

**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 Friday, June 12, 2026, I caused to be filed with the Clerk Office of the Illinois Pollution Control Board by electronic filing the attached Respondent's Illinois Environmental Protection Agency's Reply Brief, a true and correct copy of which is hereto attached and hereby served upon you.

Respectfully Submitted,

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Certificate of Service

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, June 12, 2026, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of Respondent Illinois Environmental Protection Agency's Reply Brief, and Notice of Filing.

*/s/ Christopher Grant*

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**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY’S REPLY BRIEF**

On May 21, 2026, in accordance with 35 Ill. Adm. Code 101.500, the hearing officer allowed the filing of reply briefs by the parties. Petitioner’s Response brief raises two misleading arguments, and Respondent will suffer material prejudice without the opportunity to reply. First, Petitioner misrepresents the scope of Illinois EPA’s lawful permitting authority to accomplish the purpose of the Act and avoid future violations through extended post-closure care and financial assurance. *See* Response at 4-6. Second, Petitioner raises the 2008 Adjusted Standard matter, *Petition of BFI Waste Systems of N. Am., Inc. for Waste Delisting*, PCB AS 08-005 (Dec. 4, 2008) (“2008 Adjusted Standard”)<sup>1</sup>, for the first time in its Response. Response at 6-8. Respondent has no objection to Petitioner’s raising the 2008 Adjusted Standard in its Response brief, as it actually supports Respondent’s position that Illinois EPA has the authority to extend the post-closure care period without an adjusted standard. However, Respondent believes that Petitioner has taken the Board’s opinion out of context, and, more importantly, has left out critical Board findings in that matter that relate directly to our case. As the arguments set forth in Petitioner’s Response fail to demonstrate that Illinois EPA’s Decision to extend post-closure care financial assurance on a 30-

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<sup>1</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-63479>.

year basis is not necessary to accomplish the purposes of the Act and prevent future violations, the Board should grant summary judgment in favor of Respondent and against Petitioner.

**I. ILLINOIS EPA ACTED WITHIN ITS AUTHORITY TO REQUIRE FINANCIAL ASSURANCE FOR 30 YEARS OF POST-CLOSURE.**

**a. The Need for Continued Post-Closure Care for the Next 30 Years is Justified by the Present Conditions at the Site.**

In its Response, Petitioner argues that Illinois EPA's Decision to require a rolling 30-year post-closure care financial assurance condition is "arbitrary, unnecessary and unreasonable" because Illinois EPA does not contend that the Landfill violated the Act or Board Rules. Response at 2-4. However, the permitting standard at issue is not limited to present violations of the Act. In order to prevail in its appeal of Illinois EPA's permit conditions, Petitioner must "show that the modifications imposed by the Agency were not necessary *to accomplish the purposes of the Act*, or, stated alternatively, BFI had to establish that its plan would not result in any *future* violation of the Act and the modifications, therefore, were arbitrary and unnecessary." *Browning-Ferris Indus. of Ill., Inc. v. Pollution Control Bd.*, 179 Ill. App. 3d 598, 603 (2d Dist. 1989) (emphasis added). For all its bluster, Petitioner's Response provides no substantive argument as to why or how it is arbitrary or unreasonable to expect that a landfill, which is currently generating nearly 100,000 gallons of leachate a year even after more than 40 years of post-closure care, will likely continue generating large volumes of leachate for the next 30 years.

As explained at length in Respondent's Motion for Summary Judgment ("Respondent's Motion"), 30 years of financial assurance is both necessary to accomplish the purposes of the Act and to prevent future violations by ensuring that leachate collection and removal continues at the Landfill until leachate is no longer detected, as required by Section 724.410 of the Board Hazardous Waste Regulations, 35 Ill. Adm. Code 724.410. Motion at 8-11. This leachate

management requirement was clearly cited in Illinois EPA's Decision letter (R 000132), the details of Illinois EPA's decision making process including its long-term groundwater protection concerns thoroughly examined in Illinois EPA's deposition testimony (Deposition of Jackie Cooperider at 53:21-24; 54:1-1; 71:10-19 (April 17, 2025) Exhibit 2 to Respondent's Response), and the Landfill's ongoing leachate generation and the need for further continued monitoring and removal fully supported in the Record (Response to Respondent's Interrogatories, Exhibit 1 to Respondent's Motion at 7-8). Furthermore, it is entirely appropriate for Illinois EPA to consider the current conditions at the Landfill, including the protectiveness of its base liner, in assessing the threat of groundwater pollution and the necessity of financial assurance for continued post-closure care. Petitioner's focus on the Landfill's present compliance status and past permitting decisions is misleading where the conditions under review pertain to the future care and maintenance of the Landfill. The Record fully supports Illinois EPA's thorough evaluation of the relevant environmental threats as the Landfill approaches the end of the default post-closure care period.

