
15 that agreeable?

16 A. Yes.

17 Q. You understand you've been placed under
18 oath?

19 A. Yes.

20 Q. Do you have any reason to believe you're not
21 physically or mentally well enough today to
22 understand and answer my questions?

23 A. No.

24 Q. Did you review any documents in preparation

1 for this deposition?

2 A. Yes.

3 Q. Which documents did you review?

4 A. I reviewed the first class one mod, which
5 was the M1, 2, 3 -- 3, 4, and 7. I can't remember
6 exactly which -- it was a combination of multiple
7 modifications for BFI. I reviewed that document. I
8 reviewed the post-closure care extension letter that
9 I prepared. I reviewed the M9 document along with 35
10 IAC regulations.

11 Q. Now, without telling me, you know, any
12 contents of the conversations with attorneys, did you
13 meet with anybody in preparation for this deposition?

14 A. Yes.

15 Q. And who did you meet with?

16 A. I met with --

17 THE DEPONENT: I'm sorry. I can't remember
18 your name.

19 MR. GARSTKA: Kevin.

20 THE DEPONENT: I met with Kevin. I met with
21 Chris. I met with Rich.

22 Q. (By Mr. Sievers) Did you meet with any
23 non-attorneys at all?

24 A. I don't think so.

1 Q. I'm going to ask some questions that I
2 really do know the answer to for the most part, but I
3 need to ask them for the purposes of the transcript.

4 Are you employed?

5 A. Yes.

6 Q. And where are you employed?

7 A. At the Illinois EPA.

8 Q. What is your position here at Illinois EPA?

9 A. I am an Environmental Protection Engineer 3.

10 Q. Am I correct that the Illinois EPA is
11 divided into three different bureaus?

12 A. Yes.

13 Q. Air, water, land?

14 A. Yes.

15 Q. You're within land?

16 A. Yes.

17 Q. And in your current position, what are your
18 general duties?

19 A. I draft RCRA permits, including renewal
20 permits, modifications to RCRA permits, and I also
21 draft UIC permits.

22 Q. So would it be fair to say that you're in
23 the Bureau of Land permit section?

24 A. Yes. Yes.

1 Q. Do you supervise anyone?

2 A. I do not.

3 Q. Do you have a supervisor?

4 A. Yes.

5 Q. Who's your supervisor?

6 A. Takako Halteman.

7 Q. Now, we're here today to discuss an agency
8 decision made on September 25, 2023.

9 Are you familiar with that decision?

10 A. Yes, I am.

11 Q. Who was your supervisor at the time of that
12 decision?

13 A. I believe at that time it was still Takako
14 Halteman.

15 Q. And did Ms. Halteman -- is it Ms. Halteman?

16 A. H-A-L-T-E-M-A-N, Halteman. I'm not sure if
17 I'm pronouncing her last name all that well.

18 Q. Who was her supervisor at that time?

19 A. At the time of issuance, I believe that her
20 supervisor was Jacki Cooperider.

21 Q. How long have you been in your current
22 position at Illinois EPA?

23 A. I have been since January 16, 2023.

24 Q. Were you employed by Illinois EPA prior to

1 that date?

2 A. Yes, I was.

3 Q. What was your position prior to that date?

4 A. I was still an Environmental Protection
5 Engineer 3, but I was in the Bureau of Air compliance
6 section since 2017. And before that, I was employed
7 by the Illinois EPA in the Bureau of Air permit
8 section since I believe 2014.

9 Q. Is 2014 when you started working for
10 Illinois EPA?

11 A. Yes.

12 Q. Do you hold any licenses or certifications?

13 A. I have the EIT, the engineer in training
14 license.

15 Q. So not the professional engineer license
16 yet. Is that right?

17 A. That is correct.

18 Q. Do you have an engineering degree?

19 A. Yes, I do.

20 Q. Where is your engineering degree from?

21 A. Southern Illinois University Carbondale.

22 Q. When did you graduate from there?

23 A. I believe it was 2011.

24 Q. Besides your engineering degree, did you

1 earn any other degrees there?

2 A. No.

3 Q. Have you attended any trade schools or
4 served in the military?

5 A. No.

6 Q. Mr. Nutt, I'm going to hand you a packet of
7 documents here that has a number in the upper
8 right-hand corner R000130. And the last page is
9 R000187.

10 Do you recognize that packet of documents?

11 A. Is it okay if I go through the whole thing?

12 Q. Actually, I'm just going to ask you about
13 some very specific pages. I'm going to call your
14 attention to R000131 to R00136.

15 Do you recognize the documents R000131
16 through R00134?

17 A. Yes.

18 Q. What do you recognize that document to be?

19 A. I recognize that to be the RCRA modification
20 to the BFI Davis Junction landfill that I drafted.

21 Q. And do you understand that this decision set
22 forth on those pages, that's the decision that's at
23 issue in this case?

24 A. Yes.

1 Q. That's a decision issued September 25, 2023?

2 A. Yes.

3 Q. Now, I understand from reviewing the
4 documents in this case and from the earlier
5 deposition that you were involved in this decision
6 and that other people were involved in this decision
7 as well. Would that be accurate?

8 A. Yes.

9 Q. Is it correct that an engineer and a
10 geologist are typically assigned to a particular
11 submittal to be evaluated by the permit section?

12 A. Yes.

13 Q. And you were the engineer assigned in this
14 matter to consider the five permit modification
15 requests that BFI Davis Junction had submitted?

16 A. Yes.

17 Q. The geologist that was assigned was Paula
18 Stine?

19 A. Yes.

20 Q. And then tell me what your process is when
21 you get assigned to evaluate a permit modification
22 request.

23 A. When I am assigned a permit modification
24 request, there is a review of the information that

1 has been provided from the source. I will review it
2 as to determine completeness, technical adequacy. I
3 will also review in a folder, called our staging
4 area, any previous actions that have taken place for
5 the applicable site to find out, specifically due to
6 turnover, if anyone else has already done any work on
7 the modification before I begin any work on it.

8 Q. Do you review -- strike that.

9 When someone submits a request for a permit
10 modification, do you review the existing permit?

11 A. Yes.

12 Q. That's ordinarily a part of the review
13 process?

14 A. Yes.

15 Q. In this case, in this September 25, 2023,
16 decision, did you complete your review of the
17 submittal and then pass it to Paula Stine for her
18 role in the evaluation or do you work simultaneously?

19 A. It is simultaneous. Specifically with
20 modifications, it was simultaneous. With this one,
21 it was simultaneous.

22 Q. What part of this review -- and maybe if you
23 can explain to me in lay terms. What part of
24 reviewing this permit modification request did you

1 handle versus what Paula Stine handled?

2 A. I handled anything that did not specifically
3 fall under the regulations for our groundwater unit.

4 Q. Now, let me ask you a question that may very
5 well be ignorant. But would leachate be an issue for
6 Paula Stine dealing with groundwater or would that be
7 something that you would deal with?

8 A. Both.

9 Q. What is post-closure care?

10 A. Post-closure care is the actions taken by a
11 site to eliminate any chance of having constituents
12 of concern from affecting an area outside of a site
13 after the site has stopped accepting new waste.

14 Q. And what is financial assurance?

15 A. Financial assurance is an amount of money
16 that a site needs to maintain in the event that the
17 site were to become bankrupt to ensure that the site
18 is able to be adequately taken care of by the state
19 in the event that, upon bankruptcy, that it has to be
20 turned over to the state so that the post-closure
21 care can continue without affecting the taxpayers.

22 Q. And is financial assurance part of
23 post-closure care?

24 A. Yes.

1 Q. When post-closure care ends, does financial
2 assurance end as well?

3 A. I don't know.

4 Q. Have you had any experience with the agency
5 where you've dealt with a landfill that has completed
6 post-closure?

7 A. I have not.

8 Q. I am going to call your attention to pages
9 R000135 to R00136.

10 Do you have that in front of you?

11 A. Yes, I do.

12 Q. Now, does that document -- the two-page
13 document there -- reflect changes made on
14 September 25, 2023, to the pre-existing permit for
15 this site BFI Davis Junction?

16 A. Yes.

17 Q. Would additions to the existing permit be
18 underlined?

19 A. Yes.

20 Q. And deletions would be stricken through?

21 A. Yes.

22 Q. The portions that are not underlined or
23 stricken through, those remain the same from the
24 pre-existing permit?

1 A. For the vast majority, yes. An example
2 would be number five, where there isn't a
3 strike-through or underline. Since that was just a
4 correction of a number, there wasn't -- the
5 strike-through and underline wasn't included in
6 extremely minor changes.

7 Q. So these two pages, R000135 and R000136,
8 they don't encapsulate all the changes that may exist
9 to the permit from the pre-existing permit? It's a
10 summary. Would that be accurate?

11 A. They are -- they are to summarize all the
12 changes that were made although like number five
13 where there are minor corrections that are made are
14 not -- are not included with the underlines or
15 strike-throughs if it was a numbering change or a
16 grammatical or formatting issue that was corrected.

17 Q. Did these two pages try to address more just
18 substantive changes rather than grammatical
19 typographical changes?

20 A. Yes.

21 Q. And I'll call your attention to the second
22 page, R000136 and paragraph 11. Now, there is a
23 table there, 11A. And that table has entries for
24 post-closure inspection, groundwater monitoring,

1 leachate management.

2 Do you see those entries?

3 A. Yes, I do.

4 Q. And there are two columns to the right of
5 that. There is a column -- first column where the
6 numbers are stricken through and the second column
7 where they're underlined.

8 Does that indicate -- those two sets of
9 numbers, one set being stricken through and one set
10 being underlined -- that the second set of numbers
11 replaces the first set of numbers?

12 A. Yes, it does.

13 Q. And that is -- the first set of numbers, are
14 those numbers from the 2018 permit or the
15 pre-existing permit?

16 A. I believe so, yes.

17 Q. Could they also be from BFI Davis Junction's
18 submittal and then the second column is EPA's
19 modification to that?

20 A. My apologies. Could you reword that?

21 Q. I'm just trying to sort out -- I just want
22 to make sure that these two columns -- that I
23 understand what these two columns reflect.

24 The first column are the numbers from the

1 pre-existing permit and the second column are from
2 this permit, the September 25, 2023, permit. Is that
3 right?

4 A. Yes.

5 Q. And would you agree that the change in those
6 numbers is, in the post-closure inspection ground
7 water monitoring leachate management, about a
8 10 percent change increase over the second column
9 from the first column?

10 A. Approximately.

11 Q. The change in those numbers, is that a
12 calculation you made?

13 A. No. Those numbers were provided.

14 Q. Provided by BFI Davis Junction?

15 A. Yes.

16 Q. Do you have any understanding as to why the
17 numbers would increase by roughly 10 percent for the
18 first column to the second column?

19 A. It's my understanding that it was annual
20 inflation that drove the numbers up.

21 Q. So you're unaware of any change in the scope
22 of the post-closure inspection or groundwater
23 monitoring or leachate management that would have
24 altered those numbers from the pre-existing permit?

1 A. I don't remember, no.

2 Q. I will bring your attention back to page
3 R000132. And I'm going to call your attention to
4 paragraph number one in the center of that page.
5 Take a moment to read that to yourself and let me
6 know when you're finished.

7 A. Okay.

8 Q. Third sentence says the Illinois EPA has
9 reevaluated the requirements for post-closure care
10 cost estimates and financial assurance under 35
11 Illinois Admin. Code Part 724 and has determined that
12 total post-closure care estimate must reflect
13 30 years of post-closure care as required by 35 Ill.
14 Admin. Code 724.217.

15 Did I read that correctly?

16 A. Yes.

17 Q. Were you involved in the reevaluation of
18 those requirements for post-closure care cost
19 estimates and financial assurance?

20 A. Through internal meetings I was told how we
21 were -- how the Illinois EPA was interpreting -- was
22 to interpret those regulations, yes.

23 Q. Did you have multiple meetings?

24 A. Yes. Yes.

1 Q. Any idea how many meetings?

2 A. It wasn't necessarily just about this. Our
3 unit holds weekly meetings and it was an item of
4 discussion.

5 Q. So it might have been discussed at one
6 weekly meeting but not the next?

7 A. Yes.

8 Q. Are minutes kept of those meetings at all?

9 A. I believe so. Not -- I'm sorry. Not
10 formally kept. But I believe that we keep a summary
11 of our unit meetings.

12 Q. Do you recall who the individuals were that
13 participated in the reevaluation referenced there in
14 that page?

15 A. I believe that the main driving force behind
16 that was Rob Watson.

17 Q. And what makes you believe that?

18 A. During the time in which I was assigned this
19 task, and completed the draft, Rob had retired and
20 Takako had taken his position. And I believe that
21 the reevaluation of the 30 years of post-closure care
22 had happened before Rob left.

23 Q. Had you -- did you ever have a discussion
24 with Rob Watson about the way to determine the length

1 of time for post-closure care and financial
2 assurance?

3 A. No.

4 Q. Did you ever have a discussion with Takako
5 about that?

6 A. Probably, but not in a formal manner. Just
7 talking about it.

8 Q. Do you think -- well, strike that.

9 Was Rob Watson working for Illinois EPA
10 either full-time or on a contract when he was
11 participating in this evaluation or reevaluation of
12 the post-closure care and financial assurance
13 discussion?

14 A. Yes.

15 Q. Do you recall why the post-closure care time
16 period and financial assurance was reevaluated?

17 A. Yes.

18 Q. And what was the reason?

19 A. Sites that were under post-closure care that
20 were approaching the end of the original 30 years of
21 post-closure care were running out of financial
22 assurance without completing post-closure care. And
23 this conundrum led to a position where it appeared to
24 the Illinois EPA that sites that still had to manage

1 hazardous wastes were no longer going to have
2 financial assurance ready. And that was how it was
3 encapsulated through the discussion -- the internal
4 discussions during meetings.

5 But I know that Rob had mentioned
6 discussions with other state agencies that were
7 running into similar issues. And my understanding
8 was that other states -- other state EPAs had not
9 done the prorating method that the Illinois EPA had
10 done with the RCRA sites under post-closure care and
11 instead were holding sites that needed to maintain
12 post-closure care activities to hold a continual
13 30-year amount of financial assurance as necessary.

14 Q. And when you say other agencies or other
15 EPAs, you were talking about not in Illinois, but
16 outside of Illinois?

17 A. Correct.

18 Q. Like the Wisconsin version of the Illinois
19 EPA or the Florida version of the Illinois EPA?

20 A. Those are the two specific ones that I know
21 I heard discussions about.

22 Q. Besides Rob Watson, who else do you recall
23 participating in the discussions about the
24 post-closure care and financial assurance

1 reevaluation?

2 A. I believe that the only other one that would
3 be a person that was -- that had these discussions
4 and was disseminating it to our unit would have been
5 Takako.

6 Q. Do you recall any discussions with USEPA
7 about the concerns about post-closure care and
8 financial assurance being sufficient to cover the
9 obligations of post-closure care?

10 A. I know there were discussions. I only know
11 of them through memos though.

12 Q. Are you referencing that guidance memo from
13 the USEPA?

14 A. Yes.

15 Q. Now, what is your understanding of the
16 prorated or pro rata method that was used prior to
17 September 25, 2023, to calculate financial assurance
18 for post-closure permits?

19 A. It's my understanding that the previous
20 manner in which these -- that the financial assurance
21 was calculated was a total amount of financial
22 assurance at the beginning of post-closure care and
23 over the course of the 30 years it would decrease on
24 a manner of 1/30th a year until it ran out.

1 Q. In your position in Illinois EPA, have you
2 ever employed that method to calculate financial
3 assurance?

4 A. No.

5 Q. That happened before your time?

6 A. Yes.

7 I'm sorry. I know I'm very much a hands and
8 head speaker. So I apologize there.

9 MR. SIEVERS: Off the record.

10 (Discussion off the record.)

11 Q. (By Mr. Sievers) So do you understand that
12 prior to the September 25, 2023, decision that's at
13 issue in this case that the permit that was in place
14 beforehand was from 2018?

15 A. Yes, yes.

16 Q. Do you need to look at anything just to
17 confirm that?

18 A. I don't think so. I was trying to remember
19 what date the last revision to the BFI Davis Junction
20 permit was issued. And I believe that the 2018 date
21 sounds correct.

