

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
	)	
Petitioner,	)	
	)	PCB 25-9, 25-10
v.	)	(Permit Appeal – RCRA)
	)	(Consolidated)
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

NOTICE OF FILING

TO: Attached Service List Via Email

PLEASE TAKE NOTICE that on October 22, 2026, I caused to be filed with the Clerk of the Illinois Pollution Control Board in the above referenced case via the “COOL” system the attached Respondent’s, Illinois Environmental Protection Agency’s, Motion for Leave to File, *Instant*, Its Reply in Support of Its Motion to Supplement the Record.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

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CERTIFICATE OF SERVICE

I, Justin Bertsche, an Assistant Attorney General, hereby certify that on the 22nd of October 2026, I caused to be served the foregoing Notice of Filing and Respondent's Motion for Leave to File, *Instantly*, Its Reply in Support of Its Motion to Supplement the Record, upon the parties named on the attached Service List via email.

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**RESPONDENT’S MOTION FOR LEAVE TO FILE, *INSTANTER*, ITS REPLY IN
SUPPORT OF ITS MOTION TO SUPPLEMENT THE RECORD**

Respondent, Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), pursuant to 35 Ill. Adm. Code 101.500(e), hereby moves the Illinois Pollution Control Board (“Board”) for leave to file its Reply in Support of its Motion to Supplement the Record. In support of this motion, Respondent states as follows:

1. On September 24, 2026, Respondent filed its Motion to Supplement the Record (“Motion”) with a single publicly available document titled “Memorandum of Agreement Between the State of Illinois and the United States Environmental Protection Agency Region 5” (“Delegation Agreement”) which the Agency relied upon in making its Final Decisions. *See* Motion at 2.

2. On October 8, 2026, Petitioner filed its Objection to Respondent’s Motion to Supplement the Record (“Objection”). Petitioner’s Objection ignores Section 105.212(b)(5) of the Board rules on Appeals of Final Decisions of State Agencies (“Board Permit Appeal Rules”) and raises objections that are irrelevant as a matter of law and incorrect as a matter of fact. Moreover, Respondent’s Motion entirely overlooks the controlling Board Order entered in *BFI Waste Systems of North America, LLC v. Illinois Environmental Protection Agency*, PCB 2024-029 (August 20,

2026). In the time since Petitioner filed its Objection, the Hearing Officer found that the Board Order in *BFI Waste Systems* was controlling and granted Illinois EPA's motion to supplement the record with this same Delegation Agreement dealing with identical legal issues in *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility) v. Illinois Environmental Protection Agency*, PCB 26-39 (October 19, 2026).

3. Section 101.500(e) of the Board's Procedural Rules provides, "[t]he moving person will not have a right to reply, except as the Board or the hearing officer permits to prevent material prejudice. A motion for permission to file a reply must be filed with the Board within 14 days after service of the response." 35 Ill. Adm. Code 101.500(e).

4. In the absence of an opportunity to file a reply to Petitioner's Objection, Respondent will be materially prejudiced. *See* 35 Ill. Adm. Code 101.500(e). Specifically, Respondent must be permitted to reply to Petitioner's objections which (1) baselessly aim to add constraints to the regulation governing which documents must be included in the agency record, *see* 35 Ill. Adm. Code 105.212(b)(5); (2) falsely assert that Illinois EPA did not consider the Delegation Agreement in making its Final Decisions; (3) wrongly maintain that Illinois EPA failed to explain how it relied upon the Delegation Agreement; (4) insinuate that Illinois EPA disingenuously represents it relied upon the Delegation Agreement; and (5) erroneously argue that the Delegation Agreement is an unpromulgated rule. Additionally, Respondent reiterates that the Board Order in *BFI Waste Systems* and the Hearing Officer Order in *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* are conclusively dispositive of Respondent's Motion. A copy of the proposed reply is attached hereto as Exhibit A. By this Motion, Respondent seeks leave to file its reply with the Board to avoid material prejudice.

5. Petitioner filed its Objection on October 8, 2026. Fourteen days after October 8, 2026, is October 22, 2026. Therefore, Respondent's motion for leave to file its reply and attached Motion, filed with the Board on October 22, 2026, is timely filed.