**b. In the 2008 Adjusted Standard, the Board Only Issued a Limited, Conditional De-Listing of Landfill Leachate.**

In its Response, Petitioner misleadingly raises the 2008 Adjusted Standard as somehow precluding Illinois EPA from taking the Landfill's present and future leachate generation into consideration in determining permit conditions that impact the Landfill's future post-closure care obligations and the financial assurance required to support that care. Response at 4-7. The de-listing of Landfill Leachate for regulation as a hazardous waste in the 2008 Adjusted Standard matter was extremely limited and conditional. Petitioner had sought the adjusted standard solely for the purpose of replacing its current leachate disposal destinations, which included CID in Calumet City, Illinois, approximately 100 miles from the Landfill, and a facility in Vickery, Ohio, approximately 268 miles from the Landfill, with Interstate Pollution Control, Inc. ("IPC"),

approximately 7 miles from the Landfill. 2008 Adjusted Standard, PCB AS 08-005, slip op. at 9-10 (Dec. 4, 2008). At IPC, the leachate would be chemically treated using aluminum sulfide, calcium chloride, ferric chloride, and a polymer. *Id.* at 10. By doing so, BFI expected to save approximately \$146,500 annually. *Id.* at 13.

Contrary to Petitioner's representation (Response at 7), Illinois EPA initially opposed granting the Adjusted Standard. 2008 Adjusted Standard, PCB AS 08-005, *Ill. Env't Protec. Agency's Response to the Petition for Adjusted Standard Waste Delisting* (Mar. 28, 2008)<sup>2</sup>, Of particular concern to the Agency was the level of 1,4 dioxane which exceeded levels in federal Delisting Risk Assessment Software Models. *Id.* at 2.

After consultation with Illinois EPA, BFI submitted a revised Petition, which provided, in pertinent part:

Specifically, BFI is proposing amendatory language for paragraph (g) which would clarify that the delisting would only apply to leachate which is transported to and received by a permitted wastewater treatment facility located in Illinois which has a Pretreatment Program which has been approved by the United States Environmental Protection Agency.

2008 Adjusted Standard, PCB AS 08-005, *BFI Waste Systems of N. Am., Inc. Motion to Amend Petition for Adjusted Standard for Waste Delisting*, ¶ 3 (Apr. 14, 2008) (emphasis in the original)<sup>3</sup>.

In considering the application, the Board evaluated primarily the risk of a spilled 5,000-gallon tanker truck while traveling to the new treatment facility. 2008 Adjusted Standard, PCB AS 08-005, slip op. at 37 (Dec. 4, 2008). To allow BFI to take advantage of the new disposal method, it granted the adjusted standard, with enumerated conditions. *Id.* at 43-46. Conditions included that the leachate was transported to the wastewater treatment facility, and delisting only applied once the leachate was loaded for transport. *Id.* at 45. Accordingly, the leachate being

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<sup>2</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-60637>.

<sup>3</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-60850>.

generated within the Landfill, leachate being stored, and leachate being otherwise handled was not delisted and was still, as a matter of law, hazardous waste.

Because the issue before it only involved transport and the threat of release *after* loading and in transit, the Board did not evaluate the threat to *groundwater* from continued leachate generation. Without question, the leachate generated and remaining within the waste mass at the Landfill was not delisted, and remains hazardous waste. As described in Respondent's Motion for Summary Judgment, landfill leachate is currently "in contact with or very close to groundwater." Respondent's Motion, at 12. As noted in Respondent's Response Brief, groundwater testing has disclosed an exceedance for 1,4 dioxane, the very contaminant of concern that triggered Illinois EPA's initial opposition to the Adjusted Standard petition. Respondent's Response, at 11. In granting the conditional adjusted standard, the Board did not consider risks that are currently present at the Landfill. Accordingly, the 2008 delisting of leachate for transport to a USEPA-approved chemical waste treatment facility has no relevance to this case.

