ILLINOIS POLLUTION CONTROL BOARD
March 5, 2026

WASTE MANAGEMENT OF ILLINOIS, INC.,	)	
Petitioner,	)	
v.	)	PCB 25-2
	)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. Gibson):

On July 23, 2024, Waste Management of Illinois, Inc. (WM) timely filed a petition asking the Board to review a June 18, 2024, determination of the Illinois Environmental Protection Agency (IEPA). *See* 415 ILCS 5/40(a)(1) (2024); 35 Ill. Adm. Code 101.300(b), 105.206. The determination concerns Waste Management's leachate evaporator at 18762 Lincoln Road in Morrison, Whiteside County. On March 27, 2025, the parties filed cross-motions for summary judgment.

For the reasons discussed below, the Board finds that there is no genuine issue of material fact and summary judgment is appropriate. The Board denies WM's motion for summary judgment and grants IEPA's motion for summary judgment.

The Board's opinion begins below with the procedural history and the undisputed facts of this matter. After providing the legal background, the Board discusses the issues and whether summary judgment is appropriate for each issue. The Board concludes by reaching its decision and issuing an order.

PROCEDURAL BACKGROUND

WM filed this petition on July 23, 2024 (Pet.). The Board accepted the petition for review on August 8, 2024. On August 22, 2024, IEPA filed its administrative record (R.).

On March 27, 2025, IEPA and Waste Management each filed a motion for summary judgment (IEPA Mot.) (WM Mot.). Also on March 27, 2025, the parties filed a joint stipulation of facts (Stip.). On April 17, 2025, IEPA and Waste Management filed responses to the motions for summary judgment (IEPA Resp.) (WM Resp.). On May 1, 2025, IEPA and Waste Management filed replies in support of their summary judgment motions (IEPA Reply) (WM Reply).

FACTS

Undisputed Facts

Waste Management is the operator of Prairie Hill, a "municipal solid waste and non-hazardous special waste landfill located in Whiteside County, Illinois." Stip. at 1. On April 30, 1992, WM applied for local siting approval from Whiteside County for a non-hazardous waste landfill and landscape waste transfer station on 423 acres, 229 of which would be developed for the landfill. *Id.* Whiteside County conducted public hearings on WM's application on July 30 and 31, 1992. Whiteside County passed a resolution granting siting approval on September 15, 1992. *Id.* On July 10, 1995, IEPA issued a solid waste landfill permit, Permit No. 1994-579-LF, to WM that authorized the development of the Prairie Hill landfill. *Id.* at 2.

On August 12, 2015, IEPA modified Prairie Hill's permit, Modification No. 87 to Permit No. 1994-579-LF, to allow it to accept non-hazardous special waste. Stip. at 2. On August 18, 2025, Whiteside County passed a resolution amending its local siting approval for Prairie Hill, which allowed it to accept special waste at the landfill. *Id.*

IEPA issued a permit to WM to construct a leachate evaporator at Prairie Hill on February 13, 2019. Stip. at 2. On June 3, 2020, IEPA approved WM's installation of the leachate evaporator, Modification No. 107 to Permit No. 1994-579-LF. *Id.* IEPA approved the operation of the leachate evaporator, Modification No. 116 to Permit No. 1994-579-LF, on February 10, 2023. *Id.* IEPA issued Prairie Hill its current operating permit, Modification No. 121 to Permit No. 1994-579-LF, on August 16, 2024. *Id.* at 3.

Prairie Hill's leachate evaporator is permitted under its operating permit to manage 40,000 gallons of leachate per day, and currently it manages approximately 20,000 gallons of leachate per day. This leachate is generated on-site by Prairie Hill. Stip. at 3. The leachate generated by Prairie Hill is a special waste. *Id.*

WM also controls and operates a separate landfill in a different county - the Peoria City/County Landfill (PCC #2), which is a municipal solid waste landfill in Peoria County. Stip. at 3. On January 12, 2024, WM submitted an application to IEPA requesting a modification to its operating permit to allow the Prairie Hill landfill to accept leachate from PCC #2. WM intends to process the leachate from PCC #2 at the leachate evaporator at Prairie Hill. *Id.* WM's permit application did not request an increase in the capacity of the leachate evaporator. *Id.*

