

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

Please take notice that on May 13, 2026, I filed with the Clerk of the Illinois Pollution Control Board, Respondent Illinois Environmental Protection Agency’s Response to Petitioner’s Cross-Motion for Summary Judgment, and Motion to Supplement Record via the “COOL” System, copies of which are attached and served upon you.

Respectfully Submitted,

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Certificate of Service

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, May 13, 2026, I caused to be served on the individuals listed below, by electronic mail, a true and correct copies of Respondent Illinois Environmental Protection Agency's Response to Petitioner's Cross-Motion for Summary Judgement, Motion to Supplement Record, and Notice of Filing.

/s/ Christopher Grant

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**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S REPOSE TO PETITIONER’S CROSS-MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

As owner of the Davis Junction Landfill-Phase I (“Landfill”), a hazardous waste disposal facility, Petitioner BFI Waste Systems of North America, Inc. (“Petitioner” or “BFI”) has the responsibility to ensure that the Landfill does not cause, threaten, or allow contamination of the surrounding area, including groundwater. As the delegated permitting authority under Section 39 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/39 (2024), the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) cannot issue permits that would cause a violation of the Act, Illinois Pollution Control Board (“Board”) regulations, or the Resource Conservation and Recovery Act (“RCRA”) and regulations promulgated thereunder. *Jersey Sanitation v. Ill. Env’t Prot. Agency*, PCB 00-82, Slip op. at 6, 9 (June 21, 2001). Instead, Illinois EPA must include terms and conditions in RCRA Permits that accomplish the purposes of these statutes and associated regulations. *See* 35 Ill. Adm. Code 703.241. Illinois EPA has met the foregoing requirements, and the Board must deny this Petition to ensure that Petitioner meets its responsibilities under the Act and Board regulations as set forth in the September 25, 2023 Permit.

Without question, post-closure care at the Landfill is nowhere near complete. As described in detail in Respondent's Motion for Summary Judgment ("*Respondent's Motion*"), which Respondent incorporates herein, the current state of the Landfill at least threatens, and may have already caused, the pollution of groundwater beneath the Landfill. Petitioner also has a continuing obligation to collect and treat leachate, a listed hazardous waste, in accordance with 35 Ill. Adm. Code 724.410(b)(2). To minimize continued leachate generation, Petitioner should also be required to continue to maintain the Landfill cover and perform the other post-closure care tasks listed in 35 Ill. Adm. Code 724.410, which are Board-required Post-Closure Care requirements.

Petitioner, who has the burden of proof in this Matter, cannot neither show that: 1) it is no longer obligated to continue post-closure care, nor that 2) granting its permit application, which drastically reduced regulatorily-required financial assurance for post-closure care, would not cause violations of the Act, Board regulations, or RCRA and regulations promulgated thereunder. Accordingly, the Board should deny Petitioner's Motion for Summary Judgment ("*Petitioner's Motion*").

## **II. PETITIONER MISSTATES ILLINOIS EPA'S PERMIT DECISION.**

In Petitioner's Motion, it repeatedly claims that Illinois EPA has imposed a "perpetual" obligation for post-closure care (*see, e.g., Petitioner's Motion*, p.1). However, this misstates the plain language of the modified permit at issue. In the final September 25, 2023 permit, Illinois EPA reasonably required that the 30 years of post-closure financial assurance be maintained until such time as the facility can demonstrate that the hazardous waste is no longer a threat to human health and the environment. The term "perpetual" is found nowhere in the approved permit. *Record* ("R.") at pp. 000131-000185. While general discussions of the extension of post-closure

care are found in the United States Environmental Protection Agency (“USEPA”) Guidance and other documents in the Record, the sole issue in this case is Illinois EPA’s September 25, 2023 final decision to issue the September 25, 2023 Permit, with modifications.

Illinois EPA’s position on rolling 30-year periods was explained by RCRA Unit Manger Takako Halteman in her deposition. Relevant excerpts of Ms. Halteman’s deposition transcript are attached hereto as *Exhibit 1*.

Q. Is it correct that under the agency’s current understanding and application of the regulations that this 30-year rolling post-closure care obligation and including the financial assurance that is a perpetual obligation for a hazardous waste landfill?

[Excerpted exchange by counsel]

A. Yeah, so you know this evaluation is ongoing just ... not directly answering eh question, but I’m trying to answer the question. So it’s ... so that 30 years are required until such time that agency can determine that there’s no longer a risk to human health and the environment.

*Exhibit 1*, at 60:22-24; 61:1-20

Accordingly, Illinois EPA’s permit decision was not to impose a “perpetual” obligation, but rather to extend the post-closure period, in 30-year increments, until post-closure care is completed and the Agency can determine that there is no unacceptable risk to human health or the environment at the Landfill.

The Landfill continues to generate hazardous waste in the form of approximately 100,000 gallons of leachate annually, all of which must be withdrawn and taken off site for treatment and disposal. *Respondent’s Motion*, p. 9. According to 2002 and 2003 groundwater reports, the Landfill liner shows signs of failure, which immediately threatens the migration of leachate into groundwater. *Respondent’s Motion*, p. 12 . By operation of 35 Ill. Adm. Code 724.410, Petitioner is still required to perform post-closure care, and, if necessary, take remedial action in accordance with 35 Ill. Adm. Code 724.200. Petitioner’s Landfill continues to pose a threat to

human health and the environment, and Illinois EPA properly applied the requirements in 35 Ill. Adm. Code 703.241 (“... each RCRA permit must include permit conditions necessary to achieve compliance with each of the applicable requirements specified in 35 Ill. Adm. Code 724 and 726 through 728”) to implement the required financial assurance period for the Landfill in accordance with 35 Ill. Adm. Code Sections 724.255(a)(2) and 724.217. However, Illinois EPA did not do so “perpetually,” as claimed by Petitioner. Illinois EPA reasonably required a “default” 30-year period secured by financial assurance.<sup>1</sup> Further, the regulations provide for early termination of post-closure care by operation of 35 Ill. Adm. Code 724.217(a)(2), if Petitioner can demonstrate to the Board that the reduced period is sufficient to adequately protect human health and the environment.

Petitioner cannot claim surprise that it is still required to perform post-closure care. It began closure of the Landfill in 1983. R.000140-000141. However, in 1982, USEPA promulgated its RCRA Landfill regulations. *Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities*, 47 Fed. Reg. 32349 (July 26, 1982). Included in these regulations was 40 C.F.R. § 264.310, which provides, in pertinent part:

**§ 264.310 Closure and post-closure care**

- \* \* \*
- (b) After final closure, the owner or operator must comply with all post-closure requirements contained in §§264.117-264-120 . . . . The owner or operator must:
- \* \* \*
- (3) continue to operate the leachate collection and removal system until leachate is no longer detected;

47 Fed. Reg. at p. 32365.

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<sup>1</sup> See *Respondent's Motion*, at p. 23, citing USEPA guidance describing “... default 30-year post-closure period ...” citing R.001629-001630.

The provisions of the 1982 RCRA regulations have the same requirements as 35 Ill. Adm. Code 724.410 regarding continued leachate extraction. Accordingly, as of July 26, 1982, Petitioner was on (at least constructive) notice that it would be required to continue leachate extraction and treatment for an indeterminate period. Notwithstanding this requirement, Petitioner made the decision to close the Landfill with the hazardous waste left in place, instead of by “clean closure” (closure by removal), in accordance with the standards in 35 Ill. Adm. Code Part 725. By so deciding, and by taking no action to remove and decontaminate the hazardous waste since that time, Petitioner accepted responsibility for leachate extraction, removal, and treatment, a required post-closure responsibility. How long that post-closure requirement continues is not foreseeable. However, it was this 1983 decision by Petitioner, and not any action taken by Illinois EPA, that created its ongoing post-closure obligations. Illinois EPA’s approved RCRA permit in this case did not create a “perpetual” obligation, but rather it holds the Petitioner accountable for the confirmed threat to human health and the environment. Illinois EPA’s requirement of financial assurance to support a continued “default” 30-year post-closure care period was both reasonable and necessary to ensure that issuing the permit did not violate the Act, Board regulations, or RCRA and regulations promulgated thereunder.

**III. THE ACT AND BOARD REGULATIONS PROVIDE AUTHORITY FOR EXTENDING POST-CLOSURE CARE.**

In *Respondent’s Motion*, Illinois EPA provides extensive support for Illinois EPA’s extension of the Post-Closure Care period for an additional 30-year period, or until such time as site conditions would not pose an unacceptable risk to human health and the environment. Respondent will not repeat each argument in this Response but will rather point out a fact ignored by Petitioner: The Landfill is still in its post-closure care period.

This case is about providing adequate financial assurance for an additional 30-year

period. In another case pending before the Board, *BFI Waste Systems of North America, LLC, v. Illinois EPA*, PCB 25-44, Illinois EPA's permit action did, in fact, require the submission of a Class 2 Permit Modification acknowledging continuation of post-closure care for an additional 30-year period after the expiration of the prior post-closure care period in 2024. PCB 25-44, *Petition for Review of Illinois EPA Decision*, Attachment A (Jan. 30, 2025). Although the Board declined to consolidate these matters, obviously the additional 30 years of post-closure care is common to both cases.

The Landfill is still generating leachate and therefore must continue extracting and treating it for an unknown period. Section 724.410 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.410, provides, in pertinent part, as follows:

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

\* \* \*

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

\* \* \*

The Landfill continues to annually generate approximately 100,000 gallons of leachate, a listed hazardous waste. There is no information in the Record suggesting that leachate generation is slowing or when Petitioner's Post-Closure Care obligations under 35 Ill. Adm. Code 724.410(b) will end. And, if Petitioner stopped operating the leachate collection system at the Landfill it would be subject to enforcement for violation of its post-closure obligations.

Accordingly, in this case, Petitioner seeks only to avoid its ongoing financial assurance obligations, despite still being in its post-closure care period. The Board should not allow this to happen.

The Act and Board regulations provide sufficient authority for Illinois EPA to appropriately extend the post-closure care period. 35 Ill. Adm. Code 703.241 provides that RCRA permits must include conditions to achieve compliance with Part 724. Section 22.3 of the Act provides that Landfill owners “shall, without limitation be responsible for the site” after closure for “... *such longer period* as required by federal Resource Conservation and Recovery Act of 1976, P.L 94-580, or regulations issued thereunder, or by Board regulations adopted pursuant to subsection 22(a) or (f) of this Act.” 415 ILCS 5/22.3 (2024) (emphasis added). The Board should apply these provisions to interpret the Post-Closure Care period to be “at least 30 years,” not “30 years—no more and no less,” as urged by Petitioner. *Petitioner’s Motion*, p. 6.

