

ILLINOIS POLLUTION CONTROL BOARD

December 4, 2025

BFI WASTE SYSTEMS OF NORTH	)	
AMERICA, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 25-44
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. Gibson):

BFI Waste Systems of North American, LLC (BFI) appeals three determinations of the Illinois Environmental Protection Agency (IEPA) concerning the Davis Junction Landfill it owns and operates in Ogle County. In PCB 24-29, IEPA approved requests to modify BFI's Resource Conservation and Recovery Act (RCRA) post-closure permit with conditions. In PCB 25-12, IEPA required BFI to request a permit modification to extend post-closure care. In PCB 25-44, IEPA approved BFI's request with conditions and modifications.

On July 15, 2025, IEPA filed a motion in each of these three cases to consolidate them with one another. For the reasons below, the Board denies these motions and directs its hearing officer to proceed separately in them.

Below, the Board first reviews the separate procedural history of the three appeals before summarizing the three petitions for review, including background on the Davis Junction Landfill. The Board then discusses the motions to consolidate before reaching its conclusion and issuing its order.

PROCEDURAL HISTORIES

PCB 24-29

On November 2, 2023, the Board granted the parties' request to extend the statutory deadline to appeal a September 25, 2023 IEPA determination. On January 30, 2024, BFI timely filed a petition for review (Pet. 24-29). On February 15, 2024, the Board accepted the petition for hearing.

On March 4, 2024, the hearing officer granted IEPA's motion to extend the deadline to file the record on appeal to March 14, 2024. On that date, IEPA filed the record.

On April 18, 2024, BFI filed a motion to supplement the record, and on May 3, 2024, IEPA filed its response. On May 16, 2024, the hearing officer partially granted and partially denied the motion. On May 22, 2024, BFI filed the supplemental record on appeal.

BFI waived its statutory decision deadline to a specific date five times: on February 26, 2024; March 7, 2024; March 27, 2024; April 16, 2024; and May 24, 2024. On August 22, 2024, BFI filed an open waiver of its statutory decision deadline.

On June 10, 2024, the parties filed a proposed agreed schedule of discovery: initial written discovery requests served by June 17, 2024, and responses due within 28 days of service of requests. Based on status conferences on August 22, 2024; September 26, 2024; November 21, 2024; January 23, 2025; and March 6, 2025, the hearing officer reported that discovery proceeded.

On April 10, 2025, BFI served notice of deposition of two witnesses on April 17, 2025. On June 10, 2025, BFI filed notice of deposition of two additional witnesses on June 24, 2025.

On July 15, 2025, IEPA filed a motion to consolidate this appeal with PCB 25-12 and PCB 25-44. On July 29, 2025, BFI filed its objection to the motion.

PCB 25-12

On September 19, 2024, the Board granted the parties' request to extend the statutory deadline to appeal a July 29, 2024 IEPA determination. On December 4, 2024, BFI timely filed a petition for review (Pet. 25-12). On December 19, 2024, the Board accepted the petition for hearing.

On January 6, 2025, the hearing officer granted IEPA's oral motion to extend the deadline to file the record on appeal. On February 4, 2025, IEPA timely filed the record.

On February 6, 2025, filed an open waiver of its statutory decision deadline.

Based on status conferences on March 6, 2025; April 24, 2025; and June 17, 2025, the hearing officer reported that the parties continued to conduct and review discovery.

On July 15, 2025, IEPA filed a motion to consolidate this appeal with PCB 24-29 and PCB 25-44. On July 29, 2025, BFI filed its objection to the motion.

PCB 25-44

On January 30, 2025, BFI timely filed a petition for review of a December 26, 2024 IEPA determination. On February 6, 2025, the Board accepted the petition for hearing.

On March 6, 2025, BFI filed an open waiver of its statutory decision deadline.

As agreed by the parties in a status conference on February 20, 2025, IEPA on March 14, 2025, filed the record on appeal.