IEPA Determination

In a letter dated June 18, 2024, IEPA denied Waste Management's permit modification to accept leachate from other Waste Management facilities for disposal in the leachate evaporator. R. at 169. IEPA stated that:

> The Illinois Environmental Protection Act (Act), Section 3.330(b)(3) states that a new pollution control facility is "a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special

or hazardous waste." Prairie Hill Landfill is proposing using a treatment facility (leachate evaporator) that would be accepting leachate, which is a special waste, from other facilities for the first time. Therefore, proof of local siting approval for a new treatment facility, granted by the County of Whiteside, shall need to be submitted to the Illinois EPA before the leachate evaporator can be approved. *Id.*

LEGAL BACKGROUND

The Board first describes the standards it applies when considering motions for summary judgment. After that, the Board sets forth the relevant Board regulations, along with pertinent definitions.

Summary Judgement

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). A genuine issue of material fact precluding summary judgment exists when "the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 753; Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004).

When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). Summary judgment "is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 754; Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871.

"In a summary judgment proceeding, the burden of persuasion is always on the moving party to establish that there are no genuine issues of material fact and that moving party is entitled to judgment as a matter of law." Performance Food Group Co., LLC v. ARBA Care Ctr. of Bloomington, LLC, 416 Ill. Dec. 757, 764 (3rd Dist. 2017). The party moving for summary judgment may meet its initial burden of production by "presenting facts which, if uncontradicted, would entitle it to judgment as a matter of law." In re Estate of Sewart, 236 Ill. App. 3d 1, 8 (1st Dist. 1991). Once the party moving for summary judgment "produces such evidence, the burden of production shifts to the party opposing the motion, who . . . is required to come forth with some facts which create a material issue of fact." *Id.* "Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must nonetheless present a factual basis, which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

Burden of Proof and Standard of Review

"The question before the Board in permit appeal proceedings is whether the applicant proves that the application, as submitted to the Agency, demonstrated that no violation of the Act would have occurred if the requested permit had been issued." Peoria Disposal Co. v. IEPA, PCB 08-25, slip op. at 64-65 (Jan. 10, 2008), *citing* ESG Watts, Inc. v. IEPA, PCB 01-63, 01-64, slip op. at 5 (April 4, 2002) (citations omitted). "[T]he Agency's denial letter frames the issues on appeal." Peoria Disposal, PCB 08-25, slip op. at 65, *citing* ESG Watts, Inc. v. PCB, 286 Ill. App. 3d 325, 676 N.E. 2d 299 (3rd Dist. 1997). "The Board's review is limited to the record before the Agency and is not based on information developed after the Agency's determination." Peoria Disposal, PCB 08-25, slip op. at 65, *citing* ESG Watts, Inc. v. IEPA, PCB 01-63, 01-64, slip op. at 5 (April 4, 2002), *citing* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist 1987). "[T]he Board is not required to apply the manifest-weight test to its review of the Agency's decision denying a permit." IEPA v. PCB, 115 Ill. 2d 65, 70, 503 N.E.2d 343, 345 (1986). The Act places the burden of proof on WM as the petitioner. 415 ILCS 5/40(a)(1) (2026); *see* 35 Ill. Adm. Code 105.112(a).

Statutory and Regulatory Authorities

Leachate means "liquid containing materials removed from solid waste." 35 Ill. Adm. Code 807.104.

"Pollution control facility" means "any waste storage site, sanitary landfill, waste disposal site, waste transfer station, waste treatment facility, or waste incinerator. This includes sewers, sewage treatment plants, and any other facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act." 415 ILCS 5/3.330(a) (2024).

Section 3.330(a)(3) states that the following are not pollution control facilities:

> (3) sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities, when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person, or when such wastes are transported within or between sites or facilities owned, controlled or operated by such person. 415 ILCS 5/3.330(a)(3) (2024).

