BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
WASTE MANAGEMENT OF ILLINOIS, INC.	)	
	)	
Petitioner,	)	
	)	**PCB 26-39**
	)	**(Permit Appeal - RCRA)**
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Waste Management of Illinois, Inc.'s Petition to Appeal Illinois EPA's Final Determinations and Request for Stay, a copy of which is herewith served upon you.

Dated: March 9, 2026

Waste Management of Illinois, Inc.

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One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Waste Management of Illinois, Inc.'s Petition to Appeal Illinois EPA's Final Determinations and Request for Stay was electronically filed on March 9, 2026 with the following:

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and copies were sent via e-mail on March 9, 2026 to the parties on the service list.

Dated: March 9, 2025

Waste Management of Illinois, Inc.

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One of its Attorneys

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	)	
Respondent.	)	

PETITION TO APPEAL ILLINOIS EPA's FINAL DETERMINATIONS AND REQUEST FOR STAY

Petitioner, the Waste Management of Illinois, Inc. ("WMIL" or "Petitioner"), pursuant to Section 40(a) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/40(a), and 35 Ill. Adm. Code 105.200 *et seq*., submits this petition to appeal the Illinois Environmental Protection Agency's ("Illinois EPA" or "Agency") October 27, 2025 determination concerning Solid Waste Management Units ("SWMUs") at Areas 1 and 2 ("Areas 1 and 2") and Hazardous Waste Management Units (HWMUs) at Areas 3 and 4 ("Areas 3 and 4") of the CID Recycling & Disposal facility ("CID RDF") (RCRA Permit Log Nos. B-27R2-M-8 and B-27R2-M-10). The October 27, 2025 Determination is attached as Exhibit A ("Final Determination"). At issue in this proceeding are the permit conditions relating to Areas 3 and 4. On December 4, 2025, the Illinois Pollution Control Board ("Board" or "IPCB") extended the appeal period to March 9, 2026, making this Petition for Review timely.

The Final Determination is in error because Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") does not have the authority to require WMIL to maintain financial

assurance in an amount equal to 30 years of costs without annual reduction as permitted by regulation. Illinois EPA is also equitably estopped from changing its longstanding practice of allowing reduction in financial assurance during the post-closure care period.

WMIL requests that the Board find that the Illinois Administrative Procedures Act ("IAPA") automatically stays the Final Determination pending this appeal. *See* 5 ILCS 100/10-65(b).

I. APPEAL

A. ISSUES ON APPEAL

1. Illinois EPA's Final Determination impermissibly adds additional financial assurance requirements that are not present in and contrary to the plain language of the underlying regulations and improperly preclude WMIL from pursuing its legal right to reduce its financial assurance specifically granted by the regulations. By including a permit condition that WMIL must maintain financial assurance in an amount equal to 30 years of costs "for the entire post-closure care period", without the ability to seek annual reductions in those costs as allowed by 35 Ill. Adm. Code 724.245, Illinois EPA is unilaterally nullifying the effect and purpose of Illinois regulations. Illinois EPA's actions disregard the plain language of its regulations, under-mine established principles of regulatory construction, and quash WMIL's legal rights. *See Kisor v. Wilkie*, 588 U.S. 558, 574-76, 139 S. Ct. 2400, 2415 (2019).

2. Illinois EPA's decision to impose additional financial assurance by using a Class 1*[1] permit modification was beyond Illinois EPA's lawful authority because it was procedurally incorrect and does not meet the regulatory requirements. Such an extension qualifies as a Class 2

[1] Board regulations denote certain Class 1 permit modifications that require Agency approval by an asterisk, hence the designation of Class 1* permit modifications. 35 Ill. Adm. Code 703.281(b). See infra at Section C.2.

modification, which requires additional procedural steps, including public notice, a meeting, and response to comments.

3. Illinois EPA is equitably estopped from enforcing the extended financial assurance requirements due to repeated prior permit modifications, representations, and conduct that WMIL reasonably relied upon in maintaining compliance with initial post-closure care requirements.

B. SITE HISTORY

4. The CID RDF is located at 138th & Calumet Expressway, Calumet City, Cook County, Illinois.

5. CID RDF is a permitted hazardous waste disposal facility whose permit covers (i) post-closure care for two closed HWMUs at Areas 3 and 4, and (ii) corrective action activities for two closed SWMUs at Areas 1 and 2. Exh. A, p. 1. At issue in this proceeding are the permit conditions relating to Areas 3 and 4.

6. Area 3 comprises a 173-acre closed landfill where approximately 83 acres received hazardous waste between 1980 and January 1983, when hazardous waste was co-disposed with municipal solid waste. Exh. A, p. ii. Area 4 is a closed 25.9-acre landfill that received industrial hazardous waste during its active operations. *Id.* WMIL certified closure of Areas 3 and 4 on May 30, 2008 and February 18, 2010, respectively. *Id.*

7. EPA approved closure of Area 3 on October 10, 2008, and approved closure of Area 4 on April 23, 2010. Exh. A, p. i – ii.