Based on status conferences on April 24, 2025, and June 7, 2025, the hearing officer reported that discovery and reviewing discovery continued.

On July 15, 2025, IEPA filed a motion to consolidate this appeal with PCB 24-29 and PCB 25-44. On July 29, 2025, BFI filed its objection to the motion.

PETITIONS FOR REVIEW

Background of Davis Junction Landfill

BFI is the permitted owner and operator of the Davis Junction landfill in Ogle County. Pet. 24-29 at 3 (¶11); Pet. 25-12 at 3 (¶13); Pet. 25-44 at 5 (¶17). The landfill consists of three units. Phases II and III accepted only municipal solid waste, and Phase I was a combined municipal waste and RCRA Subtitle C hazardous waste disposal facility. Pet. 24-29 at 3 (¶12); Pet. 25-12 at 3 (¶14); Pet. 25-44 at 6 (¶18), *citing* Petition of BFI Waste Systems of North America, Inc. for Waste Delisting, AS 08-5, slip op. at 8 (Dec. 4, 2008).

Phase I operated from December 1976 to January 1983. Pet. 24-29 at 3 (¶15); Pet. 25-12 at 4 (¶17); Pet. 25-44 at 6 (¶21), *citing* Petition of BFI Waste Systems of North America, Inc. for Waste Delisting, AS 08-5, slip op. at 8 (Dec. 4, 2008). IEPA approved certification of closure for the Davis Junction landfill on December 5, 1984, and post-closure care began on that date. Pet. 24-29 at 3 (¶16, 17); Pet. 25-12 at 4 (¶¶18, 19); Pet. 25-44 at 6 (¶¶22, 23), *citing* Petition of BFI Waste Systems of North America, Inc. for Waste Delisting, AS 08-5, slip op. at 8 (Dec. 4, 2008). The IEPA determination at issue concerns only Phase I of the landfill. Pet. 24-29 at 3 (¶14); Pet. 25-12 at 3 (¶16); Pet. 25-44 at 6 (¶20).

BFI's permit provided for post-closure care of at least 30 years to December 5, 2014. Pet. 24-29 at 4 (¶¶18, 19); Pet. 25-12 at 4 (¶19); Pet. 25-44 at 6 (¶23). On October 21, 2014, IEPA approved BFI's request to modify its permit including a 10-year extension of post-closure care to December 5, 2024. Pet. 24-29 (¶¶20-22); Pet. 25-12 at 4 (¶¶20-22); Pet. 25-44 at 7 (¶¶24-26). The 2014 permit modification required providing financial assurance for post-closure activities. Pet. 24-29 at 4 (¶23); Pet. 25-12 at 4 (¶23); Pet. 25-44 at 7 (¶27). IEPA approved an estimate of post-closure costs of \$818,112 based upon having 10 remaining years of post-closure care. Pet. 24-29 (¶24).

On September 26, 2018, IEPA issued to BFI modified RCRA Hazardous Waste Post-Closure Care Permit No. B-142R2 with an expiration date of May 4, 2028. Pet. 24-29, Exh. A at 7; Pet. 25-44, Exh. B at 9.

PCB 24-29

On behalf of BFI for the Davis Junction landfill, Weaver Consultants Group submitted five requests to IEPA to modify Permit No. B-142R2. These requests were dated November 16,

2018, August 27, 2019, August 18, 2020, January 27, 2022, and December 1, 2022. Pet. 24-29, Exh. A at 1-2. The requests “included updated post-closure cost estimates and minor revisions to BFI’s current RCRA Post-Closure Permit.” *Id.* at 2.