Section 3.330(a)(24) states that the following are not pollution control facilities:

> (24) the portion of a municipal solid waste landfill unit:
>
> (A) that is located in a county having a population of not less than 55,000 and not more than 60,000 according to the 2010 federal census;

(B) that is owned by that county;

(C) that is permitted, by the Agency, prior to July 10, 2015 (the effective date of Public Act 99-12); and

(D) for which a permit application is submitted to the Agency within 6 months after July 10, 2015 (the effective date of Public Act 99-12) for the disposal of non-hazardous special waste. 415 ILCS 5/3.330(a)(24) (2024).

Section 3.330(b)(3) states that a new pollution control facility is:

(3) a permitted pollution control facility requesting approval to store, dispose of, transfer or incinerate, for the first time, any special or hazardous waste. 415 ILCS 5/3.330(b)(3) (2024).

Section 39(c) provides that:

Except for those facilities owned or operated by sanitary districts organized under the Metropolitan Water Reclamation District Act, no permit for the development or construction of a new pollution control facility may be granted by the Agency unless the applicant submits proof to the Agency that the location of the facility has been approved by the county board of the county if in an unincorporated area, or the governing body of the municipality when in an incorporated area, in which the facility is to be located in accordance with Section 39.2 of this Act. For purposes of this subsection (c), and for purposes of Section 39.2 of this Act, the appropriate county board or governing body of the municipality in which the facility is to be located as of the date when the application for siting approval is filed. 415 ILCS 5/39(c) (2024).

DISCUSSION

The first issue the Board will discuss is whether summary judgment is appropriate. If there are genuine issues of fact, the Board must deny both motions. However, if there are no genuine issues of fact, then the Board must decide whether the exception in Section 3.330(a)(3) applies to this case, whether the facility is a "new pollution control facility" under Section 3.330(b)(3), and whether siting approval is required for operating permits under Section 39(c).

Genuine Issue of Material Fact

The Board may only grant summary judgment in an appeal of an IEPA determination when there is no genuine issue of material fact. 35 Ill. Adm. Code 101.515(b). The parties filed a joint stipulation of facts addressing the material facts at issue. Agreement of the parties alone "does not establish that there is no issue of material fact, nor does it obligate the Board to render summary judgment." Prairie Rivers Network v. PCB, 2016 IL App (1st) 150971 at ¶ 24, 50 N.E.3d 680, 684 (Feb. 26, 2016). In this instance, the Board is asked to interpret the law and apply that

law to the undisputed facts. The Board agrees with the participants that the joint stipulation establishes that there is no genuine issue of material fact and a summary judgment determination is appropriate.

Whether the Section 3.330(a)(3) Exception Applies

The first issue the Board analyzes whether WM's leachate evaporator falls under Section 3.330(a)(3) of the Act. WM argues that the exception applies not just to waste created on-site, but can also extend to transporting, and then treating, waste from other facilities that it owns. IEPA opposes Waste Management's argument and contends that Section 3.330(a)(3) only applies to transporting, but not treating, waste from other facilities.

Parties' Arguments

Plain Language. IEPA argues that WM must obtain siting approval for processing leachate that has been generated off site because the exception in Section 3.330(a)(3) of the Act does not apply to WM. IEPA Mot. at 10-11. For IEPA, the plain language of the exception in Section 3.330(a)(3) is limited to either disposing of and treating waste *within* a facility **or** transporting waste *between* facilities. IEPA Resp. at 4. In closely reading the language of the Section, IEPA reads the subject of "sites or facilities" as narrowed by the qualifier "for wastes generated by such person's own activities." *Id.*; 415 ILCS 5/3.330(a)(3) (2024). In IEPA's reading, this provision is limited to "operator generated waste at waste disposal facilities." *Id.* WM proposed that it would transfer waste from its Peoria landfill for treatment in its leachate evaporator at Prairie Hill. Rather than processing waste generated on-site, WM would be processing waste generated off-site. IEPA contends that this does not fall within the exception in Section 3.330(a)(3).

In reading the remaining parts of the Section, IEPA argues a plain language reading supports its argument. IEPA argues that the second half of the exception describes an on-site generation scenario: "when such wastes are stored, treated, disposed of, transferred or incinerated within the site or facility owned, controlled or operated by such person." *Id.* This clause is followed by "or," which IEPA reads as separating on-site treatment of waste from the transportation of operator-generated waste between different facilities. *Id.* In IEPA's reading, an operator may treat waste that has been generated on-site, and may transfer waste between sites, but may not treat waste that has been generated off-site. Treatment of waste that has been generated off-site would require the operator to submit proof of local siting approval.

