

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PETITIONER’S ANSWERS TO ILLINOIS EPA’S INTERROGATORIES

NOW COMES Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, by and through its attorney, Scott B. Sievers of Brown, Hay + Stephens, LLP, and, pursuant to 35 Ill. Adm. Code 101.620, hereby propounds upon Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), the following answers to Respondent’s First Set of Interrogatories to Petitioner:

OBJECTION TO RESPONDENT’S INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

INTERROGATORY NO. 2: Please provide the identities and addresses of your witnesses who will testify at trial and provide the following information:

(a) Illinois Supreme Court Rule 213(f)(1) *Lay Witnesses*. Identify the subjects, on which the witness will testify.

ANSWER:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Illinois Supreme Court Rule 213(f)(2) *Independent Expert Witnesses*. Identify the subjects on which the witness will testify and the opinions the party expects to elicit.

ANSWER: None at this time. Investigation continues.

(c) Illinois Supreme Court Rule 213(f)(3) *Controlled Expert Witnesses*. Identify:

- (i) the subject matter on which the witness will testify;
- (ii) the conclusions and opinions of the witness and the bases therefor;

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

ANSWER: None at this time. Investigation continues.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: No.

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

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

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

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

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

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

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

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

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Respectfully submitted,

BFI WASTE SYSTEMS
OF NORTH AMERICA, LLC,

Petitioner.

BY:



Scott B. Sievers
Attorney for Petitioner

ATTESTATION

STATE OF Illinois)
) SS.
COUNTY OF Livingston)

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

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

VERIFICATION BY CERTIFICATION

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

BY: Megan Crowley
Megan Crowley

DATE: July 25, 2024