BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
WASTE MANAGEMENT OF ILLINOIS, INC.	)	
	)	
Petitioner,	)	
	)	**PCB 26-39**
	)	**(Permit Appeal - RCRA)**
	)	
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Waste Management of Illinois, Inc.'s Objection to Respondent's Motion to Supplement Record, a copy of which is herewith served upon you.

Dated: October 8, 2026

Waste Management of Illinois, Inc.

/s/ Kristen L. Gale
One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Waste Management of Illinois, Inc.'s Objection to Respondent's Motion to Supplement Record was electronically filed on October 8, 2026 with the following:

Don Brown, Clerk of the Board
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and copies were sent via e-mail on October 8, 2026 to the parties on the service list.

Dated: October 8, 2026

Waste Management of Illinois, Inc.

/s/ Kristen L. Gale
One of its Attorneys

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Electronic Filing: Received, Clerk's Office 10/08/2026

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	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
Respondent.	)	

OBJECTION TO RESPONDENT'S MOTION TO SUPPLEMENT RECORD

Waste Management of Illinois, Inc. ("WMIL") responds and objects to Illinois Environmental Protection Agency's ("Illinois EPA" or "Agency") motion to supplement the record. Only documents that were relied on, or should have been relied on, in forming a final decision may be in a permit record. In this case, the Agency did not identify the 2016 RCRA Delegation Agreement with USEPA ("Delegation Agreement") as one of the documents it relied on in forming its decisions on the two permits that are the subject of this appeal ("Final Decisions"), and the Agency provides no explanation on how it relied on the Delegation Agreement in making the Final Decisions. Further, the Agency should not rely on the Delegation Agreement in forming its decision because the Delegation Agreement is a statement of general applicability that implements policy, rendering it an unpromulgated rule. Because the Agency did not rely on the Delegation Agreement in forming the Final Decisions and should not rely on it, the Board should deny the Agency's motion.[1]

[1] WMIL made good faith efforts to reach an agreement with Illinois EPA by proposing that additional documents also be added to the record. Illinois EPA refused and instead filed its motion.

I. Standard of Law

Pursuant to the Illinois Pollution Control Board ("Board") Rules, the Agency record includes any information the Agency relied upon in making its final decision. 35 Ill. Adm. Code 105.212(b)(5). The Agency must file the record with the Board, and must include a certification by the Agency. 35 Ill. Adm. Code 105.116(b). Further, the hearing for a permit appeal must be "based exclusively on the Agency record before the Agency at the time the permit or decision was issued…." 35 Ill. Adm. 105.214(a). "Typically, evidence that was not before the Agency at the time of its decision is not admitted at hearing or considered by the Board." *Community Landfill Company v. Illinois EPA*, PCB 1-170, (Dec. 6, 2001), *slip op*. at 4. (citations omitted). However, the Board has made it clear that the record in a permit appeal includes documents that the Agency considered or reasonably should have considered in making its permitting decision. *United Disposal of Bradley, Inc. v. IEPA*, PCB 03-235, *slip op.* at 2 (June 17, 2004); *Land and Lakes Company*, PCB90-118, 1990 Ill. ENV LEXIS 901, *26 (Nov. 8, 1990). In this case, Illinois EPA cannot meet these standards regarding the Delegation Agreement.

II. Argument

A. The Delegation Agreement Is Not Identified in the Review Documents, Negating Any Claim of Consideration

Because the Delegation Agreement was not identified as one of the documents the Agency reviewed in making the Final Decisions, it is evident that the Agency did not consider it. On April 27, 2026, the Agency filed the record for the appeal. Pursuant to Section 105.116, Kelly Huser certified that the index and record were "true and correct." *WMIL v. Illinois EPA*, Certificate of Record on Appeal, April 27, 2026. As part of the record, the Agency included its permit file (R000001-000427) and correspondence (R000428-456). The Delegation Agreement was not

included in the record, nor is it described as one of the documents reviewed or relied upon by the Agency. Rather, the only "delegation agreement" described is a delegation agreement related to the New Source Performance Standards in the Lifetime Operating Permits for the landfill gas collection system, which is unrelated to the Delegation Agreement. *See* R000047, R000049, R000053. In comparison, the Agency identified the USEPA 2016 Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA ("USEPA Guidelines") as one of the documents that was the basis for its decision in its review documents (*see* R000001), which at least provides the Agency's purported reason for including it in the record.[2]

B. The Agency Provides No Explanation for How it Considered the Delegation Agreement, Nullifying Any Claim of Consideration