In response, WM argues that the plain language of Section 3.330(a)(3) includes facilities used by companies to manage their own waste, even if that waste is generated at another facility the company owns and operates and is transferred to the site for management. WM Resp. at 3. WM reads Section 3.330(a)(3) as covering two scenarios: the first is "where a person conducting waste management operations generates waste resulting from its own on-site activities and manages that waste on-site," and the second is "where a person conducting waste management operations generates waste from another facility such person owns, controls or operates and transports that waste between the two sites." *Id.* According to WM, the second scenario applies to the situation at Praire Hill and the exception includes "sites or facilities used

by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, for wastes generated by such person's own activities . . . when such wastes are transported within or between sites or facilities owned, controlled, or operated by such person." *Id.* at 3-4. WM argues that since the leachate evaporator at Prairie Hill is used by a person, WM, which conducts waste treatment operations, generates waste by its own activities, and transports the waste between sites that WM operates, WM's activities fall under Section 3.330(a)(3)'s exception. *Id.* at 4.

WM argues that IEPA's reading of Section 3.330(a)(3) is incorrect and it is not the activity of "transporting" that is exempted, but the "sites or facilities" to which the waste is transported. WM Resp. at 4. According to WM, Section 3.330 defines the sites, not the conduct. Therefore, WM interprets Section 3.330(a)(3) as providing an exception for "sites and facilities," not the act of transporting waste. *Id.* WM argues that the exception applies to "sites where any type of waste management activity occurs . . . if the waste is generated by the person's 'own activities.'" WM Reply at 2.

Additionally, WM asserts that IEPA ignores the use of "person" and "such person" in the Section. WM Resp. at 4. WM contends that the "person" at issue is the person that is generating the waste is also the same person that is transporting and treating the waste. *Id.* at 5. Therefore, according to WM, it is "the site receiving the waste, whether it manages waste generated on-site or generated at a different site the person owns, controls or operates, that is exempt." *Id.*

WM also argues that IEPA's interpretation of Section 3.330(a)(3) renders the exemption impractical. WM reads the Section as providing that waste that has been "transported between sites" must then be either stored, treated, disposed of, transferred, or incinerated. WM Resp. at 5. WM states that the moment the waste arrives at the new facility it is being "stored." *Id.*, *citing* 415 ILCS 5/3.480 (2024). According to WM, IEPA's interpretation would mean that no facility receiving wastes transported between its own sites would fall under the Section 3.330(a)(3) exception. WM Resp. at 5.

In reply, IEPA argues that WM "reads the phrase 'transported within or between sites or facilities' into the first clause and seeks to expand the narrow application of the on-site generation exception." IEPA Resp. at 4. IEPA argues that WM's interpretation of Section 3.330(a)(3) renders the differences between the clauses meaningless, especially the specific description of waste management activities and geographic scope included in the different clauses. *Id.*

Statutory Interpretation Rules. IEPA uses the statutory canon *expressio unius est exclusio alterius* in support of its interpretation of Section 3.330(a)(3). IEPA Mot. at 12. IEPA states that this canon means that "when people say one thing they do not mean something else" and it "emphasizes the statutory language as it is written." *Id.*, *citing* O'Connell v. County of Cook, 2021 IL App (1st) 201031, ¶ 26 *citing* Bridgestone/Firestone, Inc. v. Aldridge, 179 Ill. 2d 141, 152 (1997) (*citing* 2A Norman J. Singer, Statutes and Statutory Construction §§ 47.24, 47.25 at 228, 234 (5th ed.1992)). According to IEPA, using this canon leads to the conclusion that the legislature intended the treatment and disposal of on-site generated waste within the

same site or facility to be an exception to the definition of a "pollution control facility," but to only extend the exception to the transfer of on-site generated waste when there are two facilities with the same operator. IEPA Mot. at 12, *citing* Schultz v. Performance Lighting, Inc., 2013 IL 115738, ¶ 17.

