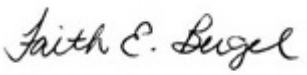
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	)	
Complainants,	)	
v.	)	PCB 18-11 (Enforcement – Water)
CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT and POWER,	)	
Respondent.	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that I have served a true and correct copy of **COMPLAINANTS' APPEAL OF HEARING OFFICER'S RULING ON TABLE 1** via electronic mail to the parties listed on the attached service list before 5:00 p.m.

Respectfully submitted,



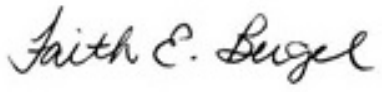
Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
(312) 282-9119
FBugel@gmail.com
Attorney for Sierra Club

Dated: June 16, 2026

CERTIFICATE OF SERVICE

The undersigned, Faith E. Bugel, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named on the attached Service List a true and correct copy of **COMPLAINANTS' APPEAL OF HEARING OFFICER'S RULING ON TABLE 1** before 5 p.m. Central Time on June 16, 2026 to the email addresses of the parties on the attached Service List. The entire filing package, including exhibits, is 14 pages.

Respectfully submitted,



Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
(312) 282-9119
FBugel@gmail.com
Attorney for Sierra Club

SERVICE LIST
PCB 2018-11

City Water Light and Power
Deborah Williams
Regulatory Affairs Director
800 East Monroe
Springfield, IL 62757
Deborah.williams@cwlp.com
(217) 789-2116

City of Springfield
James K. Zerkle
800 East Monroe, 3rd Floor
Springfield, IL 62701
James.zerkle@springfield.il.us

Don Brown
Clerk of the Board
Illinois Pollution Control Board
100 W. Randolph St., Suite 11-500
Chicago, IL 60601
don.brown@illinois.gov
(312) 814-3620

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Complainants, v. CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT and POWER, Respondent.	)	PCB 18-11 (Enforcement – Water)

COMPLAINANTS' APPEAL OF HEARING OFFICER'S RULING ON TABLE 1

Sierra Club, Prairie Rivers Network, and National Association for the Advancement of Colored People (collectively "Complainants") hereby appeal to the Board the Hearing Officer's Ruling on Respondent Springfield, Office of Public Utilities d/b/a City Water, Light and Power's ("Respondent") objection to Complainant's motion to admit into the record Table 1 to Mark Hutson's expert report of January 5, 2025 at the May 5, 2026 hearing on remedy in this matter. Table 1 should have been admitted into the record because the Illinois Rules of Evidence and Illinois case law allow experts to rely on work performed and information compiled by non-witnesses and Table 1 falls within the hearsay exclusion for business records.

PROCEDURAL BACKGROUND

On the first day of the remedy-phase hearings on May 5, 2026, Complainants moved for the admission of Mark Hutson's January 5, 2025 expert report (Ex. 15). May 5, 2026 Hr'g Tr. 11:20-21. Respondent objected to the admission of Table 1 of that expert report. May 5, 2026 Hr'g Tr. 11:22-12:5 ("We're going to object to the use of Table 1."). Respondent's basis for the

objection was that Mark Hutson had not prepared the table himself. *Id.* (stating that Mr. Hutson did not "know what definitions the folks used who prepared the table to categorize one topic to another" and therefore "[]he's not the appropriate witness to be able to lay the foundation for this exhibit"). *Id.* Hearing Officer Webb ruled on the objection to Table 1 that it may be submitted to the record as an offer of proof. May 5, 2026 Hr'g Tr. 12:16-21 (admitting Exhibit 15 and stating that she would "hear the testimony . . . . [and] take the testimony as an offer of proof and then . . . discuss admission of that table").