In this instance, a Post-Closure Care period beyond 30 years is required by RCRA and regulations adopted under RCRA to prevent groundwater pollution. The antiquated in-situ liner at the Landfill is currently threatening pollution of groundwater at the Site. *Respondent’s Motion*, pp. 12-13. It was Petitioner’s operation of the hazardous waste Landfill, and, significantly, its decision to leave the waste in place rather than perform “clean closure” by removal and decontamination, that created this hazard. Petitioner must be held accountable for its decisions, not the taxpayers. That is the point of the financial assurance requirements. *See People v. Wayne Berger*, PCB 94-373 (May 6, 1999) Slip op. at 19-20;<sup>2</sup> *E.S.G. Watts (Viola Landfill) et al. v. Illinois EPA*, PCB Nos. 01-63, 01-64 (consolidated) (April 4, 2002) Slip op. at 14<sup>3</sup> (“Clearly the question presented in this proceeding is one of a public nature in that financial assurance for

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<sup>2</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-2881>.

<sup>3</sup> Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-17033>.

closure/post-closure care of a landfill is essential to protect the State of Illinois from potential liability to care for landfills that might be abandoned.”)

Illinois EPA’s increased of financial assurance requirement from a 10-year post-closure care cost to a rolling 30-year period is in keeping with the requirements of Section 39(d) of the Act, 415 ILCS 5/39(d) (2024), which provides, in pertinent part:

\* \* \*

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

By including the additional 30 years of post-closure care, which is subject to reduction in accordance with 35 Ill. Adm. Code 724.217((a)(2)(A), Illinois EPA ensured that post-closure care financial assurance would be in place during the required post-closure care activities under 35 Ill. Adm. Code 724.410. Illinois EPA’s permit decision therefore was properly made in accordance with Section 39(d) of the Act, 415 ILCS 5/39(d) (2024).

**IV. ILLINOIS EPA CANNOT BE ESTOPPED FROM MODIFYING PERMIT CONDITIONS TO REQUIRE APPROPRIATE POST-CLOSURE CARE FINANCIAL ASSURANCE.**

Petitioner claims that Illinois EPA is “bound by its prior decisions” in prior permits issued for the Landfill. *Petitioner’s Motion*, p.21. This is strikingly similar to Petitioner’s claims in the prior case *Browning Ferris Indus. v. Ill. Env’t Prot. Agency*, PCB 84-136 (May 5, 1988) (“1988 Case”)<sup>4</sup>, that Illinois EPA could not change its prior permit conditions, a claim rejected by the Board and the Appellate Court. *See Browning-Ferris Indus. v. Ill. Env’t Prot. Agency*, 179 Ill. App. 3d 598, 611 (2d Dist. 1989). Such arguments continue to be without merit, as public

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<sup>4</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-25311>.

policy disfavors the application of estoppel principles against state agencies acting in a governmental capacity, and cannot be applied where doing so would cause the “people of Illinois to be denied their constitutional right to a healthful environment (Ill. Const., art. XI, § 2), because of the actions of certain State officials.” *Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill. App. 3d 249, 255 (2d Dist. 1976). Moreover, the Record shows that Illinois EPA’s permitting decision to change how it calculates the financial assurance obligation was not an arbitrary decision, but rather, was fully informed by the latest conditions at the Landfill and USEPA guidance. Finally, the cases Petitioner provides in support of this argument are easily distinguishable.

In the 1988 Case, Petitioner claimed that the Agency was bound by and could not change a July 27, 1984 Permit, with conditions related to leachate depth which differed from permits issued in 1975, 1976, and 1982. PCB 84-136 (May 5, 1988), slip op. at 5-6. Characterizing the challenge as one to Illinois EPA’s “breadth of discretion,” the Board rejected BFI’s contention that, having issued the prior permits, Illinois EPA “somehow cannot now alter these earlier determinations and require BFI to accept more stringent permit conditions.” *Id.* The Board held:

Essentially this argument is an estoppel argument. When a state agency acts in a governmental, as opposed to a proprietary, capacity, public policy militates against circumscribing the agency’s discretion by an estoppel. Estoppel could impair the proper function of government and will only arise under extraordinary or compelling circumstances.

*Id.*, citing *Illinois EPA v. Modine Manufacturing Co.* PCB 86-27, slip op. at 4-5 (February 4, 1988.)<sup>5</sup>

Similarly, in this case Petitioner again claims that Illinois EPA is bound by its previous permit decisions related to the “pro-rating” (i.e., annually reductions to) of financial assurance in

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<sup>5</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-25667>.

a 2018 permit, compared to requiring a full 30-year financial assurance in the 2023 Permit Decision. Essentially, Petitioner is claiming that Illinois EPA is estopped from changing its position, despite the pending expiration of the former post-closure care period, and the requirement for posting financial assurance securing post-closure care. In addition, Petitioner ignores that each permit decision was a separate act, based on information known to the Agency at the time of each permit issuance. For each permit, Illinois EPA was obligated to comply with Section 39(d) of the Act and ensure that each RCRA permit "... contain those terms and conditions, including but not limited to schedules of compliance, which may be required to accomplish the purposes and provisions of this Act." 415 ILCS 5/39(d) (2024). Petitioner provides no authority suggesting that Illinois EPA could not independently weigh site conditions at the time of each permit decision and determine that new requirements were necessary to comply with the provisions of the Act and Board regulations.

**a. Illinois EPA Considered Current Conditions at the Landfill in its Permitting Decision.**

Petitioner further claims that "no change in risk" at the Landfill occurred between 2018 and 2023. *Petitioner's Motion*, p.14. This is patently incorrect. The record shows that the Landfill was generating significant amounts of leachate in 2018 (*see Respondent's Motion*, p. 9, (100,000 gallons for 2018, and 79,499 gallons in 2023)), so certainly this issue had not significantly changed. However, the post-closure period was expiring, and along with this, Petitioner's obligation to secure continued post-closure care with adequate financial assurance. The internal evaluation for the September 25, 2023 permit decision was described by Bureau of Land Deputy Chief Jackie Cooperider in her depositions:

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

- A. Correct.
- Q. What went into your evaluation that that was insufficient?
- A. It was mainly the evaluation of the risks at the site.
- Q. And what were the risks at the site that you identified?
- A. Well, this site was built—started in the ‘70s. And they took an unknown amount of hazardous material. The bottom clay liner was just an *in situ* clay liner. It doesn’t have any of the protections that are required today for the double liner. It just has a clay liner and it was referred to as an *in situ*, which means that I’m not even certain that they compacted that clay liner. And today’s requirements, we require two geomembranes and a compacted clay liner. So the protections in place for the bottom liner are very inadequate.

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

And so all of those risks—those are the big risks combined that we have seen and didn’t see—we don’t see those—there was no demonstration by the applicant that those risks are decreasing or going to be an end any time in the near future.

\* \* \*

- Q. Are you aware of any reports of problems at BFI Davis Junction Phase I since it received the 2018 permit, but prior to the September 25, 2023, permit decision?
- A. Well, I know they are still generating an excessive amount of leachate. I know they are still producing landfill gas. And as far as the groundwater testing, I don’t have the specifics in front of me for that period of time. I know currently there is one for dioxane exceedance.

Excerpts from Cooperider’s April 17, 2025 deposition transcript are attached hereto as *Exhibit 2*, 53:21-24; 54:1-18, 70:24; 71:10-19.

Illinois EPA did an extensive evaluation of risk prior to issuing the September 25, 2023 permit. Obviously, expiration of the post-closure period was a factor, considering Petitioner’s continued post-closure obligation to withdraw leachate. Illinois EPA evaluated the ongoing post-closure activities required at the Landfill. Given the continued generation of leachate and

the need to maintain the post-closure care activities, and Illinois EPA's re-evaluation of the liner system, along with the current groundwater exceedance for dioxane, clearly the increased risk was a factor in Illinois EPA's permit decision, that the existing financial assurance was inadequate.

**b. The Cases Cited by Petitioner do not Support Nullifying Illinois EPA's Permit Decision.**

None of the cases Petitioner cites support its claim that Illinois EPA is barred from changing its position in a new permit. Both the *Panhandle Eastern* and *Reichold Chemicals* cases involved Illinois EPA's authority to *modify* a permit *after* issuance, not a change of position in a newly issued permit. *See Panhandle Eastern Pipe Line Co. v. Ill. Env't Prot. Agency*, 314 Ill. App. 3d 296 (4th Dist. 2000); *Reichold Chemicals Inc. v. Pollution Control Bd.*, 204 Ill. App. 3d 674, 677 (3d Dist. 1990). Therefore, they are irrelevant to this case, which involved four separately issued permit modifications for financial assurance.

In *Reichold Chemicals Inc.*, the Court reversed the Board's dismissal of a permit appeal on the basis that Illinois EPA was considering modifications to the denied permit application. 204 Ill. App. 3d at 677-78. The Court found that Illinois EPA did not have authority to amend or change a final permit decision under the existing statute and further stated "[w]hen the Agency denies an application, the applicant's only options are to start over with a new application or file a petition for review. Requests to modify or reconsider are not permissible under the present statutory scheme." *Id.* at 679-680.

Similarly, in *Panhandle Eastern Pipe Line Co.*, Petitioner had appealed a permit denial by Illinois EPA because of failure to comply with Prevention of Significant Deterioration requirements. 314 Ill. App. 3d at 296. The Court upheld the Board's decision in favor of the Agency, but decided to also address Illinois EPA's further claim that it had the authority to

revise existing permits. *Id.* at 303. Citing *Reichold*, the Court held that “[a]dministrative agencies do not have the authority to reconsider, change, or modify decisions once announced unless empowering statutes authorize it.” *Id.* Following *Reichold*, the Court stated that “[t]he IEPA had no authority to reconsider its earlier ruling.” *Id.* at 306. However, the “earlier ruling” was a final permit decision. *Id.* As stated in *Reichold*, the appropriate procedure was a petition for review or a new permit application. 204 Ill. App. 3d at 679-680.

These cases have no relation to our case. Illinois EPA did not “reconsider” or “revise” a previous permit decision. Each permit at issue in this case was a separate permit decision with a separate legal effect, and not a revisitation of an existing permit. Petitioner’s position that Illinois EPA could not change the terms or conditions from one permit to another is nothing but the same failed “estoppel” argument it made in the 1988 Case. In this case, Illinois EPA had good reasons for determining that Landfill site conditions then posed an unacceptable risk, particularly to groundwater, and that post-closure activities needed to continue, secured by financial assurance.

Similarly, in *TNT Holland Motor Express v. Office of the State Fire Marshal*, the Board rejected OSFM’s attempt to revise a final determination, not make a new independent decision. PCB 94-133 (May 18, 1995), slip op. at 2.<sup>6</sup>

Likewise, in *Central Illinois Public Service Co. v. Pollution Control Board*, 165 Ill. App. 3d 354 (4th Dist. 1988), the Court found for appellant on the basis that the Board had misinterpreted the provisions of 35 Ill. Adm. Code 214.186, and any comments about changes in position by Illinois EPA are *obiter dicta*, and do not support Petitioner’s claims. Respondent also notes that BFI’s reliance on this case has already been criticized by the Appellate Court in

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<sup>6</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-17734>.

its appeal of the Board's decision in the 1988 Case. In *Browning Ferris Industries of Illinois, Inc. v. Pollution Control Board*, the Court stated, "BFI's reliance on *Central Illinois Public Service Co. v. Pollution Control Board* (1988), 165 Ill. App. 3d 354, 518 N.E. 2d 1354, for the proposition that its past permits are evidence of the reasonableness of its closure/post-closure plan is misplaced." 179 Ill. App. 3d 598, 605 (2d Dist. 1989). Similarly, in this case, *Central Illinois Public Service Co.* offers no support where the Landfill is still required to continue post-closure care, secured by appropriate financial assurance. *See generally* 165 Ill. App. 3d at 354-366.