IEPA argues that the last antecedent doctrine, another statutory interpretation rule, also supports its reading of Section 3.330(a)(3). IEPA Mot. at 12. IEPA asserts that the last antecedent doctrine provides that "relative or qualifying words, phrases, or clauses are applied to the words or phrases immediately preceding them and are not construed as extending to or including other words, phrases, or clauses more remote." *Id.*, *citing* In re E.B., 231 Ill. 2d 459, 467 (2008). Since the phrase "when such wastes are stored, treated, disposed of, transferred or incinerated" is immediately before "within the site," but the provision describing waste at different sites are separated from the phrase by a comma, "or", and "transported", IEPA interprets the Section 3.330(a)(3) exception to be limited to the transfer of off-site waste between facilities with the same operator. IEPA Mot. at 12.

Legislative Intent. WM looks to the legislative history of Section 3.330(a)(3) as supporting WM's interpretation of the Section's language. WM Resp. at 6. According to WM, the Governor vetoed the original bill establishing the local siting requirement because it did not provide an exception for "off-site facilities operated by the person whose activities generate the waste involved." *Id.*, *citing* Am. Fly Ash Co. v. Tazewell Cnty., 120 Ill. App. 3d 57, 61 (3d Dist. 1983), *citing* S. Journal, 82nd Sess., 4469-4470 (Ill. 1981). In his amendatory veto message, the Governor stated that local siting approval "was intended to apply to offsite treatment, storage or disposal facilities, as opposed to those sites where industrial waste stays on the site where it was generated." S. Journal, 82nd Sess., at 4469 (Ill. 1981). The Governor amended the definition of "regional pollution control facility" to "more clearly define the extent of the local approval process." *Id.* WM contends that the legislature, in response to the veto, revised the bill to include the language in Section 3.330(a)(3). WM Resp. at 6. WM asserts that the legislature intended the Section 3.330(a)(3) exception to apply to the current situation because the leachate evaporator is "off-site" but operated by the same "person," which generates that waste. *Id.*

In response, IEPA contends that the legislature "purposefully divided 'within the site' and 'between sites' into separate clauses with different activities list." IEPA Reply at 4. IEPA argues that if the legislature intended for all wastes generated by the same operator to be included in the Section 3.330(a)(3) exception, it could have simply included them in the plain language. The legislature could have added "sites or facilities used by any person conducting a waste storage, waste treatment, waste disposal, waste transfer or waste incineration operation, or a combination thereof, to store, treat, dispose of, transfer or incinerate wastes generated by such person's own activities." *Id.* IEPA also claims that WM quotes "the court's paraphrasing of an out of context portion of Governor Thompson's amendatory veto, unrelated to the actual holding," in Am. Fly Ash Co. *Id.* at 5, *citing* S. Journal, 82nd Sess., 4469-4470 (Ill. 1981). In looking to the discussion in the General Assembly regarding the proposed bill, IEPA points to a statement made by Senator Demuzio, who moved the bill. In introducing it, Senator Demuzio said that the "Governor made some clarifying language changes to indicate that the bill did not

apply to on-site waste storage, treatment or disposal facilities." *Id.*, *citing* 82nd General Assembly Regular Session (Oct. 15, 1981) Tr. 67.

In reply, WM reads a policy argument into the legislative history by arguing that the legislature treated "facilities that manage either on-site generated waste, or waste generated at another facility owned, controlled or operated by the same person, differently than facilities which manage waste generated by third-parties." WM Reply at 3. WM also contends that "Section 3.330(a)(3) encourages these facilities to manage their own waste 'in-house' not only because they will understand their own waste streams but also because it is often more efficient to manage wastes internally." *Id.* Therefore, according to WM, the legislature "recognized the efficiency of allowing companies with multiple facilities to manage their waste on a company-wide basis, rather than having redundant waste management operations at each site." *Id.*

Transporting v. Treating. In its summary judgment motion, WM claims that its operating permit modification request is only for transporting waste between its own facilities, which, WM argues, is included in Section 3.330(a)(3)'s exception. WM Mot. at 5. WM asserts that it is not relevant whether "leachate evaporation is disposal, treatment, storage, or some combination of the three." *Id.* at 6, f.n. 1. According to WM, at issue is that WM will be transporting leachate between two WM-operated facilities, which is appropriately an exemption covered by Section 3.330(a)(3). *Id.* at 7.