8. Since it certified closure, WMIL has been conducting post-closure care activities respectively at Areas 3 and 4 including, but not limited to (i) maintenance of the final cover, (ii) management of leachate, (iii) monitoring of the groundwater, and (iv) providing financial

assurance for post-closure activities pursuant to 35 Ill. Adm. Code Part 724 Subpart H. See Ex. A, p. I-1 and I-17.

9. As required, WMIL provided post-closure care costs for Areas 3 and 4 for the duration of the post-closure care period and continuing to the present and maintained insurance to satisfy its financial assurance obligations, pursuant to 35 Ill. Adm. Code 724.245(e)(9).[2] Between 2014 and 2021, WMIL routinely requested, and Illinois EPA granted, annual reductions to financial assurance amounts representing the remaining time of the post-closure care period. *See* Annual Permit Modification Requests and Illinois EPA Responses, collected as Exh. B.[3]

10. On October 27, 2023, WMIL submitted an updated post-closure cost estimate for Areas 3 and 4, which included an annual reduction. *See* Exh. C. Illinois EPA did not respond.

11. On October 28, 2024, WMIL again submitted an updated post-closure cost estimate for Areas 3 and 4, which again included an annual reduction in financial assurance. *See* Exh. D. On August 7, 2025, WMIL provided Illinois EPA with an updated version of a table contained in the October 2024 submittal. *See* Exh. E. Illinois EPA did not respond.

12. Eventually, on October 27, 2025, Illinois EPA issued the Final Determination that required a new financial assurance cost estimate consisting of the total of 30 years of post-closure care costs "for the entire post-closure period."[4] Exh. A, p. 2. In other words, Illinois EPA ended annual financial assurance reductions and required maintenance of the total cost at the same level for 30 years, contrary to the Agency's prior practice.

[2] Section 724.245(e)(9) applies to the use of insurance as financial assurance and provides that "Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency." 35 Ill. Adm. Code 724.245(e)(9),

[3] Exh. B is subdivided by year for 2014 through 2021 as B.1, B.2, etc., with each division including WMIL's request and Illinois EPA's returned approval. In 2022, WMIL did not submit a reduction request because Illinois EPA requested that WMIL wait while it prepared a new permit.

[4] The Final Determination also approved other cost estimates that are not the subject of this appeal.

13. Illinois EPA determined that WMIL's submissions of October 27, 2023 and October 28, 2024 were a Class 1* permit modification request, referencing 35 Ill. Admin. Code 703.280(d)(2)(A). Exh A, p. 2.

14. Illinois EPA declared that its Final Determination was a final action prompting WMIL's right to appeal to the Illinois Pollution Control Board under Section 40 of the Illinois Environmental Protection Act. Exh. A, p. 3.

15. On November 24, 2025, WMIL and Illinois EPA filed a joint request with the Board for an extension of the ninety-day appeal period for PCB 26-39. The Board granted the request and extended the appeal period to March 9, 2026. *See* Board Order of December 4, 2025.

C. ARGUMENTS FOR APPEAL

1. ILLINOIS EPA HAD NO BASIS TO EXTEND POST-CLOSURE FINANCIAL ASSURANCE TO 30 CONTINUOUS YEARS.

16. By both creating additional extra-regulatory restrictions through interpretation and ignoring the plain language of Illinois regulation, Illinois EPA violates the established principles of regulatory interpretation, ignores the plain language it should adhere to, and quashes WMIL's right to annual reductions.

a) Illinois EPA may not add nonexistent requirements to Illinois regulations through regulatory interpretation.

17. In its Final Determination, Illinois EPA states that it "cannot approve" WMIL's post-closure cost estimate submissions from 2023 and 2024 and that a "RCRA-permitted facility must maintain financial assurance for 30 years for the entire post-closure period unless it has completed a post-closure activity or changed the frequency of an activity, that would cause a reduction in the post-closure cost estimate. …" Exh. A, p. 2 (emphasis in original).

18. Illinois EPA states that it based its Final Decision on "the regulations [35 IAC Subtitle G]," without any further specification of a Part, Subpart, or regulation. Subtitle G is the entire Waste Disposal Subtitle of the Board's regulations. It is comprised of over 60 Parts, a majority of which are unrelated to the Hazardous Waste Units at CID RDF, such as Part 731 (Underground Storage Tanks), Part 830 (Compost Facilities), and Part 845 (Coal Combustion Residuals Surface Impoundments). Fundamentally, a permittee is entitled to the basis for the Agency's Permit decision, and the Agency's claim that an entire Subtitle supports its decision violates that rule. The Act requires that Illinois EPA justify permit denials with "detailed statements as to the reasons the permit application was denied" and must include "the Sections of the Act" and the "provision of the regulations" that justify the decision, as well as "a statement of specific reasons why the Act and the regulations might not be met if the permit were granted." 35 ILCS 5/39(a) and 35 ILCS 5/39(a)(i), (ii), and (iv). Illinois EPA's citation to over 60 Parts to justify its denial in the Final Determination fails to provide the detailed statement and specificity required by the Illinois Environmental Protection Act.