On September 25, 2023, IEPA partially approved the permit modification requests with conditions and modifications, three of which BFI appeals:

1. BFI’s annual costs and one-time cost for post-closure care in the updated cost estimate can be approved by the Illinois EPA. However, the total post-closure care cost estimate cannot be approved by the Illinois EPA at this time. The Illinois EPA has reevaluated the requirements for post-closure care cost estimates and financial assurance under 35 Ill. Adm. Code Part 724 and has determined the total post-closure care estimate must reflect thirty (30) years of post-closure care as required by 35 Ill. Adm. Code 724.217.
2. Within sixty (60) days of the receipt of this letter, BFI must submit a revised post-closure cost estimate (in 2023 dollars) and financial assurance to reflect thirty (30) years of post-closure care in accordance with 35 Ill. Adm. Code 724.217. This revised cost estimate must include items required in Condition 3 and 4 below.
3. The Permittee must include costs associated with re-surveying the wells every five (5) years in accordance with Condition III.J.5 of the Permittee’s RCRA Permit. In addition, copies of the latest well survey information must be provided to the Illinois EPA. Pet. 24-29, Exh. A at 2.

BFI argues that these conditions and modifications misconstrue the cited rules and IEPA’s authority to extend post-closure care requirements. Pet. 24-29 at 5 (¶27).

First, BFI argues that Section 724.217(a)(1) is the only provision in Part 724 that refers to a 30-year post-closure care period, and it does not authorize IEPA to extend that period or require cost estimates beyond 30 years. Pet. 24-29 at 6 (¶31). BFI acknowledges that Section 724.217(a)(2) allows an extension, but it does so only if the Board has found in an adjusted standard proceeding that “the extended period is necessary to adequately protect human health and the environment.” *Id.* at 7 (¶32). BFI argues that IEPA has misconstrued the cited rules and lacked authority to extend post-closure care including financial assurance for an additional 30 years. *Id.* at 8 (¶36).

Second, BFI notes that IEPA’s modification requires it to submit financial assurance for 30 years. Pet. 24-29 at 8-9 (¶37). In addition to increasing one-time and annual costs, IEPA recalculated estimated post-closure costs from \$484,460 to \$2,589,796 in 2022 dollars. *Id.* at 9 (¶¶39, 40), *citing* Exh. A at 6, 18. BFI argues that IEPA misconstrued 35 Ill. Adm. Code 724.217 and lacked authority to require additional post-closure care and increased financial assurance. Pet. 24-29 at 9-10 (¶¶42, 43).

Third, BFI argues that under the Board's rules, extending the post-closure care period is listed as a Class 2 permit modification and not the Class 1* modification it submitted to IEPA. Pet. 24-29 at 11 (¶52), *citing* 35 Ill. Adm. Code 703.Appendix A(E)(2). BFI asserts that Class 2 modifications require additional and substantially different procedures than Class 1 modifications. Pet. 24-29 at 11 (¶53), *citing* 35 Ill. Adm. Code 703.281, 703.282. BFI argues that IEPA could request to extend post-closure care only as a Class 2 permit modification. Pet. 24-29 at 11 (¶54). BFI asserts that IEPA "failed to comply with the procedural requirements for Class 2 permit modifications and lacked lawful authority to extend the post-closure care period." *Id.* at 12 (¶55).

BFI requested that the Board reverse IEPA's determination and grant "the permit modifications it sought without the three challenged modifications and conditions identified above." Pet. 24-29 at 12 (¶56).

PCB 25-12

In a letter dated July 29, 2024, IEPA notified BFI that it had

conducted a review and evaluation of the post-closure status for the Phase I Landfill to determine whether the environmental conditions and associated regulatory requirements identified at this site meet the standards of the Illinois Environmental Protection Act (Act), Title 35 Illinois Administrative Code (35 Ill. Adm. Code) Subtitle G, Subtitle C of the Resource Conservation and Recovery Act (RCRA), and the USEPA's "Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA", dated December 15, 2016 (2016 USEPA Guidance). In addition, USEPA's guidance "Implementing Climate Resilience in Hazardous Waste Permitting Under the Resource Conservation and Recovery Act (RCRA)", dated June 5, 2024 (June 5, 2024, USEPA Guidance) is also referenced in this letter. Pet. 25-12 at 5 (¶24), Exh. A at 1.

