

**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 MOTION FOR LEAVE TO FILE  
OBJECTION TO RESPONDENT’S MOTION TO SUPPLEMENT RECORD**

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 101.500, moves the Hearing Officer for leave to file its Objection to Respondent’s Motion to Supplement Record. In support, Petitioner states the following:

1. On May 13, 2026, Respondent Illinois Environmental Protection Agency’s Response to Petitioner’s Cross-Motion for Summary Judgment was filed. Within that same filing, Respondent’s Motion to Supplement Record was included.

2. On May 21, 2026, Respondent orally moved to file a reply to Petitioner’s response to Illinois EPA’s summary judgment motion. The Hearing Officer thereafter granted the parties until June 5, 2026, to file their respective replies. Petitioner subsequently moved for an extension of that reply deadline, which the Hearing Officer granted on June 9, 2026, extending the deadline to June 10, 2026.

3. Good cause exists to grant Petitioner leave to file its Objection to Respondent’s Motion to Supplement Record. Because Respondent’s Motion to Supplement Record was included in the filing of its Response to Petitioner’s Cross-Motion

for Summary Judgment and the deadline for replies to such responses subsequently was extended, Petitioner's deadline to respond to Respondent's Motion to Supplement Record was not properly calendared to reflect the 14-day time period for such responses set forth in 35 Ill. Adm. Code 101.500(d) due to inadvertent error. Accordingly, Petitioner seeks leave to file its Objection to Respondent's Motion to Supplement Record, which is attached hereto as Exhibit A.

WHEREFORE, for the above reasons, Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, moves the Hearing Officer for leave to file its Objection to Respondent's Motion to Supplement Record, which is attached hereto as Exhibit A, and for such other and further relief as deemed appropriate.

DATED: June 10, 2026

Respectfully submitted,

Scott B. Sievers  
Ill. Atty. Reg. No. 6275924  
Brown, Hay + Stephens, LLP  
P.O. Box 2459  
205 S. Fifth Street  
Springfield, Illinois 62705  
(217) 544-8491 (telephone)  
(217) 544-9609 (facsimile)  
ssievers@bhslaw.com

BFI WASTE SYSTEMS  
OF NORTH AMERICA, LLC,

Petitioner.

BY: s/Scott B. Sievers  
Scott B. Sievers  
Attorney for Petitioner



**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.	)	

**OBJECTION TO RESPONDENT’S MOTION TO SUPPLEMENT RECORD**

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 101.500, objects to Respondent’s Motion to Supplement Record as follows:

1. Section 105.116(a) of the regulatory provisions applicable to this matter provides that Illinois EPA “must file with the Board the entire record of the Agency’s ... decision[.]” 35 Ill. Adm. Code 101.202, 105.116(a); *see also* 35 Ill. Adm. Code 105.212(a) (“The Agency must file its entire Agency record of decision with the Clerk[.]”) This Board has held that “[t]he record must include all documents that the Agency either relied on or ‘reasonably should have relied on’ and it is the Agency’s responsibility to file the complete record.” *KCBX Terminals Company v. Illinois EPA*, 2014 WL 1598132, at \*11 (PCB No. 14-110) (Order of April 17, 2014).

2. Section 105.212(b) of those provisions states that Illinois EPA’s record must include:

- 1) Any permit application or other request that resulted in the Agency's final decision;

- 2) Correspondence with the petitioner and any documents or materials submitted by the petitioner to the Agency related to the permit application;
- 3) The permit denial letter that conforms to the requirements of Section 39(a) of the Act or the issued permit or other Agency final decision;
- 4) The Agency public hearing record of any Agency public hearing that may have been held before the Agency, including any transcripts and exhibits; and
- 5) Any other information the Agency relied upon in making its final decision.

35 Ill. Adm. Code 105.212(b).

3. On March 13, 2024, Illinois EPA filed the Record on Appeal in this case. Jacob Nutt, an Illinois EPA Environmental Engineer III, signed the Certification of Record on Appeal that accompanied the Record on Appeal certifying that it was “true and correct to the best of my knowledge, information and belief.” Nutt was particularly qualified to sign the certification, as he was the engineer assigned to review Petitioner’s five permit modification submittals at issue in this case. (Pet. Mot. for Summ. J. (Ex. 2 (Cooperider dep.) at 22:12–14, 22:18–20; see Ex. 4 (Halteman dep.) at 20:5–12; Ex. 3 (Nutt dep.) at 13:13–19).