IEPA looks to WM's operating permit application and notes that WM described the leachate evaporator at Prairie Hill as a waste treatment facility. IEPA Reply at 6, *citing* R. at 8, 13. IEPA also contends that WM's description of the leachate evaporator in its permit application is consistent with the definition of "treatment" in the Act, which includes "any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any waste so as to neutralize it or render it nonhazardous, safer for transport, amendable for recovery, amenable for storage, or reduced in volume." IEPA Reply at 6, *citing* 415 ILCS 5/3.505 (2024). Since WM's leachate evaporator is designed to "change the physical composition of liquid leachate waste to concentrated solids that can be deposited into a landfill for disposal," IEPA asserts that it is a waste treatment facility and does not fall under the exception in Section 3.330(a)(3). IEPA Reply at 6.

Board Discussion and Finding

The Board agrees with IEPA that the plain language of Section 3.330(a)(3) includes waste that is transported between facilities, and not treatment of waste between facilities. "The law is well settled that the plain language of a statute should be given the common meaning of the language." Saline Cnty. Landfill, Inc. v. IEPA, slip op. at 40 (May 6, 2004), *citing* Pioneer Processing, Inc. v. IEPA, 111 Ill. App. 3d 414, 444 N.E.2d 211 (4th Dist. 1952). Section 3.330(a)(3) clearly separates the clauses that deal with on-site generation of waste versus waste transported between facilities owned, controlled, or operated by the same person. The Board finds that the plain reading of the language of Section 3.330(a)(3) limits the exception to transporting waste between sites.

Similarly, the Board finds that the legislative history of Section 3.330(a)(3) illustrates that the legislature clearly intended to exclude from the exception waste transferred between sites owned or operated by the same person. The transcript from the Illinois Senate only shows the intent to exempt on-site waste storage, treatment or disposal facilities. The Board previously held, that as a matter of statutory construction, the legislature does not intend for exceptions to overtake the Act; rather, it intends for exceptions to be limited. Peoria Disposal Co. v. IEPA, PCB 08-25, slip op. at 80-81 (Jan. 10, 2008); Pielet Brothers Trading Co. v. PCB, 110 Ill. App. 3d 752 (5th Dist. 1982). Treating waste that originated off-site, even if that other site is owned by the same entity, falls outside the "on site" handling of waste. Because treating waste generated off-site goes beyond the plain language and legislative intent of Section 3.330(a)(3), the Board finds the Section's exception does not apply to WM's requested modification to the operating permit of the leachate evaporator.[1] Therefore, the Board finds for IEPA on this issue.

Whether the Facility is a "New Pollution Control Facility" Under Section 3.330(b)(3)

The Board next discusses whether the leachate evaporator is a new pollution control facility under Section 3.330(b)(3). WM contends that the leachate evaporator is not a new facility because it is not treating special waste for the first time. WM received siting approval as part of Prairie Hill landfill, and WM argues that previous Board and court cases support interpreting Section 3.330(b)(3) as not applying to facilities that have already been permitted to treat special or hazardous waste. Further, WM argues that the legislature did not intend to require re-siting for every new waste stream. IEPA disagrees and argues that the leachate facility at Prairie Hill is requesting to treat special waste for the first time as a pollution control facility. Additionally, IEPA argues that the leachate evaporator did not receive siting approval because it is an independent pollution control facility from Prairie Hill landfill, and IEPA argues that the case law WM cites is irrelevant to the case at hand. It is IEPA's contention that WM's interpretation of Section 3.330(b)(3) would create a large loophole in the Act which would allow operators to transfer waste for treatment between facilities by avoiding the siting process.