19. In any case, no part of Subtitle G of Title 35 of the Illinois Administrative Code supports the Agency's requirement to maintain 30 years of financial assurance for the entire post-closure period of a hazardous waste facility.[5]

20. Section 724.244 is the Financial Assurance Section that has governed WMIL's cost estimates for post-closure care. Section 724.244 states that facilities must produce cost estimates "in accordance with the applicable regulations in Sections 724.217 through 724.220, 724.328, 724.358, 724.380, 724.410, and 724.703." 35 Ill. Admin. Code 724.244. None of these regulations

[5] A review of each Part under 35 Ill. Admin. Code Subtitle G for financial assurance provisions finds that none require 30 years of continuous post-closure financial assurance at a facility such as CID RDF. *See* 35 Ill. Admin. Code Parts 724, 725, 727, 730, 807, 811, 814, 830, 845, 848.

require a facility to maintain 30 years of financial assurance for the entire post-closure period each year.

21. Section 724.217(a)(l) is the only provision within 35 Ill. Adm. Code Part 724 that mentions a 30-year period. Yet, nothing in Section 724.217(a)(1) authorizes Illinois EPA to require financial assurance for the entire post-closure care period every year.

22. By requiring maintenance of financial assurance for the entire period, the Agency is improperly adding conditions not contained in the regulation. “Because administrative regulations have the force and effect of law, the familiar rules that govern construction of statutes also apply to the construction of administrative regulations.” *Haage v. Zavala*, 2021 IL 125918, ¶ 43. A reviewer “may not add provisions to a statute nor read any conditions not expressed in the language.” *Walker v. Dart*, 2015 IL App (1st) 140087, at ¶51 (Mar. 27, 2015) citing *Schultz v. Illinois Farmers Insurance Co*., 237 Ill. 2d 391, 408 (2010). A court cannot “depart from a statute's plain language by reading into the law exceptions, limitations, or conditions that the legislature did not express." *Schultz v. Illinois Farmers Insurance Co*., 237 Ill. 2d 391, 408 (2010). *See also Concerned Citizens v. Ill. Com. Comm’n*, 2026 IL 131026, ¶21 (Jan. 23, 2026) (“We apply the statute as written, without looking to any aids of statutory construction when its language is plain and unambiguous.”).

23. WMIL asks the Board to find that Illinois EPA erred in finding that all of Subtitle G mandates 30 years of continuous financial assurance at all times, because this requirement does not exist in this text.

b) Illinois EPA's Final Determination improperly precludes WMIL from pursuing its legal right to reduce its financial assurance, as specifically granted by regulations.

24. By adding a permit condition that WMIL must maintain financial assurance in an amount equal to 30 years for the entire post-closure care period without the ability to seek annual reductions in those costs as allowed by 35 Ill. Adm. Code 724.245, Illinois EPA is reading away the plain meaning of Illinois regulation and rendering a portion of those regulations meaningless.

25. Illinois' financial assurance regulations specifically allow a permittee to request annual reductions in the total amount of financial assurance as each year passes, gradually reducing the total costs of post-closure care. *See e.g.*, 35 Ill. Adm. Code 724.245(a-f).

26. For Areas 3 and 4, WMIL currently maintains insurance to satisfy its financial assurance obligations. 35 Ill. Adm. Code 724.245(e)(9).

27. Section 724.245(e)(9) provides, "Whenever the current post-closure cost estimate decreases during the operating life of the facility, the face amount may be reduced to the amount of the current post-closure cost estimate following written approval by the Agency." 35 Ill. Adm. Code 724.245(e)(9).

28. The remaining paragraphs of Section 724.245, describing different financial assurance mechanisms, similarly allow a permittee to request reductions in financial assurance. *See e.g.*, 35 Ill. Adm. Code 724.245 (a)(7), (b)(7), (c)(7) et seq.

29. The U.S. Supreme Court has stated that where a regulation is clear, there is no room for Agency interpretation or deference. *See Kisor v. Wilkie,* 588 U.S. 558, 574-75, 139 S. Ct. 2400, 2415 (2019). Further, that "[i]f uncertainty does not exist, there is no plausible reason for deference. The regulation then just means what it means—and the court must give it effect, as the court would any law. … [A] court has no business deferring to any other reading, no matter how

much the agency insists it would make more sense." *Id.* at 575, *see also Loper Bright Enters. v. Raimondo,* 144 S. Ct. 2244 (2024) (USSC consistently stated that statutory clarity precludes deference to agency interpretations). The Illinois Supreme Court has similarly held that [w]here the language of the regulation is clear and unambiguous, we must apply it as written, without resort to extrinsic aids of statutory construction." *People ex rel. Madigan v. Ill. Commerce Comm'n,* 231 Ill. 2d 370, 380 (2008).