22 Q. From the issuance of the 2018 permit, until
23 the issuance of the September 25, 2023, permit, do
24 you know of any change at BFI Davis Junction Phase 1

1 that factored into that 2023 decision?

2 MR. GARSTKA: Objection to form.

3 What do you mean by -- I'm not sure what you
4 mean by "change."

5 MR. SIEVERS: Your objection is noted.

6 Q. (By Mr. Sievers) You may answer.

7 A. I kind of have two answers to that one. I
8 know that there was a modification request to BFI
9 Davis Junction in regards to a storage tank. That
10 one was not included in this one. That is M5. But I
11 know of that change. But that did not factor in into
12 the change in financial assurance for M1, M2, M4, M6,
13 and M7.

14 Q. Would that be a different phase of the
15 landfill by chance that was affected or was it Phase
16 1?

17 A. I believe it was still Phase 1.

18 Q. And my lay person understanding is Phase 1
19 is the hazardous waste component of BFI Davis
20 Junction and that the other phases are not hazardous
21 waste. Is that your understanding?

22 A. That's my understanding, yes.

23 Q. Since the permit was issued in 2018, in the
24 time period between that past permit and the

1 September 25, 2023, permit, do you know of any change
2 in the Illinois Environmental Protection Act, in the
3 Pollution Control Board regulations, in the case law
4 that formed a basis for your decision in this -- in
5 the 2023 permit?

6 MR. GARSTKA: Objection. Calls for a legal
7 conclusion.

8 You can answer.

9 THE DEPONENT: Can you repeat it again,
10 please?

11 MR. SIEVERS: I'll rephrase it, actually.

12 Q. (By Mr. Sievers) I guess my question really
13 comes down to: Are you aware of any change in the
14 law since 2018, when the last permit was issued, that
15 was a basis you relied upon in making changes in the
16 2023 permit?

17 A. No.

18 Q. So the past method, before this decision was
19 issued September 25, 2023, in calculating financial
20 assurance for this site was using that prorated
21 method. Is that right?

22 A. Yes.

23 Q. And now, going forward, the method is that
24 at any particular time during the course of the

1 post-closure care permit there needs to be 30 years
2 of financial assurance in place?

3 A. Yes.

4 Q. Has that rule, which I'll refer to as the
5 rolling 30-year post-closure care obligation, has
6 that been applied to any other site besides BFI Davis
7 Junction Phase 1?

8 A. I believe so, yes.

9 Q. Have you applied it to any other site?

10 A. No.

11 I haven't had any -- may I elaborate? I
12 haven't had any other ones that needed it applied. I
13 have been focused on renewals and haven't had this
14 type of an issue come up since.

15 Q. So is it your understanding that the
16 financial assurance obligation that is set forth in
17 the September 25, 2023, decision is that at any time
18 during the course of the existing post-closure care
19 permit there needs to be 30 years of financial
20 assurance in place?

21 A. Yes.

22 Q. Does the post-closure care permit expire at
23 any point?

24 A. I believe it expires in 10 years.

1 Q. Now, BFI Davis Junction Phase 1, had a
2 30-year post-closure care period that was extended by
3 an additional 10 years. Is that your understanding?

4 A. That is my understanding, yes.

5 Q. And now, this September 25, 2023, decision,
6 that -- does that also extend the post-closure care
7 permit an additional 30 years?

8 A. Yes.

9 Q. And so during this additional 30 years,
10 30 years of financial assurance has to be maintained
11 under this decision?

12 A. Yes.

13 Q. And at the end of that 30-year post-closure
14 care period, can that -- can this site complete
15 post-closure care?

16 A. I believe so. But I believe that to
17 complete post-closure care, it would require BFI
18 Davis Junction to apply for a different type of
19 permit which I'm unfortunately unsure of what they
20 would have to apply for. But the intent is to
21 maintain that 30 years. And when the permit expires,
22 they would have to either renew the permit or apply
23 for something else. That way, the decision is of how
24 to continue at the expiration point of the permit at

1 that point.

2 Q. Under the September 25, 2023, decision, how
3 long does that permit last?

4 A. The September 25th permit is only in
5 modification to their previous permit, which was the
6 B142 second revision R2 permit. And so these
7 modifications are not necessarily a standalone
8 permit. They just are an addendum -- a modification
9 to the existing permit, which I don't remember when
10 that permit expires. But that would be the end of --
11 whenever the underlying permit that these
12 modifications are modifying needs to be renewed, that
13 would be whenever this permit packet of M1, M2, M4,
14 M6, M7 would no longer be applicable as a renewal
15 permit would have to reevaluate everything.

16 Q. So the underlying permit, when the time for
17 that runs out, that doesn't buy itself complete
18 post-closure care?

19 A. Correct.

20 Q. Is it your understanding that at the
21 expiration of that underlying permit, that an
22 additional post-closure care permit would be required
23 by the agency?

24 A. At the expiration of the underlying permit,

1 an application for a renewal to the existing -- the
2 permit that was expiring would be expected from the
3 agency to be able to issue a renewed permit, yes.

4 Q. So and that would -- that renewed permit,
5 would that be a 30-year permit or 10-year permit?

6 A. The permit itself would last 10 years. And
7 the modification permit, R000137, the current permit
8 expires in '28.

9 Q. 2028?

10 A. Yes.

11 Q. And so in 2028, BFI Davis Junction would
12 need to submit a request to renew the permit at that
13 point?

14 A. Yes.

15 Q. And then that renewal would be a 10-year
16 renewal?

17 A. Yes.

18 Q. During the course of that 10-year renewal,
19 at any point in that 10-year renewal they would need
20 to maintain 30 years' worth of financial assurance?

21 A. Yes.

22 Q. Is the only way to get out of the -- to
23 complete or get out of the financial assurance
24 obligation to get out of post-closure care?

1 evaluating BFI Davis Junction's Phase 1 submittal
2 that's at issue in this case?

3 A. Yes.

4 Q. I'm going to call your attention to R000214.
5 Paragraph number two there, it says: Internal
6 discussion with lead workers and co-workers in the
7 RCRA unit determined that the prorating of
8 post-closure care which has been historically
9 included in the RCRA permits is not the correct
10 manner in which to acquire cost estimates of
11 post-closure care.

12 Did I read that correctly?

13 A. Yes.

14 Q. Not correct, I'm curious. Was there a
15 determination of what was incorrect about that
16 prorating calculation?

17 A. Yes. The manner of prorating and decreasing
18 the financial assurance through cost estimates prior
19 -- well, the manner in which we decreased the
20 financial assurance required through cost estimates
21 over the course of the post-closure care period was
22 determined to be not the correct manner in which we
23 were to require financial assurance.

24 Q. And was that determined by looking at

1 Pollution Control Board regulations or something
2 else?

3 A. That was determined -- that was determined
4 through multiple discussions that Rob Watson held
5 prior to my time really working in the Bureau of
6 Land. This was something that was being worked on
7 before I started here -- started in Bureau of Land.
8 Sorry. And it was -- and it was an item that was
9 being introduced very soon after I had started
10 working in Bureau of Land.

11 Q. I guess what I'm trying to get at is, I've
12 worked in government, so I understand that there can
13 be times where you're looking to do something better
14 or differently and there's maybe a policy change on
15 something.

16 This term here says that it's not correct.
17 And that sounds to me like something different than
18 just a new and improved way of doing something. It
19 suggests that the prior something was incorrect. And
20 I'm, you know, wondering what was incorrect about it
21 other than just now there's a new perspective on how
22 things should be done.

23 A. It's my understanding that, through
24 discussions that I was not part of, that prorating

1 the financial assurance required did not have any
2 regulations to stand on.

3 Q. And then would the new way of calculating
4 financial assurance saying that there's got to be
5 30 years of financial assurance in place at any
6 particular time during post-closure care, that did
7 have regulatory basis or authority?

8 A. It's my understanding, yes.

9 (Exhibit A was marked for
10 identification.)

11 Q. (By Mr. Sievers) Mr. Nutt, I'm handing you
12 what has previously been marked Exhibit A.

13 Mr. Nutt, do you recognize Exhibit A to be a
14 provision of the Pollution Control Board regulations?

15 A. Yes.

16 Q. Is that a provision you relied upon in
17 reaching your decision on the September 25, 2023,
18 decision that the agency issued?

19 A. Yes.

20 Q. And is the basis for the determination of
21 this rolling 30-year post-closure care obligation for
22 financial assurance, is that in section A, subpart 1
23 of this document, Exhibit A?

24 A. That is part of it, yes.

1 Q. Do you recall, is there another regulatory
2 basis that you relied upon for reevaluating the
3 financial assurance obligation and determining that
4 it had to be a rolling 30-year financial assurance
5 obligation?

6 A. Can you repeat that, please?

7 MR. SIEVERS: Can you read that back?

8 (Record read back by the
9 reporter.)

10 THE DEPONENT: I know that I relied upon
11 other regulations, but the 30-year rolling was not --
12 it wasn't -- it wasn't that -- sorry. I'm trying to
13 think of a way to word this. I know I relied on
14 other regulations in addition to this. But the
15 decision to require 30 years rolling was instructed
16 to me.

17 Q. (By Mr. Sievers) And who instructed that to
18 you?

19 A. At that time, it was Rob; Rob Watson.

20 Q. And did he point to any statutory or
21 regulatory authority in support of his instruction?

22 A. He relied on 35 IAC 724.217 in addition to I
23 believe it was 35 IAC 724.410(b)(2) due to leachate
24 still being generated.

1 Q. Do you recall whether you relied on any
2 other provisions?

3 A. Oh, I don't know -- without rereading my
4 permit, I don't know exactly what provisions I relied
5 on, but there were other provisions in the regulatory
6 language that were relied on, yes.

7 Q. Sure.

8 Those are the two key ones, would that be
9 fair to say?

10 A. I believe so, yes.

11 Q. Prior to reaching the September 25, 2023,
12 decision, did Illinois EPA at any time consider
13 petitioning the Pollution Control Board for an
14 adjusted standard as contemplated in the section
15 that's before you, Exhibit A?

16 A. I don't know that answer.

17 Q. Would it be fair to say you're not aware of
18 any consideration to file -- to petition the
19 Pollution Control Board for an adjusted standard in
20 the BFI Davis Junction matter?

21 A. Yes.

22 Q. A couple of questions for you left. I want
23 to preface this. I have no reason to think that you
24 haven't testified completely or that you have

1 testified incorrectly. But I want to just pose these
2 questions to you.

3 Are you aware of any answers that you gave
4 today to my questions that were incorrect?

5 A. No. But I -- the transition between Rob and
6 Takako for my managers is something that I -- Rob
7 came back on 75-day contract. And I don't
8 100 percent know when that hand over happened. And
9 so I don't want to attest all actions to Rob that may
10 have been either or both of them since they were both
11 acting in the same capacity for a period of time.

12 Q. Fair enough.

13 And are you aware of any answers you gave
14 today to my questions that were incomplete?

15 A. One. When you asked if I recognized this.
16 I got distracted asking about something else. And
17 yes, I did recognize the item that starts with
18 R000130.

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

21 A. I don't believe so, no.

22 MR. SIEVERS: Nothing further.

23 MR. GARSTKA: Can we take a short like
24 two-minute break?

1 MR. SIEVERS: Absolutely.

2 (Break taken from 2:45 p.m.
3 to 2:47 p.m.)

4 MR. GARSTKA: Scott, we don't have any
5 questions.

6 MR. SIEVERS: Okay. Great.

7 You have an opportunity to review the
8 transcript, if you wish. And really, generally
9 speaking, you don't get to make wholesale changes to
10 the transcript, but if there are typographical
11 errors -- if you said 2018 and you meant 2019, that
12 sort of thing, those are the kind of little errors
13 that can be corrected in it. Also, you can just
14 trust the court reporter took it down accurately and
15 just do what's called waive signature. I will leave
16 it to your counsel to advise you whether you want to
17 waive signature or reserve signature.

18 MR. GARSTKA: Our recommendation is that you
19 waive.

20 THE DEPONENT: I'll waive signature.

21 (FURTHER DEPONENT SAITH NAUGHT.)

22 (Time concluded: 2:48 p.m.)

23

24

1 STATE OF ILLINOIS)
2) SS
3 COUNTY OF SANGAMON)

4
5 C E R T I F I C A T E

6 I, Angela C. Turner, a Certified Shorthand
7 Reporter, do hereby certify that prior to the taking
8 of the deposition herein, and on April 17, 2025, the
9 Deponent JACOB NUTT was, by me, sworn to testify to
10 the truth in relation to the matter in controversy
11 herein. That on said date the foregoing deposition
12 was taken down in shorthand by me and afterwards
13 reduced to typewritten form by me, and that the
14 foregoing transcript contains a true and accurate
15 translation of all such shorthand notes.

16 Given under my hand this 28th day of April,
17 2025, at Springfield, Illinois.

18 *Angela C. Turner*

19 _____
20 Certified Shorthand Reporter
21 License No. 084-004122

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West's Illinois Administrative Code
Title 35. Environmental Protection
Subtitle G. Waste Disposal
Chapter I. Pollution Control Board
Subchapter C. Hazardous Waste Operating Requirements
Part 724. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
(Refs & Annos)
Subpart G. Closure and Post-Closure Care

35 Ill. Adm. Code 724.217

724.217 Post-Closure Care and Use of Property

Currentness

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:

A) Monitoring and reporting in accordance with the requirements of Subparts F, K, L, M, N, and X; and

B) Maintenance and monitoring of waste containment systems in accordance with the requirements of Subparts F, K, L, M, N, and X.

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).



b) The Agency must require continuation at partial or final closure of any of the security requirements of Section 724.114 during part or all of the post-closure period when either of the following is true:

1) Hazardous wastes may remain exposed after completion of partial or final closure; or

2) Access by the public or domestic livestock may pose a hazard to human health.

c) Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liners, or any other components of the containment system or the function of the facility's monitoring systems, unless the Agency finds, by way of a permit modification, that the disturbance is necessary for either of the following reasons:

1) It is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

2) It is necessary to reduce a threat to human health or the environment.

d) All the post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in Section 724.218.

Credits

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Current through rules published in the Illinois Register Volume 49, Issue 14, April 4, 2025. Some sections may be more current, see credits for details.

35 ILAC § 724.217, 35 IL ADC 724.217

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JAMES JENNINGS, INTERIM DIRECTOR

217/524-3301

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RETURN RECEIPT REQUESTED

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JUL 20 2024

BFI Waste Systems of North America, LLC
Attn: Matthew Healy
26 West 580 Schick Road
Hanover Park, IL. 60103

Re: 1418210001 -- Ogle County
BFI - Davis Junction Landfill - Phase I
ILD980700751
Log No. B-142R2
RCRA Permit File - 24A
Permit Correspondence

Dear Mr. Healy,

The purpose of this letter is to inform BFI Waste Systems of North America, LLC (BFI) of the Illinois EPA's post-closure care evaluation and determination for a closed hazardous waste management unit, the Phase I Landfill, at the above-referenced BFI - Davis Junction facility. BFI has been conducting post-closure care activities at the Phase I Landfill since December 5, 1984, the date Illinois EPA accepted certification of closure, under the requirements of the facility's RCRA Post-Closure Permit (Log Nos. B-142, B-142R, and B-142R2).

The Illinois EPA has conducted a review and evaluation of the post-closure status for the Phase I Landfill to determine whether the environmental conditions and associated regulatory requirements identified at this site meet the standards of the Illinois Environmental Protection Act (Act), Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Subtitle G, Subtitle C of the Resource Conservation and Recovery Act (RCRA); and the USEPA's "Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA", dated December 15, 2016 (2016 USEPA Guidance). In addition, USEPA's guidance "Implementing Climate Resilience in Hazardous Waste Permitting Under the Resource Conservation and Recovery Act (RCRA)", dated June 5, 2024 (June 5, 2024, USEPA Guidance) is also referenced in this letter. A copy of the USEPA 2016 Guidance and 2024 Guidance are attached to this letter.

Condition I.C.2 of the facility's current RCRA Post-Closure Permit states, post-closure care of the Phase I Landfill must be provided for at least thirty (30) years, until at least December 5, 2024. The Illinois EPA has evaluated the conditions of the site, as identified in this letter, and determined that it is necessary to continue post-closure care of the Phase I Landfill beyond December 5, 2024, for at least thirty (30) years in accordance with 35 Ill. Adm. Code 703.282. Additionally, the facility must modify the current RCRA Post-Closure Plan in order to address current and future environmental concerns identified in this letter.