WHEREFORE, Respondent, Illinois Environmental Protection Agency, respectfully requests that the Hearing Office grant its Motion for Leave to File, *Instantly*, its Reply in Support of its Motion to Supplement the Record and other such relief as the Hearing Officer deems proper.

Respectfully submitted,

Illinois Environmental Protection Agency
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Attorney General of the State of Illinois

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**RESPONDENT’S MOTION FOR LEAVE TO FILE, *INSTANTER*, ITS REPLY IN
SUPPORT OF ITS MOTION TO SUPPLEMENT THE RECORD**

EXHIBIT A

RESPONDENT’S REPLY IN SUPPORT OF ITS MOTION TO
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**REPLY IN SUPPORT OF RESPONDENT’S
MOTION TO SUPPLEMENT THE RECORD**

Respondent, Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) seeks to supplement the Record with a single publicly available document titled “Memorandum of Agreement Between the State of Illinois and the United States Environmental Protection Agency Region 5” (“Delegation Agreement”), which the Agency relied upon in making its Final Decisions. See Respondent’s Motion to Supplement the Record (“Motion”) at 2. The Illinois Pollution Control Board (“Board”) and the Hearing Officer have already granted Illinois EPA’s motions to supplement the record in two cases involving the same Delegation Agreement and the same legal issues. See *BFI Waste Systems of North America, LLC v. Illinois Environmental Protection Agency*, PCB 2024-029, Board Order at 2 (August 20, 2026),¹ and *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility) v. Illinois Environmental Protection Agency*, PCB 2026-039, Hearing Officer Order at 1 (October 19, 2026).² For that reason alone, the Hearing Officer should follow the aforementioned precedent and grant Respondent’s Motion.

Beyond the controlling precedent, Petitioner’s arguments in its Objection to Respondent’s Motion to Supplement Record (“Objection”) ignore the relevant Board rule on Appeals of Final

¹ See <https://pcb.illinois.gov/documents/dsweb/Get/Document-116961>.

² See <http://pcb.illinois.gov/documents/dsweb/Get/Document-117456>.

Decisions of State Agencies (“Board Permit Appeal Rules”). Specifically, Section 105.212(b)(5) of the Board Permit Appeal Rules requires the Agency to include in the record all “information the Agency relied upon in making its final decision.” 35 Ill. Adm. Code 105.212(b)(5). Here, the Agency relied upon the Delegation Agreement in making its Final Decisions, *see* Motion at 2, and therefore the Rule requires its inclusion in the Record. Petitioner’s objections about (1) whether the Agency’s review documents reference the Delegation Agreement, *see* Objection at 2; (2) whether Illinois EPA adequately explained how it relied upon the Delegation Agreement, *see* Objection at 3; and (3) whether the Delegation Agreement is an unpromulgated rule, *see* Objection at 4, are all irrelevant. The Agency has clearly stated it relied upon the Delegation Agreement and therefore Section 105.212(b)(5) mandates its inclusion in the Record. In addition to overlooking Section 105.212(b)(5), Petitioner’s objection that the Delegation Agreement is an unpromulgated rule fails because the Delegation Agreement, by its own terms, governs the respective obligations of USEPA and Illinois EPA with respect to administering the RCRA program in Illinois. Moreover, Illinois EPA’s duty to carefully consider USEPA’s program guidance does not amount to an “agency statement of general applicability” under Section 1-70 of the Illinois Administrative Procedure Act (“IAPA”). For the foregoing reasons, and those set forth in the Motion, Respondent respectfully requests that the Hearing Officer grant its Motion.

ARGUMENT

I. The Board’s Order in the *BFI Waste Systems* and the Hearing Officer’s Order in *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* Granting Illinois EPA’s Motion to Supplement the Record with the Same Delegation Agreement is Dispositive of Respondent’s Motion.