Parties' Arguments

New Pollution Control Facility. WM argues that it is not seeking a permit for a "new pollution control facility" under Section 3.330(b)(3) because WM is not seeking a permit to dispose of special waste for the first time. WM Mot. at 7-8. WM states that IEPA permitted WM to dispose of special waste at Prairie Hill in 2015 and Whiteside County also approved disposal of special waste at Prairie Hill in 2015. *Id.* at 8. WM contends that IEPA permitted WM to use the leachate evaporator to dispose of special waste in 2023. *Id.* Therefore, WM

[1] The Board acknowledges its holding in Peoria Disposal on a generator's "own activities." PCB 08-25, slip op. at 31-32. However, the parties did not argue this point before the Board, unlike in Peoria Disposal. Additionally, unlike IEPA's denial letter in Peoria Disposal, IEPA's denial letter here neither cited, nor quoted the "own activities" language of Section 3.330(a)(3) The Board does not now apply the "own activities" language to these facts. Nothing in the Board's opinion contradicts the holding in Peoria Disposal.

alleges that, even if the leachate evaporator were a pollution control facility under Section 3.330(a), it is not a "new pollution control facility" under Section 3.330(b)(3). *Id.*

WM contends that IEPA's interpretation of Section 3.330(b)(3) is overly expansive and adds a phrase that does not appear in the Section. WM Mot. at 10-11. WM asserts that "from other facilities" is not in Section 3.330(b)(3), and adding this language goes against the plain language and the legislative intent of the Section. *Id.*

IEPA argues that WM's leachate evaporator is both a pollution control facility under Section 3.330(a) and a new pollution control facility under Section 3.330(b)(3). IEPA alleges that the leachate evaporator is both a waste disposal site and a waste treatment facility because it accepts leachate for disposal and treatment. IEPA Resp. at 3. Therefore, according to IEPA, the leachate evaporator is a pollution control facility under Section 3.330(a). *Id.* IEPA asserts that, while the leachate evaporator has always been a pollution control facility, it did not go through the siting process because the leachate evaporator fell under the Section 3.330(a)(3) exception of treating on-site waste. *Id.* Since WM is now seeking to dispose of and treat off-site generated waste at the Prairie Hill leachate evaporator, IEPA argues that WM is "requesting approval for the newly qualifying pollution control facility to dispose of and treat, for the first time, leachate, which is a special waste." *Id.* at 6.

In reply, WM contends that IEPA attempts to re-write the statute when it adds "as a pollution control facility" to the end of Section 3.330(b)(3). WM Reply at 4-5. WM argues that adding words to a statute that changes its meaning is not proper statutory interpretation. *Id.* at 5, *citing* People v. Reyes, 2023 IL 128461, ¶ 34. Furthermore, WM asserts that IEPA's argument is "internally inconsistent and in direct conflict with the language of Section 3.330(b)(3)." WM Reply at 5. Section 3.330(b)(3) only applies to a "permitted pollution control facility," but since IEPA is arguing that the leachate evaporator is not currently a pollution control facility, WM alleges that Section 3.330(b)(3) does not apply. *Id.*

The Leachate Evaporator is an Independent Pollution Control Facility. While Prairie Hill has been permitted to accept special waste, IEPA argues that the leachate evaporator is an independent pollution control facility and it has never disposed of or treated leachate as a pollution control facility due to falling under the Section 3.330(a)(3) exception. IEPA Resp. at 6. IEPA asserts that the leachate evaporator never required local siting approval when WM requested a construction and operation permit for it because it fell under that exception. IEPA Mot. at 9-10. According to IEPA, the leachate evaporator, not the Prairie Hill landfill, is the relevant pollution control facility because accepting "liquid waste like Prairie Hill leachate would violate the Prairie Hill landfill's local siting conditions, its current operating permit, and Board regulations." IEPA Mot. at 10. Since accepting leachate would violate Prairie Hill's permit and siting conditions, but not the leachate evaporator's permit, IEPA argues that the leachate evaporator is a separate pollution control facility.