4. Now with Respondent’s Motion to Supplement Record, Illinois EPA seeks to supplement the Record on Appeal to include the 2016 Memorandum of Agreement between the Agency and U.S. EPA characterized as their RCRA Delegation Agreement. (Mot. at 1). In support of its motion, Illinois EPA asserts that “[t]he Delegation Agreement was inadvertently left out of the Record filed in this case, but has become increasingly relevant due to Petitioner’s challenge to Illinois EPA’s consideration of a December 16, 2016 USEPA RCRA Guidance document, which is in the Permit Record as R. 001727-R. 001645[.]” (Mot. at 1). Illinois EPA contends that “[t]he Delegation Agreement was

executed in 2016, and governs Illinois EPA's administration of the Illinois RCRA program. Accordingly it was necessarily considered by Illinois EPA prior to the date of the 2023 Permit Decision in our case." (Mot. at 2). This is at odds with the Agency's prior statements to this Board and counsel.

5. The Board will recall that Illinois EPA's September 25, 2023, decision did not cite any U.S. EPA guidance document as the basis for that decision. (R 000131–000136). The Agency's reliance upon that document was identified in the notes of the permit reviewer, Jacob Nutt. (R 000223–000224). Nonetheless, the document was not included in the Record on Appeal originally filed by Illinois EPA on March 13, 2024. (R 000001–R 001626). Petitioner had to file a Motion to Supplement Record on Appeal to specifically request that this guidance document referenced in the reviewer's notes be included in the record. (Mot. to Supp. Record on Appeal at 3–4). Further, while Illinois EPA did not object but agreed to inclusion of the December 16, 2016, U.S. EPA guidance document in the record, the Agency did qualify its response, stating, "**Without agreeing that Illinois EPA relied on these documents in this particular permit decision**, the documents do provide USEPA's guidance to delegated states regarding post-closure care for hazardous waste landfills, such as Petitioner's landfill." (Illinois EPA's Resp. to Mot. to Supp. Record at 1–2) (emphasis added). Thus, back when it filed its response to Petitioner's Motion to Supplement Record on May 3, 2024, Illinois EPA knew that the reviewer's notes referenced the December 16, 2016, guidance document but went out of its way not to agree that it relied upon it in reaching the Agency's September 25, 2023, decision. Consequently, Illinois EPA's last-minute effort to include the Delegation Agreement in the record ostensibly due to Petitioner's questioning of the Agency's reliance

upon the December 16, 2016, guidance document that it now contends it had no choice but to consider rings hollow and should not be countenanced by this Board.

WHEREFORE, for the above reasons, Petitioner, BFI WASTE SYSTEMS OF NORTH AMERICA, LLC, objects to Respondent's Motion to Supplement Record and prays that the Board deny the same and grant such other and further relief as deemed appropriate.

DATED: June 10, 2026

Scott B. Sievers  
Ill. Atty. Reg. No. 6275924  
Brown, Hay + Stephens, LLP  
P.O. Box 2459  
205 S. Fifth Street  
Springfield, Illinois 62705  
(217) 544-8491 (telephone)  
(217) 544-9609 (facsimile)  
ssievers@bhslaw.com

Respectfully submitted,

BFI WASTE SYSTEMS  
OF NORTH AMERICA, LLC,

Petitioner.

BY: s/Scott B. Sievers  
Scott B. Sievers  
Attorney for Petitioner

*BFI Waste Systems of North America, LLC v. Illinois EPA*  
**Pollution Control Board No. 24-29**

**CERTIFICATE OF SERVICE**

Scott B. Sievers of the law firm of Brown, Hay + Stephens, LLP herein certifies that on June 10, 2026, from Springfield, Illinois, he electronically submitted for filing the foregoing **PETITIONER'S MOTION FOR LEAVE TO FILE OBJECTION TO RESPONDENT'S MOTION TO SUPPLEMENT RECORD** with the Pollution Control Board by using the Clerk's Office On-Line (COOL) eFile system. Scott B. Sievers further certifies that on June 10, 2026, he served the other parties in this case with a copy of the foregoing document by transmitting the document by e-mail to the parties' representatives, who are identified below, at their designated e-mail addresses of record:

Senior Assistant Attorney General Christopher J. Grant  
Christopher.Grant@ilag.gov  
Assistant Attorney General Taylor Desgrosseilliers  
t.desgrosseilliers@ilag.gov  
Assistant Attorney General Justin Bertsche  
justin.bertsche@ilag.gov  
Assistant Attorney General Kevin J. Garstka  
kevin.garstka@ilag.gov  
Environmental Bureau  
Office of the Illinois Attorney General  
69 W. Washington Street, 18th Floor  
Chicago, IL 60602  
maria.caccio@ilag.gov

**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 this instrument are true and correct, except as to matters herein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Scott B. Sievers  
Ill. Atty. Reg. No. 6275924  
Brown, Hay + Stephens, LLP  
P.O. Box 2459  
205 S. Fifth Street  
Springfield, Illinois 62705  
(217) 544-8491 (telephone)  
(217) 544-9609 (facsimile)  
ssievers@bhslaw.com

**BFI WASTE SYSTEMS  
OF NORTH AMERICA, LLC,**

Petitioner

BY: s/Scott B. Sievers  
Scott B. Sievers  
Attorney for Petitioner