After Mark Hutson's testimony discussing some of the sites listed in Table 1, Complainants renewed their motion to admit Table 1 into the record as part of Exhibit 15. May 5, 2026 Hr'g Tr. 128:21-24. Respondent maintained their objection to Table 1 and argued, in part, that they did not "know who made the table" and it was not possible to "just go out on the Website and find the same table" because the table is dependent on the factors chosen for consideration. May 5, 2026 Hr'g Tr. 130:7-12 ("You have to choose factors that . . . . caused the site to get on the table or off the table"). Respondent also alluded to a hearsay objection arguing that Table 1 is "offered for the proof of the matter asserted" that other sites are also undertaking removal. *Id.* at 130:17-18. Hearing Officer Webb ruled to maintain Table 1 "as an offer of proof" stating that Respondent "can argue in [their] post hearing briefs for the admission . . . [as to] questions about the document." *Id.* at 130:23-131:3.

LEGAL BACKGROUND

The Illinois Pollution Control Board ("Board") applies a broad standard of relevance in enforcement proceedings, when applying the statutory factors enumerated in Section 33(c) of the Illinois Environmental Protection Act (the "Act"). 415 ILCS 5/33; *Highland v. Pollution Control Bd.*, 66 Ill. App. 3d 144, 145 (1978). Evidence is admissible if it is "material, relevant,

and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." 35 Ill. Adm. Code § 101.626. Additionally, the Board has discretion to admit evidence that supports a good faith argument regarding the interpretation of substantive law. *Id.*

In general, the Board admits evidence more liberally than the Illinois Courts that strictly adhere to the Rules of Evidence. That is, while the Board follows "[t]he rules of evidence and privilege as applied in civil cases in the circuit courts of this State," it may also admit "[e]vidence not [otherwise] admissible under those rules of evidence . . . if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." 5 ILCS 100/10-40; *see also Discovery S. Group et al. v. IPCB and Village of Matteson*, 275 Ill. App. 3d 547, 553-54 (1995) (noting that the records at issue were admissible because they were of the type that a reasonably prudent person would rely on and despite being hearsay evidence).

ARGUMENT

1. **Experts may rely on the work-product of others to support their opinions.**

Expert witnesses are not required to prepare every attachment to or exhibit in support of their testimony themselves. Illinois Rule of Evidence 703, which Illinois courts have adopted for expert testimony, allows experts to base opinions on facts or data provided by non-witnesses when such facts or data would be normally relied upon by experts in the field. 35 Ill. Admin. Code § 101.626; Ill. R. Evid. 703. Rule 703 allows the expert to rely on facts provided to him or her before hearing stating that:

> The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

Ill. R. Evid. 703. While the facts or data an expert relies on need not be admissible, the data at issue in the present case are, in fact, admissible and should be admitted.

Illinois courts have consistently held that experts may base their opinions on facts or data outside of the proceeding, as long as those facts or data are of a type reasonably relied upon by experts in the field. For example, the Illinois Supreme Court has adopted Federal Rule of Evidence 703, which permits experts to rely on such information even if it is not independently admissible, provided it is reliable and commonly used by experts in forming opinions. *Wilson v. Clark*, 84 Ill. 2d 186, 193 (1981) (discussing and applying Fed. R. Evid. 703). In short, the Illinois courts will "allow [expert] opinions based on facts not in evidence." *Id.*

Wilson v. Clark provides an example analogous to the present case with respect to application of Rule 703. In *Wilson v. Clark*, the court held that an expert may rely on hospital records to support the expert's opinions and likewise provide a "response to a hypothetical question based on facts contained in those records" "due to the high degree of reliability of hospital records" and because it would be "extremely time consuming to call into court every person who made an entry in the hospital records." *Wilson v. Clark*, 84 Ill. 2d at 194 (relying on an Advisory Committee Note to Fed. R. Evid. 703 stating that "allowing expert opinions based on facts not in evidence dispenses with the expenditure of substantial time in producing and examining various authenticating witnesses"). Similarly, in the present case, it would be time consuming and resource-intensive to call every individual involved in compiling the information contained in Table 1 as a witness for the sole purpose of authenticating the publicly available information contained therein.