Petitioner also cites *Owens Oil Co v. Illinois EPA*, PCB 98-32 (December 18, 1997), 1997 Ill. Env. Lexis 702,<sup>7</sup> in support of its claim that Illinois EPA is barred from changing conditions in a new permit transaction. This case does not provide support as it does not involve an Illinois EPA permitting decision. Instead, it involves a 29-year-old underground storage tank reimbursement decision, whereas in this case, Petitioner is attempting to avoid providing financial assurance for regulatorily-required post-closure activities at a permitted hazardous waste landfill. The issues are simply too dissimilar for *Owens* to offer any support.

Further, *Owens* involved one transaction—remediation of a single release under a single Illinois Emergency Management Agency release number. 1997 Ill. Env Lexis 702, pp. 1-3. The Board found that Illinois EPA acted arbitrarily when it changed its position mid-stream during the remediation on reimbursement of monthly lease payments for a groundwater treatment system. *Id.* at 2-3. In this case, we are dealing with multiple permit actions. Petitioner essentially claims that Illinois EPA was barred from changing its position from its 2018 permit action, in which it allowed "pro-rating" of financial assurance, to now requiring a full 30 years of

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<sup>7</sup> The opinion and order are not on the Board's website but are available on Lexis.

financial assurance in its 2023 permit action. If *Owens* had involved multiple releases with updated reimbursement criteria in a second reimbursement decision, it would more closely reflect the real issue in our case. *Owens* did not, and it has no relevance to this case.

Further, in *Owens*, the Board stated that an agency is “bound by prior custom” unless the facts of the new matter are different or in the case of a determination that the prior practice was in error. *Id.* Certainly, in our case, the facts are significantly different between 2018 and 2023. The post-closure financial assurance was expiring, even though leachate extraction and treatment was still required. Further, between these two permit actions Illinois EPA determined that its prior practice was in error.

At her deposition, Ms. Cooperider provided the following testimony regarding the change in policy:

Q. I am going to call your attention to page R000214. Under IEPA reviewer’s comments, paragraph two, it says, “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.” Did I read that correctly?

A. Yes

Q. Were you part of those internal discussions?

A. Yes.

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

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

\* \* \*

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

A. Yes.

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

A. Correct.

[Objection deleted]

Q. Let me ask you. Did you have any issue with the 10-year extension of the post-closure care and financial assurance obligation imposed on BFI Davis Junction?

A. Yes.

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

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

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

A. Correct.

Q. Was there any other component of post-closure care, besides financial assurance, that you thought was not appropriate in that 10-year extension? Let me rephrase. You said that you took issue with the 10-year extension, correct?

A. The 10-year extension was the permit.

Q. Right. The 10-year extension.

A. Right

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

A. Right.

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

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

\* \* \*

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

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

*Exhibit 2*, pp. 34:20-24, 35:1-15, 36:7-12, 36:21-24, 37:1-24, 38:1-3, 11-18.

Ms. Cooperider testified that after the 2018 permit, Illinois EPA determined that it had incorrectly tied financial assurance to the length of the permit, which must be renewed every 10 years. *Id.* With site conditions, including the continued generation of leachate, the extraction of which is a post-closure care responsibility, Illinois EPA corrected the error by eliminating the pro-ration of financial assurance from the 10-year permit length, and requiring posting of the full 30 years of post-closure care financial assurance.

In accordance with the Board's *Owens* opinion, Illinois EPA's change from a pro-rated, annual reduction in financial assurance to requiring a full 30-year requirement for financial assurance cannot be deemed "arbitrary." Illinois EPA determined, with good reason, that its prior practice was in error, and corrected that error in the September 25, 2023 Permit at issue in this case.

Finally, Petitioner's citation to *Brisko v. Kusper*, 435 F.2d 1046 (7th Cir. 1970), is inapt. *Brisko* involved a 1967 Chicago aldermanic election dispute based on constitutional equal protection claims. Petitioner has raised no claim in its Petition related to equal protection, and *Brisko* involved purely federal law, which, in any event, is not binding nor is it persuasive.

**V. ILLINOIS EPA REASONABLY CONSIDERED THE 2016 USEPA GUIDANCE.**

While Petitioner tries to downplay the weight and importance of USEPA's 2016 Guidance, it was appropriate and necessary for Illinois EPA to consider it in administrating its

RCRA permitting program. In 2016, the USEPA issued guidance on the extension of the 30-year post-closure care period. *Respondent's Motion*, p. 23; R. 001627. Significantly, the 2016

USEPA guidance provides:

... the regulations' identification of a default 30-year post-closure care period does **not** reflect a determination by EPA that 30 years of post-closure care is necessarily sufficient to eliminate potential threats to human health and the environment in all cases. The regulations provide that the decision to alter the length of the post closure can be made at any time preceding final closure ... or at any time during the post-closure period for a particular unit. For permitted facilities, such a decision must be made through permit renewal or modification procedures.... (emphasis in original).

\* \* \*

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

R. 001629-001630.

Petitioner attempts to downplay USEPA's direction to delegated agencies, stating it is merely "guidance," a "recommendation," uses "may," "should," "can," and is not intended to connote any legal obligations. *Petitioner's Motion*, pp. 17-18. However, this misrepresents the purpose and effect of the USEPA guidance.

Section 22.3 of the Act, 415 ILCS 5/22.3 (2024), provides that post-closure care may be extended for "*such longer period* as required by federal Resource Conservation and Recovery Act of 1976, P.L 94-580, or regulations issued thereunder . . . ." (emphasis added). The General Assembly directs in Section 20(a)(6) of the Act, 415 ILCS 5/20(a)(6) (2024), "that it would be inappropriate for the State of Illinois to adopt a hazardous waste management program that is less stringent than or conflicts with federal law."

Further, consideration of USEPA guidance is a requirement of Illinois EPA's delegation agreement with USEPA. Attached hereto as *Exhibit 3* is a copy of the Memorandum of

Agreement Between the State of Illinois and the United States Environmental Protection Agency, Region 5 (“Delegation Agreement”).<sup>8</sup>

Section II of the Delegation Agreement, provides, in pertinent part, as follows:

## II. POLICY STATEMENT

Each of the parties is responsible for ensuring that its obligations under RCRA are met. Illinois EPA has assumed primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries. However, the details of the actual program will be negotiated on an annual basis in the PPA commensurate with Federal and state resources. Illinois EPA will conduct the Illinois Program in accordance with USEPA program policies and guidance, including the National Performance Partnership System guidance.

Illinois EPA will administer the Illinois Program in a manner that is equivalent to and consistent with the Federal program and does not render the Illinois Program less stringent than the Federal program. **Illinois EPA agrees to consider US EPA guidance in administering the Illinois Program.**

*Exhibit 3, p.2, (emphasis added).*

Accordingly, the 2016 USEPA guidance is more than a “suggestion” or “recommendation.” Serious consideration of USEPA’s guidance, which interprets the Federal RCRA regulations, is a requirement of Illinois EPA’s administration of the RCRA permitting program in the State of Illinois. The Board, which under Section 7.2 of the Act, 415 ILCS 5/7.2 (2024), is directed to ensure that its regulations “require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois,” should also take USEPA’s direction on the extension of post-closure care to heart, and find that Illinois EPA’s extension of post-closure care financial assurance is reasonable and in keeping with the Agency’s

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<sup>8</sup> Respondent has simultaneously moved to supplement the record with Exhibit 3, which significantly pre-dates the 2023 Permit Decision, is highly relevant, and, as a publicly-available document, cannot prejudice Petitioner.

responsibility to ensure that its administration of the RCRA Permit program is no less stringent than federal law.

**VI. ILLINOIS EPA APPROPRIATELY RESPONDED TO BFI'S PERMIT APPLICATIONS.**

Petitioner restates the arguments in its Petition that Illinois EPA improperly reviewed the permit submissions at issue as “Class 1\* permits.” *Petitioner's Motion*, pp. 21-21. Respondent provided substantial argument in defense of its permit actions in *Respondent's Motion* (pp. 25-32), and Petitioner raises no new points in its Motion. Accordingly, Respondent incorporates by reference and relies on the argument it has already made in its cross motion for summary judgment. *Respondent's Motion*, pp. 25-32.

However, Petitioner wrongly states that the permit action in this case “extended the post-closure care period.” *Petitioner's Motion*, pp. 20. This is incorrect. In the permit action at issue in this case, Illinois EPA merely modified the financial assurance requirement. Illinois EPA extended the post-closure care period in the permit challenged by Petitioner in PCB 25-44, which Petitioner opposed consolidating with this case. The Board should note that in PCB 25-44, Illinois EPA directed Petitioner to file a Class 2 permit modification. PCB 25-44, *Petition*, Exhibit A, p. 3. Accordingly, Respondent does not disagree that formally extending the post-closure care period is appropriately in the category of Class 2 permit modifications, and took that action in the Permit that is the subject of PCB 25-44, and not this case. Respondent appropriately responded to Petitioner's Class 1\* permit applications under Class1\*.

**VII. CONCLUSION**

Petitioner has the burden of proving that its permit application, as submitted to Illinois EPA, demonstrated that no violation of the Act or Board rules would have occurred if the requested permit had been issued. *Jersey Sanitation v. Ill. Env't Prot. Agency*, PCB 00-82 (June

21, 2001). Pursuant to Section 39(a) of the Act, 415 ILCS 5/39(a) (2024), Illinois EPA has imposed conditions which are necessary to accomplish the purpose of the Act. Petitioner has the burden to establish that its permit application, as submitted, would not result in any future violations of the Act or Board rules, and that Illinois EPA's modifications were arbitrary and unnecessary. *Ill. EPA v. Jersey Sanitation Corp.*, 336 Ill. App. 3d 582, 593 (4th Dist. 2003) *citing Browning-Ferris Industries of Illinois v. Pollution Control Bd.*, 179 Ill. App. 3d 598, 602 (2d Dist. 1989).

Petitioner cannot meet its burden. Petitioner cannot show that it is not currently within its required post-closure care period. Petitioner cannot show that the Act, Board regulations, or RCRA and regulations thereunder do not require it to continue post-closure care for an unknowable period of time. Petitioner cannot show that its post-closure care activities are not required to be secured by financial assurance. And Petitioner cannot show that Illinois EPA's requirement of 30 years of financial assurance, without annual reductions in financial assurance, are not required to accomplish the purpose of the Act, to protect taxpayer funds and to "assure that adverse effects upon the environment are fully considered and borne by those who cause them," in accordance with Section 2(b) of the Act, 415 ILCS 5/2(b) (2024).