IEPA determined that "it is necessary to continue post-closure care of the Phase I Landfill beyond December 5, 2024, for at least thirty (30) years in accordance with 35 Ill. Adm. Code 703.282. Additionally, the facility must modify the current RCRA Post-Closure Plan in order to address current and future environmental concerns identified in this letter." Pet. 25-12 at 5 (¶25), Exh. A at 2.

IEPA required BFI to submit within 60 days "a Class 2 permit modification request to extend post-closure care for the Phase I Landfill," which must include a revised post-closure plan extending post-closure care for Phase I for at least 30 years. Pet. 25-12 at 5 (¶25), Exh. A at 1, 3, *citing* 35 Ill. Adm. Code 724.218(d)(4). IEPA stated that, if BFI did not timely submit a request, IEPA "will initiate a Class 2 permit modification of the RCRA Post-Closure Permit pursuant to 35 Ill. Adm. Code 703.241, 703.270, 703.282, and 703.Appendix A(E)(2). Pet. 25-12 at 5 (¶25), Exh. A at 3.

BFI asserted that IEPA issued this decision *sua sponte* and not in response to any submission from it. Pet. 25-12 at 5 (¶24).

On or about September 6, 2024, BFI submitted to IEPA a request for a Class 2 permit modification extending the post-closure care period for 10 years. Pet. 25-12 at 6 (¶26).

BFI asserts that no provision of the Act or Board rules provides authority for IEPA to extend the post-closure care period. Pet 25-12 at 6 (¶29), *citing* 35 Ill. Adm. Code 724.217(a)(1). BFI acknowledges that 35 Ill. Adm. Code 724.217(a)(2) allows an extension of the post-closure care period, but it argues that it requires a Board finding in an adjusted standard that “the extended period is necessary to adequately protect human health and the environment.” Pet. 25-12 at 7 (¶31). BFI argues that it does not authorize IEPA unilaterally to extend the post-closure care period beyond the 30-year duration established in 35 Ill. Adm. Code 724.217(a)(1). *Id.* BFI also asserts that IEPA’s decision cites U.S. EPA guidance documents that are not binding law. *Id.* at 8 (¶34), *citing* Exh. A at 6 (U.S. EPA guidance), n.2.

BFI concludes by requesting that the Board find that IEPA’s determination exceeded its authority by requiring it to submit a Class 2 permit modification extending post-closure care for the Phase I landfill for 30 years and that the determination is therefore void. Pet. 25-12 at 9 (¶35).

PCB 25-44

BFI states that on July 29, 2024, IEPA issued a letter requiring it to request a Class 2 permit modification extending post-closure care and to include a revised post-closure plan reflecting the extension. Pet. 25-44 at 2 (¶¶6, 7). IEPA added that, if BFI did not timely submit a request, IEPA would initiate a Class 2 modification of the post-closure permit. *Id.* at 3 (¶7). BFI reports that it timely appealed the July 29, 2024 determination. *Id.*, *citing* BFI Waste Systems of North America v. IEPA, PCB 25-12.

On or about September 6, 2024, Weaver Consultants Group submitted a Class 2 Permit Modification application on behalf of BFI in response to IEPA’s July 29, 2024 letter. Pet. 25-44 at 3 (¶9). On or about September 27, 2024, BFI submitted an updated application prepared by Environmental Information Logistics to supersede the application previously submitted on its behalf. *Id.* at 3-4 (¶10). On or about October 1, 2024, BFI submitted to IEPA a Notice of Class 2 Permit Modification and Public Meeting. *Id.* at 4 (¶11).

On December 26, 2024, IEPA issued a decision addressing BFI’s September 27, 2024 application and October 1, 2024 notice. Pet. 25-44 at 4 (¶12), 7 (¶28), Exh. B. IEPA partially approved BFI’s submissions with conditions and modifications. Pet. 25-44 at 4-5 (¶14), Exh. B at 1-2.