30. Since 2014, pursuant to the clear regulation, Illinois EPA has granted requested annual reductions of WMIL's financial assurance cost for Areas 3 and 4.

31. Now, Illinois EPA's Final Determination requires WMIL to maintain the same 30-year cost estimate over the next 30-year post-closure care period, without the ability to request reductions over the passage of time pursuant to the regulations. Illinois EPA claims that it "cannot" allow annual reductions, attempting to justify its new position by pointing to the same regulation that it used to allow annual reductions in prior years. Exh. A, p. 2 (emphasis in original). Illinois EPA's newfound reading of the regulation eliminates the permitted reductions for insurance coverage in 35 Ill. Adm. Code 724.245(e)(9), and all other permissible financial assurance mechanisms. *See e.g.,* 35 Ill. Admin. Code 724.245 (a)(7), (b)(7), (c)(7) *et seq*. Illinois EPA's abrupt U-turn in regulatory interpretation renders the reduction sentence found in every financial assurance mechanism of 35 Ill. Admin. Code 724.245 meaningless. A court will not countenance such a regulatory interpretation that ignores the plain language of the regulation. *See Concerned Citizens v. Ill. Com. Comm'n,* 2026 IL 131026, ¶21 - 25 (Jan. 23, 2026) (Acknowledging that an unambiguous law requires no interpretation at all.).

32. Further, Illinois EPA fails to consider that WMIL will have reduced maintenance requirements as the years pass, yet Illinois EPA is denying WMIL its regulatory right to seek

reductions. This denial robs WMIL of its legal rights and is not consistent with basic principles of regulatory construction. Illinois EPA cannot simply override a regulatory right though a permit provision.

33. Consequently, Illinois EPA is violating its own, unambiguous regulation and denying WMIL its right to pursue reductions of financial assurance. *See Kisor,* 588 U.S. 558, 574-75 (2019).

2. ILLINOIS EPA IMPROPERLY RELIED ON A CLASS 1* PERMIT MODIFICATION TO EXTEND POST-CLOSURE CARE.

34. Illinois EPA's decision to issue its Final Determination as Class 1* modifications was in error. Class 1* determinations are limited, minor changes that do not substantially alter the permit conditions. 35 Ill. Admin Coade 703.280(d)(2)(A). Because it applied a Class 1* review, Illinois EPA lacked the authority to alter financial assurance requirements. Its decision to proceed as a Class 1* modification deprived WMIL of the procedural protections and processes required by Illinois regulation.

35. Board regulations governing permit modifications classify the modifications into three general classes: Class 1, Class 2, and Class 3. 35 Ill. Adm. Code 703.280(a)–(d) and Appendix A. Class 1 permit modifications identified with an asterisk in 35 Ill. Adm. Code 703 Appendix A require the prior written approval of the Agency.

36. The three classes generally reflect the increasing impact of a modification upon a facility. "Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to adequately protect human health or the environment." 35 Ill. Adm. Code 703.280(d)(2)(A).

37. "Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to any of the following: i) Common variations in the types and quantities of the wastes managed under the facility permit; ii) Technological advances; and iii) Changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit." 35 Ill. Adm. Code 703.280(d)(2)(B). Class 3 modifications "substantially alter the facility or its operation." 35 Ill. Adm. Code 703.280(d)(2)(C).

38. The major differences between Class 1 and Class 2 permit modifications are primarily in the complexity of the process, public involvement, and Agency oversight. For Class 1 modifications, the permittee may implement changes immediately and must notify the Agency within seven days, providing a description of the change and its necessity, along with supporting documentation. 35 Ill. Adm. Code 703.281(a)(1). The permittee must complete notification to the facility mailing list and local/state governments within 90 days. 35 Ill. Adm. Code 703.281(a)(2). In contrast, Class 2 modifications require the permittee to submit a modification request before implementing any change, including detailed explanations of the modification's necessity, and notify the public through the facility mailing list, local/state governments, and publication in a local newspaper within seven days of submission. 35 Ill. Adm. Code 703.282(a), (b).