As Petitioner cannot meet its burden in this matter, the Board must deny Petitioner's motion for summary judgment.

Respectfully submitted,

Illinois Environmental Protection Agency

by KWAME RAOUL,  
Attorney General of the State of Illinois

BY: /s/ Christopher Grant  
Christopher Grant  
Taylor Desgrosseilliers  
Justin Bertsche  
Kevin Garstka  
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Chicago, Illinois 60603  
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Christopher.grant@ilag.gov

**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 REPOSE**  
**TO PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 1

TAKAKO HALTEMAN DEPOSITION EXCERPTS

JUNE 24, 2025

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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.  
TAKEN ON BEHALF OF THE PETITIONER  
JUNE 24, 2025

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**

**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 REPOSE**  
**TO PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 2

JACQUELINE M. COOPERIDER DEPOSITION EXCERPTS

APRIL 17, 2025

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

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 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 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

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

BFI WASTE SYSTEMS	)	
OF NORTH AMERICA, LLC,	)	
	)	
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	)	
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	)	(Permit Appeal - RCRA)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S REPOSE**  
**TO PETITIONER'S CROSS-MOTION FOR SUMMARY JUDGMENT**

EXHIBIT 3

MEMORANDUM OF AGREEMENT

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE STATE OF ILLINOIS**  
**AND**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

**I. GENERAL**

This Memorandum of Agreement (“Agreement”) establishes policies, responsibilities, and procedures pursuant to 40 CFR § 271.8 for the State of Illinois’ Hazardous Waste Management Program (“Illinois Program”) authorized under Section 3006 of the Resource Conservation and Recovery Act (“RCRA”) of 1976 (42 USC § 6901 et seq.) as amended (Public Laws 94-580, 96-482, and 98-616), and the United States Environmental Protection Agency (“USEPA”) regional office for Region 5.

This Agreement further sets forth the manner in which the Illinois Environmental Protection Agency (“Illinois EPA”) and USEPA will coordinate in Illinois EPA’s administration of the authorized Illinois Program and, pending State authorization revision, USEPA’s administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) for which Illinois is not authorized. For purposes of this Agreement, references to RCRA include HSWA.

This Agreement is entered into by the Director of the Illinois Environmental Protection Agency (“Director” or “Illinois EPA”) and the Regional Administrator of USEPA Region 5 (“Regional Administrator” or “USEPA”).

Nothing in this Agreement shall be construed to restrict in any way USEPA’s oversight and enforcement authority under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.

The parties will review the Agreement jointly at least annually (and other times as appropriate) during preparation of the annual Performance Partnership Agreement (“PPA”) for Illinois, in connection with grant funding under Section 3011 of RCRA. If a dispute arises under this Agreement, the parties agree to resolve the dispute in accordance with the PPA.

12 APR 8 12 54 PM '95

This Agreement may be modified upon the initiative of either party in order to ensure consistency with revisions to the Illinois Program or for any other purpose mutually agreed upon. Any modifications to this Agreement must be in writing and must be signed by the Director and the Regional Administrator. This Agreement will remain in effect until such time as the Illinois program authorization is withdrawn by or is voluntarily transferred to USEPA according to the criteria and procedures established in 40 CFR §§ 271.22 and 271.23.

This Agreement shall become effective after being signed by the Director and the Regional Administrator. This Agreement supersedes the Memorandum of Agreement that was effective on July 12, 1996 and any subsequent amendments or revisions thereto.

## **II. POLICY STATEMENT**

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Illinois EPA has assumed primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries. However, the details of the actual program will be negotiated on an annual basis in the PPA commensurate with Federal and state resources. Illinois EPA will conduct the Illinois Program in accordance with USEPA program policies and guidance, including the National Performance Partnership System guidance.

Illinois EPA will administer the Illinois Program in a manner that is equivalent to and consistent with the Federal program and does not render the Illinois Program less stringent than the Federal program. Illinois EPA agrees to consider US EPA guidance in administering the Illinois Program.

Cooperation between USEPA and Illinois EPA is necessary to successfully implement the RCRA program. Illinois EPA's actual priorities for implementing the Illinois Program are determined as part of the development of the annual PPA. Consequently, good faith negotiations that result in reasonable expectations between USEPA and Illinois EPA will need to be a part of the development of the annual PPA. These negotiations will determine what RCRA program activities will be accomplished by Illinois EPA given the resources available.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized states at the same time that they are applicable in unauthorized states. While USEPA retains responsibility for the direct implementation of those provisions of HSWA that Illinois EPA is not authorized to implement, it is the intention of USEPA and Illinois EPA to coordinate the implementation of such provisions to the greatest degree possible.

Illinois EPA and USEPA agree to maintain a high level of cooperation and coordination to assure successful and effective administration of the Illinois Program. USEPA and Illinois EPA will coordinate implementation of the Illinois Program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of RCRA, to allow

USEPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage Illinois EPA and USEPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes.

### **III. STATE PROGRAM REVIEW**

USEPA will assess Illinois' administration and enforcement of the Illinois Program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. USEPA will conduct this assessment by reviewing information submitted by Illinois EPA in accordance with this Agreement and the PPA, and USEPA's permit review, compliance and enforcement review and annual review of Illinois Program activities.

USEPA may also consider, as part of the regular assessment of the Illinois Program, written comments about the Illinois Program administration and enforcement that are received from regulated persons, the public, and Federal, state and local agencies. Copies of any such comments will be provided to Illinois EPA in a timely manner and Illinois EPA shall have the opportunity to provide a timely response to USEPA prior to completion of this assessment of the Illinois Program.

Illinois EPA agrees to allow USEPA access to all files and other information requested by USEPA and deemed necessary by USEPA for reviewing Illinois EPA's administration and enforcement of the Illinois Program. File reviews may be conducted at any time.

Program review meetings between Illinois EPA and USEPA will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems, and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless mutually agreed to differently. A tentative agenda will be prepared by USEPA for each meeting.

Illinois EPA and USEPA agree to develop, on an annual basis as a part of the PPA, criteria for prioritization of activities under the Illinois Program. These criteria will be based on guidance issued by USEPA in the Agency Operating Year Guidance, other guidance documents as appropriate, and State-specific concerns, and will serve to identify those activities which should receive the highest priority during the grant period.

### **IV. INFORMATION SHARING**

#### **A. General**

This Section covers information sharing for miscellaneous elements of the Illinois Program. Information sharing requirements for major Illinois Program elements are covered in the respective sections of this Agreement addressing those elements (Section V - Permit

Issuance; Section VI - Permit Administration; and Section VII - Compliance Monitoring and Enforcement) and in the PPA.

Detailed tables describing the flow of documents between Illinois EPA and USEPA are included in Attachment 1 to this Agreement.

## **B. USEPA**

USEPA will keep Illinois EPA informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, judicial or legislative actions, and any other factors that affect the Illinois Program. USEPA will also provide general technical guidance to Illinois EPA. USEPA will share with Illinois EPA any national reports developed by USEPA relating to hazardous waste management and any USEPA reports created from the data submitted through state reporting requirements.

USEPA agrees to provide to Illinois EPA notification information from USEPA Form 8700-12 obtained by USEPA prior to the effective date of this Agreement, to the extent such information has not already been provided. USEPA will provide a copy of the original notification forms and/or a computer print-out containing all the notification information. USEPA will provide such information to Illinois EPA within thirty days of the effective date of this Agreement.

USEPA will also forward to Illinois EPA, on a monthly basis, notification information submitted by persons in Illinois who file such forms with USEPA after the effective date of this Agreement.

USEPA will make available to Illinois EPA other information requested in writing that Illinois EPA needs to implement the approved Illinois Program. Information provided to Illinois EPA will be subject to the terms of 40 CFR Part 2, which requires authorization of Illinois EPA to receive confidential business information in accordance with the procedures therein.

Information to be sent by USEPA to Illinois EPA shall be sent to the following contact:

Illinois EPA  
Bureau of Land  
Attn: Todd Marvel, RCRA Coordinator/USEPA Liaison  
1021 North Grand Ave. East  
Springfield, Illinois 62702

## **C. State**

Illinois EPA agrees to provide any pertinent information requested by USEPA within a mutually agreed upon time frame, as necessary for USEPA to carry out its oversight responsibilities.

Illinois EPA agrees to inform USEPA, with as much advanced notice as possible, of proposed or adopted modification of Illinois EPA's legal authorities, memoranda of agreement or understanding with other agencies, or modifications to resource levels, that would affect Illinois EPA's ability to implement the authorized Illinois Program. Such modifications also include changes that would affect compliance monitoring and enforcement, such as privileges and immunities laws. Illinois EPA recognizes that program revisions must be made in accordance with the provisions of 40 CFR § 271.21 and that until approved by USEPA, revisions are not authorized as part of the Illinois Program.

Information to be sent by Illinois EPA to USEPA shall be sent to the following contacts:

Permit-related Information

Section Chief  
RCRA/TSCA Programs Section  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Enforcement-related Information

Section Chief  
RCRA Compliance Section 1  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Upon request, Illinois EPA agrees to provide USEPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status).

The Illinois EPA agrees to grant no variances, waivers or exemptions that would render the Illinois program less stringent than the Federal program. Any less stringent variance, waiver or exemption issued by Illinois EPA or any other body, including the Illinois Pollution Control Board, or dictated by otherwise applicable law would not be part of the authorized program and would not be a shield from enforcement by U.S. EPA.

Illinois agrees to provide USEPA with a copy of each request for a RCRA variance or adjusted standard in a timely manner. Written notification and a copy of the decisions to grant or deny a variance or adjusted standard will be provided to USEPA within five working days of Illinois EPA's receipt of the decision.

#### **D. Site Visits**

Whenever USEPA determines that it needs to obtain information concerning the Illinois Program, USEPA will first seek to gain this information from Illinois EPA and will provide, in writing, the reasons for its request of the information. Illinois EPA agrees to supply USEPA with this information within a mutually agreeable time frame. If Illinois EPA is unable to provide the information requested by USEPA, or if it is necessary to supplement the Illinois EPA information, USEPA may conduct a special inventory or perform information collection site visits after notifying Illinois EPA. USEPA will share with Illinois EPA any reports developed by USEPA as a result of such information collection.