IEPA acknowledged that its July 29, 2024 letter “required BFI to submit a request to extend the post-closure care period.” Pet. 25-44 at 4 (¶14), 7-8 (¶29), Exh. B at 1. IEPA reviewed BFI’s two submissions and approved them with conditions and modifications. Pet. 25-44 at 4 (¶14), 8 (¶30). First, IEPA determined that,

[i]n the subject Class 2 permit modification request, BFI requested to extend the postclosure care period for an additional ten (10) years. However as indicated in the Illinois EPA's July 29, 2024, letter, the Illinois EPA determined that the post-closure care period must be extended for an additional thirty (30) years or until such time as no unacceptable risks to human health and the environment is no longer present in the Phase I Landfill, as determined by the Illinois EPA. Pet. 25-44 at 4 (¶14), 8 (¶30), Exh. B at 1-2.

IEPA's determination included an attachment listing revisions to the RCRA Post-Closure Permit No. B-142R2, including requiring post-closure care "until at least December 5, 2054 or until such time as no unacceptable risks to human health and the environment are present in the Phase I Landfill, as determined by the Illinois EPA." Pet. 25-44 at 8 (¶31), Exh. B at 7, 13, 14, 15. IEPA added that its determination to extend the post-closure care period for 30 years was based on factors cited in its July 29, 2024 determination. Exh. B at 2-3; *see* Exh. A at 2-3.

Second, IEPA determined that,

[h]istorically, during the post-closure care period, the Illinois EPA has accepted the facility's proposal to reduce financial assurance liability based on the number of years of post-closure care that had been completed. However, this reduction did not take into consideration the established long-term environmental threats at facilities with hazardous waste remaining on site. The financial risk to the Illinois EPA and citizens of Illinois, should the Illinois EPA have to unexpectedly assume operation of the post-closure care of the facility, had not been appropriately accounted for. The Illinois EPA has evaluated the requirements for post-closure care, cost estimates, and financial assurance for the Phase I Landfill under 35 Ill. Adm. Code Part 724 and has determined that a rolling 30-year post-closure care cost estimate for the Phase I Landfill must be maintained by the facility, as required by 35 Ill. Adm. Code 724.217(a)(1) and 35 Ill. Adm. Code 703.282. Pet. 25-44 at 4-5 (¶14), 8 (¶30), Exh. B at 3.

Third, IEPA determined that,

[a]s previously required by the Illinois EPA's July 29, 2024, letter, and associated modifications, within sixty (60) days of the receipt of this letter, BFI must submit a revised post-closure cost estimate (in 2024 dollars) and financial assurance to reflect thirty (30) years of post-closure care in accordance with 35 Ill. Adm. Code 724.217. Pet. 25-44 at 5 (¶14), 8 (¶30), Exh. B at 4.

BFI cites 35 Ill. Adm. Code 724.217(a)(1), which provides in pertinent part that "[p]ost-closure care for each hazardous waste management unit subject to the requirements of Sections 724.217 through 724.220 must begin after completion of closure of the unit and continue for 30 years after that date. . . ." BFI argues that this rule does not authorize IEPA unilaterally to extend the post-closure care period beyond the 30-year duration. *Id.* at 9 (¶34).

BFI acknowledges that 35 Ill. Adm. Code 724.217(a)(2) provides a procedure to extend the post-closure care period for a hazardous waste landfill. However, it states that the rule requires the Board to issue an adjusted standard finding that “the extended period is necessary to adequately protect human health and the environment.” Pet. 25-44 at 10 (¶¶35, 36). BFI argues that the Board’s rules “provide no basis for Illinois EPA to unilaterally extend the post-closure care period for Petitioner’s Phase I Landfill beyond an initial 30-year post-closure care period, let alone impose a rolling, 30-year post-closure cost estimate and financial assurance obligation.” *Id.* (¶¶34, 36).

BFI also asserts that IEPA’s decision cites U.S EPA guidance documents that are not binding law. *Id.* at 11 (¶39), *citing* Exh. A at 6 (U.S. EPA guidance), n.2.