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JUL 20 2024

BFI Waste Systems of North America, LLC
Attn: Matthew Healy
26 West 580 Schick Road
Hanover Park, IL. 60103

Re: 1418210001 -- Ogle County
BFI - Davis Junction Landfill - Phase I
ILD980700751
Log No. B-142R2
RCRA Permit File - 24A
Permit Correspondence

IEPA-DIVISION OF RECORDS MANAGEMENT
RELEASABLE

SEP 18 2024

REVIEWER: EMI

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1418210001 – BFI – Davis Junction
B-142R2-Corr
Page 2

The Illinois EPA's determination to require BFI to extend post-closure care for the Phase I Landfill is based on the following:

1. **Leachate:** The ongoing generation of leachate from the Phase I Landfill requires continued leachate collection and management under post-closure care in accordance with 35 Ill. Adm. Code 724.410(b)(2). According to BFI's annual hazardous waste reports from Year 2019 through Year 2023 (the most current available 5-year data), reported volumes of leachate generated from the Phase I Landfill ranged between 79,400 to 112,146 gallons per year (average of 97,229 gallons per year). The leachate generated was 100,000 gallons in 2023 and 290,000 gallons in 2003. A large decline occurred between 2010 and 2013, but levels remain steady for the last 10 years.

According to the 2016 USEPA Guidance, monitoring for leachate generation serves as the most effective way of examining the integrity of the waste management unit (e.g., it can suggest a cover or liner failure when leachate is detected late in the post-closure care period).

2. **Nature of waste in the landfill:** The wastes contained in the Phase I Landfill are considered RCRA hazardous wastes due to 2% of the disposed wastes being hazardous materials. The hazardous materials include 96% heavy metal sludges; 4% spent solvent still bottoms, spent solvent sludges, petroleum refining residues, rodenticides glycol, polystyrene, and phthalic anhydride.

Since hazardous wastes remain at the Phase I Landfill, and leachate and gas generation persist, the Phase I Landfill is susceptible to long-term risks and requires continued maintenance and management under post-closure care.

3. **Unit Type/Design:** The existing cover system design for the Phase I Landfill, from top to bottom is: 1) a 36-inch thick final cover protective layer to support vegetation (the top 6 inches (minimum) of which is topsoil), 2) a geotextile filter fabric, 3) a geonet drainage layer, 4) a 40-mil polyethylene geomembrane, and 5) a 24-inch compacted clay layer composed of materials for the old cover materials used for the historical landfill beneath the Phase I Landfill. The existing leachate collection system consists of 15 leachate extraction points on 250-to-300-foot centers. As noted in the 2016 USEPA Guidance, a viable cover is the most important mechanisms in preventing leachate generation and, ultimately, a release of contaminants to the environment. Maintenance and monitoring of the cover system must continue to preserve its integrity.
4. **Landfill Gas:** After nearly forty (40) years of post-closure care, landfill gas continues to be generated, and therefore, a landfill gas monitoring/management program must continue at Phase I Landfill. The gas collection system must remain operational and be maintained.
5. **Long-Term Care (also known as Long-Term Stewardship):** The establishment and maintenance of physical and legal controls at the Phase I Landfill are necessary to

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prevent exposure to the hazardous waste and hazardous constituents abandoned within the landfill. The Illinois EPA has determined that long-term monitoring, including maintenance of the cover system and groundwater monitoring system, control of any liquids (leachate) and landfill gas, and restrictions of future land uses must be established at the site. These measures must continue to minimize future exposure and potential hazardous waste release to the environment in accordance with 35 Ill. Adm. Code 724.410(b)(1), Section 12(a), 21(n) and 39(g) of the Act and the 2016 USEPA Guidance.

6. Climate Change Consideration: Long-term care of the hazardous waste management unit mentioned above must also consider impacts from climate change. The USEPA June 5, 2024 Guidance requires the authorized states to incorporate climate change considerations into RCRA permitting program. The June 5, 2024, guidance requires that, "RCRA permits will include the conditions that the permitting Authority determines are necessary to ensure that the facility operation will be compliant and protective in the face of such impacts." Hazardous wastes remain at the Phase I Landfill, therefore, vulnerability screening and assessment for the any potential climate change impacts must be incorporated into the long-term care for the Phase I Landfill.

In accordance with 35 Ill. Adm. Code 724.218(d)(4), the Permittee must submit to the Illinois EPA, within sixty (60) days of the date of this letter, a Class 2 permit modification request to extend post-closure care for the Phase 1 Landfill. In addition, the Class 2 permit modification request must include a revision(s) to the post-closure plan for the Phase I Landfill to reflect the extension of post-closure care at the Phase I Landfill for at least 30 years.

If a Class 2 permit modification request is not timely received by the Illinois EPA, the Illinois EPA will initiate a Class 2 permit modification of the RCRA Post-Closure Permit pursuant to 35 Ill. Adm. Code 703.241, 703.270, 703.271, 703.282, and 703, Appendix A, E.2.

This action shall constitute the Illinois EPA's final action for the requirements described above. The applicant may appeal this final decision to the Illinois Pollution Control Board pursuant to Section 40 of the Act by filing a petition for a hearing within thirty-five (35) days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed ninety (90) days by written notice from the applicant and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782 5544

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For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph Street, Suite 11 500
Chicago, IL 60601
312/814 3620

Work required by this letter or the regulations may also be subject to other laws governing professional services, such as the Illinois Professional Land Surveyor Act of 1989, the Professional Engineering Practice Act of 1989, the Professional Geologist Licensing Act, and the Structural Engineering Licensing Act of 1989. This letter does not relieve anyone from compliance with these laws and the regulations adopted pursuant to these laws. All work that falls within the scope and definitions of these laws must be performed in compliance with them. The Illinois EPA may refer any discovered violation of these laws to the appropriate regulating authority.

Any questions regarding this letter, please contact Jacob Nutt at 217/524-7048.

Sincerely,



Jacqueline M. Cooperider, P.E.
Permit Section Manager
Bureau of Land

JMC:JDN:1418210001-B142R2-Corr

TNI *JN*
Attachments: USEPA Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal facilities under Subtitle C of RCRA

USEPA June 5, 2024, Guidance: Implementing Climate Resilience in Hazardous Waste Permitting Under the Resource Conservation and Recovery Act (RCRA)

cc: Norberto Gonzalez, Emily Keener, U.S. EPA – Region V
James Hitzeroth, BFI Waste Systems of North America, LLC

exceeds the action leakage rate, the owner or operator must submit to the Agency a report summarizing the results of any remedial actions taken and actions planned.

- c) To make the leak or remediation determinations in subsections (b)(3), (b)(4), and (b)(5), the owner or operator must do either of the following:
 - 1) Perform the following assessments:
 - A) Assess the source of liquids and amounts of liquids by source;
 - B) Conduct a fingerprint, hazardous constituent, or other analyses of the liquids in the LDS to identify the source of liquids and possible location of any leaks and the hazard and mobility of the liquid; and
 - C) Assess the seriousness of any leaks in terms of potential for escaping into the environment; or
 - 2) Document why such assessments are not needed.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

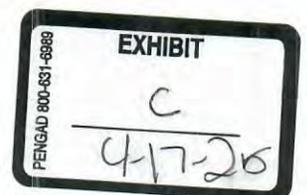
Section 724.409 Surveying and Recordkeeping

The owner or operator of a landfill must maintain the following items in the operating record required under Section 724.173:

- a) On a map, the exact location and dimensions, including depth, of each cell with respect to permanently surveyed benchmarks; and
- b) The contents of each cell and the approximate location of each hazardous waste type within each cell.

Section 724.410 Closure and Post-Closure Care

- a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to do the following:
 - 1) Provide long-term minimization of migration of liquids through the closed landfill;
 - 2) Function with minimum maintenance;
 - 3) Promote drainage and minimize erosion or abrasion of the cover;
 - 4) Accommodate settling and subsidence so that the cover's integrity is maintained; and



- 5) Have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.
- b) After final closure, the owner or operator must comply with all post-closure requirements contained in Sections 724.217 through 724.220, including maintenance and monitoring throughout the post-closure care 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;
 - 3) Maintain and monitor the LDS in accordance with Sections 724.401(c)(3)(D) and (c)(4) and 724.403(c), and comply with all other applicable LDS requirements of this Part;
 - 4) Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of Subpart F;
 - 5) Prevent run-on and run-off from eroding or otherwise damaging the final cover; and
 - 6) Protect and maintain surveyed benchmarks used in complying with Section 724.409.

(Source: Amended at 42 Ill. Reg. 22614, effective November 19, 2018)

Section 724.412 Special Requirements for Ignitable or Reactive Waste

- a) Except as provided in subsection (b) and in Section 724.416, ignitable or reactive waste must not be placed in a landfill, unless the waste and landfill meet all applicable requirements of 35 Ill. Adm. Code 728, and the waste is treated, rendered, or mixed before or immediately after placement in a landfill so that the following is true:
 - 1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 35 Ill. Adm. Code 721.121 or 721.123; and
 - 2) Section 724.117(b) is complied with.
- b) Except for prohibited wastes that remain subject to treatment standards in Subpart D to 35 Ill. Adm. Code 728, ignitable waste in containers may be landfilled without meeting the requirements of subsection (a), provided that the wastes are disposed of in such a way that they are protected from any material or conditions

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BFI WASTE SYSTEMS OF)
NORTH AMERICA, LLC,)
)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 24-29
(Permit Appeal-RCRA)



DEPOSITION OF TAKAKO HALTEMAN, P.E.
TAKEN ON BEHALF OF THE PETITIONER
JUNE 24, 2025

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I N D E X

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EXAMINATIONS

Direct Examination by Mr. Sievers 5

Cross-Examination by Mr. Grant 67

EXHIBITS

(PETITIONER'S)

Exhibit D Permit Documents 17

(EXHIBIT ATTACHED)

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

DEPOSITION OF TAKAKO HALTEMAN, P.E.,
produced, sworn and examined on JUNE 24, 2025,
between the hours of eight o'clock in the forenoon
and five o'clock in the afternoon of that day, at
the offices of Illinois Environmental Protection
Agency, 2520 West Iles Avenue, Springfield, Illinois
62704, before Ashley C. Huelsmann, Registered
Professional Reporter and Certified Shorthand
Reporter (IL) in a certain cause now pending before
the Illinois Pollution Control Board between BFI
WASTE SYSTEMS OF NORTH AMERICA, LLC, Petitioner, vs.
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent; on behalf of the Petitioner.

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A P P E A R A N C E S

FOR THE PETITIONER:

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ILLINOIS EPA IN-HOUSE COUNSEL

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LEXITAS LEGAL
711 North Eleventh Street
St. Louis, MO 63101
(314) 644-2191
(800) 280-3376

1 IT IS HEREBY STIPULATED AND AGREED by
2 and between counsel for the Petitioner and counsel
3 for the Respondent that this deposition may be taken
4 in shorthand by Ashley C. Huelsmann, Registered
5 Professional Reporter and Certified Shorthand
6 Reporter (IL), and afterwards transcribed into
7 typewriting; and the signature of the witness is
8 expressly reserved.

9 * * * * *

10 TAKAKO HALTEMAN, P.E. ,
11 of lawful age, produced, sworn and examined on
12 behalf of the petitioner, deposes and says:
13 (DEPOSITION STARTED AT 9:06 A.M.)

14 DIRECT EXAMINATION

15 BY MR. SIEVERS:

16 Q. Ms. Halteman, could you please state
17 your full name and spell it for the court reporter?

18 A. **Takako Nomoto Halteman. T-a-k-a-k-o.**
19 **N-o-m-o-t-o. H-a-l-t-e-m-a-n.**

20 Q. And am I pronouncing it right when I
21 say Takako Halteman?

22 A. **Yes, that's correct.**

23 Q. Great. I'm Scott Sievers. I'm the
24 attorney for the petitioner BFI Davis Junction.

1 Have you ever had your deposition taken before?

2 **A. No.**

3 Q. Well, then you're in for a treat. I'm
4 going to ask you a series of questions. The court
5 reporter will take down a transcript of my
6 questions. Hopefully you'll be able to answer those
7 questions, and she'll take down a transcript of your
8 answers.

9 When I'm done asking questions, your
10 attorney will be able to ask some follow-up
11 questions and the transcript will continue on. And
12 I may ask some follow-up questions after that.

13 So it will be going back and forth as
14 we create this written transcript. Do you have any
15 questions about how that might work?

16 **A. No, I do not.**

17 Q. Because we're preparing a written
18 transcript the court reporter can't really document
19 gestures, hand gestures, nods and so forth.

20 So everything we say here needs to be
21 spoken, conveyed so that she can take down a written
22 transcript; is that understandable?

23 **A. Yes.**

24 Q. Because of that there might be times

1 where if you and I were in a meeting, or at lunch or
2 what have you and we were speaking we'd completely
3 understand each other because of head nods, and
4 gestures and so forth. That won't work here.

5 So I might have to stop you, even if I
6 completely understand what you're saying, and say:
7 Is that a yes, is that a no, so forth.

8 So I just want to warn you ahead of
9 time that I might be doing that for clarity of the
10 transcript. I don't mean to be rude. Okay?

11 **A. I understand.**

12 Q. Also, for the cleanness of the
13 transcript please wait until I finish asking a
14 question before you answer it.

15 **A. Yes.**

16 Q. And as Chris Grant knows as well, I
17 have a propensity to ask questions that might be
18 confusing as a lot of attorneys do.

19 If I ask you a confusing question, you
20 don't understand it, would you agree to not answer
21 that question and tell me that you -- that it's
22 confusing?

23 **A. Yes.**

24 Q. Okay. And at any time here if you need

1 to take a break to use the bathroom, or make a phone
2 call, what have you, just let us know and we can
3 take a break.

4 All I ask is if there's a question
5 pending that you answer that question first; is that
6 agreeable?

7 **A. Yes.**

8 Q. Do you understand that you've been
9 placed under oath today?

10 **A. Yes.**

11 Q. Do you have any reason to believe that
12 you are not physically or mentally well enough to
13 understand and answer my questions?

14 **A. I -- no, I don't think so.**

15 Q. Did you review any documents in
16 preparation for this deposition?

17 **A. Yes, I have.**

18 Q. Which documents did you review?

19 **A. I have reviewed the permit modification**
20 **in question, and Jacob Nutt's review note and**
21 **ASTSWMO position paper and U.S. EPA's 2016 Closure**
22 **Guidance. And regulations as well.**

23 Q. And when you say the permit that's at
24 issue today, we're talking the September 25th, 2023

1 decision?

2 **A. That's correct.**

3 Q. Did you meet with anybody in
4 preparation for this deposition?

5 **A. Yes, I have.**

6 Q. And with whom did you meet?

7 **A. I met with Chris and Taylor here. And**
8 **I also met with Jacob Nutt and Jackie Cooperider.**

9 Q. Anyone else?

10 **A. Oh, and I'm sorry, Rich.**

11 Q. Anyone else besides those folks?

12 **A. For preparation of this deposition,**
13 **those are the people I met.**

14 MR. GRANT: I wonder can I stop for a
15 second? Did you -- if you'll -- my apologies. Did
16 you review the transcripts for the previous
17 depositions?

18 **THE WITNESS: Yes, I forget.**

19 MR. GRANT: I just wanted to make sure
20 that --

21 **THE WITNESS: Yeah, yeah.**

22 MR. GRANT: -- that was --

23 **THE WITNESS: -- apologies. I have**
24 **read Jacob and Jackie's transcript, their**

1 **deposition.**

2 BY MR. SIEVERS:

3 Q. Okay, thank you. I'd just like to get
4 some background about you now. Did you attend high
5 school?

6 **A. Yes.**

7 Q. Where did you attend high school?

8 **A. Sasebo West High School in Japan.**

9 Q. And did you subsequently attend college
10 or university?

11 **A. Yes, I have.**

12 Q. Which one did you attend?

13 **A. I have attended first -- my first two**
14 **years at College of Lake County in Illinois. And**
15 **then I attended University of Illinois in**
16 **Urbana-Champaign.**

17 Q. Did you graduate with a degree from the
18 University of Illinois at Urbana-Champaign?

19 **A. Yes.**

20 Q. And what was your degree in?

21 **A. Civil engineering.**

22 Q. Have you -- besides high school and the
23 college and university you identified, have you
24 attended any trade schools?