39. In addition, for Class 2 modifications, the permittee must notify the public of a 60-day comment period and a public meeting, and the public meeting must occur no earlier than 15 days after the notice and no later than 15 days before the comment period ends. 35 Ill. Adm. Code 703.282(b), (d), (e). Agency review of Class 1 modifications is simpler, allowing rejection if the modification does not comply with original permit conditions. 35 Ill. Adm. Code 703.281(a)(3). In comparison, Class 2 modifications involve a more formal decision-making process, with the

Agency required to respond within 90 days, which may include approval, denial, reclassification to Class 3, or temporary authorization. 35 Ill. Adm. Code 703.282(f)(1).

40. In this case, WMIL submitted minor changes to its post-closure care estimates for Area 3 and 4 landfills and an annual reduction in financial assurance as Class 1* permit modifications. *See* Exh. C and D. The minor changes were in keeping with the annual reductions in financial assurance approved under Illinois EPA's prior practice. *See* Exh. B. However, as soon as Illinois EPA unilaterally decided to add new extra-regulatory provisions that would extend financial assurance in opposition to the Agency's prior practice, Illinois EPA's use of a Class 1* modification request became unlawful. Illinois EPA should have, at minimum, performed its analysis as a Class 2 permit modification that would have allowed WMIL to properly dispute the change.

41. By inserting such a significant "modification" into a permit that WMIL did not request and then using a Class 1* evaluation for the change, Illinois EPA denied WMIL the opportunity to, "hold a public meeting, and allow an opportunity for written comments" by using Class 1 permit modification requirements. 35 Ill. Admin. Code 703.282(b). In a public hearing setting, WMIL would have had the opportunity to present information to dispute Illinois EPA's decision or attempt to reach a compromise position.

42. WMIL asks the Board to find that Illinois EPA's Final Determination was in error for extending post-closure care financial assurance requirements without complying with Board regulations for Class 2 permit modifications.

3. ILLINOIS EPA'S INCREASE IN FINANCIAL ASSURANCE FOR THIRTY-YEARS, WITHOUT OPPORTUNITY FOR REDUCTION, SHOULD BE BARRED BY EQUITABLE ESTOPPEL.

43. Because of Illinois EPA's standard practice of reducing WMIL's financial assurance, the Illinois EPA is estopped from imposing 30 years of financial assurance obligation "for the entire post-closure care period" on WMIL. Exh. A, p. 2.

44. Under Illinois law, the doctrine of equitable estoppel applies when the following factors are present: (a) words or conduct by the party against whom estoppel is alleged constitute a misrepresentation or concealment of material facts; (b) knowledge by the party against whom estoppel is alleged that representations made were untrue; (c) the party claiming the benefit of estoppel must not have known the representations were false when made or acted upon; (d) the party against whom estoppel is alleged must have intended or expected that their conduct or representations would be acted upon by the party asserting estoppel; (e) the party asserting estoppel must have reasonably relied or acted upon the representations or conduct of the other party; (f) the party asserting estoppel must show that they will suffer substantial prejudice if the other party is permitted to deny the truth of their representations; and (g) rare and unusual circumstances when applied to public bodies. *See e.g. In the Matter of: Pielet Brothers' Trading, Inc.*, *17-18, 1989 Ill. ENV LEXIS 272, AC No. 88-51, July 13, 1989; *Wachta v. Pollution Control Bd.*, 8 Ill. App. 3d 436, 289 N.E.2d 484 (1972); citing *Willowbrook Dev. Corp. v. Ill. Pollution Control Bd.*, 92 Ill. App. 3d 1074, 1079, 48 Ill. Dec. 354, 358-59 (1981)).

45. "Regarding the first two elements, the representation need not be fraudulent in the strict legal sense or done with an intent to mislead or deceive." *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 314 (May 24, 2001) citing *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 148, 102 Ill. Dec. 379, 500 N.E.2d 1 (1986). "Although fraud is an essential

element, it is sufficient that a fraudulent or unjust effect results from allowing another person to raise a claim inconsistent with his or her former declarations." *Geddes* at 314, *citing Cessna v. Montgomery*, 63 Ill. 2d 71, 86, 344 N.E.2d 447 (1976).

46. Illinois EPA's sudden change to its long-standing practice, pursuant to applicable regulation, of reducing financial assurance through annual progress meets each of these factors.

a) Illinois EPA's current position shows that its past approvals constituted a misrepresentation or concealment of material facts.

47. Illinois EPA's consistent reductions in WMIL's financial assurance obligations for Areas 3 and 4 led WMIL to reasonably believe that Illinois EPA would continue this practice. Illinois EPA's new position denying a similar reduction constitutes a misrepresentation or concealment of material facts.

48. In an analogous case of equitable estoppel, Illinois EPA made representations to the Pielet Brothers that they could operate their landfill using the area fill method, despite contrary provisions in the applicable permits. *See Pielet Bros.*, 1989 Ill. ENV LEXIS 272, at *18-19. These representations reasonably led the Pielet Brothers to believe that Illinois EPA authorized their operations. The court found that the Agency misrepresented the actual requirements and equitably estopped the Agency from asserting a permit violation. *Id.*

49. In this case, Illinois EPA's sudden reversal, without notice, of its policy to accept reductions in financial assurance pursuant to the regulations renders its previous long-standing interpretation of regulations a misrepresentation.