Both the Board and the Hearing Officer granted Illinois EPA’s motions to supplement the record in two cases involving the same Delegation Agreement and the same legal issues, therefore the Hearing Officer should grant Respondent’s Motion here. During its Motion for Summary

Judgment briefing in *BFI Waste Systems*, Illinois EPA moved the Board to supplement the record with the same Delegation Agreement at issue here. *See BFI Waste Systems*, PCB 2024-029, Illinois EPA's Response to Petitioner's Cross-Motion for Summary Judgment, and Motion to Supplement the Record (dated May 13, 2026) at PDF 55, 56.³ In granting Illinois EPA's motion to supplement, the Board found that "the Agency represents that it relied on the Delegation Agreement when reviewing the permit decision subject to this appeal." *BFI Waste Systems*, PCB 2024-029, Board Order at 2 (August 20, 2026). The Board also noted that the Delegation Agreement predates the Agency's permitting decision and that the Delegation Agreement is a public record so "its inclusion in the record does not unduly prejudice Petitioner." *Id.* In *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)*, the Hearing Officer granted Respondent's motion to supplement finding that the Board's decision in *BFI Waste Systems* was controlling. *See Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)*, PCB 2026-039, Hearing Officer Order at 1 (October 19, 2026).

The same analysis applied by the Board and followed by the Hearing Officer conclusively supports the inclusion of the Delegation Agreement in the Record here. As it made clear in its Motion, Respondent relied on the Delegation Agreement when making its permitting decision. *See* Motion at 2 ("Illinois EPA relied upon its authority under the Delegation Agreement when making its [Resource Conservation and Recovery Act 42 U.S.C. § 6901 et seq. ("RCRA")] permitting decision in this case"). The Delegation Agreement at issue here is the same document at issue in both *BFI Waste Systems* and *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)*, it similarly predates the instant appeal by nearly a decade, and it is a public document. Accordingly, Illinois EPA respectfully requests that the Hearing Officer follow the Board's Order

³ See <https://pcb.illinois.gov/documents/dsweb/Get/Document-115957>.

in *BFI Waste Systems* and the Hearing Officer's Order in *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* and grant Respondent's Motion.

II. The Board Permit Appeal Rules Mandate Inclusion of the Delegation Agreement in the Record.

Aside from the previously discussed orders granting Illinois EPA's motions to supplement the record with the Delegation Agreement, the Board regulations require the inclusion of the Delegation Agreement in the Record. Section 105.212 of the Board Permit Appeal Rules provide as follows:

The Agency Record

* * *

(b) The Agency record **must** include:

* * *

(5) Any other information the Agency relied upon in making its final decision.

35 Ill. Adm. Code 105.212(b)(5) (emphasis added). Here, the Agency relied upon the Delegation Agreement, *see* Motion at 2, and therefore the Delegation Agreement must be included in the Record. Petitioner aims to confuse a simple issue by asserting three objections: (1) that the Agency did not rely upon the Delegation Agreement because it "was not identified as one of the documents the Agency reviewed in making the Final Decisions," Objection at 2; (2) that "Illinois EPA provides no explanation for how the Delegation Agreement was considered or relied upon for their Final Decisions," Objection at 3; and (3) that the Delegation Agreement cannot be included in the Record because the Delegation Agreement is an unpromulgated rule. Objection at 4. Those objections are entirely irrelevant. The Agency relied upon the Delegation Agreement in making its Final Decisions and therefore Section 105.212(b)(5) requires that the Delegation Agreement be

included in the Record. A decision otherwise would be contrary to the recent decisions in *BFI Waste Systems* and *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* and Section 105.212 of the Board Permit Appeal Rules because, absent the Delegation Agreement, the Board would have an incomplete Record before it at hearing. See 35 Ill. Adm. Code 105.214(a).

Moreover, Petitioner asserts that “the Delegation Agreement was not identified as one of the documents the Agency reviewed in making the Final Decisions.” Objection at 2. Contrary to Petitioner’s objection, USEPA’s Guidelines for Evaluating the Post-Closure Care Period for Hazardous Waste Disposal Facilities under Subtitle C of RCRA (“2016 Guidance”) explicitly references state delegation of the RCRA Hazardous Waste Program. See R000228 (“Under RCRA, states may apply to, and receive from EPA, authorization of a state program to operate in lieu of the federal RCRA hazardous waste program. *These state programs may be broader in scope or more stringent than EPA’s RCRA hazardous waste regulations, and requirements can vary from state to state*”). Delegation of the RCRA Hazardous Waste Program is necessarily administered pursuant to a delegation agreement between USEPA and the delegated state agency. See 40 C.F.R. § 271.8. Moreover, the 2016 Guidance is referenced throughout the Record, including in the Agency’s review documents. See, e.g., R000214 – R000232, R000949, R000952, and R001098. So, while the Delegation Agreement itself may not have been explicitly referenced in the Agency’s review notes, the Delegation Agreement’s fingerprints are evident throughout the Record.