1 **A. No.**

2 Q. Did you ever serve in the military?

3 **A. No.**

4 Q. You're employed at the Illinois
5 Environmental Protection Agency?

6 **A. Yes, I am.**

7 Q. Prior to your employment at the
8 Illinois Environmental Protection Agency but after
9 you got your engineering degree, did you work
10 anywhere else?

11 **A. Yes, I have.**

12 Q. Okay. Let's start with the first place
13 you worked after you earned your engineering degree.

14 **A. I have worked at a consulting company
15 here in town, called -- it's a civil engineering
16 company.**

17 Q. Okay. And what was your position
18 there?

19 **A. I was a project engineer.**

20 Q. How long did you have that position?

21 **A. Could you repeat the question?**

22 Q. How long did you have that position?

23 **A. About year and a half, roughly.**

24 Q. And what was your next position after

1 that?

2 **A. I was a localization specialist at an**
3 **IT company in Champaign, that job lasted about -- a**
4 **few years -- a couple years -- I don't remember**
5 **exactly amounts, but.**

6 Q. And then after that what was your next
7 job?

8 **A. This job here.**

9 Q. So when did you join Illinois EPA?

10 **A. In July of 1998.**

11 Q. And what was your position then?

12 **A. Environmental protection engineer.**

13 Q. Which bureau were you in here at the
14 agency?

15 **A. Bureau of Land.**

16 Q. Has your entire career been within the
17 Bureau of Land?

18 **A. Yes.**

19 Q. I should --

20 MR. SIEVERS: Strike that.

21 BY MR. SIEVERS:

22 Q. Your entire career at the agency has
23 been with the Bureau of Land?

24 **A. Yes, that's correct, that's what I**

1 meant.

2 Q. That's what I meant, too. So you were
3 an environmental protection engineer to begin with
4 within the Bureau of Land. Walk me through your
5 different positions within the agency up to the
6 present day.

7 A. Okay. So I worked in basically same
8 area in Bureau of Land Permit Section, started in
9 Corrective Action Unit as EP1. And I have been
10 promoted to EP2, EP3.

11 And I held that position -- and in the
12 mean time -- some time, I couldn't remember when,
13 maybe 10, 15 years ago, that Corrective Action Unit
14 in the RCRA Unit merged.

15 So now it's called just one RCRA Unit.
16 And I have worked in that same capacity, and maybe
17 expanding my duty as we merged with the RCRA Unit.

18 In the meantime I have held the
19 position until I was EP3. And then -- let me think
20 when it was -- March of 2020 I became a lead worker,
21 which is EP4 in the RCRA Unit. And then --

22 Q. When you say RCRA, we're saying
23 R-C-R-A, it's an abbreviation for a federal law?

24 A. Yes, Resource Conservation Recovery

1 **Act. And then --**

2 Q. So --

3 **A. Oh, I'm sorry.**

4 Q. No. So you mentioned you became a lead
5 worker in March 2020 --

6 **A. Uh-huh.**

7 Q. -- how long did you hold that position?

8 **A. Until I was promoted to Unit Manager in**
9 **August of 2023.**

10 Q. And is that the position you're in
11 today?

12 **A. Yes.**

13 Q. So am I correct in understanding that
14 you were the unit manager when the September 25th,
15 2023 decision was issued that's at issue in this
16 case?

17 **A. That's correct.**

18 Q. And you'd been in that position for,
19 roughly, a month or so?

20 **A. Yes.**

21 Q. And when you say "unit manager", are
22 you manager of the permit section within the RCRA
23 Unit or what is the proper name of the unit?

24 **A. So it's a RCRA Unit within Permit**

1 **Section. So there are multiple units within Permit**
2 **Section in Bureau of Land.**

3 Q. So you're the -- you were and are the
4 manager of the RCRA Unit within the Permit Section
5 of Bureau of Land?

6 **A. That's correct.**

7 Q. I think I know the answer to this
8 question, but did you hold any licenses or
9 certifications?

10 **A. Yes. I'm a professional engineer,**
11 **licensed in State of Illinois.**

12 Q. Any other licenses or certifications?

13 **A. Nope. I do have a driver's license,**
14 **but.**

15 Q. Ms. Halteman, I've handed you a large
16 package of documents that are stapled together. Do
17 you see in the upper right-hand corner of that
18 package it says R00130?

19 **A. Yes, I do.**

20 Q. And if you'd look at the last page of
21 that package of documents it says R00187?

22 **A. Yes, I do.**

23 Q. Okay. And does it appear that those
24 pages are sequentially numbered?

1 **A. Yes, I do see that.**

2 Q. Okay. Do you recognize this package of
3 documents, R130 through R187?

4 **A. Yes, I do.**

5 Q. And what do you recognize this packet
6 to be?

7 **A. This is permit package, including a
8 permit that's -- a modified permit for Log No.
9 B-142R2-M-1; M-2; M-4; M-6; and M-7, that was issued
10 on September 25th, 2023.**

11 Q. What does the M1, M2, M4, M6 and M7
12 designations, what do those mean?

13 **A. Those are just log numbers for keeping
14 track of that permit being issued and modified. So
15 for BFI Davis Junction Landfill Phase 1 site we have
16 assigned a log number for the record permit. We
17 have assigned a number B142R2.**

18 And every -- each time that permit
19 modification request comes in there's, like, M1 --
20 you know, log number followed by M and then a number
21 is assigned for each modification request or
22 modified permit.

23 Q. So each of these numbers M1, M2, M4,
24 M6, M7, those are all requested permit modifications

1 submitted to the Illinois Environmental Protection
2 Agency?

3 **A. That's correct.**

4 Q. And that's a number that the agency
5 designated?

6 **A. Yes.**

7 Q. Okay.

8 MR. GRANT: Scott, do you want to mark
9 this one?

10 MR. SIEVERS: I mean it is the record,
11 so I don't know if it's necessary.

12 MR. GRANT: Okay. I just had written
13 exhibit down and I wanted to...

14 MR. SIEVERS: I mean --

15 MR. GRANT: But that's fine.

16 MR. SIEVERS: -- we can do that.

17 That's fine we can do that. For clarity's sake --
18 we can go off the record for just a second.

19 (THERE WAS A BREAK.)

20 (PETITIONER'S EXHIBIT D WAS MARKED FOR
21 IDENTIFICATION.)

22 BY MR. SIEVERS:

23 Q. So Ms. Halteman, I handed you that
24 document, that stack of documents R130 through R187

1 that has now been marked as Exhibit D as in dog,
2 correct?

3 **A. That's correct.**

4 Q. Okay. And I'm going to call your
5 attention to pages 131 through 134 of that document.
6 It's R000131 through R000134.

7 MR. GRANT: That's fine with me if you
8 eliminate the zeros, they're not significant.

9 MR. SIEVERS: Okay.

10 BY MR. SIEVERS:

11 Q. Do you see those pages, Ms. Halteman?

12 **A. Yes, I do.**

13 Q. Great. What do you recognize those
14 pages to be?

15 **A. These are cover pages to the modified
16 permit.**

17 Q. And that's the page that addresses the
18 agency's decision as to these different permit
19 modification requests?

20 **A. I'm sorry, can you repeat that question
21 again?**

22 MR. SIEVERS: Could you read that back?

23 (WHEREIN THE REQUESTED PORTION OF THE RECORD WAS
24 READ BACK.)

1 **THE WITNESS: That's correct.**

2 BY MR. SIEVERS:

3 Q. And you recognize these pages to
4 include the Illinois EPA's September 25th, 2023
5 decision that is at issue in this case?

6 **A. Yes, a summary of the decision, yeah.**

7 Q. And there's more to it than that,
8 correct?

9 **A. There is an attachment that goes with,
10 to show exactly what changes are made to that
11 permit, so. And then the permit itself.**

12 Q. Okay. On page R134 it says attachment.
13 Do you see that it says: Attachment A: Changes to
14 RCRA Post-Closure Permit? Do you see that page 134?

15 **A. 134, yes.**

16 Q. Okay. So that refers to an Attachment
17 A, Changes to the RCRA Post- Closure Permit. If you
18 turn the page to page 135, is that the attachment
19 that you understand that previous page to be
20 referring to?

21 **A. Yes.**

22 Q. And that is a two-page document; is
23 that right?

24 **A. That's correct, two pages.**

1 Q. Okay. All right. I'm going to go back
2 to page 134 and ask you some questions. There's a
3 couple names at the top of that page. The first
4 name is Paula Stine. It says: For questions
5 regarding groundwater issues call Paula Stine. Who
6 is Paula Stine?

7 **A. She was the geologist for this project**
8 **at that time of assurance or that permit**
9 **modification.**

10 Q. And who is Jacob Nutt?

11 **A. Jacob is a project engineer for this**
12 **site.**

13 Q. And they're both assigned to this
14 matter?

15 **A. Yes.**

16 Q. And then below that is a signature of a
17 Jacqueline Cooperider, would she be the ultimate
18 person to sign off on this decision?

19 **A. Yes.**

20 Q. There are -- looks like to me like four
21 sets of initials below that; do you see those
22 initials?

23 **A. Yes, I do.**

24 Q. Could you walk me through who those

1 initials those are?

2 **A. Okay. The first is JLR is Josh**
3 **Rhoades, who was at that time Groundwater Unit**
4 **Manager in Permit -- Bureau of Land Permit Section.**

5 **PS is Paula Stine. As I indicated**
6 **prior that she was a geologist for the site. She**
7 **is -- she reports -- she used to report to Josh at**
8 **this -- when the permit was signed.**

9 **JDN is the Jacob Nutt's initials. And**
10 **TNH is my initials.**

11 **Q. Then this decision is carbon copied to**
12 **a Norberto Gonzalez and Emily Keener U.S. EPA; is**
13 **that right?**

14 **A. Correct.**

15 **Q. Okay. Did you confer with Mr. Gonzalez**
16 **or Ms. Keener on this decision?**

17 **A. No, we have not.**

18 **Q. I'm going to call your attention to**
19 **page 132 -- R132 of Exhibit D, and call your**
20 **attention to Paragraph 1 -- paragraph numbered one,**
21 **and third sentence states: The Illinois EPA has**
22 **reevaluated the requirements for post-closure care**
23 **cost estimates and financial assurance under 35**
24 **Illinois Administrative Code Part 724 and has**

1 determined that total post-closure care estimate
2 must reflect 30 years of post-closure care as
3 required 35 Illinois Administrative Code 724.217.

4 Did I read that correctly?

5 **A. Yes.**

6 Q. What is post-closure care?

7 **A. Post-closure care is type of activities**
8 **that are conducted after the unit -- the subject**
9 **unit is closed -- closure has completed and since**
10 **the waste -- let me go back.**

11 **The unit is -- has waste in place**
12 **enclosed. So there is a long-term care that is**
13 **required to ensure that the waste and constituents**
14 **that is included in the waste are not mobilized and**
15 **cause concern in the future.**

16 Q. What are some of the requirements or
17 obligations that post-closure care involves?

18 **A. It involves maintenance of the cover.**

19 Q. Let me stop you there real quick. Are
20 we talking about the cover of a landfill?

21 **A. Cover of landfill in this -- yes, in**
22 **this case a cover of a landfill just to maintain**
23 **that there's no water -- you know, precipitation**
24 **would go into the unit itself.**

1 There is groundwater monitoring to
2 ensure that there is no constituents leaching into
3 the groundwater.

4 Also, there is leachate management to
5 ensure that the -- you know, and if there -- to
6 determine if there is any leachate, and if so
7 they're pumped out, so that -- again, that
8 constituents won't leach into the groundwater.

9 And also in many site, and including
10 this site, has gas monitoring management as well to
11 manage the landfill gases.

12 Q. Let me ask some questions here about
13 just some fundamentals about landfills just to make
14 sure I understand correctly.

15 So we are talking today about a
16 hazardous waste unit at a landfill, correct?

17 **A. Correct.**

18 Q. And when you're talking about the
19 cover, is that the same thing as the cap?

20 **A. Yes.**

21 Q. Is that typically a mound of dirt?

22 **A. Mound of dirt and also with engineered**
23 **cover that includes geomembranes and drainage unit,**
24 **and also with dirt and vegetation to control the**

1 runoff.

2 Q. So there might be grass on top of the
3 dirt?

4 A. Yes, that's correct.

5 Q. And so the agency doesn't want that cap
6 or that cover to be cracked open or popped open so
7 that --

8 A. That's the -- yes.

9 Q. -- so weather can get into it and cause
10 the waste to leak out?

11 A. The -- yeah, waste to leak out. Yes.
12 So the purpose of the cover is to keep the water
13 off, yeah.

14 Q. Okay. And the groundwater is the water
15 table beneath the landfill?

16 A. That's correct, yeah.

17 Q. And leachate is a liquid substance
18 that's generated from moisture within the landfill
19 that's percolates down over time and to a collection
20 system; is that right?

21 A. That's -- yes, a collection system or
22 just -- yes, that's correct.

23 Q. Okay. And so that post-closure care
24 involves, I think you mentioned monitoring the

1 groundwater, maintaining the cap or cover,
2 collecting leachate, does it involve testing the
3 leachate?

4 **A. That is -- yes, that's required as**
5 **well.**

6 Q. Oh, and monitoring gas?

7 **A. That's correct.**

8 Q. And so the contents of the landfill
9 when they degenerate or degrade create gas; is that
10 correct?

11 **A. Yes.**

12 Q. And so that -- when we're talking about
13 monitoring gas, gas that is created as a result of
14 the contents of the landfill degrading; is that
15 correct?

16 **A. That's generally the case or reacting**
17 **within, you know -- between two different type of**
18 **wastes, that could be possible.**

19 Q. Okay. So those are, by my count, four
20 different requirements for post-closure care.
21 There's also a financial assurance obligation,
22 correct?

23 **A. That's correct.**

24 Q. Going back to just the non-financial

1 assurance component of post-closure care, besides
2 those four things we discussed, you know, monitoring
3 groundwater, monitoring gas emission, leachate
4 collection and testing and maintaining the cap or
5 cover, are there any other obligations of
6 post-closure care imposes upon a facility physically
7 at the site?

8 **A. Physically. Anything that -- or the**
9 **activities that are required also require reporting**
10 **to agency. If there are anything else -- oh, so**
11 **generally, I mean require, like, review of the**
12 **system. Also, I think frequencies -- I'm not sure**
13 **on this site, but resurveying to make -- ensure that**
14 **the facility -- that the landfill is not collapsing**
15 **or, you know, settling. So that's part of the**
16 **requirements.**

17 **And anything -- so anything that goes**
18 **-- not wrong, but any deficiency in that maintenance**
19 **or detection of leachate. And so corrective action**
20 **to correct any deficiency are also required.**

21 **Q. Am I correct that a landfill can still**
22 **be emitting gas and can still be generating leachate**
23 **and be closed by the agency or certified closed by**
24 **the agency?**

1 **A. Can I ask to say is -- for this site,**
2 **or any landfills, because I don't work on salvage**
3 **waste landfills, so I am not sure on -- I can't**
4 **answer all landfill questions.**

5 Q. That's fair. Absolutely. I guess my
6 thought is, you know, this is a hazardous waste or
7 RCRA landfill, correct, that's at issue?

8 **A. That's correct.**

9 Q. And this landfill at one point was
10 certified closed by the agency; is that right?

11 **A. Yes, that's correct. And this is why**
12 **that facility is in post-closure care.**

13 Q. And when it was closed at that time it
14 was still generating leachate?

15 **A. Closure, I can't -- I don't know that.**
16 **I have -- I don't have information at the time --**
17 **information on the condition of the landfill at the**
18 **time of the closure in 1984 -- three or four.**

19 Q. Would that be the same answer to a
20 question of, you know, was this landfill at that
21 time emitting gas?

22 **A. That's correct.**

23 Q. Don't know the answer to that either?

24 **A. Huh-uh.**

1 Q. Okay, that's fine. What is financial
2 assurance?

3 A. Financial assurance is the mechanism of
4 financial obligation to the post-closure care --
5 well, in this case post-closure care facility or any
6 facility that manages waste to -- that is required
7 by a regulation to ensure that there's enough
8 funding available for managing the hazardous or
9 non-hazardous waste.