BFI concludes that IEPA’s determination exceeds its authority by imposing conditions and modifications to extend the post-closure care period, require a 30-year rolling post-closure care cost estimate, and require a revised cost estimate and financial assurance. Pet. 25-44 at 12 (¶40). BFI requests that the Board find that IEPA erred and acted without legal authority and that its December 26, 2024 decision is void as a matter of law. *Id.* at 12-13.

DISCUSSION

Section 101.406 of the Board's procedural rules provides in its entirety that

[t]he Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of 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 where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

In each the three appeals addressed above, IEPA moved to consolidate with the other two (Mot.). In each, BFI filed a response objecting to IEPA’s motions (Resp.).

IEPA argues that each of the three appeals challenges a RCRA permitting decision for BFI’s Davis Junction Landfill and is likely to rely on the same witnesses. Mot. at 1, 3.

IEPA adds that BFI in each of the three appeals has the burden of proof that its submissions will not result in a violation of the Act or Board rules. *See* 415 ILCS 5/40(a)(1) (2014); 35 Ill. Adm. Code 105.112(a). IEPA suggests that this burden of proof does not prevent the Board from consolidating these three cases with one another. *See* Mot. at 3.

Also, the Board notes that BFI has filed an open waiver of its statutory decision deadline in each case. IEPA suggests that no statutory deadline prevents the Board from consolidating them. Mot. at 3.

However, IEPA acknowledges that the three appeals filed by BFI differ procedurally. *See Mot. at 3.* BFI asserts that, in PCB 24-29, the parties began to conduct discovery in the summer of 2024 by serving written requests, responding to interrogatories, and requesting production of documents. *Resp. at 1.* After the parties conducted discovery in PCB 24-29, IEPA issued another permit determination, which BFI appealed on December 4, 2024, in PC 25-12 and a third permit determination, which BFI appealed on January 20, 2025, in PCB 25-44. *Id. at 1-2.*

BFI elaborates that it took depositions of two IEPA witnesses on April 17, 2025, and two additional IEPA witnesses on June 24, 2025. *Resp. at 2.* It argues that the first of these depositions clarified that its scope was limited to IEPA's determination in PCB 24-29. *Id. at 4.* BFI adds that the four depositions spent "little, if any, time" addressing the determinations in PCB 25-12 and 25-44. *Id.*

The Board agrees that consolidating the three separate appeals at this stage of their proceedings would prejudice BFI after it expended time and effort on depositions with the understanding that their scope was limited to PCB 24-29.

The Board notes that IEPA referred repeatedly to the possibility of consolidation. The Board's hearing officer orders referred specifically to a possible motion to consolidate on January 6, 2025, in PCB 25-12, on January 23, 2025, in PCB 24-29, and on February 6, 2025, in PCB 25-12. *Resp. at 2.* However, IEPA moved to consolidate months later on July 15, 2025, after IEPA witnesses had been deposed in April and June of 2025. *Id.* The Board is not persuaded that consolidating the three case and effectively expanding the scope of discovery already completed furthers the interest in convenient and expeditious determination of claims.

The Board also notes BFI's position that, although these three permit appeals have similarities with one another, they concern separate IEPA determinations with "distinct factual and/or legal grounds." *Resp. at 2.* BFI asserts that consolidating them would confuse their distinct issues. *Id.* The Board has summarized those determinations and appeals above and is not persuaded that consolidating them results in more convenient or expeditious resolution.

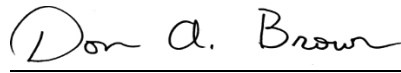
Based on these factors, the Board denies IEPA's motion to consolidate these three appeals.

CONCLUSION

For the reason above, the Board denies the motion to consolidate this appeal with PCB 24-29 and PCB 25-12 and directs its hearing officer to proceed separately to hearing on them.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 4, 2025, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk
Illinois Pollution Control Board