Furthermore, because Table 1 is a compilation of information and data that is available through public-facing sources, it too is highly reliable and verifiable.[1]

Medical records provide an apt comparison in another case as well, *Bong Jin Kim v. Nazarian*. There the court noted that "a physician in his own practice bases his diagnosis on information from numerous sources and of considerable variety . . . . [m]ost of [which] are admissible in evidence, but only with the expenditure of substantial time in producing and examining various authenticating witnesses." *Bong Jin Kim v. Nazarian*, 216 Ill. App. 3d 818, 826-27 (2nd Dist. 1991). A "physician makes life-and-death decisions in reliance upon" these records and so "[h]is validation, expertly performed and subject to cross-examination, ought to suffice for judicial purposes." *Id.*; *see also Piano v. Davison*, 157 Ill. App. 3d 649, 670 (1st Dist. 1987) ("It is permissible for a doctor to testify about statements made by other medical personnel in reports which the witness relied upon in evaluating the mental condition of a patient."); *Lawson v. G. D. Searle & Co.*, 64 Ill. 2d 543, 557 (1976) ("It is enough for a physician, testifying to a medical fact, that he is by training and occupation a physician; whether his source of information for that particular fact is in part or entirety the hearsay of his fellow-practitioners and investigators is immaterial."). Table 1 here is like the medical records at issue in *Bong Jin Kim* in that it is also a collection of information that comes from numerous sources. But unlike medical records, which are under the purview and control of the medical facility,

[1] Table 1 came from a package of information that Earthjustice created for regulators, policymakers, and communities to enable those individuals "to choose effective coal ash pond closures that protect the environment and public health while also creating jobs and benefiting the economy." Earthjustice, *Mapping the Coal Ash Contamination* (Nov. 3, 2022), https://earthjustice.org/feature/coal-ash-contaminated-sites-map#cleanup.

the records at issue here are publicly available and can be verified by anyone. Moreover, as discussed in *Bong Jin Kim*, it would be extremely time consuming to call every person who was involved in gathering the data and compiling it into Table 1.

Respondent argues that it is unclear what factors were considered when selecting which coal ash sites would be presented in Table 1 as well as who created the table. However, those considerations are not outcome determinative to the admissibility question at hand. Table 1 represents a collection of factual data and information gathered from the public-facing industry disclosure documents reporting on compliance and monitoring as required by federal law. The sites included in the table are those that had, at the time the table was created, engaged in coal ash removal. The selection methodology Respondent seeks is immaterial because, in a sense, Table 1 is a just a consolidated list of sites that have successfully excavated coal ash. Therefore, Table 1 is highly reliable because it contains no subjective elements and is based purely on industry-reported data.

As to who created the Table, Mr. Huston's testimony includes a footnote linking to the database prepared by Earthjustice that was used to inform the Table. This database represents a comprehensive summary of CCR compliance, including a range of remedies, and includes a thorough explanation of how the information was gathered and compiled on tabs 1 and 2. While Mr. Hutson did not prepare Table 1, he was privy to the entirety of the underlying database including tabs 1 and 2, as any interested member of the public would also be. Therefore, Mr. Huston was able to testify as to who prepared the Table, what it contains, and offer testimony independently verifying some of the entries in the table. Any other questions about the reliability of the underlying information are ultimately left to the discretion of the hearing officer. *See People v. Almighty Four*

Hundred, 287 Ill. App. 3d 123, 133 (1st Dist. 1997) (finding that an expert report containing measurements made by a different non-testifying expert was admissible because the measurements were the type of data relied upon by experts in the field).