10 Q. Now looking back at Exhibit D on page
11 R132 in Paragraph 1, that sentence I read to you
12 said that Illinois EPA has reevaluated the
13 requirements for post-closure care cost estimates
14 and financial assurance. You've seen that sentence
15 in that paragraph?

16 A. Yes, I do.

17 Q. Okay. Did you participate in that
18 reevaluation?

19 A. Yes, I did.

20 Q. And what was your role in reevaluating
21 those requirements?

22 A. As a unit manager I have discussed the
23 project, and I guided Jacob in providing the
24 guidance and -- and point to regulations that might

1 be applicable for his review.

2 And if he had any questions I would
3 answer and discuss to see how we can complete
4 this -- we could complete the project, so. Have I
5 answered the question?

6 Q. Is reviewing regulations a fairly
7 common part of your job?

8 A. That's a majority of my work.

9 Q. Prior to considering this submittal at
10 issue -- submittals at issue in this case from BFI
11 Davis Junction, had you had reason to reevaluate
12 post-closure care cost estimates and financial
13 assurance?

14 A. We had to -- so yes.

15 Q. Okay. So before the agency received
16 BFI Davis Junction's submittals here, it had -- had
17 it taken any steps to reevaluate it's prior
18 determinations on post-closure care cost estimates
19 and financial assurance?

20 A. I'm sorry, I'm not clear on that
21 question.

22 Q. I'll rephrase. What was the manner
23 that the agency used prior to this decision in
24 determining post-closure care cost estimates and

1 financial assurance?

2 A. Can I ask if -- are you discussing for
3 this site or in general?

4 Q. Well, let's talk about in general.
5 Like, if we're looking at a RCRA site that has been
6 certified closed by the agency, and you're generally
7 trying to explain how post-closure care cost
8 estimates and final assurance are calculated, how
9 is -- how is that done prior to this decision?

10 A. I believe the financial assurance was
11 for 30 years to start with. Along some time, and I
12 don't know when, or who, or why, but there was a
13 prorating per se was allowed to reduce the financial
14 assurance by the year -- number of years of
15 post-closure care completed from that 30 years down
16 to -- I think down to ten years.

17 And I think -- and it's generally -- so
18 again, just generally, and I don't know what all
19 permits, what we did with, you know, all
20 post-closure sites. But that was general
21 understanding that once that hits the ten years then
22 we could not reduce from the ten years.

23 That was my understanding, but I -- I
24 didn't work on a lot of landfill sites so that --

1 but that was my understanding.

2 Q. So is it your understanding that prior
3 to this decision if a RCRA landfill had been
4 certified closed and the permit then would require
5 30 years of post-closure care and financial
6 assurance at that point initially?

7 A. Initially, yes.

8 Q. And then as time went by we take time
9 off of that 30-year period, would that be right?

10 A. Yes, up to a certain time. And
11 I actually should have mentioned in the last
12 question, that prior to this decision there are a
13 few other decision that were made that -- not
14 decision, evaluations for other sites that are made
15 that we had to reevaluate to see if that ten-year --
16 you know, down to ten-year practice was appropriate.

17 And we have made the decision that it
18 really should be 30 years. So just kind of
19 answering the question before as well, that decision
20 was that -- to move to -- from ten years to 30 years
21 -- back up to 30 years was discussed prior to this
22 decision -- September 2023 decision.

23 Q. Would that have been discussed for
24 multiple other sites besides BFI Davis Junction?

1 **A. That's correct.**

2 Q. How many other sites?

3 **A. I don't know exactly, but I worked on**
4 **at least one site and discussed a few more sites.**

5 Q. What was the one site you worked on?

6 MR. SIEVERS: He can't answer the
7 question for you.

8 MR. GRANT: I'd love to though. Let me
9 just at this point say we do have some other cases
10 that are in litigation right now, and so we've -- to
11 the extent we get into another permit appeal, the
12 details of that we'll object to, and I'll direct her
13 not to answer.

14 So let's try to avoid that. If
15 you want -- everything you've said so far is fine.
16 I just wanted to give you a heads-up that if we get
17 into another case and the details of that
18 we're going --

19 MR. SIEVERS: You'll direct her not to
20 answer on that?

21 MR. GRANT: Yeah, if you ask about
22 another permit appeal and how that decision was made
23 or something like that.

24 MR. SIEVERS: Now, you recognize that

1 directing somebody to not answer a question is
2 usually limited --

3 MR. GRANT: You can take it Brad.

4 MR. SIEVERS: -- usually limited to --

5 MR. GRANT: I know, but this is a --

6 MR. SIEVERS: --attorney/client --

7 MR. GRANT: -- unique situation and
8 that's why -- oh, yeah, no, absolutely. And I've so
9 instructed them. But it is a sensitive area, if we
10 get into another actively litigated case and the
11 decision that was made on that, that's not relevant
12 to the case.

13 Where ordinarily relevance you're not
14 going to direct somebody to answer it, because of
15 the sensitivity on the ongoing litigation I feel
16 obligated to do that.

17 BY MR. SIEVERS:

18 Q. So let me ask you then specifically --

19 MR. SIEVERS: Well, actually, if you
20 could re-read the question back to the witness.

21 (WHEREIN THE REQUESTED PORTION OF THE RECORD WAS
22 READ BACK.)

23 MR. GRANT: No objection.

24 **THE WITNESS: Yeah, I can answer that.**

1 **It's a City of North Chicago site.**

2 BY MR. SIEVERS:

3 Q. Are you aware of any other sites
4 besides the City of the North Chicago site in which
5 the prior prorated method of determining
6 post-closure care cost estimates and financial
7 assurance was reevaluated? Prior to this decision?

8 **A. Yes. Is that a yes or no question?**

9 Q. Are you aware of?

10 **A. Yes, I am aware.**

11 Q. And what other sites besides the City
12 of North Chicago are you aware of in which the
13 agency reevaluated its prior prorated post-closure
14 care cost estimates and financial assurance?

15 **A. Yes, BP Riverfront site -- BP, like**
16 **British Petroleum, BP Riverfront facility. CID,**
17 **Alton Steel, and RCH Newco and that's all I can**
18 **think of right now.**

19 Q. CID was one of the sites?

20 **A. Yes.**

21 Q. To your knowledge, were the decisions
22 in any of those matters appealed to the Pollution
23 Control Board?

24 **A. I don't -- I don't know that it's -- I**

1 **think, yes.**

2 Q. Do you know which one would have
3 been -- which ones?

4 **A. I don't know where CID is at, but I**
5 **believe it is.**

6 MR. SIEVERS: I'm just trying to figure
7 out how I find more information about those.

8 MR. GRANT: Oh, yeah, I'm not trying to
9 stop you, Scott.

10 Just so that I know, RCH Newco is in
11 litigation, right?

12 **THE WITNESS: Oh, RCH Newco, that's**
13 **what --**

14 MR. GRANT: And CID is in litigation,
15 Rich?

16 MR. KIM: I don't know about that.

17 MR. GRANT: I don't know about CID
18 either.

19 **THE WITNESS: I'm not sure. RCH Newco**
20 **is -- I'm sorry, I think I got confused with CID as**
21 **RCH Newco. They are very close in timeline when --**
22 **so it might be RCH Newco.**

23 **And then I'm not sure where CID is, but**
24 **I don't believe we have other -- prior -- I mean**

1 that -- among those named I don't think there is any
2 other litigation.

3 MR. GRANT: Besides Newco?

4 THE WITNESS: Yeah, especially
5 co-financial assurance. There is other -- BP
6 Riverfront has litigation, but that's not to do with
7 financial assurance.

8 MR. GRANT: Okay.

9 BY MR. SIEVERS:

10 Q. So these decisions that you mentioned
11 or these sites that you mentioned, the agency
12 reevaluated post-closure care cost estimates and
13 financial assurance prior to its September 25th,
14 2023 decision in the BFI Davis Junction case?

15 A. That's correct.

16 Q. And when the agency reevaluated
17 those -- that post-closure care cost estimate and
18 financial assurance, in each case did it stop using
19 a prorated methodology and start implementing a
20 rolling 30-year post-closure cost estimate and
21 financial assurance?

22 A. I -- yes, I believe so.

23 Q. When was the first time that the agency
24 determined that that prorated methodology, it was no

1 longer going to follow that, and it was going to use
2 this rolling 30-year methodology instead?

3 **A. I don't recall exactly when. But the**
4 **site I worked on, which is North Chicago site, I can**
5 **say that the consideration or in reevaluation --**
6 **need for reevaluation or evaluation came through a**
7 **submittal that requested closure of the --**
8 **completion of post-closure care for the site and**
9 **previous discussions with that facility, North**
10 **Chicago.**

11 Q. Were you RCRA Unit Manager at that
12 time?

13 **A. No, I was lead worker at that time.**

14 Q. Who would the RCRA Unit Manager have
15 been at that time?

16 **A. Rob Watson.**

17 Q. When that determination was made,
18 who -- that initial determination on the first time
19 the agency decided that the prorated methodology,
20 they were not going to follow anymore, and now it
21 was going to go with the 30-year rolling
22 methodology, who to your recollection participated
23 in that decision?

24 **A. Myself, Rob Watson, and I'm trying to**

1 think who that -- section manager at the time. I'm
2 not sure if Jackie Cooperider was Section Manager or
3 prior was -- Ken Smith was prior Section Manager.

4 But also -- I'm sure other staff that I
5 can't recall exactly were, but it was also brought
6 up to management at the time and Bureau of Land
7 upper management.

8 And I don't recall the exact
9 discussion. So that rolling 30 years was mentioned
10 or not is -- I -- I don't recall exactly, but it was
11 more for requiring to extend post-closure care and
12 providing 30-year financial assurance.

13 Q. When you say "upper management", are we
14 referring to the bureau chief?

15 A. Bureau chief's office, that included
16 deputy bureau chief at that time. But again, I'm --
17 I don't recall what was -- what was reported, you
18 know, that we just let them know that this was --
19 this decision was being made or it's actually
20 discussed.

21 It was several years ago and I don't
22 recall exactly what in context that was, you know,
23 discussed or reported.

24 Q. It's your recollection that the deputy

1 bureau chief was advised of that decision though at
2 least; is that right?

3 **A. I believe so, at least in reporting,**
4 **you know, manner.**

5 Q. Who was the deputy bureau chief at that
6 time?

7 **A. I believe it was Greg Dunn at that**
8 **time.**

9 Q. So going back to the September 25th,
10 2023 decision in this case with BFI Davis Junction,
11 when the decision says: Illinois EPA has evaluated
12 the requirements for post-closure care cost
13 estimates and financial assurance.

14 This decision was not the agency's
15 first time reevaluating those cost estimates and
16 financial assurance, would that be correct?

17 **A. That's correct.**

18 Q. And you had mentioned, you know, four
19 or five prior instances in which the agency had done
20 so?

21 **A. That's correct. And we were evaluating**
22 **in general, because we have a lot of post-closure**
23 **care sites in Illinois in RCRA.**

24 Q. And why would that matter?

1 A. So our agency mission is to protect
2 human health and environment. And this post-closure
3 care of hazardous waste landfills, that waste -- you
4 know, hazardous waste is in place in a manmade
5 containment system.

6 There are some concerns, you know, with
7 -- that once that we hit the 30 years what would
8 happen. And this issue -- it's called long-term
9 stewardship has been brought up nationally, not just
10 by, you know, within the agency, but by U.S. EPA
11 ASTSWMO group -- ASTSWMO is Association for -- of
12 State and Territorial Solid Waste Management
13 Organization [sic], that -- what to do with this --
14 all these hazardous waste landfills, or closed
15 impoundment or anything that waste -- you know,
16 waste left in place when the 30 year hits.

17 Because like anything else, you know,
18 waste is not going to be there forever. And the
19 concern for future waste is always there, because
20 the waste is still in place.

21 And to terminate the post-closure care
22 requirement would cause -- would potentially cause
23 releases of the constituents in the future and that
24 would affect the environment and potentially the

1 community public health.

2 So that discussion has been kind of
3 brought up with the long-term stewardship, and that
4 was kind of keyword on what to do with these
5 long-term care sites.

6 So -- and we are facing -- we as in
7 Illinois, and among other states as well, are facing
8 that 30-year mile markers in many sites.

9 So agency as in Illinois EPA had to
10 take closer look that we haven't done before to see
11 what needs to be done to ensure that the long-term
12 care is -- would continue for these sites.

13 Q. This discussion of this problem posed
14 by running out of the 30-year period, was that done
15 just limited to internal Illinois EPA or was it with
16 other agencies?

17 A. Other -- well, other agencies -- so
18 like I said, with U.S. EPA their permit writers
19 calls, monthly calls. There is ASTSWMO meetings,
20 and those are -- those topics came up.

21 And you know, we were -- we became
22 aware that this is necessary and we need to do
23 something, you know, not to be reactive, but be
24 proactive in this matter.

1 Q. And so this -- this discussion mostly
2 occurred by, what, conference telephone call or was
3 it in person?

4 A. I know there were a few discussions --
5 I mean several discussions and conference calls as
6 well as ASTSWMO meetings and in person. I have
7 attended a couple.

8 I understand that, you know, Rob Watson
9 has a -- a supervisor at that time attended, you
10 know, several meetings. And he was appointed as
11 subcommittee for the ASTSWMO for post-closure care,
12 you know, working group -- work group to -- so as --
13 you know, talk this issue with other states, because
14 ASTSWMO represents all 50 states and territories as
15 well.

16 Q. Mr. Watson was on an advisory committee
17 for that group?

18 A. Work group. And I'm not sure the exact
19 name was, but post-closure care work group within --
20 it's a subcommittee.

21 Q. How many of those discussions -- how
22 many conference calls do you think you participated
23 in where this post-closure care issue -- running out
24 of time for the post-closure care at hazardous waste

1 landfills was discussed by Illinois EPA staff and
2 others?

3 A. I can't tell you that. I don't recall
4 how many.

5 Q. More than a dozen?

6 A. I would think so.

7 Q. And what kind of time frame -- is it
8 over a five-year period?

9 A. I'm pretty sure that discussion was
10 held prior to even me -- myself getting involved
11 with the discussion. So I can't tell you how many
12 discussions were held, because 2016 Guidance, you
13 know, came out in 2016 prior to that.

14 I think -- I believe there was a 2012
15 Guidance. And I know ASTSWMO commented on both of
16 these needing for -- you know, more action. There
17 is -- so I have no idea. I think it's been going
18 on, but for years.

19 Q. How many calls do you think you
20 personally participated in where this was discussed?

21 A. So like I said, there are several sites
22 that are going through post-closure care and we have
23 approximately -- I'm not sure this is an exact
24 number, but 24 sites that are going under

1 post-closure care in RCRA.

2 So with that, I -- I don't know. I
3 mean we do -- since 2020 there are lot of conference
4 calls instead of, you know, stopping by and just
5 discussing, you know, between cubicles, or you know,
6 there's a lot of people remote on different days, so
7 we, you know, get on the call pretty often, so I
8 can't tell you --

9 Q. Well --

10 A. -- how many meetings we had.

11 Q. -- well, specifically not -- I don't
12 want to ask about conference calls that were limited
13 to just Illinois EPA folks discussing this matter,
14 but when you had conference calls on behalf of
15 Illinois EPA but with entities outside of Illinois
16 EPA concerning this issue of post-closure care cost
17 estimates and financial assurance I think you
18 alluded that you -- those calls sometimes involved
19 U.S. EPA staff?

20 A. Uh-huh.

21 Q. Is that right?

22 A. That's correct.

23 Q. And they sometimes involve staff from a
24 trade association, right? Or is it ASTSWMO, is that

1 --

2 **A. ASTSWMO, yes.**

3 Q. Did it also -- those calls also involve
4 personnel from other states equivalent of the
5 Illinois Environmental Protection Agency?

6 **A. I think there are a few calls
7 potentially made to a few state personnels.**

8 Q. And what were those calls to -- or to
9 whom were those calls made?

10 **A. I believe I've talked to one from
11 Virginia, and I can't recall his name, but he was
12 the committee chair for that proposed closure care
13 subgroup that I previously mentioned.**

14 I have talked -- maybe talked to or
15 e-mailed a few gentlemen in Florida and Wisconsin.

16 Q. Anyone else, any representatives from
17 other states besides --

18 **A. Other states, I think in -- so there
19 are -- maybe directors call -- RCRA directors call
20 among Region 5 states.**

21 So that may have come up, but I'm not
22 sure, that I just kind of participate. So if that
23 was mentioned in -- it's a potential that those --
24 also there are directors from other states, Region 5

1 states participate. So if that was mentioned then,
2 you know, but I don't recall when or who exactly.