#### **E. Emergency Situations**

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this Agreement of the existence of such situation. USEPA shall call 217/782-3637 and notify Illinois EPA's Emergency Response Unit, Illinois Environmental Protection Agency, 1021 N. Grand Ave. East, P.O. Box 19276, Springfield, Illinois 62794-9276. Illinois EPA shall call the 24-hour emergency number 312/353-2318 and notify Donald J. Bruce, Chief, Response Section II, Emergency and Enforcement Branch, SE-5J, USEPA (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

#### **F. Confidentiality**

Any information obtained or used in the administration of the Illinois Program shall be available to USEPA without restriction. If the information has been submitted to Illinois EPA under a claim of confidentiality, Illinois EPA must submit that claim to USEPA when providing that information to USEPA, in accordance with Section 7 and 7.1 of the Environmental Protection Act, 415 ILCS 5/7 and 5/7.1 as amended. Any information obtained from Illinois EPA and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

USEPA agrees to furnish to Illinois EPA information in USEPA files that is not submitted under a claim of confidentiality and which Illinois EPA needs to implement the Illinois Program. Subject to the conditions in 40 CFR Part 2, USEPA will furnish Illinois EPA information submitted to USEPA under a claim of confidentiality that Illinois EPA needs to implement the Illinois Program. All information USEPA agrees to transfer to Illinois EPA will be transferred in accordance with the requirements of 40 CFR Part 2. USEPA will notify affected facilities when such information is sent to Illinois EPA.

#### **G. RCRA Data Management**

Illinois EPA is responsible for receiving, processing, and verifying information on notification Form 8700-12 and for assigning RCRA identification numbers. If Illinois EPA receives a notification form from USEPA or an applicant, Illinois EPA will assign a RCRA

Identification number to the applicant and inform the applicant of its number. Illinois EPA will assign all RCRA Identification numbers and enter all notification data into the national RCRA data management system (currently, RCRAInfo).

Illinois EPA agrees to use, maintain, and enter data into the national RCRA data management system.

Illinois EPA is responsible for the correctness of the data Illinois EPA enters. Illinois EPA will timely correct any data errors in the national RCRA data management systems that Illinois EPA has created.

USEPA is responsible for the correctness of the data USEPA enters and will timely correct any data errors that USEPA has created.

USEPA will inform Illinois EPA promptly when changes are made to the national RCRA data management system that might affect Illinois EPA's implementation of that system.

Illinois EPA will input Biennial Reporting data into the national RCRA data management system within the time frames established by the USEPA Office of Resource Conservation and Recovery.

Neither Illinois EPA nor USEPA will unilaterally change their RCRA data management system in any way without advance consultation with, and agreement of, the other party.

Both USEPA and Illinois EPA, as implementers of the national RCRA data management systems, can choose and change their hardware platforms to optimize system efficiency, but will not do so in such a way as to affect the merged data base, access to the merged data base reports, or the potential for updating their implementer databases with the other party's data.

## **V. PERMIT ISSUANCE**

Illinois EPA and USEPA have agreed to the permitting process described in this Agreement. Under this process, Illinois EPA and USEPA have established policies and procedures by which each will pursue their respective permitting responsibilities under RCRA. This permitting process is established in accordance with Section 3006(c)(3) of RCRA. The

duties and responsibilities of Illinois EPA and USEPA for permitting, including any work sharing agreements, are also specified in the PPA.

USEPA and Illinois EPA may enter into a separate written agreement for the purpose of implementing a work-sharing program for permit issuance.

USEPA agrees to transfer to Illinois EPA any pending Part A and Part B hazardous waste management facility permit applications originally submitted directly to USEPA prior to the effective date of this Agreement pursuant to 40 CFR § 270.10 by facilities located in Illinois and

which have not already been transferred to Illinois EPA, together with all pertinent file information, for those portions of the program for which Illinois EPA has received authorization. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, fact sheets and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangements Illinois EPA and USEPA may make regarding the priority of transfer.

USEPA will also provide to Illinois EPA, within ten days of receipt by USEPA, Part A and Part B permit applications submitted directly to USEPA by persons in Illinois after the effective date of this Agreement.

#### **A. USEPA Permitting**

Illinois EPA and USEPA have agreed to a process for the processing and enforcement of permits for those provisions of RCRA for which Illinois EPA does not have authorization.

Pursuant to Section 3006(g)(1) of RCRA, whenever new HSWA standards are established under RCRA or USEPA revises federal HSWA regulations to add permitting standards for processes not currently covered by federal regulations, USEPA shall process and enforce HSWA permits applying those new standards to facilities in Illinois affected by those standards until Illinois EPA receives interim or final program authorization for those standards. If USEPA promulgates new standards requiring permit modification, USEPA retains the right, pursuant to 40 CFR § 270.42(b)(6)(vii), to extend the time period for final approval or denial of a modification request until such time that the State receives authorization for the new standards and the Illinois EPA completes review of the modification request in accordance with those standards. As Illinois EPA receives program authorization for additional provisions of RCRA, USEPA will suspend issuance of federal permits imposing those standards in Illinois.

#### **B. USEPA Overview of State Permits**

USEPA may comment in writing on any draft permit or on any proposed permit modification, whether or not USEPA commented on the permit application, within forty-five days of its receipt. Illinois EPA will ensure that USEPA will receive the draft or proposed permit materials that are out for public comment at least 45 days before issuance or denial of a permit. Where USEPA indicates in a comment that issuance of the permit would be inconsistent with the approved Illinois Program, USEPA shall include in the comment:

1. a statement of the reasons for the comment (including the section or sections of Illinois regulations that support the comment and why they support that comment); and
2. the recommended actions that should be taken by Illinois EPA in order to address the comments (including the conditions that the permit would include if it were issued by USEPA).

USEPA shall notify Illinois EPA when satisfied that Illinois EPA has met or refuted its concerns and shall also provide the permit applicant with a copy of such notification.

Under Section 3008(a)(3) of RCRA, USEPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, USEPA will observe the conditions established in 40 CFR § 271.19(e).

### **C. Illinois EPA Permitting**

Illinois EPA is responsible for drafting, circulating for public review and comment, issuing, modifying, reissuing, and terminating all RCRA permits for all hazardous waste treatment, storage, and disposal facilities in Illinois which are subject to the authorized Illinois Program, and shall do so in a manner consistent with the Environmental Protection Act, 415 ILCS 5/1 et seq, as amended, with regulations adopted at 35 Illinois Administrative Code (“IAC”) Parts 700, 702, 703, 705, 724, with this Agreement, and with the original Illinois EPA Program Description and all amendments thereto. Illinois EPA shall include as permit conditions all applicable provisions of 35 IAC Parts 702, 703, and 724. Illinois EPA agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

If Illinois EPA has not yet received interim or final authorization to implement and enforce new standards established under HSWA or new standards adopted by USEPA, then USEPA will issue and enforce RCRA permits in Illinois for those new standards until Illinois EPA receives authorization of equivalent and consistent State standards.

Upon request by the holder of a USEPA-issued RCRA permit or upon expiration of that permit, Illinois EPA will issue or deny a State RCRA permit for newly-authorized provisions addressed in that USEPA-issued permit.

Illinois EPA agrees to consider all comments USEPA makes on permitting applications, draft permits, and permit modifications. Illinois EPA will satisfy or refute USEPA’s concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification. To meet repository requirements, Illinois EPA will transmit to USEPA as they are received, copies of all Part A and Part B applications.

### **D. Other Federal Acts**

Illinois EPA will ensure that it follows procedures required in applicable Federal laws identified in 40 CFR § 270.3.

## **VI. PERMIT ADMINISTRATION**

USEPA will administer the RCRA permits it has issued to facilities in Illinois until they expire or are terminated. USEPA will be responsible for enforcing the terms and conditions of federal permits while they remain in force.

Illinois EPA agrees to review all hazardous waste permits which were issued under Illinois law prior to the effective date of this Agreement in accordance with 40 CFR § 271.13(d) and to modify, or revoke and reissue, such permits as necessary to require compliance with the authorized Illinois Program. Illinois EPA shall notify USEPA of any permits not equivalent to Federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once USEPA has determined that Illinois EPA has fulfilled the requirements of 40 CFR § 271.13(d), USEPA will terminate applicable Federal permits, or Federal portion of permits, pursuant to the procedures in 40 CFR § 124.5(d).

Where the State permit is not equivalent to the federal permit requirements, the State may modify, or revoke and reissue the State permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the State does not modify, or revoke and reissue, a permit equivalent to the federal permit, USEPA will administer and enforce its permit until it expires or is terminated.

Upon the effective date of an equivalent State permit, USEPA will terminate the federal permit pursuant to 40 CFR §§271.8(6) and 124.5(d). USEPA will notify the permittee by certified mail of its intent to terminate the federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

USEPA will notify Illinois EPA that the permits are terminated, will no longer administer those permits or portions of permits for which Illinois EPA is authorized, and will rely on Illinois EPA to enforce those terms and conditions of the State RCRA permits in accordance with this Agreement.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

## **VII. COMPLIANCE MONITORING AND ENFORCEMENT**

### **A. USEPA**

Nothing in this Agreement shall restrict USEPA's right to inspect any hazardous waste generator, transporter, or facility, or bring enforcement action against any person believed to be in violation of the Illinois Program or Federal hazardous waste program or believed to have a release of hazardous waste or hazardous constituents. Before conducting an inspection of a generator, transporter, or facility, USEPA will normally give Illinois EPA at least seven, and whenever possible, 15 days notice of the intent to inspect in accordance with 40 CFR

§ 271.8(b)(3)(i). USEPA will offer Illinois EPA an opportunity to accompany the USEPA inspector on such inspections. In case of an imminent hazard to human health and the environment, USEPA may shorten or waive the notice period. In the event that USEPA waives the notice period, USEPA shall, on the day of the inspection, inform Illinois EPA that an inspection has occurred and its findings, if any.

Prior to the beginning of each fiscal year, USEPA will notify Illinois EPA of the frequency of USEPA joint inspections to be conducted during the fiscal year. USEPA will negotiate, on an annual basis with Illinois EPA, the percentage of Illinois EPA's compliance inspections on which USEPA will accompany Illinois EPA.

USEPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). However, USEPA will normally take enforcement action only when requested to do so by Illinois EPA, or upon determining that Illinois EPA has not taken timely and appropriate enforcement action. USEPA will notify Illinois EPA prior to issuing an order or commencing a civil action under Section 3008(a)(2) of RCRA. In most instances, this notice will be in writing. USEPA also retains its rights to issue orders and bring actions under Sections 3008(h), 3013, and 7003 of RCRA and any other applicable federal statute.

After providing notice to Illinois EPA, USEPA may take action under Section 3008 of RCRA against a holder of a permit issued by Illinois EPA on the ground that the permittee is not complying with a condition of that permit. In addition, USEPA may take action under Section 3008 of RCRA against a holder of a permit issued by Illinois EPA on the ground that the permittee is not complying with a condition that USEPA, in commenting on the permit application or draft permit, stated was necessary to implement approved Illinois program requirements, whether or not that condition was included in the final permit.

USEPA agrees to provide to Illinois EPA copies of any final inspection reports resulting from compliance inspections within a reasonable time from completion of the inspections.

## **B. Illinois EPA**

Illinois EPA agrees to carry out a program for monitoring the compliance by generators, transporters, and facilities with applicable Illinois Program requirements (see 40 CFR § 271.15). As part of this program, Illinois EPA will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other Illinois Program requirements. Compliance monitoring activities and priorities will be specified in Illinois EPA's Enforcement Management System ("EMS") and the annual PPA and shall be consistent with all applicable federal requirements and with Illinois EPA's Program Description.