Finally, Illinois case law recognizes that any concerns raised about the evidence supporting an expert's opinion generally go to the weight and do not affect its admissibility. *People v. Lind*, 307 Ill. App. 3d 727, 739 (1999) ("Any weakness in the basis of an expert's opinion goes to the weight of the testimony; it should not affect its admissibility if the facts, data, or opinions are reasonably relied upon by experts in the relevant field."). Therefore, if the table is a compilation of records of the sort experts ordinarily consult (for example, aggregated records, summaries, or compilations maintained by organizations in the relevant domain), the expert may rely on it under Rule 703, and any dispute about completeness, accuracy, or representativeness is properly addressed through cross-examination and competing evidence rather than exclusion. *Id.* In conclusion, Illinois Rule of Evidence 703 (as adopted and applied in Illinois) allows experts to base opinions on facts or data provided by non-witnesses when such facts or data would be normally relied upon by experts in the field. As a result, Complainants' expert, Mark Hutson, may rely on a table created by another organization that compiles records. Table 1 should, therefore, be admitted as evidence with the Mark Hutson's validation and availability for cross examination.

2. Table 1 is admissible over a hearsay objection.

For evidence relied upon by expert witnesses to be admitted as exhibits into the record, the requirement is the same as for any other evidence—it must be material, must be relevant, and would be relied upon by prudent persons. 35 Ill. Adm. Code § 101.626 - Information Produced at Hearing, *People of the State of Illinois v. Atkinson Landfill Co.*, 2014 Ill. ENV LEXIS 1, PCB

No. 13-28 (Enforcement - Water) (2014) (citing 35 Ill. Adm. Code 101.626) ("The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged."). This standard aligns with the principles established in Illinois case law and Illinois Rule of Evidence 703 and is generally a relaxed standard.

Accordingly, even evidence that might otherwise be considered hearsay may be admitted if it is of the type that reasonably prudent people would rely on in the conduct of serious affairs. Section 12(a) of the Illinois Administrative Procedures Act ("IL APA") is instructive in this regard. Section 12(a) states in part that:

> The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

Ill. Rev. Stat. 1987, ch. 127, par. 1012(a). Thus, "[w]hile hearsay evidence has generally been held to be inadmissible in an administrative hearing . . . section 12(a) appears to create an exception to the rule when the hearsay is reliable." *Metro Utility v. ICC*, 193 Ill. App. 3d 178, 185 (2nd Dist. 1990) (citations omitted).

The Board's own rules mirror Section 12(a) of the IL APA and implement an evidentiary standard that is more lenient than the Illinois Rules of Evidence applied by Illinois courts. Section 101.626 of the Illinois Pollution Control Board's procedural rules states that "[t]he hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged." Ill. Admin. Code tit. 35 § 101.626. As such, the Board may admit evidence that is material, relevant, and commonly relied upon by prudent persons in carrying out serious affairs, *even if it does not*

strictly conform to technical evidentiary rules, provided it is not precluded by statute. *See 35 Ill. Adm. Code* § 101.626 - Information Produced at Hearing; *Metro Utility v. ICC*, 193 Ill. App. 3d 178 (1990) (emphasis added). This flexibility supports the admission of data compilations relied upon by experts, particularly when the data is both trustworthy and relevant to the matter at hand.

Further, if an expert relies on a data compilation that would otherwise be hearsay, it is admissible if it falls within the business records exclusion to the hearsay rule. According to the Illinois Rules of Evidence Section 803(6), types of evidence that would not be excluded by the hearsay rule include:

> Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the opposing party shows that the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Ill. R. Evid. 803(6). Courts have found that data compilations qualify as business records under Section 803(6) if they meet the foundational requirements. For example, *in People v. Maya*, the court admitted Facebook records as business records because they were authenticated by a custodian of records and created in the regular course of business. *People v. Maya*, 2017 IL App (3d) 150079, ¶ 100 (2017). Similarly, in *Ortega v. CACH, LLC*, the court noted that third-party documents could become business records of an organization if they are incorporated into the organization's records, relied upon in its regular activities, and deemed trustworthy. *Ortega v. CACH, LLC*, 396 S.W.3d 622 (Tex. App. 2013) ("The theory underlying the business-records

exception is that there is a certain probability of trustworthiness of records regularly kept by an organization while engaged in its activities and upon which it relies in the ordinary course of its activities.").

