

ILLINOIS POLLUTION CONTROL BOARD

August 20, 2026

BFI WASTE SYSTEMS OF NORTH	)	
AMERICA, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-29
	)	(Permit Appeal - RCRA)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by A. Tin):

On May 13, 2026, the Illinois Environmental Protection Agency (Agency) filed a response to BFI Waste Systems of North America, LLC's cross-motion for summary judgment. Along with its response, the Agency filed a motion to supplement the record (Mot.). On June 10, 2026, Petitioner filed a motion for leave to file an objection to the Agency's motion to supplement the record, along with an attached objection (Objection).

The Agency's motion seeks to supplement the record with a document titled Memorandum of Agreement Between the State of Illinois and the United States Environmental Protection Agency (USEPA), Region 5 (Delegation Agreement). Mot. at 1. The Agency states that the Delegation Agreement was inadvertently omitted from the record filed with the Board but has become increasingly relevant because the Petitioner challenges the Agency's consideration of a USEPA Resource Conservation and Recovery Act (RCRA) Guidance document dated December 16, 2016. *Id.* The Agency further states that the Delegation Agreement requires the Agency to consider such guidance. *Id.* at 1-2, *see also* Agency Response to Petitioner's Cross-Motion for Summary Judgment at 17. The Agency argues that the 2016 Delegation Agreement governs its administration of Illinois' RCRA program and therefore was considered and relied upon before the 2023 permit decision subject at issue in this appeal. Mot. at 2. The Agency also argues that the Delegation Agreement is highly relevant and publicly available and, therefore, its inclusion in the record cannot prejudice Petitioner. *Id.* In support of its request, the Agency cites Board decisions permitting parties to supplement the record, during, and even after, briefing on motions for summary judgment. *Id.*

Petitioner objects to the Agency's motion to supplement the record. In its objection, Petitioner first argues that the Environmental Engineer III who reviewed the permit modifications at issue in this appeal certified that the record was "true and correct to the best of my knowledge, information and belief." Objection at 2. Petitioner further challenges the Agency's explanation that the Delegation Agreement was inadvertently omitted from the record, citing the Agency's response to Petitioner's April 18, 2024, motion to supplement the record. Objection at 2-3, *see also* Agency 5/3/24 Resp. at 1-2.

The Board grants the Petitioner's motion for leave to file an objection to the Agency's motion to supplement the record and accepts the attached objection.

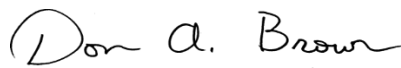
The Board recognizes that a permit appeal is based on the record before the Agency when it made its decision and a party should not be permitted to supplement the record merely to add a new justification for a decision after the fact. The Board also recognizes Petitioner's concern regarding the timing of the Agency's motion. Here, however, the Agency represents that it relied on the Delegation Agreement when reviewing the permit decision subject to this appeal and that the document was inadvertently omitted from the record. The Delegation Agreement predates the 2023 permit decision, and the Board finds the Agency's representation of reliance sufficient to support its inclusion in the record. Additionally, because the Delegation Agreement is publicly available, its inclusion in the record does not unduly prejudice Petitioner. The Board's decision to allow supplementation does not permit the Agency to alter or supplement the substantive basis for the 2023 permit decision; rather, it permits the record to be completed with a pre-existing document that the Agency represents it relied upon in making that decision.

For these reasons, the Board grants the Agency's motion to supplement the record and accepts the attached Delegation Agreement into the record.

Because the Delegation Agreement is being added to the record after Petitioner filed its motion for summary judgment, the Board will allow the parties an opportunity to amend their filings, including their motions for summary judgment and responses thereto. The Board directs the hearing officer to schedule a status conference to discuss any potential amendments and to establish appropriate deadlines and briefing schedules.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 20, 2026, by a vote of 5-0.

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

Don A. Brown, Clerk
Illinois Pollution Control Board