USEPA and Illinois EPA may enter into a separate written agreement for the purpose of implementing a work-sharing program for compliance activities.

Illinois EPA agrees to provide USEPA, upon request, compliance, monitoring inspection and enforcement data, including copies of inspection reports and subsequent enforcement actions, for all commercial and federal facilities and any other facilities requested by USEPA in accordance with the PPA or this Agreement.

In accordance with its EMS, Illinois EPA agrees to take timely and appropriate enforcement action against persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other Illinois Program requirements, including violations detected by Illinois or Federal compliance inspections. Appropriate Illinois enforcement action or response will be set forth by Illinois EPA's EMS and will not include more than two warning letters.

Illinois EPA will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Any civil penalty sought, or agreed upon by Illinois EPA shall be appropriate to the violation, as defined in 40 CFR § 271.16(c).

Illinois EPA agrees to retain all records pertaining to compliance monitoring and enforcement for at least three years unless there is an enforcement action pending. In that case, all records pertaining to that action will be retained until such action is resolved.

## **VIII. AVAILABILITY OF INFORMATION**

### **A. General**

Illinois EPA agrees to provide for the public availability of information it obtains regarding facilities and sites for the treatment, storage, and disposal of hazardous waste, and to make such information available to the public in substantially the same manner, and to the same degree, as USEPA would under Federal law.

Illinois EPA agrees to maintain the authorized Illinois Program to allow public availability of information in a manner and to a degree that is at least equivalent to that available under Federal law.

A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. Illinois EPA agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

### **B. Requests for information.**

If it denies a written request for information, Illinois EPA agrees to provide the requestor the basis for the denial and to notify the requestor of any applicable Illinois judicial or

administrative procedures or statutes of limitations.

Illinois EPA agrees to make the fullest possible disclosure of records to the public, except where the record would qualify for any of the exemptions under the Federal Freedom of Information Act, 5 U.S.C. § 552(a)(2), if such exemption is recognized by Illinois.

### **C. Confidentiality of Business Information**

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for Illinois EPA to respond to a request, Illinois EPA agrees to notify the requestor of the confidentiality claim within the maximum 30-day time limit provided for an Illinois EPA response. In addition, the requestor will be told that the request was initially denied in order to resolve the confidentiality claim.

### **D. Oversight**

Illinois EPA agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to USEPA during the review of the Illinois Program.

Illinois EPA agrees to keep USEPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to Section 3006(f) of RCRA.

## **IX. CORRECTIVE ACTION**

### **A. Illinois EPA Role**

Illinois EPA will conduct the RCRA Corrective Action Program under Sections 3004(u) and (v) of RCRA in a manner that promotes rapid achievement of cleanups while protecting human health and the environment. Specifically, Illinois EPA will, to the extent practicable:


1. Embrace flexible, practical, results-based approaches that focus on control of human exposure and contaminated groundwater migration in the short term, with final cleanup being the long term goal;
2. Provide ready public access to information and meaningful opportunities for public involvement in the cleanup process;
3. Foster a culture of innovation, creativity, communication and technical expertise, focused on accelerating cleanups and meeting program goals; and
4. Carefully consider key Federal program guidance (and any updates) in conducting the RCRA Corrective Action Program.

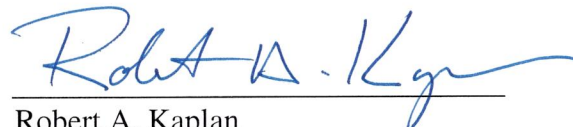
**B. USEPA Role**

USEPA will assist Illinois EPA with all aspects of the cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

STATE OF ILLINOIS  
ENVIRONMENTAL  
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

BY:   
Alec Messina  
Acting Director

BY:   
Robert A. Kaplan  
Acting Regional Administrator

DATE: 10/11/16

DATE: 12/23/2016

**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’S MOTION TO SUPPLEMENT RECORD**

Now comes Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by KWAME RAOUL, Attorney General of the State of Illinois, and moves the Illinois Pollution Control Board (“Board”), in accordance with Sections 101.500 and 105.212 of the Board Procedural Regulations, 35 Ill. Adm. Code Sections 101.500 and 105.212, to allow it to supplement the record in this matter with a single additional document, Illinois EPA’s RCRA Delegation Agreement with USEPA (“Delegation Agreement”). The document, titled Memorandum of Agreement Between the State of Illinois and the United States Environmental Protection Agency, Region 5, has been bated stamped R. 001819-R. 001832, and is attached hereto as *Exhibit 1*.

The Delegation Agreement was inadvertently left out of the Record filed in this case, but has become increasingly relevant due to Petitioner’s challenge to Illinois EPA’s consideration of a December 16, 2016 USEPA RCRA Guidance document, which is in the Permit Record as R. 001727-R. 001645 See: Petitioner’s Motion For Summary Judgment (“*Petitioner’s Motion*”), p.17. As further argued in Respondent’s Response Brief, Illinois EPA’s Delegation Agreement requires Illinois EPA to consider such guidance. See: Respondent’s Response to Petitioner’s Motion Cross-

Motion for Summary Judgment (“*Respondent’s Response*”), p.17.

The Delegation Agreement was executed in 2016, and governs Illinois EPA’s administration of the Illinois RCRA program. Accordingly, it was necessarily considered by Illinois EPA prior to the date of the 2023 Permit Decision in our case.

The Delegation Agreement is highly relevant and a public document and will be helpful to the Board in consideration of the arguments in *Petitioner’s Motion*. Accordingly, its inclusion in the Record cannot be prejudicial to Petitioner.

The Board has commonly allowed supplementation of the Record during, and even after, briefing on summary judgment. See, e.g., *White & Brewer Trucking, Inc. v. Illinois EPA*, PCB 96-250 (Permit Appeal-Land), (January 9, 1997) (directing Agency to supplement the record after briefing on summary judgment); *Village of Robbins and Allied Waste Transportation, Inc. v. Illinois EPA*, PCB 04-48 (Permit Appeal) (September 16, 2004) (allowing Petitioner to supplement record more than a month after motions for summary judgment were filed); *Fedex Ground Package System, Inc. v. Illinois EPA*, PCB 07-12 (UST Appeal) (December 21, 2006) (allowing both parties to supplement record after briefing on summary judgment); *Illinois Power Co. v. Illinois EPA*, PCB 85-119 (Permit Appeal), November 7, 1985 (allowing Petitioner to file Motion to Supplement along with Motion for Summary Judgement).

Respondent is filing this Motion simultaneously with its filing of its Response to *Petitioner’s Motion*, and has incorporated the requested document into *Respondent’s Response as Exhibit 3*. Therefore, granting this Motion will not delay the Board’s consideration of the cross-motions, or its ultimate resolution of the case.

WHEREFORE, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully requests that the Board grant its Motion and allow it to supplement the Record with R. 001819-R. 001832.

RESPECTFULLY SUBMITTED:

PEOPLE OF THE STATE OF ILLINOIS  
by KWAME RAOUL,  
Attorney General of the  
State of Illinois

BY: /s/ Christopher Grant  
Christopher Grant  
Taylor Desgrosseilliers  
Justin Bertsche  
Kevin Garstka  
Assistant Attorneys General  
Environmental Bureau  
69 W. Washington St., #1800  
Chicago, Illinois 60602  
(312) 814-5388  
Christopher.grant@ilag.gov

**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'S MOTION TO SUPPLEMENT RECORD**

EXHIBIT 1

R 001819-001832

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE STATE OF ILLINOIS**  
**AND**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**

**I. GENERAL**

This Memorandum of Agreement (“Agreement”) establishes policies, responsibilities, and procedures pursuant to 40 CFR § 271.8 for the State of Illinois’ Hazardous Waste Management Program (“Illinois Program”) authorized under Section 3006 of the Resource Conservation and Recovery Act (“RCRA”) of 1976 (42 USC § 6901 et seq.) as amended (Public Laws 94-580, 96-482, and 98-616), and the United States Environmental Protection Agency (“USEPA”) regional office for Region 5.

This Agreement further sets forth the manner in which the Illinois Environmental Protection Agency (“Illinois EPA”) and USEPA will coordinate in Illinois EPA’s administration of the authorized Illinois Program and, pending State authorization revision, USEPA’s administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (“HSWA”) for which Illinois is not authorized. For purposes of this Agreement, references to RCRA include HSWA.

This Agreement is entered into by the Director of the Illinois Environmental Protection Agency (“Director” or “Illinois EPA”) and the Regional Administrator of USEPA Region 5 (“Regional Administrator” or “USEPA”).

Nothing in this Agreement shall be construed to restrict in any way USEPA’s oversight and enforcement authority under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.

The parties will review the Agreement jointly at least annually (and other times as appropriate) during preparation of the annual Performance Partnership Agreement (“PPA”) for Illinois, in connection with grant funding under Section 3011 of RCRA. If a dispute arises under this Agreement, the parties agree to resolve the dispute in accordance with the PPA.

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This Agreement may be modified upon the initiative of either party in order to ensure consistency with revisions to the Illinois Program or for any other purpose mutually agreed upon. Any modifications to this Agreement must be in writing and must be signed by the Director and the Regional Administrator. This Agreement will remain in effect until such time as the Illinois program authorization is withdrawn by or is voluntarily transferred to USEPA according to the criteria and procedures established in 40 CFR §§ 271.22 and 271.23.

This Agreement shall become effective after being signed by the Director and the Regional Administrator. This Agreement supersedes the Memorandum of Agreement that was effective on July 12, 1996 and any subsequent amendments or revisions thereto.

## II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Illinois EPA has assumed primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries. However, the details of the actual program will be negotiated on an annual basis in the PPA commensurate with Federal and state resources. Illinois EPA will conduct the Illinois Program in accordance with USEPA program policies and guidance, including the National Performance Partnership System guidance.

Illinois EPA will administer the Illinois Program in a manner that is equivalent to and consistent with the Federal program and does not render the Illinois Program less stringent than the Federal program. Illinois EPA agrees to consider US EPA guidance in administering the Illinois Program.

Cooperation between USEPA and Illinois EPA is necessary to successfully implement the RCRA program. Illinois EPA's actual priorities for implementing the Illinois Program are determined as part of the development of the annual PPA. Consequently, good faith negotiations that result in reasonable expectations between USEPA and Illinois EPA will need to be a part of the development of the annual PPA. These negotiations will determine what RCRA program activities will be accomplished by Illinois EPA given the resources available.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized states at the same time that they are applicable in unauthorized states. While USEPA retains responsibility for the direct implementation of those provisions of HSWA that Illinois EPA is not authorized to implement, it is the intention of USEPA and Illinois EPA to coordinate the implementation of such provisions to the greatest degree possible.