50. Illinois EPA, through longstanding practice since 2014, created a misleading impression that the prior reductions would continue. Conditions at Areas 3 and 4 have remained generally the same since 2019 and the regulations themselves have not changed. The only change here is Illinois EPA's supposed interpretation of the post-closure care regulations. Like in *Pielet*

Brothers, Illinois EPA's sudden reversal of annual financial assurance reductions renders the Agency's prior pattern a material misrepresentation, warranting equitable estoppel.

b) Illinois EPA knowingly ignores years of financial assurance practices.

51. Illinois EPA knew of its longstanding practice of reducing WMIL's financial assurance obligations and was aware that WMIL relied on these reductions as adjustments to its post-closure care obligations.

52. Under Illinois case law, the knowledge requirement of equitable estoppel is met when the party against whom estoppel is alleged was aware of its representations and did not promptly correct them. See *Wachta v. Pollution Control Bd*., 8 Ill. App. 3d 436, 440, 289 N.E.2d 484, 488 (1972); *Pielet Bros*., 1989 Ill. ENV LEXIS 272, at *18. In *Wachta*, the court found that the positive act of the State Sanitary Water Board ("Water Board") of issuing sewer permits to petitioners, which included the right to continue construction, was known to the Water Board. *Wachta*, 8 Ill. App. 3d at 440. After eight months of silence on the issue, the Board, the successor to the Water Board, and the Illinois EPA declined to allow any further sewer connections, even though the construction project was proceeding. *Id*. The failure of the Illinois EPA and the Board to promptly notify the petitioner to correct or clarify its position demonstrated its knowledge of the misrepresentation. *Id*.

53. Similarly, In *Pielet Bros*., the court equitably estopped Illinois EPA from attempting to enforce violations of an original permit based on the Agency's representations that it was in the process of allowing a different disposal method under a new permit. The Pielet Brothers initially had a permit for disposing of waste using the trench method. *Pielet Bros*., 1989 Ill. ENV LEXIS 272, at *8. In 1982, the Pielet Brothers applied for a permit to use an area fill method instead. *Id*. Following several years of responding to Illinois EPA's requests for investigations and information

to support using the area fill method, the Pielet Brothers understood that its permit was under consideration. *Id*. In 1986, Illinois EPA informed the Pielet Brothers that it had overlooked the permit application. *Id*. at *11. The Pielet Brothers argued that the Agency should be estopped from enforcing the trench fill method of the original permit because during various meetings, Illinois EPA representatives knew that they were only allowing the area fill method to be used for a short time but did not inform the Pielet Brothers. *Id*. at *18. Even though the permit for the area fill method was never approved, the Board agreed with the Pielet Brothers and found that Illinois EPA made representations on which Pielet Brothers reasonably relied. *Id*. *18-19.

54. Here, Illinois EPA was fully aware of its longstanding practice of reducing WMIL's financial assurance obligations and knew that WMIL relied on these reductions because it had approved them consistently since 2014. WMIL had also similarly routinely requested reductions in its financial assurance obligations since 2014. *See* Exh. B. WMIL then submitted annual financial assurance reductions for 2023 and 2024, in accordance with longstanding practice. Exh. C and D.[6] Illinois EPA proceeded to ignore those submissions for two years, until October of 2025, when it issued the Final Determination and revealed that its prior practices "cannot [emphasis Illinois EPA's]" be approved. Exh. A, p. 2. Like the plaintiffs in *Wachta* and *Pielet Bros*., WMIL reasonably relied upon Illinois EPA's prior practices, and acted accordingly in 2023 and 2024. Illinois EPA's years of silence followed by sudden reversal demonstrate that Illinois EPA knew that it had misrepresented its policies to WMIL and did nothing to correct it.

[6] Similarly, WMIL has also relied upon Illinois EPA's practice to approve reduction of financial assurance for its other landfills in post-closure care. *See WMIL v. IEPA*, 25-09/25-10, WMIL's Petition to Appeal Illinois EPA's Final Determination, ¶¶ 13, 14, 48, 66, 69, 72.

(c) WMIL had no way of knowing that Illinois EPA's past representations were false when WMIL acted on them.

55. WMIL had no reason to suspect that the Illinois EPA's consistent practice of approving annual financial assurance reductions would suddenly reverse into an indefinite rolling obligation to maintain a minimum of 30 years in post-closure costs.