Illinois EPA provides no explanation for ***how*** the Delegation Agreement was considered or relied upon for their Final Decisions. The Agency claims that the Delegation Agreement states that the Illinois RCRA program must be conducted in a manner equivalent to the Federal program, but does not explain how that equivalent manner applies here. Agency Mot., p. 1. In fact, in this case if the Delegation Agreement applied at all to the Agency's Final Decisions, its application would show that USEPA had a right to object – but did not object – to the Illinois EPA's longstanding practice, from 2014 until at least 2021, of consistently reducing the financial assurance values for the CID Recycling & Disposal Facility. *See* WMIL Petition (March 9, 2026), ¶9, and the July 29th Permit Modification, attached as Ex. B to the Petition; *See* Delegation Agreement, p. 8. The Agency's only explanation for attempting to include the Delegation

[2] However, as explained below, the Agency's use of the USEPA Guidelines for the Final Decisions was improper because the USEPA Guidelines are an unpromulgated rule. *See infra*, §II.C.

Agreement in the Record is a vague reference that the Delegation Agreement is at the "heart" of their decision-making authority. Agency Motion, p. 2. But if the Board were to accept that to be true, then any statute, guidance, or policy regarding Illinois EPA's authority could be pulled into a permit record.

Further, Illinois EPA's claim that the Delegation Agreement was "inadvertently left out of the Record" is difficult to accept, given that Illinois EPA appears to have "inadvertently" left out the same agreement from the record of two other similar appeals. In *BFI v. Illinois EPA*, PCB24-29 (Aug. 20, 2026), which the Agency relies upon in support of its motion, the Board granted the Agency's request to supplement because the Agency represented that it "inadvertently omitted" the Delegation Agreement from the record. *BFI v. Illinois EPA*, PCB24-29 (Aug. 20, 2026), *slip op.*, p. 2. On the same day as their motion here, Illinois EPA also filed a motion to supplement the record with the Delegation Agreement in *WMIL v. Illinois EPA*, PCB25-9/25-10, also stating it was "inadvertently left out of the record."[3] *See WMIL v. Illinois EPA*, PCB25-9/25-10, Respondent's Motion to Supplement Record, (Sept. 24, 2026), p. 2. Because of the similarity in filings, this appears to be a coordinated effort to shoe-horn the Delegation Agreement into the records of these appeals, despite no evidence that it was ever relied upon.

C. The Delegation Agreement Should Not Be Relied Upon Because It Is an Unpromulgated Rule

As applied by the Agency, the Delegation Agreement is an unpromulgated rule, which "may not be invoked by an administrative agency for any purpose." 5 ILCS 100/5-10(c). Illinois

[3] Indeed, the motions appear to be practically identical word-for-word. *Compare WMIL v. Illinois EPA*, PCB26-39, Respondent's Motion to Supplement Record, (Sept. 24, 2026), and *WMIL v. Illinois EPA*, PCB25-9/25-10, Respondent's Motion to Supplement Record, (Sept. 24, 2026). Given the identical arguments, WMIL's response in this matter and in PCB25-9/25-10 are equally similar.

EPA has moved to supplement the record to include the Delegation Agreement in three similar appeals, making it clear that the Agency is applying the Delegation Agreement as a statement of general applicability that implements policy affecting the rights of persons outside the Agency. Accordingly, it falls within the definition of a "rule" under the Illinois Administrative Procedures Act ("APA). 5 ILCS 100/1-70; *City of Joliet v. Illinois EPA*, PCB 09-25 (May 7, 2009), *slip op.*, p. 22. However, there is no evidence that the Delegation Agreement was ever subjected to the APA's rulemaking requirements - including public notice, opportunity for public comment, and filing with the Secretary of State. 5 ILCS 100/5-35, 5-40, 5-65. Indeed, the Board has similarly found that an inter-agency agreement was an unpromulgated rule, and held that the Agency's reliance on it was invalid. *City of Joliet v. Illinois EPA*, PCB 09-25 (May 7, 2009), *slip op.*, p. 22 (Board found that the Agency's claim of exceedance of the inter-agency agreement not a proper ground for permit denial). Here, because the Agency's use of the Delegation Agreement is as an unpromulgated rule, the Agency should not and may not rely upon the Delegation Agreement in its Final Decisions. As such, the Delegation Agreement may not be included in the record.[4] *See City of Quincy v. Illinois EPA*, PCB 08-86 (June 17, 2010), *slip-op*, p. 32-33.

III. Conclusion

There is no evidence that the Agency relied on the Delegation Agreement, nor does the Agency provide any explanation for how it relied on the document, negating any claims of reliance.

[4] Similarly, the Agency's reliance on the USEPA Guidelines was also improper because the USEPA Guidelines are an unpromulgated rule.

Also, because the Delegation Agreement is an unpromulgated rule, the Agency cannot and should not rely upon it. The Hearing Officer should deny the Agency's motion to supplement the record.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

Petitioner,

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One of its Attorneys

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