

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 July 15, 2025, I filed Illinois EPA's Motion to Consolidate with PCB 25-12 and PCB 25-44, with the Clerk of the Illinois Pollution Control Board via the "COOL" system in the above referenced case, a true and correct copy of which is attached and served upon you.

Respectfully Submitted,
BY: /s/ CHRISTOPHER GRANT
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Certificate of Service

I, CHRISTOPHER GRANT, an attorney, do hereby certify that, today, July 15, 2025, I caused to be served on the individuals listed below, by electronic mail, a true and correct copy of Respondent's Motion to Consolidate with PCB 25-12 and PCB 25-44, and Notice of Filing.

/s/ CHRISTOPHER GRANT

Mr. Bradley P. Halloran
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**RESPONDENT ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S MOTION
TO CONSOLIDATE WITH PCB 25-12 AND PCB 25-44**

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 Section 101.406 of the Board Procedural Rules, 35 Ill. Adm. Code 101.406, to consolidate this matter with *BFI Waste Systems of North America, LLC v. Illinois Environmental Protection Agency*, PCB 25-12, and *BFI Waste Systems of North America, LLC v. Illinois Environmental Protection Agency*, PCB 25-44, for all further proceedings, including hearing and decision. In support thereof, Respondent states, as follows:

I. INTRODUCTION

There are currently three closely-related cases pending before the Board. In each matter, Petitioner BFI Waste Systems of North America, LLC ("BFI") challenges an Illinois EPA decision related to post-closure care and post-closure financial assurance for BFI's Davis Junction Landfill, Unit I ("Landfill"), which contains hazardous waste. Each challenged permit action was taken pursuant to the same permit, B-142R2, a Resource Conservation and Recovery Act ("RCRA") Permit governing post-closure care of the Landfill. Although each Illinois EPA determination was

separate for purposes of appeal, the three appeals cover essentially the same subject matter, i.e. a required extension of the post-closure care period, and full financial assurance for the post-closure care period. Accordingly, there is no reason for the Board to consider each matter separately. Consolidation of the three pending matters for hearing and decision would be prudent, expeditious, and would avoid contrary results on essentially the same issues.

PCB 24-29

The first matter, PCB 24-29 was filed on January 30, 2024, and challenges Illinois EPA's September 25, 2023 permit decision, modifying conditions of BFI's RCRA permit. The modifications challenged by BFI are specifically to increase post-closure financial assurance to fully reflect 30 additional years of post-closure care, and to submit a revised post-closure care plan to cover an additional 30 years of post-closure. *BFI Petition*, p.6, par. 25, *Petition Exhibit A*, p. 000005.

PCB 25-12

PCB 25-12 was filed on December 4, 2024, and challenges Illinois EPA's July 29, 2024 permit action on BFI's RCRA permit. On July 29, 2024, Illinois EPA directed BFI to submit a permit modification including the provision to extend post-closure care for an additional 30 years. *BFI Petition*, p. 5, par. 25, *Petition Exhibit A*, p. 000003.

PCB 25-44

PCB 25-44 was filed on January 30, 2025, and challenges an Illinois EPA permit action of December 26, 2024 on BFI's RCRA permit. BFI had submitted a proposed extension of the post-closure period of 10 years instead of the 30 year period required by Illinois EPA on July 29, 2024. In its December 26, 2024 permit action, Illinois EPA imposed a post-closure period of an additional 30 years "...or until such time as no unacceptable risks to human health and the

environment is no longer present in the [Landfill] as determined by the Illinois EPA.” *BFI Petition*, p. 8, par. 30, *Petition Exhibit B*, p. 000002. Illinois EPA also again insisted that full financial assurance be provided for the entire 30 year extended post-closure period. *Id.*

II. CONSOLIDATION OF THE THREE CASES IS APPROPRIATE

Section 101.406 of the Board Procedural Rules, 35 Ill. Adm. Code 101.406, provides as follows:

Section 101.406 Consolidation of Claims

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings in which the burdens of proof vary.

While the reasons for the three permit actions in the three cases were procedurally different, the issues on appeal are largely identical. The question for the Board in all three cases will be if Petitioner BFI, which has the burden of proof in all three cases, can demonstrate that failing to extend its post-closure activities for a period of either 30 years or until such time that it can demonstrate to Illinois EPA that the Landfill no longer poses any risk, will not result in any violation of the Act or Board RCRA regulations. The witnesses in all three cases are likely to be the same. Further, consolidation will ensure a consistent result on the issues in all three cases.

Because of the similarity of the issues in these cases, consolidation will not result in material prejudice to either Illinois EPA or BFI. Instead, it will result in a “...convenient, expeditious, and complete determination of the claims”. Finally, the Board should note that BFI has provided open decision waivers on all three cases, and therefore the Board may consolidate the cases for both hearing and decision.

WHEREFORE, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, respectfully requests that the Board consolidate PCB 24-29, PCB 25-12, and PCB 25-44 for all further proceedings, including hearing and decision, and direct such other relief as the Board deems appropriate.

RESPECTFULLY SUBMITTED:

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

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