Similarly here, Table 1 contains a compilation of data that Earthjustice routinely updates and is the type of resource that the organization creates in the ordinary course of its activities. Earthjustice began tracking coal ash remediation activities "[b]eginning in 2018" when "coal-fired electric utilities were compelled to publicly report groundwater monitoring data … following transparency requirements imposed by federal coal ash regulations … ." Earthjustice, *Mapping the Coal Ash Contamination* (Nov. 3, 2022), https://earthjustice.org/feature/coal-ash-contaminated-sites-map#cleanup. Consequently, as required by federal law, companies began to regularly report this data as part of their normal course of business. Earthjustice and another organization gathered and organized the data also in the regular course of their business. *Id.* ("Legal and technical experts from Earthjustice, Environmental Integrity Project, and partner organizations located and collected information from the data disclosures."). Eventually, this information was compiled into a single resource and made available to the public on Earthjustice's webpage. *Id.* The value of this public resource lies entirely in its accuracy. *See Birch v. Drummer*, 139 Ill. App. 3d 397, 407 (1985) (stating that a report "was useless unless accurate" as part of the discussion on reliability of a business record). Because these records were originally created by the utilities as part of the regular course their business and then collected and compiled as part of Earthjustice's business for public use, these compilations fall within the business records exemption to the hearsay rule.

Here, the origin and development of Table 1 is readily available for public scrutiny. There is no subjectivity to this type of record as it merely takes existing data and consolidates

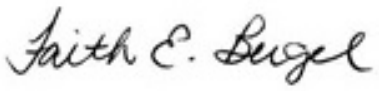
into a single public resource without editorializing the information. There is also no question about the reliability of the underlying information used to populate the table as it comes directly from entities submitting compliance reports and was made publicly available with the intention of being a resource for other's use. *See supra* note 1 (providing a link to Earthjustice's coal ash monitoring website); *Thakore v. Universal Mach. Co. of Pottstown*, 670 F. Supp. 2d 705, 723 (N.D. Ill. 2009) (finding, among others, the fact that "it [was] impossible to determine who provided the underlying factual information on which their conclusions are based and whether those persons were persons with knowledge" as inconsistent with the requirements of Rule 803(6)). Finally, hearsay within hearsay is admissible when each layer of hearsay is covered by its own exemption. Ill. R. Evid. 805. Therefore, Table 1 is a business record and is therefore admissible under an exclusion to the hearsay rule without a secondary witness to authenticate them. Ill. R. Evid. 803(6).

A compilation of data relied upon by an expert can be admitted as a business record exception to hearsay at the Illinois Pollution Control Board if it satisfies the foundational requirements under Illinois Supreme Court Rule 236 and Illinois Rule of Evidence 803(6). Given Mark Hutson's extensive experience working on coal ash issues, Mr. Hutson was qualified to provide a foundation for the admission of Table 1. The Board's procedural rules and the IL APA provide additional flexibility, allowing for the admission of reliable and relevant evidence commonly relied upon by prudent persons, even if it does not strictly conform to technical evidentiary rules. Ill. Sup. Ct., R 236, 35 Ill. Adm. Code § 101.626 - Information Produced at Hearing; *Metro Utility v. ICC,* 193 Ill. App. 3d 178 (1990).

CONCLUSION

For all the reasons stated above, Complainants respectfully request that the Board grant Complainant's appeal and admit Table 1 into evidence in this matter.

Respectfully submitted,



Faith E. Bugel
1004 Mohawk
Wilmette, IL 60091
(312) 282-9119
FBugel@gmail.com
Attorney for Sierra Club

Priyam Desai
Staff Attorney, Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612
(415) 294-0910
priyam.desai@sierraclub.org