56. For equitable estoppel to apply, the party asserting estoppel must not have known the representations to be false either at the time made or at the time acted upon. See *Pielet Bros*., 1989 Ill. ENV LEXIS 272, at *19; *Wachta*, 8 Ill. App. 3d at 439–440. In *Wachta*, Petitioners reasonably relied on permits issued by the Water Board without knowledge that the Board would later retract its approval. The permits explicitly authorized the connections, leaving no indication of future revocation. *Id*. at 439–440. In *Pielet Brothers,* the Pielet Brothers could not have reasonably known that the Illinois EPA would later require the trench method after allowing the area fill method during meetings. *See Pielet Bros*., 1989 Ill. ENV LEXIS 272, at *19. The Agency's failure to communicate a change in its position ensured Pielet's reliance was reasonable. *Id*.

57. In this case, WMIL had no reason to suspect that the Illinois EPA's would suddenly reverse its position on financial assurance reductions to create an indefinite rolling obligation. Illinois EPA provided no notice or indication of such a shift, even after receiving WMIL's submissions in 2023 and 2024. WMIL's reliance on Illinois EPA's consistent practice since 2014 was reasonable and without knowledge of falsity. Like *Wachta* and *Pielet Brothers*, WMIL lacked knowledge that Illinois EPA could reverse itself.

(d) Illinois EPA expected WMIL to act on the Agency's past conduct and representations.

58. Illinois EPA's continuous practices since 2014 conveyed to WMIL that it could rely on these reductions to structure its financial and operational resources.

59. Another factor of equitable estoppel is that the party estopped must have intended or reasonably expected that its representations or conduct would be acted upon by the party asserting estoppel. See *Pielet Bros.*, 1989 Ill. ENV LEXIS 272, at *19. In *Pielet Brothers,* Illinois EPA's approval of area fill operations, as discussed during 1982 and 1983 meetings, was reasonably intended to encourage Pielet Brothers to proceed with those operations. *Id.* at *19. The Board found this expectation inherent in the conduct of the Agency. *Id.*

60. Here, by creating a continuous practice of annual reductions, Illinois EPA demonstrated its intent and expectation that WMIL would rely on the language of the permit.

(e) WMIL reasonably relied and acted on Illinois EPA's representations and conduct.

61. WMIL has relied on the Illinois EPA's annual reductions in its financial assurance obligations, structuring its financial planning on the explained pattern of diminishing obligations.

62. In determining if equitable estoppel applies, courts will consider whether the party asserting estoppel relied upon or acted on the representations. See *Wachta*, 8 Ill. App. 3d at 439–440; *Pielet Bros.*, 1989 Ill. ENV LEXIS 272, at *19. In *Pielet Brothers*, the Pielet Brothers undertook a new method of disposal, revised its closure plans, and adjusted operations based on Illinois EPA's representations, demonstrating reasonable reliance on the Agency's conduct. *See Pielet Bros.*, 1989 Ill. ENV LEXIS 272, at *19; s*ee also Bederman v. Pollution Control Bd.,* 22 Ill. App. 3d 31, 316 N.E.2d 785 (1974) (The court estopped the Board from enforcing a cease-and-desist order due to the reasonable reliance created by prior state-issued permits).

63. There is no question that WMIL has relied, for years, on the fact that Illinois EPA would approve its requests for annual reductions in the total amount of its financial assurance mechanisms. WMIL structured its financial planning on this long-standing pattern of diminishing obligations. This conduct reasonably led WMIL to believe that its obligations would continue to

diminish in line with the Agency's original approach to financial assurance needs. The Board should equitably estop Illinois EPA from unexpectedly requiring WMIL to post a renewed rolling 30-year financial assurance obligation, without opportunity for reduction, at this late stage.

(f) WMIL will suffer substantial prejudice if the Board allows Illinois EPA to reverse its representations.

64. WMIL will suffer significant financial harm if it is required to keep a rolling 30-year assurance obligation, without the ability to reduce the total cost amount as years of post-closure care continue. WMIL relied on the Agency's pattern of approvals since 2014, during which time WMIL structured its resources around diminishing financial obligations.

65. In analyzing equitable estoppel, courts will also consider whether the party asserting estoppel will be prejudiced if the other party is permitted to deny the truth of the representations. See *Wachta,* 8 Ill. App. 3d at 440–441; *Pielet Bros.*, 1989 Ill. ENV LEXIS 272, at *19. In *Pielet Brothers*, the Pielet Brothers faced penalties for conducting area fill operations that the Illinois EPA had previously authorized. The Board concluded that such penalties would unfairly prejudice Pielet Brothers. *Id.* at *19. In *Wachta,* the court held that revoking permits after petitioners relied on them would cause significant financial harm, creating substantial prejudice. *Wachta,* 8 Ill. App. 3d at 440–441.