Illinois EPA and USEPA agree to maintain a high level of cooperation and coordination to assure successful and effective administration of the Illinois Program. USEPA and Illinois EPA will coordinate implementation of the Illinois Program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of RCRA, to allow

USEPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage Illinois EPA and USEPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes.

### **III. STATE PROGRAM REVIEW**

USEPA will assess Illinois' administration and enforcement of the Illinois Program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. USEPA will conduct this assessment by reviewing information submitted by Illinois EPA in accordance with this Agreement and the PPA, and USEPA's permit review, compliance and enforcement review and annual review of Illinois Program activities.

USEPA may also consider, as part of the regular assessment of the Illinois Program, written comments about the Illinois Program administration and enforcement that are received from regulated persons, the public, and Federal, state and local agencies. Copies of any such comments will be provided to Illinois EPA in a timely manner and Illinois EPA shall have the opportunity to provide a timely response to USEPA prior to completion of this assessment of the Illinois Program.

Illinois EPA agrees to allow USEPA access to all files and other information requested by USEPA and deemed necessary by USEPA for reviewing Illinois EPA's administration and enforcement of the Illinois Program. File reviews may be conducted at any time.

Program review meetings between Illinois EPA and USEPA will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems, and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless mutually agreed to differently. A tentative agenda will be prepared by USEPA for each meeting.

Illinois EPA and USEPA agree to develop, on an annual basis as a part of the PPA, criteria for prioritization of activities under the Illinois Program. These criteria will be based on guidance issued by USEPA in the Agency Operating Year Guidance, other guidance documents as appropriate, and State-specific concerns, and will serve to identify those activities which should receive the highest priority during the grant period.

### **IV. INFORMATION SHARING**

#### **A. General**

This Section covers information sharing for miscellaneous elements of the Illinois Program. Information sharing requirements for major Illinois Program elements are covered in the respective sections of this Agreement addressing those elements (Section V - Permit

Issuance; Section VI - Permit Administration; and Section VII - Compliance Monitoring and Enforcement) and in the PPA.

Detailed tables describing the flow of documents between Illinois EPA and USEPA are included in Attachment 1 to this Agreement.

## **B. USEPA**

USEPA will keep Illinois EPA informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, judicial or legislative actions, and any other factors that affect the Illinois Program. USEPA will also provide general technical guidance to Illinois EPA. USEPA will share with Illinois EPA any national reports developed by USEPA relating to hazardous waste management and any USEPA reports created from the data submitted through state reporting requirements.

USEPA agrees to provide to Illinois EPA notification information from USEPA Form 8700-12 obtained by USEPA prior to the effective date of this Agreement, to the extent such information has not already been provided. USEPA will provide a copy of the original notification forms and/or a computer print-out containing all the notification information. USEPA will provide such information to Illinois EPA within thirty days of the effective date of this Agreement.

USEPA will also forward to Illinois EPA, on a monthly basis, notification information submitted by persons in Illinois who file such forms with USEPA after the effective date of this Agreement.

USEPA will make available to Illinois EPA other information requested in writing that Illinois EPA needs to implement the approved Illinois Program. Information provided to Illinois EPA will be subject to the terms of 40 CFR Part 2, which requires authorization of Illinois EPA to receive confidential business information in accordance with the procedures therein.

Information to be sent by USEPA to Illinois EPA shall be sent to the following contact:

Illinois EPA  
Bureau of Land  
Attn: Todd Marvel, RCRA Coordinator/USEPA Liaison  
1021 North Grand Ave. East  
Springfield, Illinois 62702

## **C. State**

Illinois EPA agrees to provide any pertinent information requested by USEPA within a mutually agreed upon time frame, as necessary for USEPA to carry out its oversight responsibilities.

Illinois EPA agrees to inform USEPA, with as much advanced notice as possible, of proposed or adopted modification of Illinois EPA's legal authorities, memoranda of agreement or understanding with other agencies, or modifications to resource levels, that would affect Illinois EPA's ability to implement the authorized Illinois Program. Such modifications also include changes that would affect compliance monitoring and enforcement, such as privileges and immunities laws. Illinois EPA recognizes that program revisions must be made in accordance with the provisions of 40 CFR § 271.21 and that until approved by USEPA, revisions are not authorized as part of the Illinois Program.

Information to be sent by Illinois EPA to USEPA shall be sent to the following contacts:

Permit-related Information

Section Chief  
RCRA/TSCA Programs Section  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Enforcement-related Information

Section Chief  
RCRA Compliance Section 1  
Land and Chemicals Division  
U.S. EPA Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604

Upon request, Illinois EPA agrees to provide USEPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status).

The Illinois EPA agrees to grant no variances, waivers or exemptions that would render the Illinois program less stringent than the Federal program. Any less stringent variance, waiver or exemption issued by Illinois EPA or any other body, including the Illinois Pollution Control Board, or dictated by otherwise applicable law would not be part of the authorized program and would not be a shield from enforcement by U.S. EPA.

Illinois agrees to provide USEPA with a copy of each request for a RCRA variance or adjusted standard in a timely manner. Written notification and a copy of the decisions to grant or deny a variance or adjusted standard will be provided to USEPA within five working days of Illinois EPA's receipt of the decision.

#### **D. Site Visits**

Whenever USEPA determines that it needs to obtain information concerning the Illinois Program, USEPA will first seek to gain this information from Illinois EPA and will provide, in writing, the reasons for its request of the information. Illinois EPA agrees to supply USEPA with this information within a mutually agreeable time frame. If Illinois EPA is unable to provide the information requested by USEPA, or if it is necessary to supplement the Illinois EPA information, USEPA may conduct a special inventory or perform information collection site visits after notifying Illinois EPA. USEPA will share with Illinois EPA any reports developed by USEPA as a result of such information collection.

#### **E. Emergency Situations**

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this Agreement of the existence of such situation. USEPA shall call 217/782-3637 and notify Illinois EPA's Emergency Response Unit, Illinois Environmental Protection Agency, 1021 N. Grand Ave. East, P.O. Box 19276, Springfield, Illinois 62794-9276. Illinois EPA shall call the 24-hour emergency number 312/353-2318 and notify Donald J. Bruce, Chief, Response Section II, Emergency and Enforcement Branch, SE-5J, USEPA (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590.

#### **F. Confidentiality**

Any information obtained or used in the administration of the Illinois Program shall be available to USEPA without restriction. If the information has been submitted to Illinois EPA under a claim of confidentiality, Illinois EPA must submit that claim to USEPA when providing that information to USEPA, in accordance with Section 7 and 7.1 of the Environmental Protection Act, 415 ILCS 5/7 and 5/7.1 as amended. Any information obtained from Illinois EPA and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

USEPA agrees to furnish to Illinois EPA information in USEPA files that is not submitted under a claim of confidentiality and which Illinois EPA needs to implement the Illinois Program. Subject to the conditions in 40 CFR Part 2, USEPA will furnish Illinois EPA information submitted to USEPA under a claim of confidentiality that Illinois EPA needs to implement the Illinois Program. All information USEPA agrees to transfer to Illinois EPA will be transferred in accordance with the requirements of 40 CFR Part 2. USEPA will notify affected facilities when such information is sent to Illinois EPA.

#### **G. RCRA Data Management**

Illinois EPA is responsible for receiving, processing, and verifying information on notification Form 8700-12 and for assigning RCRA identification numbers. If Illinois EPA receives a notification form from USEPA or an applicant, Illinois EPA will assign a RCRA

Identification number to the applicant and inform the applicant of its number. Illinois EPA will assign all RCRA Identification numbers and enter all notification data into the national RCRA data management system (currently, RCRAInfo).

Illinois EPA agrees to use, maintain, and enter data into the national RCRA data management system.

Illinois EPA is responsible for the correctness of the data Illinois EPA enters. Illinois EPA will timely correct any data errors in the national RCRA data management systems that Illinois EPA has created.

USEPA is responsible for the correctness of the data USEPA enters and will timely correct any data errors that USEPA has created.

USEPA will inform Illinois EPA promptly when changes are made to the national RCRA data management system that might affect Illinois EPA's implementation of that system.

Illinois EPA will input Biennial Reporting data into the national RCRA data management system within the time frames established by the USEPA Office of Resource Conservation and Recovery.

Neither Illinois EPA nor USEPA will unilaterally change their RCRA data management system in any way without advance consultation with, and agreement of, the other party.

Both USEPA and Illinois EPA, as implementers of the national RCRA data management systems, can choose and change their hardware platforms to optimize system efficiency, but will not do so in such a way as to affect the merged data base, access to the merged data base reports, or the potential for updating their implementer databases with the other party's data.

## **V. PERMIT ISSUANCE**

Illinois EPA and USEPA have agreed to the permitting process described in this Agreement. Under this process, Illinois EPA and USEPA have established policies and procedures by which each will pursue their respective permitting responsibilities under RCRA. This permitting process is established in accordance with Section 3006(c)(3) of RCRA. The

duties and responsibilities of Illinois EPA and USEPA for permitting, including any work sharing agreements, are also specified in the PPA.

USEPA and Illinois EPA may enter into a separate written agreement for the purpose of implementing a work-sharing program for permit issuance.

USEPA agrees to transfer to Illinois EPA any pending Part A and Part B hazardous waste management facility permit applications originally submitted directly to USEPA prior to the effective date of this Agreement pursuant to 40 CFR § 270.10 by facilities located in Illinois and

which have not already been transferred to Illinois EPA, together with all pertinent file information, for those portions of the program for which Illinois EPA has received authorization. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, fact sheets and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangements Illinois EPA and USEPA may make regarding the priority of transfer.

USEPA will also provide to Illinois EPA, within ten days of receipt by USEPA, Part A and Part B permit applications submitted directly to USEPA by persons in Illinois after the effective date of this Agreement.

#### **A. USEPA Permitting**

Illinois EPA and USEPA have agreed to a process for the processing and enforcement of permits for those provisions of RCRA for which Illinois EPA does not have authorization.

Pursuant to Section 3006(g)(1) of RCRA, whenever new HSWA standards are established under RCRA or USEPA revises federal HSWA regulations to add permitting standards for processes not currently covered by federal regulations, USEPA shall process and enforce HSWA permits applying those new standards to facilities in Illinois affected by those standards until Illinois EPA receives interim or final program authorization for those standards. If USEPA promulgates new standards requiring permit modification, USEPA retains the right, pursuant to 40 CFR § 270.42(b)(6)(vii), to extend the time period for final approval or denial of a modification request until such time that the State receives authorization for the new standards and the Illinois EPA completes review of the modification request in accordance with those standards. As Illinois EPA receives program authorization for additional provisions of RCRA, USEPA will suspend issuance of federal permits imposing those standards in Illinois.