3 (THERE WAS A BREAK.)

4 MR. GRANT: Are you moving on to a
5 different area? Good time for a quick break?

6 MR. SIEVERS: Sure.

7 (THERE WAS A BREAK.)

8 BY MR. SIEVERS:

9 Q. Ms. Halteman, for the benefit of
10 clarity in the transcript, we've been talking about
11 an organization and I want to get some clarity on
12 the proper name. I think you've been calling it --
13 is it ASTSWMO; is that right?

14 A. Yes.

15 Q. So what are the initials of the
16 organization?

17 A. Okay. Association --

18 MR. GRANT: He said the initials first.

19 THE WITNESS: Yeah.

20 MR. GRANT: So A-S --

21 THE WITNESS: A-S-T-S-W-M-O.

22 BY MR. SIEVERS:

23 Q. Okay. I've seen that in the documents
24 in this case. I didn't bring them with me today,

1 and so I can't find them.

2 So can you tell me what that
3 organization is? You've mentioned it already today,
4 but for the benefit of the court reporter and for
5 me, if you could repeat what that group is called.

6 **A. It's Association of State and**
7 **Territorial Solid Waste Management Organization**
8 **[sic], I believe.**

9 Q. Okay. And you pronounce that ASTSWMO?

10 **A. ASTSWMO, I think so.**

11 Q. And that was -- there is a white paper,
12 I believe, that was relied upon in this case that I
13 believe Mr. Nutt cited in his review notes from
14 ASTSWMO; is that correct?

15 **A. It's was a position paper.**

16 Q. Okay. Thank you for clarifying that.
17 There was also guidance from U.S. EPA that Mr. Nutt
18 relied upon?

19 **A. Yes.**

20 Q. And you supervise Jacob Nutt; is that
21 right?

22 **A. Yes, I do.**

23 Q. And so you supervised him on this
24 particular decision, the September 25th, 2023

1 decision?

2 **A. Yes.**

3 Q. Before the agency changed its
4 methodology for determining post-closure care
5 obligations and financial assurance from the
6 prorated method to the 30-year rolling obligation,
7 am I correct in understanding that there were
8 discussions within the agency and without about the
9 problems when post-closure care expires?

10 **A. We identified potential problems that**
11 **would arise.**

12 Q. So if post-closure care -- and this is
13 just general, not about this site specifically. But
14 if post-closure care were to end, the time period
15 were to end, and yet there were still hazardous
16 waste constituents the landfills, what are some of
17 the problems that the agency is concerned about?

18 **A. Okay. So different questions -- and**
19 **these are pretty well summarized in that 2016 U.S.**
20 **EPA Guidance that, you know, we have talked about.**

21 **So there are different considerations**
22 **that we have to look at, but potential -- I mean at**
23 **the end of the day the main concern is that that**
24 **hazardous waste or hazardous constituents within the**

1 waste would migrate offsite, or you know, down to
2 groundwater, or come out of, you know, the unit in
3 some way to harm the public health and the
4 environment.

5 Q. Are you aware of any instance where a
6 hazardous waste landfill completed post-closure care
7 and then afterwards that fear was realized that
8 hazardous waste constituents migrated out of the
9 landfill or otherwise threatened public health or
10 the environment?

11 A. I have talked to Region 5 U.S. EPA
12 staff, and I do not recall exactly who it was, years
13 ago, and I think there were -- there was a site in
14 Indiana that has the covered -- you know, the closed
15 landfill, and I'm not sure if that was Superfund or
16 RCRA either, but have migrated offsite and then
17 contaminated residential area. That's something we
18 discussed somewhere along the line.

19 We have not had any closed RCRA
20 landfills in Illinois that I am aware of, so -- and
21 -- but there are closed -- I meant -- I'll take back
22 the closed. There are closed -- a lot of closed
23 landfills, but completed post-closure care. That's
24 what I meant by closed.

1 **However, there are a few sites that**
2 **have contamination from -- partially from the**
3 **landfill that's closed and affecting the groundwater**
4 **and migrating offsite that we're trying to address**
5 **currently.**

6 Q. There are some RCRA sites?

7 **A. Yes.**

8 Q. That are closed that are having
9 migration issues?

10 **A. Yes.**

11 Q. Am I correct in understanding you to
12 have said that there are no RCRA sites in Illinois
13 that have completed post-closure care?

14 **A. As far as I am aware.**

15 Q. That's correct?

16 **A. Yes. And there is one -- that site --**
17 **North Chicago site in particular will be closing,**
18 **completing post-closure care, because they decided**
19 **to clean close, and that has been public noticed.**

20 **And so that will be probably one site**
21 **that will be coming out of post-closure care,**
22 **because they decided to remove the waste and clean**
23 **close the site.**

24 Q. And what does clean close the site

1 mean?

2 A. Clean close the site is removing the
3 waste. And so you have a new closure plan to --
4 it's called dirty closure. It's basically creating
5 landfill. But clean close is removing the waste and
6 cleaning up the contamination in accordance with
7 certain radio objectives and so there no longer a
8 need for post-closure care.

9 Q. So clean closure of a RCRA site would
10 mean taking the hazardous waste out of the landfill,
11 where would it go?

12 A. So for this particular site, I don't
13 know that -- I mean I can't tell you for all the
14 sites, but this particular site they are treating it
15 to the point that it's no longer hazardous, because
16 the waste they had is a characteristic hazardous
17 waste.

18 So there are treating it and then
19 taking it off site to a landfill that accepts
20 special waste -- non-hazardous special waste. So
21 you can treat the waste to render non-hazardous.

22 Q. Is the site they're taking it to within
23 Illinois?

24 A. Yes.

1 Q. So prior to the September 25th, 2023
2 decision in this case involving BFI Davis Junction
3 the agency had reevaluated post-closure care cost
4 estimates and financial assurance methodology in
5 other sites as well; is that right?

6 A. Yes.

7 Q. And you had mentioned, you know, City
8 of North Chicago and three or four others; is that
9 right?

10 A. Yes, but I mean discussion was also
11 more generic as well, because like I mentioned there
12 are 24 post-closure care sites that we manage. And
13 so we had to discuss not just for this site, but for
14 other sites.

15 But to also -- you know, to -- general
16 idea of what we need to evaluate generally, but then
17 apply that to site specific -- to individual site
18 and evaluate, so.

19 Q. So there was a more generic --

20 A. So there was a generic decision and
21 there is general discussion based on basically 2016
22 Guidance on all these, you know, points that they
23 have listed.

24 And so that was kind of the discussion:

1 Okay, we need to follow the U.S. EPA Guidance. And
2 then we will apply all these criteria and, you know,
3 consideration into each site. So we would evaluate
4 each site separately, individually.

5 Q. When did you personally first become
6 aware that there may be an issue if the agency
7 continued to use the prorated method of post-closure
8 cost estimates and financial assurance to RCRA
9 hazardous waste sites that were in post-closure
10 care?

11 A. Personally -- so I can't speak for
12 others. I'm sure there are other discussions since
13 the 2016 Guidance came out, but you know, so I can't
14 speak for others.

15 But for me probably around 2019 or so
16 that I was assigned a new project that has
17 that migrating contaminant from the post-closure
18 care site. And it's a bankrupted facility.

19 So that was kind of wake-up call for
20 me. And this was probably first site that I really
21 seriously looked into, you know, what we need to do
22 to protect, you know, the public, because the
23 migrating -- the contaminants migrating offsite to
24 the residential area.

1 Q. So it was a bankrupted facility?

2 A. Yes, that's correct.

3 Q. And where in the process -- had it been
4 -- had it been certified closed by the agency?

5 A. It was certified closed, and it was in
6 post-closure care for years. And I -- you know,
7 like I said, I didn't get involved until more recent
8 in RCRA years, and you know, probably around 2019
9 or, you know, so. And I might be recalling the date
10 incorrect, but around that time. Several years ago.

11 Q. Am I correct in understanding that
12 during the post-closure care period for that
13 facility hazardous waste constituents migrated
14 offsite?

15 A. It is migrating offsite.

16 Q. But in 2019 when the matter was
17 assigned to you that had already occurred?

18 A. That has been, yes, occurring.

19 Q. In 2019, it had occurred by that time?

20 A. I believe around that time. And I
21 don't know the exact year, but.

22 Q. And what about that situation then --

23 MR. SIEVERS: Strike that.

24

1 BY MR. SIEVERS:

2 Q. Was there no financial assurance in
3 place on that site to address the migration issue?

4 A. So it was bankrupted in the early
5 2010s. And again, I don't recall exact history of
6 that site.

7 There was a national settlement. And
8 there are sites around the country that basically
9 the bankruptcy court took the asset and then
10 allocated a certain amount each site.

11 So this site received allocation, and
12 however, you know, after address -- you know, we're
13 trying to address it, and that trust -- so trust --
14 assigned bankruptcy court assigned a trust is
15 managing the site, working with us and it's been
16 addressed so that the public health is protected,
17 but money is running out.

18 Q. And that --

19 MR. SIEVERS: Strike that.

20 BY MR. SIEVERS:

21 Q. Being assigned that project was how you
22 first became aware of a potential problem in the way
23 the agency calculated post-closure care cost
24 estimates and financial assurance for RCRA sites in

1 post-closure care?

2 A. Personally, that -- that we have to do,
3 you know, something about this, and you know, make
4 sure that other sites won't fall into the same
5 category.

6 However, in the meantime -- again,
7 there are several other project managers who have
8 managed these other projects, has post-closure care
9 sites, that are, you know, potentially discussing
10 this earlier than myself.

11 And again, Rob Watson was a Unit
12 Manager at the time. And he has been I think
13 discussing that a lot longer than, you know, I have.

14 And so this was -- for me, and for this
15 site with North Chicago site also came into land on
16 my desk that we -- you know, there's need for
17 properly evaluating that risk and financial
18 assurance associated with it had to be evaluated,
19 so.

20 But again, as far as other project
21 managers, and also Rob's discussions been probably
22 continuing a lot longer than that, but I don't know
23 how long.

24 Q. What site is the bankrupt site you're

1 referring to?

2 **A. It's Greenfield Multistate site that we**
3 **call it, but it's a former Tronox site.**

4 **T-r-o-n-o-x.**

5 Q. Where is that located?

6 **A. Madison, Illinois.**

7 Q. When you worked on that matter, did you
8 confer with Rob Watson about it?

9 **A. Yes.**

10 Q. Was he aware of other hazardous waste
11 sites that were in post-closure care that also had
12 issues where the financial assurance wasn't
13 sufficient to address the problems?

14 **A. Yes, there is another site, Vertellus**
15 **site. That is actually pretty close to the Tronox**
16 **site, but that's also another bankruptcy site with**
17 **hazardous waste closed in place.**

18 Q. So there are two sites that you were
19 aware of in or around 2019 in which financial
20 assurance as the agency had calculated it at that
21 time was not sufficient for post-closure care; is
22 that right?

23 **A. So I -- so they are bankrupt. They**
24 **were bankrupt prior to this time, so we didn't -- so**

1 for bankrupt sites we do not require financial
2 assurance, because there's no financial assurance to
3 provide.

4 But we were, you know, made aware that
5 whatever that we had in financial assurance
6 previously, you know, before the bankruptcy were not
7 enough to cover the costs of running these sites.

8 Q. And was that based because the prorated
9 method ended up reducing the financial assurance to
10 a point that was insufficient?

11 A. I don't know that. Like I said, I
12 didn't work on this, you know, Tronox site until
13 like around maybe -- yeah, like I said, 2019 or
14 around that time.

15 And the -- I did not work on the
16 Vertellus site until I became a unit manager and
17 looked at the site. So I don't know how it was
18 financial assurance prior to bankruptcy was
19 determined.

20 Q. Are you aware of any effort on behalf
21 of the Illinois Environmental Protection Agency to
22 get new regulations to address post-closure care
23 cost estimates and financial assurance when you're
24 concerned that the prorated methodology wasn't

1 sufficient?

2 A. Again, I don't know when this
3 bankruptcy occurred. And I don't even know when
4 prorated method even started and why or -- you know,
5 who started when, I have no idea.

6 It was just -- I was aware that ten
7 years. And I think it was originally 30 years, and
8 somehow it -- you know, it was allowed to reduce --
9 the facilities were allowed to reduce.

10 So there's no -- no, there's no
11 regulation -- you know, proposed regulation that
12 would've changed or -- but I think -- I don't think
13 regulations says that you can reduce or -- you know,
14 or otherwise.

15 I just -- I think the appropriateness
16 maybe was not maybe considered -- was considered
17 differently prior -- before. So I don't have that
18 really information on the history of that.

19 Q. Well, I guess what I'm trying to get at
20 is, the agency has come to the conclusion that the
21 prorated methodology was not correct and
22 insufficient, correct?

23 A. In recent years. As far as when, you
24 know, since I kind of got involved with that -- the

1 **evaluation and decisionmaking or reviewing of, yes.**

2 Q. When it determined that the prorated
3 methodology was incorrect and was insufficient to
4 provide necessary financial assurance for
5 post-closure care, did the agency at that time, to
6 your knowledge, explore getting new regulations or
7 amending existing regulations to address that issue?

8 A. We definitely looked at regulations,
9 and I believe our current regulation would support
10 that -- that changes. That internal decision that
11 we made to 30 years to protect the human health and
12 the environment. There are several places in our
13 regulations that would require us to set a proper
14 condition in the permit. So financial assurance is
15 one of the conditions that is -- is if it's
16 necessary we -- the regulation I believe will allow
17 that.

18 So I don't believe that there is no --
19 any need for change of a regulation to implement --
20 for facility to provide a proper financial
21 assurance.

22 Q. Is it correct that under the agency's
23 current understanding and application of the
24 regulations that this 30-year rolling post-closure

1 care obligation and including the financial
2 assurance that that is a perpetual obligation for a
3 hazardous waste landfill?

4 **A. So I --**

5 MR. GRANT: Let me object, and just
6 insert an objection on the basis of -- we're talking
7 very generally, and what we've got is a permit
8 appeal about a specific permit decision.

9 MR. SIEVERS: Your objection --

10 MR. GRANT: You can go ahead --

11 MR. SIEVERS: -- is noted.

12 MR. GRANT: -- you can go ahead and
13 answer if you can.

14 **THE WITNESS: Yeah. So you know, this**
15 **evaluation is ongoing just -- not directly answering**
16 **the question, but I'm trying to answer the question.**

17 **So it's -- so that 30 years are**
18 **required until such time that agency can determine**
19 **that there's no longer a risk to human health and**
20 **environment.**

21 **So I will bring up the North Chicago**
22 **case again. They have decided to clean close the**
23 **site. And at the time -- when that clean closure is**
24 **completed, there's no waste in place, there's no**

1 migration of hazardous waste or hazardous
2 constituents coming from that facility. And then we
3 can determine that post-closure care and the rolling
4 30 years no longer required.

5 BY MR. SIEVERS:

6 Q. But now --

7 A. So that's as an example. But there
8 might be other cases, I don't know that. We have
9 not come across any other cases that there is no
10 risk to human health and the environment at this
11 time at any of the post-closure care sites yet.

12 So that is a decision that has to be
13 made case by case in the future when, you know, that
14 can be demonstrated. And I can't tell you what
15 future would hold or, you know, what determination
16 and what demonstration is going to come in and we'll
17 evaluate case by case.

18 So perpetual -- you know, if there's --
19 nothing changes at the facility, leachate is
20 generating, there's a hazardous waste constituents,
21 you know, there is, you know, potential for
22 migration, then yes.

23 However, if there is anything else that
24 in the future that might be demonstrated that

1 there's no more risk, then there might be some other
2 decision that can be made, but that's depends on,
3 you know, demonstration and future decision.

4 Q. Am I correct, though, that if you have
5 hazardous waste in a RCRA landfill, even if there's
6 no longer generating gas, there's no longer
7 generating a leachate, no issues with water --
8 groundwater monitoring, cap is secure, that in that
9 situation the agency would still say because there's
10 hazardous waste in this landfill that a risk still
11 exists here of migration, and therefore we will
12 never let you out of post-closure care?