Petitioner also incorrectly objects that “Illinois EPA provides no explanation for how the Delegation Agreement was considered or relied upon for their Final Decisions.” Objection at 3. As Respondent made clear in its Motion (and as Petitioner quoted in its Objection), the Delegation Agreement goes to the heart of Illinois EPA’s decision-making authority under RCRA. Motion at 2. That is especially relevant here because the Delegation Agreement provides context necessary

to understand why Illinois EPA included the 2016 Guidance in the Record, that is, because the Delegation Agreement requires Illinois EPA to “[c]arefully consider key Federal program guidance (and any updates) in conducting the RCRA Corrective Action Program.” Delegation Agreement at 13.

Petitioner baselessly tries to cast doubt on the credibility of Illinois EPA’s claims that the Delegation Agreement was inadvertently left out of the Record but only supports its proposition by citing similar motions Respondent has filed in other cases. Objection at 3, 4. Petitioner cites Respondent’s other motions as though it is evidence of a conspiracy to deceive the Board into including a public document that governs Illinois EPA’s administration of the RCRA Hazardous Waste Program in all of the currently pending RCRA permit appeals, instead of what it is, Respondent realizing a document Illinois EPA relied upon was inadvertently omitted from the record in this matter and other pending RCRA matters at the same time and taking prompt and consistent action to supplement the records. Therefore, Petitioner’s objections are incorrect both as a matter of law, *see* 35 Ill. Adm. Code 105.212(b)(5), and as a matter of fact, and the Hearing Officer should grant Respondent’s Motion.

III. The Delegation Agreement is Not an Unpromulgated Rule because Its Function is Internal Coordination Between USEPA and Illinois EPA and Does Not Mandate that Illinois EPA Adopt Any Particular Rule.

Beyond the precedent in *BFI Waste Systems* and *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* and the Board Permit Appeal Rules mandating inclusion of the Delegation Agreement in the Record, Petitioner’s argument that the Delegation Agreement is an unpromulgated rule falls short of the mark. By its own terms, the Delegation Agreement “sets forth the manner in which [Illinois EPA] and USEPA will coordinate in Illinois EPA’s administration of the authorized Illinois Program.” Delegation Agreement at 1. One aspect of that coordination

involves Illinois EPA's obligation to "[c]arefully consider key Federal program guidance (and any updates) in conducting the RCRA Corrective Action Program." Delegation Agreement at 13. Petitioner's poorly developed argument identifies the entire Delegation Agreement as a rule, *see* Objection at 4, 5, but fails to identify any "agency statement of general applicability" or, indeed, any provision that applies to Petitioner at all. *See* 5 ILCS 100/1-70. Illinois EPA is required to "[c]arefully consider" USEPA program guidance but leaves the decision-making door open for Illinois EPA. Because Petitioner fails to identify any particular rule, its position that the entire Delegation Agreement is a rule is fatally flawed, and the Hearing Officer should grant Respondent's Motion.

IV. Conclusion.

The Board's Order in *BFI Waste Systems* and the Hearing Officer's Order in *Waste Management of Illinois, Inc. (CID Recycling & Disposal Facility)* are dispositive of Respondent's Motion in this case. Moreover, Section 105.212(b)(5) mandates the inclusion of the Delegation Agreement in the Record because the Agency relied upon it in making its Final Decisions. Finally, the Delegation Agreement, a document outlining the respective obligations of USEPA and Illinois EPA with respect to administering the RCRA in Illinois is not itself a "rule" within the meaning of the IAPA. Therefore, the Hearing Officer should grant Respondent's Motion.

Respectfully submitted,

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by KWAME RAOUL
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