#### **B. USEPA Overview of State Permits**

USEPA may comment in writing on any draft permit or on any proposed permit modification, whether or not USEPA commented on the permit application, within forty-five days of its receipt. Illinois EPA will ensure that USEPA will receive the draft or proposed permit materials that are out for public comment at least 45 days before issuance or denial of a permit. Where USEPA indicates in a comment that issuance of the permit would be inconsistent with the approved Illinois Program, USEPA shall include in the comment:

1. a statement of the reasons for the comment (including the section or sections of Illinois regulations that support the comment and why they support that comment); and
2. the recommended actions that should be taken by Illinois EPA in order to address the comments (including the conditions that the permit would include if it were issued by USEPA).

USEPA shall notify Illinois EPA when satisfied that Illinois EPA has met or refuted its concerns and shall also provide the permit applicant with a copy of such notification.

Under Section 3008(a)(3) of RCRA, USEPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, USEPA will observe the conditions established in 40 CFR § 271.19(e).

### **C. Illinois EPA Permitting**

Illinois EPA is responsible for drafting, circulating for public review and comment, issuing, modifying, reissuing, and terminating all RCRA permits for all hazardous waste treatment, storage, and disposal facilities in Illinois which are subject to the authorized Illinois Program, and shall do so in a manner consistent with the Environmental Protection Act, 415 ILCS 5/1 et seq, as amended, with regulations adopted at 35 Illinois Administrative Code (“IAC”) Parts 700, 702, 703, 705, 724, with this Agreement, and with the original Illinois EPA Program Description and all amendments thereto. Illinois EPA shall include as permit conditions all applicable provisions of 35 IAC Parts 702, 703, and 724. Illinois EPA agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

If Illinois EPA has not yet received interim or final authorization to implement and enforce new standards established under HSWA or new standards adopted by USEPA, then USEPA will issue and enforce RCRA permits in Illinois for those new standards until Illinois EPA receives authorization of equivalent and consistent State standards.

Upon request by the holder of a USEPA-issued RCRA permit or upon expiration of that permit, Illinois EPA will issue or deny a State RCRA permit for newly-authorized provisions addressed in that USEPA-issued permit.

Illinois EPA agrees to consider all comments USEPA makes on permitting applications, draft permits, and permit modifications. Illinois EPA will satisfy or refute USEPA’s concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification. To meet repository requirements, Illinois EPA will transmit to USEPA as they are received, copies of all Part A and Part B applications.

### **D. Other Federal Acts**

Illinois EPA will ensure that it follows procedures required in applicable Federal laws identified in 40 CFR § 270.3.

## **VI. PERMIT ADMINISTRATION**

USEPA will administer the RCRA permits it has issued to facilities in Illinois until they expire or are terminated. USEPA will be responsible for enforcing the terms and conditions of federal permits while they remain in force.

Illinois EPA agrees to review all hazardous waste permits which were issued under Illinois law prior to the effective date of this Agreement in accordance with 40 CFR § 271.13(d) and to modify, or revoke and reissue, such permits as necessary to require compliance with the authorized Illinois Program. Illinois EPA shall notify USEPA of any permits not equivalent to Federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once USEPA has determined that Illinois EPA has fulfilled the requirements of 40 CFR § 271.13(d), USEPA will terminate applicable Federal permits, or Federal portion of permits, pursuant to the procedures in 40 CFR § 124.5(d).

Where the State permit is not equivalent to the federal permit requirements, the State may modify, or revoke and reissue the State permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the State does not modify, or revoke and reissue, a permit equivalent to the federal permit, USEPA will administer and enforce its permit until it expires or is terminated.

Upon the effective date of an equivalent State permit, USEPA will terminate the federal permit pursuant to 40 CFR §§271.8(6) and 124.5(d). USEPA will notify the permittee by certified mail of its intent to terminate the federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

USEPA will notify Illinois EPA that the permits are terminated, will no longer administer those permits or portions of permits for which Illinois EPA is authorized, and will rely on Illinois EPA to enforce those terms and conditions of the State RCRA permits in accordance with this Agreement.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

## **VII. COMPLIANCE MONITORING AND ENFORCEMENT**

### **A. USEPA**

Nothing in this Agreement shall restrict USEPA's right to inspect any hazardous waste generator, transporter, or facility, or bring enforcement action against any person believed to be in violation of the Illinois Program or Federal hazardous waste program or believed to have a release of hazardous waste or hazardous constituents. Before conducting an inspection of a generator, transporter, or facility, USEPA will normally give Illinois EPA at least seven, and whenever possible, 15 days notice of the intent to inspect in accordance with 40 CFR

§ 271.8(b)(3)(i). USEPA will offer Illinois EPA an opportunity to accompany the USEPA inspector on such inspections. In case of an imminent hazard to human health and the environment, USEPA may shorten or waive the notice period. In the event that USEPA waives the notice period, USEPA shall, on the day of the inspection, inform Illinois EPA that an inspection has occurred and its findings, if any.

Prior to the beginning of each fiscal year, USEPA will notify Illinois EPA of the frequency of USEPA joint inspections to be conducted during the fiscal year. USEPA will negotiate, on an annual basis with Illinois EPA, the percentage of Illinois EPA's compliance inspections on which USEPA will accompany Illinois EPA.

USEPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). However, USEPA will normally take enforcement action only when requested to do so by Illinois EPA, or upon determining that Illinois EPA has not taken timely and appropriate enforcement action. USEPA will notify Illinois EPA prior to issuing an order or commencing a civil action under Section 3008(a)(2) of RCRA. In most instances, this notice will be in writing. USEPA also retains its rights to issue orders and bring actions under Sections 3008(h), 3013, and 7003 of RCRA and any other applicable federal statute.

After providing notice to Illinois EPA, USEPA may take action under Section 3008 of RCRA against a holder of a permit issued by Illinois EPA on the ground that the permittee is not complying with a condition of that permit. In addition, USEPA may take action under Section 3008 of RCRA against a holder of a permit issued by Illinois EPA on the ground that the permittee is not complying with a condition that USEPA, in commenting on the permit application or draft permit, stated was necessary to implement approved Illinois program requirements, whether or not that condition was included in the final permit.

USEPA agrees to provide to Illinois EPA copies of any final inspection reports resulting from compliance inspections within a reasonable time from completion of the inspections.

## **B. Illinois EPA**

Illinois EPA agrees to carry out a program for monitoring the compliance by generators, transporters, and facilities with applicable Illinois Program requirements (see 40 CFR § 271.15). As part of this program, Illinois EPA will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other Illinois Program requirements. Compliance monitoring activities and priorities will be specified in Illinois EPA's Enforcement Management System ("EMS") and the annual PPA and shall be consistent with all applicable federal requirements and with Illinois EPA's Program Description.

USEPA and Illinois EPA may enter into a separate written agreement for the purpose of implementing a work-sharing program for compliance activities.

Illinois EPA agrees to provide USEPA, upon request, compliance, monitoring inspection and enforcement data, including copies of inspection reports and subsequent enforcement actions, for all commercial and federal facilities and any other facilities requested by USEPA in accordance with the PPA or this Agreement.

In accordance with its EMS, Illinois EPA agrees to take timely and appropriate enforcement action against persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other Illinois Program requirements, including violations detected by Illinois or Federal compliance inspections. Appropriate Illinois enforcement action or response will be set forth by Illinois EPA's EMS and will not include more than two warning letters.

Illinois EPA will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Any civil penalty sought, or agreed upon by Illinois EPA shall be appropriate to the violation, as defined in 40 CFR § 271.16(c).

Illinois EPA agrees to retain all records pertaining to compliance monitoring and enforcement for at least three years unless there is an enforcement action pending. In that case, all records pertaining to that action will be retained until such action is resolved.

## **VIII. AVAILABILITY OF INFORMATION**

### **A. General**

Illinois EPA agrees to provide for the public availability of information it obtains regarding facilities and sites for the treatment, storage, and disposal of hazardous waste, and to make such information available to the public in substantially the same manner, and to the same degree, as USEPA would under Federal law.

Illinois EPA agrees to maintain the authorized Illinois Program to allow public availability of information in a manner and to a degree that is at least equivalent to that available under Federal law.

A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. Illinois EPA agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

### **B. Requests for information.**

If it denies a written request for information, Illinois EPA agrees to provide the requestor the basis for the denial and to notify the requestor of any applicable Illinois judicial or

administrative procedures or statutes of limitations.

Illinois EPA agrees to make the fullest possible disclosure of records to the public, except where the record would qualify for any of the exemptions under the Federal Freedom of Information Act, 5 U.S.C. § 552(a)(2), if such exemption is recognized by Illinois.

### **C. Confidentiality of Business Information**

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for Illinois EPA to respond to a request, Illinois EPA agrees to notify the requestor of the confidentiality claim within the maximum 30-day time limit provided for an Illinois EPA response. In addition, the requestor will be told that the request was initially denied in order to resolve the confidentiality claim.

### **D. Oversight**

Illinois EPA agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to USEPA during the review of the Illinois Program.

Illinois EPA agrees to keep USEPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to Section 3006(f) of RCRA.

## **IX. CORRECTIVE ACTION**

### **A. Illinois EPA Role**

Illinois EPA will conduct the RCRA Corrective Action Program under Sections 3004(u) and (v) of RCRA in a manner that promotes rapid achievement of cleanups while protecting human health and the environment. Specifically, Illinois EPA will, to the extent practicable:


1. Embrace flexible, practical, results-based approaches that focus on control of human exposure and contaminated groundwater migration in the short term, with final cleanup being the long term goal;
2. Provide ready public access to information and meaningful opportunities for public involvement in the cleanup process;
3. Foster a culture of innovation, creativity, communication and technical expertise, focused on accelerating cleanups and meeting program goals; and
4. Carefully consider key Federal program guidance (and any updates) in conducting the RCRA Corrective Action Program.

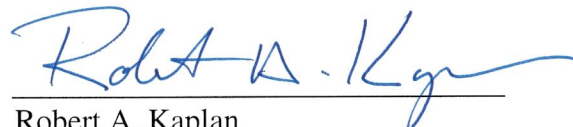
**B. USEPA Role**

USEPA will assist Illinois EPA with all aspects of the cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

STATE OF ILLINOIS  
ENVIRONMENTAL  
PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY  
REGION 5

BY:   
Alec Messina  
Acting Director

BY:   
Robert A. Kaplan  
Acting Regional Administrator

DATE: 10/11/16

DATE: 12/23/2016

**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.	)	

**CERTIFICATION**

Under penalties 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:

1. I, Joshua Rhoades, am employed by the Illinois Environmental Protection Agency ("Illinois EPA"), as the Permit Section Manager within the Bureau of Land.
2. As part of my duties, I am responsible for the review and safekeeping of the records of certain Illinois EPA files related to the Bureau of Land and located in Springfield, Illinois, including agreements with the United States Environmental Protection Agency ("U.S. EPA").
3. The document marked Exhibit 3 to Respondent's Response Brief is a true and accurate copy of the 2016 Memorandum of Agreement Between the State of Illinois and the United States Environmental Protection Agency, Region 5, which was executed between Illinois EPA and U.S. EPA as part of Illinois EPA's delegated authority to operate the RCRA program in the State of Illinois.

Dated: May 6, 2026