13 A. Is that a question or a statement?

14 Q. That was my question.

15 MR. SIEVERS: Could you read it back to
16 her?

17 (WHEREIN THE REQUESTED PORTION OF THE RECORD WAS
18 READ BACK.)

19 MR. GRANT: I'm going to object for the
20 record on the basis of relevance. Again, because
21 it's a general question about a specific permit
22 decision.

23 MR. SIEVERS: You may answer.

24 MR. GRANT: Yes, you may answer, if you

1 can.

2 THE WITNESS: Okay. Again, this is
3 site specific. The concern here is if there is
4 hazardous waste still left in place, even though
5 there might not be leachate generated, leachate can
6 be generated in the future when the cover system
7 may, you know, deteriorate.

8 So maintenance -- like I said, part of
9 the post-closure care is maintenance of the cover.
10 If that is not maintained, and you know, there's no
11 inspections, or any type of a climate change that
12 happens that -- you know, wind speed, the rainfall
13 rate changes, anything can deteriorate and that can
14 introduce the water into that waste, that would
15 create leachate.

16 Also, the -- you know, that would be
17 the cover, the liner -- as far as the liner -- you
18 know, the liner goes it's different for this site.
19 However, you know, generally there is a, you know
20 manmade liner system.

21 And then any other system -- I mean,
22 like your roof or the concrete on your driveway,
23 they deteriorate. If you don't maintain, there's
24 going to be a crack, you know, it's -- nothing would

1 last forever.

2 And if there is still hazardous waste
3 that is considered, you know, that can leach in
4 somehow it will find a way to migrate.

5 So this -- we're not talking about just
6 ten years from now, or maybe even 30, I mean, you
7 know, a long term. If it's not monitored we would
8 not know if there is any migration occurring.

9 If there is no requirement to maintain
10 the cover, and you know, keep track to see -- make
11 sure -- ensure that that water is not leaching in,
12 so it doesn't generate the leachate. So that has to
13 be maintained.

14 So if there is hazardous waste, and you
15 know, that's in the containment system, post-closure
16 care would prevent from that from going outside of
17 the containment. That -- so that's the purpose. If
18 that goes away there's a potential. And you know,
19 we would never know if there is no requirement.

20 So again, in the future there might be
21 a better system that might be able to address that,
22 the future need. However, at this time as far as I
23 know with the technology and the construction of
24 generally landfill that would need maintenance if

1 there is hazardous waste still remain in place. So
2 that would be my answer. I'm not sure if I answered
3 the question, but.

4 BY MR. SIEVERS:

5 Q. So as long as hazardous waste is in
6 place at a RCRA facility there's a risk that's
7 posed?

8 A. Yes, I believe so.

9 Q. And so in that situation post-closure
10 care needs to exist forever?

11 MR. GRANT: I'm going to object again
12 based on the -- it's getting away from the specifics
13 of ours. That wasn't mentioned anywhere in the
14 permit record I'll point out. But go ahead and
15 answer if you can.

16 THE WITNESS: It would be facility's
17 obligation to demonstrate that there is no risk. At
18 this time we have not seen any of the demonstration
19 that would tell us that, otherwise that there's no
20 risk.

21 MR. SIEVERS: Okay. I have nothing
22 further.

23 MR. GRANT: Can you give me a minute?

24 MR. SIEVERS: Yeah, sure.

1 MR. GRANT: Okay, thanks.

2 (THERE WAS A BREAK.)

3 CROSS-EXAMINATION

4 BY MR. GRANT:

5 Q. Ms. Halteman, my name is Chris Grant,
6 and I'm with the Assistant Attorney General assigned
7 in the case -- or one of them.

8 I'm going to ask you a few questions
9 specifically about this landfill. Are you familiar
10 with the type of liner that's present at the BFI
11 landfill in Ogle County?

12 A. Yes.

13 Q. And what sort of liner does it have?

14 A. So it is an in situ liner, which is
15 basically an existing -- native soil that is present
16 in the ground.

17 Q. Okay. When you say in situ, is that
18 spelled i-n, one word, second one, s-i-t-u?

19 A. That's correct.

20 Q. Okay, thank you. Do you believe that
21 an in situ liner such as that is protective of
22 groundwater in a hazardous waste landfill?

23 A. I don't think so in current standard.
24 There is usually a double liner with certain, you

1 know, technology requirements, high density -- HDPE
2 liner that are installed with drainage layer, and
3 you know, leachate collection system, which is
4 required for the newer hazardous waste landfills.
5 But this does not have any.

6 And it's not a comparable. So any new
7 landfill would not have that in situ liner in this
8 days, but it was allowed back in -- you know, back
9 in this time.

10 Q. Do you know when the landfill was
11 originally opened up?

12 A. I don't know when it originally opened
13 up, but I know waste was placed, I believe, 1973
14 through 1983.

15 Q. Okay. Are you aware of the specifics
16 at this landfill regarding groundwater elevation?

17 A. I am -- I have a knowledge. You know,
18 I can't tell you exact the depth and such. However,
19 I know that bottom of that liner -- in situ liner is
20 very close to or at the groundwater line.

21 Q. Do you think it's possible that the
22 groundwater is already contaminated with waste from
23 this landfill?

24 MR. SIEVERS: Objection, calls for

1 speculation. You may answer.

2 **THE WITNESS:** There was a -- I looked
3 at the groundwater report from -- I believe from
4 last year and there was exceedance of multiple
5 [phonetic] dioxin that was above the background, and
6 also a Class I water level.

7 So there is a groundwater contamination
8 from this landfill at this time -- from -- as of
9 last year.

10 BY MR. GRANT:

11 Q. Okay. Can you explain what the Land
12 Disposal Regulations are, specifically LDRs?

13 A. Land Disposal Restriction, it's in 35
14 IAC 728, that is a -- so sets the standard for the
15 level of treated hazardous waste that can be
16 disposed in land based unit.

17 So it's basically a list -- the limit
18 or requirements of the treatment level or level of
19 contamination that can be disposed in a land based
20 unit like hazardous waste landfill.

21 Q. Okay. Do you know when those
22 regulations became effective?

23 A. I believe it was late 1990 -- 1984.

24 Q. Okay. Was this -- this landfill, the

1 BFI Ogle County landfill operating prior to the
2 effective date of the LDRs?

3 **A. Yes.**

4 Q. Okay. So waste that was brought in
5 before the effective date was not evaluated to the
6 LDRs; is that a logical assumption?

7 **A. Yes, that's correct.**

8 MR. GRANT: Okay. That's all I've got,
9 Scott.

10 MR. SIEVERS: Nothing further. Do you
11 want to advise on the record as to waiving signature
12 and so forth?

13 MR. GRANT: I think we're going to --
14 well, are you going to order it up?

15 MR. SIEVERS: Yes.

16 MR. GRANT: Okay, good. I'll take a
17 copy. And we want to reserve for signature.

18 (THE DEPOSITION WAS CONCLUDED AT 11:03 A.M.)

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CERTIFICATE OF REPORTER

I, Ashley C. Huelsmann, a Registered Professional Reporter and Certified Shorthand Reporter (IL) do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to five ILCS 255/2 (from Ch. 101, par.2); that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Certified Shorthand Reporter
within and for the State of Illinois

1 July 9, 2025

2 CHRISTOPHER J. GRANT, ESQ.
3 ILLINOIS ATTORNEY GENERAL
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6 (312) 614-5388
7 cgrant@atg.illinois.il.us

8 In Re: BFI WASTE SYSTEMS OF NORTH AMERICA, LLC vs.
9 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

10 Dear Mr. Grant:

11 Please find enclosed your copy of the deposition of
12 Takako Halteman, P.E., taken on June 24, 2025 in the
13 above-referenced case. Also enclosed is the
14 original signature page and errata sheets.

15 Please have the witness read your copy of the
16 transcript, indicate any changes and/or corrections
17 desired on the errata sheets, and sign the signature
18 page before a notary public.

19 Please return the errata sheets and notarized
20 signature page to Lexitas Legal Production
21 Department.

22 Thank you for your attention to this matter.

23 Sincerely,

24 Ashley C. Huelsmann, RPR, CSR(IL), CCR (MO)
Enclosures
cc: Scott B. Sievers, Esq.

1 STATE OF)
)
2 COUNTY OF)

3
4 I, TAKAKO HALTEMAN, P.E., do hereby certify:
5 That I have read the foregoing deposition;
6 That I have made such changes in form and/or
7 substance to the within deposition as might be
8 necessary to render the same true and correct;
9 That having made such changes thereon, I
10 hereby subscribe my name to the deposition.
11 I declare under penalty of perjury that the
12 foregoing is true and correct.

13
14
15 TAKAKO HALTEMAN, P.E.

16 Executed this day of ,
17 2025, at

18 Notary Public:

19 My Commission Expires:

20 Signature page to: CHRISTOPHER J. GRANT, ESQ.

21 WLD/ TAKAKO HALTEMAN, P.E., JUNE 24, 2025

22 BFI WASTE SYSTEMS OF NORTH AMERICA, LLC vs. ILLINOIS
23 ENVIRONMENTAL PROTECTION AGENCY
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WITNESS ERRATA SHEET

Witness Name: TAKAKO HALTEMAN, P.E.

Case Name: BFI WASTE SYSTEMS vs. ILLINOIS EPA

Date Taken: JUNE 24, 2025

Page #_____ Line #_____

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Witness Signature:

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1	2023 8:24 14:9,15 16:10 19:4 31:22 36:14 39:10 47:24 52:1	724 21:24 724.217 22:3 728 69:14	accordance 51:6	agencies 41:16,17
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BFI WASTE SYSTEMS OF)
NORTH AMERICA, LLC,)
)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No. 24-29
(Permit Appeal-RCRA)



DISCOVERY DEPOSITION OF W. ROBERT WATSON, P.E.
TAKEN ON BEHALF OF THE PETITIONER
JUNE 24, 2025

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EXAMINATIONS

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(No exhibits marked.)

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

DISCOVERY DEPOSITION OF W. ROBERT WATSON,
P.E., produced, sworn and examined on JUNE 24, 2025,
between the hours of eight o'clock in the forenoon
and five o'clock in the afternoon of that day, at
the offices of Illinois Environmental Protection
Agency, 2520 West Iles Avenue, Springfield, Illinois
62704, before Ashley C. Huelsmann, Registered
Professional Reporter and Certified Shorthand
Reporter (IL) in a certain cause now pending before
the Illinois Pollution Control Board between BFI
WASTE SYSTEMS OF NORTH AMERICA, LLC, Petitioner, vs.
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent; on behalf of the Petitioner.

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A P P E A R A N C E S

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1 IT IS HEREBY STIPULATED AND AGREED by
2 and between counsel for the Petitioner and counsel
3 for the Respondent that this deposition may be taken
4 in shorthand by Ashley C. Huelsmann, Registered
5 Professional Reporter and Certified Shorthand
6 Reporter (IL), and afterwards transcribed into
7 typewriting; and the signature of the witness is
8 expressly waived.

9 * * * * *

10 W. ROBERT WATSON, P.E.,
11 of lawful age, produced, sworn and examined on
12 behalf of the petitioner, deposes and says:
13 (DEPOSITION STARTED AT 12:58 P.M.)

14 DIRECT EXAMINATION

15 BY MR. SIEVERS:

16 Q. Mr. Watson, could you please state your
17 name and spell it for the court reporter?

18 A. Name is Rob, R-o-b. Watson,
19 W-a-t-s-o-n. Also, full name would be W. Robert
20 Watson.

21 Q. Great, thank you. Have you ever had
22 your deposition taken before?

23 A. Yes.

24 Q. How many times?

1 A. Once. One deposition.

2 Q. Was it work related?

3 A. Yes.

4 Q. Was it a long time ago?

5 A. Oh, yes.

6 Q. Yeah, okay. Well, then you're familiar
7 that I'm going to ask you a series of questions.
8 The court reporter will take a transcript down of my
9 questions. You'll hopefully be able to answer my
10 questions, and she'll take a transcript down of your
11 answers.

12 When I'm done asking questions
13 Mr. Grant -- or Taylor is going to be following up
14 with some questions of her own. And we'll go back
15 and forth for a little like that until we're all
16 done.

17 But the important thing here is that
18 since it's a transcript we need to be able to
19 respond orally, verbally, and not through hand
20 gestures and nods and so forth; is that agreeable to
21 you?

22 A. Yes.

23 Q. And also we try to avoid ums and ahs
24 and so forth, that also is problematic; is that

1 agreeable?

2 A. I will try, yes.

3 Q. I will, too. It's not natural, so. To
4 keep the transcript clean, please let me finish my
5 question before you answer it.

6 And I try not to ask totally confusing
7 questions, but I know that I do at times. If I ask
8 you a confusing question, you don't understand it,
9 would you agree to not answer that question and to
10 tell me that you don't understand it or you find it
11 confusing?

12 A. Yes.

13 Q. Okay. If you need to go to the
14 restroom at any time, you need to take a break, make
15 a phone call, whatever it is, just let us know we
16 can take a break pretty easily.

17 All I ask is if I've got a question
18 posed to you that you answer that question first
19 before we take that break; is that okay?

20 A. Yes, I understand.

21 Q. Do you understand you've been placed
22 under oath?

23 A. Yes.

24 Q. Do you have any reason to believe that

1 you are not physically or mentally well enough today
2 to understand and answer my questions?

3 A. No, I'm okay.

4 Q. Did you review any documents in
5 preparation for this deposition?

6 A. Yes.

7 Q. Which documents did you review?

8 A. I looked at the testimony from Jacob
9 and Jackie Cooperider.

10 Q. Anything else?

11 A. No.

12 Q. And you're retired; is that correct?

13 A. Correct.

14 Q. Did you meet with anybody in
15 preparation for this deposition?

16 A. Yes.

17 Q. Who did you meet with?

18 A. The attorneys here and Takako.

19 Q. Anyone else you can think of that you
20 met with?

21 A. No.

22 Q. Okay. Just go over some background on
23 you. Did you attend college or university?

24 A. Yes.

1 Q. Where did you attend?

2 A. University of Illinois

3 Champaign-Urbana.

4 Q. And did you earn a degree there?

5 A. Yes, graduated.

6 Q. What was it?

7 A. Civil engineering.

8 Q. Just as Takako did as well?

9 A. I think so, yeah.

10 Q. Yeah, I think so. Did you attend any
11 other college or universities?

12 A. No.

13 Q. Did you -- have you attended any trade
14 schools?

15 A. No.

16 Q. Serve in the military?

17 A. Nope.

18 Q. When did you graduate from college?

19 A. January 1983.

20 Q. And when did you start working for
21 Illinois EPA?

22 A. May of 1983.

23 Q. Okay. So was there -- did you work
24 anywhere in between, besides Illinois EPA?

1 A. Boy, there was a like a retail store
2 and a restaurant, yeah.

3 Q. Not professionally?

4 A. Not professionally, no.

5 Q. So when you started working for
6 Illinois EPA in 1983 did you remain at the agency
7 until you retired?

8 A. Yes.

9 Q. Were you always in the same bureau
10 during that time?

11 A. For the most part, yes. For a year and
12 a half I worked in Bureau of Water, drinking water.

13 Q. So is it correct that the rest of the
14 time you were in the Bureau of Land?

15 A. Correct, yes.

16 Q. And what was the position you held when
17 you retired?

18 A. I was the manager of the RCRA Unit.
19 Permit Section in the Bureau of Land.

20 Q. Had you always been in the RCRA Unit
21 during your time at Illinois EPA?

22 A. No. When I first started I don't think
23 there was a RCRA Unit, but I'd been in the Permit
24 Section whenever I was in the Bureau of Land.

1 Q. So you were a RCRA -- you were RCRA
2 Unit Supervisor or Manager?

3 A. Manager.

4 Q. And what did that job entail?

5 A. Really the management of the RCRA
6 permitting and corrective action programs for the
7 State of Illinois.

8 Q. Does that include hazardous waste
9 landfills?

10 A. Yes.

11 Q. What does it -- besides hazardous waste
12 landfills, what else is included in that area?

13 A. RCRA permitting for any facility that's
14 required to have a RCRA permit, so it would be
15 container, tank storage, surface impoundments,
16 incinerators, and then corrective action at those
17 various facilities.