66. In this case, the prejudice to WMIL is evident. Instead of maintaining financial assurance in the amount of approximately $12,570,000, Illinois EPA demands that WMIL maintain approximately $28,488,900- a difference of approximately $15,918,900. Illinois EPA neglects to mention that Illinois regulations require increased annual cost estimates each year for inflation. 35 Ill. Admin. Code 724.244(b). As a result, Illinois EPA's demand for approximately $28,488,900 today will continue to increase each year. WMIL relies on reductions in financial assurance costs over time for expenditure planning.

(g) This case presents unusual circumstances that warrant applying equitable estoppel to a public body.

67. While equitable estoppel against a public entity is generally disfavored, the doctrine may apply where, under all the facts and circumstances, the public entity's actions would make it inequitable or unjust to permit it to negate what it has done or permitted. *See Wachta,* 8 Ill. App. 3d at 438-439. In *Wachta*, the court acknowledged that equitable estoppel against a public entity is justified where substantial reliance has occurred. *Id*. at 440-441. In that case, the Sanitary Water Board issued sewer permits and remained silent while petitioners acted on these permits, incurring significant financial obligations. *Id*. When the Board later attempted to revoke the permits, the court found that estoppel was appropriate because the Board's inconsistent actions and failure to notify the petitioners created an inequitable situation. *Id*.

68. Here, Illinois EPA provided no notice to WMIL that it was reversing its long-standing practice and planned to demand that WMIL maintain, as financial assurance, an amount equal to 30 years of costs, indefinitely. This lack of transparency creates a strong estoppel claim because WMIL reasonably relied on the Illinois EPA's prior practices, which indicated a tapering of obligations, not an indefinite 30 years. Had WMIL received notice, it could have structured its resources to plan for additional post-closure assurance instead of relying on the Agency's longstanding practices.

69. Applying equitable estoppel in this context also aligns with public policy, which encourages transparency and predictability in agency dealings with regulated entities. By holding the Illinois EPA to the interpretation of financial assurance regulations it has used for years, the Board would affirm the principle that agencies may not impose arbitrary changes that disrupt reasonable, longstanding reliance. Such protection fosters a regulatory environment where

businesses can operate with a degree of certainty and fairness, reducing the risk of financial disruption caused by abrupt and unexpected agency shifts.

70. WMIL's reliance on Illinois EPA's longstanding financial assurance policy was reasonable and induced by the Agency's clear practices. Illinois EPA's sudden reversal imposes significant, unjustifiable financial burdens on WMIL. The principles of equitable estoppel should prevent the Illinois EPA from reversing course, especially when site conditions and the underlying regulations have remained the same.

II. AUTOMATIC STAY IS PROVIDED BY THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

71. The IAPA stays an agency decision in its entirety during the appeal period when an Agency decision on a permit references activity of a continuing nature. 5 ILCS 100/10-65(b). *See RCH Newco II, LLC v. IEPA,* Order of the Board, August 22, 2024, PCB 24-66, 2024 ILL. ENV LEXIS 137, *4, (Board granted the stay of a RCRA permit appeal concluding "5 ILCS 100/10-65(b) of the IAPA provides for an automatic stay during permit appeals on Illinois EPA decisions."); *Ill. Power Generating Co. (Coffeen Power Station) v. IEPA,* PCB 17-15 (Nov. 17, 2016).

72. Here, WMIL has been maintaining Areas 3 and 4 in post-closure care and submitting applications for permit modifications as needed as post-closure care progresses. Accordingly, WMIL requests that the Board find that the automatic stay applies to the Final Determination. The ongoing nature of its post-closure care, coupled with its continued compliance, justifies such a stay, preventing the new financial assurance requirements from taking effect until the appeal concludes.

WHEREFORE, Waste Management of Illinois, Inc. requests that the Board:

1. Enter an order staying the terms of the Final Determination;

2. Conduct a hearing on the issues raised in this Appeal;

3. Reverse and remand the Final Determination to the Illinois EPA to delete or modify in accordance with Petitioner's objections and the Board's order; and

4. Such other relief as may be justified.

Respectfully submitted,

Waste Management of Illinois, Inc.

Petitioner,

By: /s/ Jennifer T. Nijman
One of its Attorneys

Dated: March 9, 2026

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List of Exhibits

Exhibit A: Illinois EPA's October 2025 Permit Modification

Exhibit B.1: WMIL 2014 Modification Request and Illinois EPA Response

B.2: WMIL 2015 Modification Request and Illinois EPA Response

B.3: WMIL 2016 Modification Request and Illinois EPA Response

B.4: WMIL 2017 Modification Request and Illinois EPA Response

B.5: WMIL 2018 Modification Request and Illinois EPA Response

B.6: WMIL 2019 Modification Request and Illinois EPA Response

Exhibit C: WMIL Submission to Illinois EPA, October 27, 2023

Exhibit D: WMIL Submission to Illinois EPA, October 28, 2024

Exhibit E: Supplemental Table submitted to Illinois EPA, August 2025