**c. Illinois EPA does not Need an Adjusted Standard to Require More than 30 Years of Post-Closure Care, Secured by Financial Assurance.**

As explained at length in Respondent's Motion, Illinois EPA has the authority to require post-closure care and therefore financial assurance for that post-closure care beyond the initial 30-year period when faced with the clear on-going need for continued leachate management to prevent groundwater pollution. Respondent's Motion, at 8-11. Moreover, Illinois EPA has the duty to harmonize state and federal regulations and consider federal guidance to ensure that its permitting decision will not result in future violations. *Id.* at 14-15; *see also, e.g., D&L Landfill, Inc. v. Ill. Pollution Control Bd.*, 2017 IL App (5th) 160071, ¶ 28 (finding the interpretation of the post-closure care period for Part 807 landfills as a hard limit was "inconsistent with the Act's purposes and fails to harmonize the statutory provisions relating to post-closure care."). This is consistent

with the 2008 Adjusted Standard, where the Board noted, and BFI conceded, that Illinois EPA was entitled to extend the Post-Closure Care Period. Specifically, in its Petition for Adjusted Standard, BFI noted the following:

Under the proposed Adjusted Standard, the management of the leachate at the Davis Junction Landfill will continue to be governed by the Illinois RCRA Post-Closure Permit, however BFI will be allowed to transport and dispose of the leachate as a non-hazardous Illinois special waste. The delisting will apply to leachate collected at the Phase I Landfill Unit (“Phase 1 Unit”) over the remaining RCRA Post-Closure Period, which is anticipated to be seven years, although this could be extended by the Illinois Environmental Protection Agency (“IEPA”).

2008 Adjusted Standard, PCB AS 08-005, *Petition for Adjusted Standard Waste Delisting*, at 1-2 (Nov. 21, 2007)<sup>4</sup>.

In its final opinion, the Board stated:

The Phase 1 unit’s post-closure care period under the RCRA Part B permit is to end, at the earliest, on December 5, 2014. The leachate collection and removal system must continue operating throughout the post-closure care period until pumpable levels of leachate are no longer present. Pet., Att. 1 at 6, App. H (RCRA permit). BFI anticipates the remaining RCRA post-closure period to be seven years, ***although the period could be extended by IEPA if pumpable levels of leachate exist after seven years . . . .***

2008 Adjusted Standard, PCB AS 08-005, slip op. at 10 (Dec. 4, 2008) (emphasis added).

Neither BFI nor the Board included a requirement that, to extend the post-closure period, Illinois EPA needed to, itself, seek an adjusted standard. Plainly, in finding that Illinois EPA could extend the post-closure care period, the Board simply harmonized the provisions of 415 ILCS 5/22.3 (2024) and 35 Ill. Adm. Code 724.410, which provides for post-closure care in the form of leachate extraction as long as detectable levels of leachate remain. Interestingly, BFI’s position at the time of the 2008 Adjusted Standard and the Board’s finding conflict with BFI’s current position that post-closure care continued only for “‘30 years’—no more and no less.” Petitioner’s Motion for Summary Judgment, at 6.

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<sup>4</sup> Available at: <https://pcb.illinois.gov/documents/dsweb/Get/Document-59445>.

Accordingly, the 2008 Adjusted Standard decision was made by the Board under the assumption that post-closure care, in the form of leachate extraction and treatment, would continue until no pumpable levels of leachate could be detected. That Board finding is directly related to the issue in this case. In this case, approximately 100,000 gallons of leachate, which continues to be a hazardous waste notwithstanding the 2008 adjusted standard decision, is being generated annually. Illinois EPA has required that financial assurance continue, in 30-year increments, until BFI is able to demonstrate no continued threat to human health or the environment. Respondent's Response, at 3. Petitioner cites the 2008 Adjusted Standard Case in an attempt to downplay the hazardous nature of the Landfill leachate. Petitioner's Response, at 7. However, the Board's findings in that case only provide additional support for the 2023 permit decision at issue in this case. *See* 2008 Adjusted Standard, PCB AS 08-005, slip op. at 43-46 (Dec. 4, 2008). While the conditional and limited de-listing afforded Petitioner a significant and practical treatment option, while reducing the risk of accidents during transport to distant facilities, it did not affect the characterization of the leachate currently being generated at the Landfill. *Id.* at 45. The Board's finding that the post-closure care period could be extended, "... if pumpable levels of leachate exist," directly supports Illinois EPA's extension of the requirement for financial assurance to secure continued post-closure care due to the Landfill's continued leachate generation. *See id.* at 10. This is especially true and further supported with the requirement of leachate removal for treatment in accordance with 35 Ill. Adm. Code 724.410, which must be secured by adequate financial assurance. For the reasons set forth herein as well as those stated in Respondent's Motion for Summary Judgment, the Board should grant summary judgment in favor of Respondent, the Illinois Environmental Protection Agency and against Petition BFI Waste Systems of North America, Inc.

Respectfully submitted,

Illinois Environmental Protection Agency

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