18 Q. Was hazardous waste landfills a
19 substantial portion of what you worked with in that
20 position?

21 A. I don't really know if it was
22 substantial, but certainly played a big role,
23 uh-huh.

24 Q. I'm going to hand you what has been

1 previously marked as Exhibit D. Why don't you take
2 a look at that for a moment?

3 For the record, that's a document that
4 starts at page R000130 and goes to R000187.

5 A. Okay. I don't know what I'm supposed
6 to be looking at.

7 Q. Do you recognize that document at all?

8 A. It looks like letters from the Permit
9 Section to BFI.

10 Q. Let me call your attention to couple
11 specific pages. On R131 to R134 of that document.
12 See if that -- the first page has got a date stamp
13 of September 25th, 2023; do you see that?

14 A. Yes.

15 Q. And that's a four-page letter with an
16 attachment; is that correct?

17 A. Appears to be.

18 Q. Okay. Looking at that letter, are you
19 familiar with that letter?

20 A. No.

21 Q. Never seen that letter before?

22 A. No.

23 Q. Okay. Were you involved in a decision
24 on BFI Davis Junction's petition for modification of

1 its permit that was made in 2023?

2 A. No.

3 Q. Okay. Weren't involved at all; is that
4 right?

5 A. No, I -- yeah, I had retired in -- end
6 of June, July of 2023.

7 Q. Did you come back at all on a contract?

8 A. Yes, the contract ran from December --
9 well, January 1st, 2023 through June, July, 75 days,
10 whatever that turned out to be. I think the end of
11 June.

12 Q. So when you say you retired in June of
13 2023, that was really at the end of your contract
14 portion?

15 A. Correct -- sorry. Yes, correct.

16 Q. Would it be accurate to say that you
17 retired prior to your contract and then you were on
18 a contract --

19 A. Yes.

20 Q. -- afterwards?

21 A. Yeah.

22 Q. So would your formal retirement date be
23 the end of, like, December 2022?

24 A. Correct.

1 Q. Okay. And you probably said that, I
2 just overlooked that. Do you recall being part of
3 any discussions concerning -- when you were employed
4 at Illinois EPA as RCRA Permit Section Manager --
5 I'm sorry, as RCRA Unit Manager, do you recall being
6 involved in any discussions concerning a permit
7 modification at BFI Davis junction?

8 A. Not specifically.

9 Q. Okay. Do you recall discussions
10 concerning RCRA hazardous waste landfills -- I guess
11 this is redundant.

12 Do you recall any discussion regarding
13 RCRA landfills in which the post-closure care cost
14 estimates and financial assurance were at issue?

15 A. Yes.

16 Q. Do you recall discussions about a
17 prorated methodology of calculating that versus a
18 30-year rolling method of calculating it?

19 A. Yes.

20 Q. And you had those discussions while you
21 were under contract or when you were a regular
22 employee?

23 A. Probably both, yeah.

24 Q. How many conversations do you think you

1 participated in about that topic?

2 A. A lot. I really don't know. It was an
3 important topic, so there were a lot of
4 conversations with a lot of people.

5 Q. Would that topic have been a
6 discussion, like, your entire career?

7 A. Off and on, sure. I spent a lot of
8 time in RCRA and RCRA permitting, and so any RCRA
9 permit that you'd be part of post-closure care for a
10 landfill, financial assurance, those were all --
11 those topics come up all the time.

12 Q. Okay. But specifically the idea of
13 whether --

14 MR. SIEVERS: Strike that.

15 BY MR. SIEVERS:

16 Q. Are you familiar there was a time at
17 Illinois EPA where the method that was used to
18 calculate post-closure care cost estimates and
19 financial assurance was using a prorated method?

20 A. Yes.

21 Q. And then at some point the agency chose
22 a different method; are you aware of that?

23 A. Yes.

24 Q. The discussion about making that

1 change, did that discussion go on for a period of
2 years?

3 A. I think so, yeah.

4 Q. What years are we talking about would
5 you estimate?

6 A. Oh, last five or more -- ten years
7 maybe. The post-closure care had been a concern for
8 a long time, because the 30 years of post-closure
9 care was -- I mean the clock was running out on a
10 lot of landfills, so that came up for a lot of
11 different sites in a lot of different ways.

12 Q. What do you mean by "the clock was
13 running out"?

14 A. Well, 30 years would be approaching,
15 and the question then is: What does that mean for
16 each site. Conditions are different at each site.
17 But if the 30 years runs out, what does that mean,
18 how are you still protective of human health, the
19 environment, if you reach the 30 years.

20 Q. And that hadn't happened at any
21 hazardous waste landfill in Illinois previously,
22 correct?

23 A. There might have been a couple that had
24 exceeded 30. And then others were approaching the

1 30. And so as the RCRA Unit Manager that was a
2 concern of myself, and my staff and management as
3 well that how do you -- how do you address that
4 issue.

5 Q. At what point was it --

6 MR. SIEVERS: Well, strike that.

7 BY MR. SIEVERS:

8 Q. Were you -- did you participate in any
9 decisions on permits concerning RCRA landfills in
10 which that prorated method was employed?

11 A. Yes, I was involved in permits where
12 that was part of the permit, and even before I was a
13 unit manager, yes.

14 Q. And do you recall discussing or
15 conferring with anybody about why that prorated
16 method was the method to be used?

17 A. No, I don't, no. I'm sure it happened,
18 but it's been a long time. I don't remember
19 specific conversations about that.

20 Q. Was there a point when it was brought
21 to your attention or you came to the conclusion that
22 the prorated method was incorrect?

23 A. Yeah, when I became a unit manager and
24 those decisions became something that I was

1 responsible for, that was a part of the time when
2 looked at that decision and determined that it was
3 not adequate.

4 Q. And remind me, when did you become a
5 unit manager?

6 A. Oh, boy. Let's see. I don't remember
7 -- '20 -- let's see. '21, maybe, something like
8 that. I think I was a manager for about five years.

9 Q. Who was your predecessor in that
10 position?

11 A. Jim Moore.

12 Q. So when you were a RCRA -- when you
13 were the RCRA Unit Manager that's when you came to
14 the conclusion that the prorated method was
15 incorrect?

16 A. Yes.

17 Q. Did you come to that on your own, or
18 did you -- did somebody bring the idea to you at the
19 agency?

20 A. I wouldn't say I came up with it all by
21 myself. It was an issue that a lot of people had
22 been concerned about in our state and on a national
23 basis that, how do you -- not just prorating, but
24 financial assurance in general for post-closure

1 care.

2 And when we looked at the prorating
3 it -- it was clear to me that when -- if you
4 followed that approach you could end up with very
5 little financial assurance at a facility.

6 And then the company, say, goes
7 bankrupt, and now there's an environmental facility
8 that may have groundwater contamination, pumping
9 leachate, have gas. Each site is a little
10 different.

11 But then now that's something that the
12 State of Illinois is going to have to bear the
13 burden of paying for all those -- addressing those
14 issues. And that didn't seem right, and it didn't
15 seem like what the regulations required.

16 Q. Okay. So did you come to the
17 determination that a regulation was being
18 misinterpreted?

19 A. Yes.

20 Q. Do you remember which regulation it
21 was?

22 A. I'd have to go back and look at --
23 it's -- well, the 724, what, 217 in Subpart H --
24 724, Subpart H, 724, like, 410, the landfill regs.

1 A favorite of mine, 724.131 is more of a general
2 requirement.

3 Q. Okay. There wasn't a change in the
4 regulation that brought you to that conclusion that
5 there was a need to reevaluate the way post-closure
6 care cost estimates and financial assurance were
7 being implemented; is that right?

8 A. I believe so, that's correct.

9 Q. You know when you retire you don't have
10 to have those regulations memorized.

11 A. Yeah. Well, it's -- when you've done
12 it for a while some of them stick with you, I guess.

13 Q. Do you recall a specific site in which
14 this reevaluation of the prorated methodology and
15 the implementation of a new methodology was
16 employed, the very first time you did that?

17 A. Not really. There were -- I mean we
18 were facing a number of facilities that were
19 approaching or had exceeded 30 years.

20 Not all the permits were the same. The
21 conditions of the permits were not all the same on
22 all of them, the conditions were not the same. So I
23 think it was more of a overall looking at the group,
24 yeah.

1 Q. When the determination was made to no
2 longer follow the prorated method and to use this
3 30-year rolling obligation, do you remember who was
4 all in -- participated in making that decision?

5 A. There were a lot of people, a lot of
6 discussions over a long period of time. I spoke
7 with our legal counsel --

8 Q. Let me stop you there. I don't want to
9 hear about your conversations with legal counsel,
10 because that's privileged. So don't tell me what
11 they said or you said to them.

12 A. Okay.

13 Q. I mean it's fine that you tell me that
14 you did talk to them. But just tell me about the
15 people that you spoke to, not lawyers.

16 A. So I would have spoken with -- my
17 manager at the time was, Ken Smith was the Unit
18 Manager, probably the bureau chief or deputy bureau
19 chief.

20 When I was manager, Takako, my lead
21 worker, probably talked with our staff about that as
22 well, understanding what conditions were at all the
23 different facilities.

24 Q. Was there any formal adoption of the

1 policy, like a memorandum that went up to the -- you
2 know, the head of the agency, or the bureau chief or
3 anything like that?

4 A. I don't think so. I mean we're not
5 making policy. You know, we were interpreting the
6 regulations.

7 So yeah. And I also talked with people
8 in ASTSWMO, talked with U.S. EPA. Like I said, this
9 was an issue that a lot of people and a lot of
10 states, you know, were concerned with.

11 Q. And you mentioned a group there, for
12 the court reporter's benefit and for mine, could you
13 say that term again?

14 A. ASTSWMO?

15 Q. Yes.

16 A. Association of State and Territorial
17 Solid Waste Management Officers [sic].

18 Q. And so you conferred with those folks?

19 A. Uh-huh.

20 Q. That's yes?

21 A. Sorry, yes.

22 Q. It's okay, we all do it. And you
23 conferred with folks at U.S. EPA?

24 A. Yes.

1 Q. Did you confer with any other states
2 besides Illinois EPA?

3 A. Yes.

4 Q. Which other states?

5 A. Wow. Florida, Minnesota, Indiana,
6 Ohio, Virginia, New York, North Dakota -- trying to
7 remember who were on some of the work groups.

8 Q. How did their regulation compare to
9 Illinois's on the topic of post-closure care cost
10 estimates and financial assurance as far as you
11 understand?

12 A. Right. Everybody was based on the
13 federal regs. You know, if you have an authorized
14 program you have to be consistent with the federal
15 regs. But the state regs did vary and the way they
16 interpreted them varied.

17 I don't recall exactly -- some were
18 more stringent, some were less stringent, some --
19 yeah, it kind it varied. It's been a while, I can't
20 recall exactly how they did it.

21 Q. Would it be fair to say the general
22 theme was everybody was concerned about -- or most
23 everyone was concerned about post-closure care
24 running out and not having enough financial

1 assurance to cover problems if they arose?

2 A. Yes.

3 Q. And I guess the problem -- the problem
4 is -- and correct me if I'm wrong, but it's the --
5 you've got -- you have hazardous waste materials
6 that are in these landfills and there's concern that
7 those constituents might get out somehow?

8 A. Correct.

9 Q. And they might affect human health, the
10 environment, et cetera?

11 A. Correct.

12 Q. Are there any RCRA landfill sites that
13 you recall specifically discussing implementing
14 this -- the 30-year rolling post-closure care and
15 financial assurance obligation upon, if you don't
16 recall the BFI Davis Junction matter?

17 A. Chicago CID landfill. Let's see. Was
18 it Newco -- gosh, there are others. I'd say
19 probably all of them. Honestly if there was a list
20 of landfills we probably discussed it for all of
21 them, especially those that were approaching the
22 30 years or had passed it.

23 Q. Okay. What do you understand
24 post-closure care to involve?

1 A. The proper maintenance of a closed
2 landfill, so would be maintaining the cover system,
3 complying with the groundwater monitoring
4 requirements.

5 If there's leachate, pumping the
6 leachate, surveying it on occasion to see if there's
7 differential settlement.

8 Inspecting to see if security at the
9 site is maintained, and make sure kids on dirt bikes
10 or burrowing animals don't interfere with the cover
11 system. Those types of things.

12 Q. Okay. And what is financial assurance?

13 A. Financial assurance is the amount of --
14 amount of funds that a facility has to provide to
15 ensure that in the event that the company goes
16 bankrupt or in some other ways not able to care for
17 the landfill then the state can take those funds and
18 pay for the cost of maintaining, inspecting,
19 operating the landfill.

20 Q. When you participated in the decision
21 to change from a prorated method of applying
22 post-closure care costs and financial assurance to
23 this 30-year rolling average -- or not rolling
24 average, rolling obligation, were other alternatives

1 to the financial assurance issue addressed or
2 contemplated?

3 A. I don't think so. As far as -- I mean
4 following the regulations it says you have financial
5 assurance, you know, calculated annual amount. And
6 then the other regulation says, you know, provide
7 that annual amount for 30 years.

8 Q. Was there any discussion about seeking
9 to add new regulations or to amend the existing
10 regulations to address that issue?

11 A. I don't think so. It could have been
12 with discussions with DLC that they saw some
13 concerns with the regulations that they thought
14 maybe should be addressed.

15 Q. But as far as you're aware, you're not
16 aware of any discussions to try to get new or
17 amended regulations to address this topic?

18 A. I wasn't involved in that I don't
19 believe.

20 MR. GRANT: Scott, can I have one
21 minute?

22 MR. SIEVERS: Yeah.

23 (THERE WAS A BREAK.)

24

1 BY MR. SIEVERS:

2 Q. Mr. Watson, are you familiar with the
3 BFI Davis Junction landfill?

4 A. Somewhat, yeah.

5 Q. And how have you become familiar with
6 that landfill?

7 A. Spending as much time as I have in the
8 RCRA Permit Unit and then Permit Section in general,
9 just general understanding of it.

10 I might have worked on it in the past.
11 I've got my name and initials on a lot of projects
12 over the years.

13 Q. And there's more to that landfill than
14 simply the hazardous waste unit; is that right?

15 A. I think so. I believe it was a
16 co-disposal situation, but pretty general of what my
17 knowledge of what all is going on there.

18 Q. You wouldn't have cause to be involved
19 in any aspect of that landfill besides the RCRA or
20 Hazardous Waste Unit; is that right?

21 A. I don't think so, no, that's correct.

22 Q. Do you recall having a conversation at
23 any time with Jacob Nutt about the BFI Davis
24 Junction landfill's RCRA phase?

1 A. Offhand, no, but if I was the manager
2 and it was his project I'm sure I did.

3 Q. Okay. At the end of your time as RCRA
4 Unit Manager did that coincide with Jacob Nutt
5 coming in that particular unit?

6 A. I think he'd joined the unit maybe a
7 year before I left, something like that. He hadn't
8 been there for very long.

9 Q. So he would have been within your unit
10 for maybe about a year before you retired?

11 A. Something like that, yes.

12 Q. Do you recall ever having a
13 conversation with him about, you know, post-closure
14 care estimates and financial assurance for hazardous
15 waste landfills?

16 A. Offhand, I don't, but I would suspect
17 that I did.

18 Q. Are you aware at any time of Illinois
19 EPA considering petitioning the Pollution Control
20 Board for an adjust standard concerning post-closure
21 care cost estimates and financial assurance?

22 A. No.

23 MR. SIEVERS: I don't think I have
24 anything further.

1 MS. DESGROSSEILLIERS: I think we're
2 good.

3 MR. SIEVERS: That's it. That's all I
4 got for you. Thanks for coming in, I appreciate it.

5 THE WITNESS: No problem.

6 (THERE WAS AN OFF-THE RECORD DISCUSSION.)

7 THE WITNESS: I waive signature.

8 (THE DEPOSITION WAS CONCLUDED AT 1:35 P.M.)

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CERTIFICATE OF REPORTER

I, Ashley C. Huelsmann, a Registered Professional Reporter and Certified Shorthand Reporter (IL) do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to five ILCS 255/2 (from Ch. 101, par.2); that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Certified Shorthand Reporter
within and for the State of Illinois

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