WM contends that it already has local siting approval for the leachate evaporator. WM Reply at 6, WM Resp. at 9. WM asserts that it is "undisputed that (1) Whiteside County granted local siting approval for the Prairie Hill Landfill; (2) Whiteside County chose to remove the condition of that local siting that had originally precluded [WM] from managing special

waste at the site; and (3) the leachate evaporator is part of the geographic site that is the Prairie Hill Landfill." *Id.* WM argues that, even if the leachate evaporator meets the definition of a pollution control facility, it does not mean that the leachate evaporator is a separate pollution control facility from the landfill. *Id.* Rather, since the leachate evaporator is located at Prairie Hill Landfill, it is part of the landfill and not a separate facility. *Id.*

WM argues that Prairie Hill is both a sanitary landfill and a waste disposal site and therefore falls under the definition of a pollution control facility. *Id.* WM states that a site includes "any location, place, tract of land, and facilities, including but not limited to buildings, and improvements used for purposes subject to regulation or control by this Act or regulations thereunder." *Id.*, *citing* 415 ILCS 5/3.460 (2024). According to WM, the leachate evaporator falls under the definition of site because it treats and disposes of waste, which is an "improvement used for the purposes subject to regulation or control by the Act." WM Resp. at 10. WM Resp. at 10. WM also contends that the leachate evaporator is within Prairie Hill and is "permitted in the landfill's solid waste operating permit." *Id.* Therefore, WM alleges that the leachate evaporator is part of the same pollution control facility as Prairie Hill and has received local siting approval as part of that facility. *Id.* at 10-11.

WM also asserts that the leachate evaporator is part of the same pollution control facility as Prairie Hill landfill, even if the leachate evaporator is not part of the same municipal solid waste landfill (MSWLF) unit. WM Resp. at 11. Since the definition of "site" may include "one or more units," WM argues that the Prairie Hill pollution control facility includes both the "MSWLF units, which do not accept leachate, and the leachate evaporator—a separate 'unit' that is permitted to receive landfill leachate." *Id.* Therefore, according to WM, the "Act's prohibition on the disposal of leachate in an MSW landfill cell is entirely consistent with the conclusion that the evaporator is part of the Prairie Hill pollution control facility." *Id.*

In response, IEPA argues that Whiteside County did not grant local siting approval for the leachate evaporator to accept off-site special waste when it passed a resolution removing the prohibition on special waste. IEPA contends that Whiteside County's resolution is limited by Section 3.330(a)(24), which only provides an exception for "the portion of a municipal solid waste landfill unit" from the definition of a pollution control facility. IEPA Reply at 10, 415 ILCS 5/3.330(a)(24) (2024). IEPA alleges that it authorized Prairie Hill to accept special waste without siting approval under the Section 3.330(a)(24) exception. IEPA Reply at 11. However, IEPA asserts that its authorization for Prairie Hill to accept special waste is limited to the MSWLF unit. *Id.* Since the leachate evaporator is not a MSWLF unit, IEPA argues that Prairie Hill's authorization to accept special waste does not extend to the leachate evaporator. *Id.* Additionally, IEPA asserts that Section 3.330(a)(24) only applies to permit modifications submitted to IEPA within six months of July 10, 2015, which does not apply to the leachate evaporator because WM submitted the application for the leachate evaporator on January 12, 2024. *Id.*

IEPA also contends that the leachate evaporator is both a site and a pollution control facility. IEPA Reply at 12. According to IEPA, nothing in the Act precludes finding that "both the Prairie Hill MSWLF and the Leachate Evaporator are each a 'site' and a 'pollution control facility.'" *Id.* IEPA contends that "the definition of 'site' does not subsume every addition

within a site to the point where a site cannot contain 'pollution control facilities."" *Id.* Therefore, because the leachate evaporator is both a site and a pollution control facility that has not received local siting approval, IEPA argues that it cannot issue WM's requested modification to its operating permit. *Id.*

Case Law. According to WM, previous Board and Illinois court cases held that facilities are not "new pollution control facilities" every time they apply for a permit to manage special waste from a different source. WM Mot. at 8. WM contends that in the case Waste Management of Illinois, Inc. v. Board of Supervisors of Tazewell Cnty, PCB 82-55 (Aug. 5, 1982), the Board held that Section 3.330(b)(3) only requires a facility to obtain approval from local authorities when that facility has never handled special or hazardous waste before. *Id.* at 8-9. In Tazewell, the Board explained that "local authorities would have a chance to review the site with respect to the special or hazardous wastes only once and not each time a new special or hazardous waste stream was requested." *Id.*, *quoting* Tazewell, PCB 82-55, slip op. at 22. Allowing local authorities to "review each new waste stream would virtually paralyze the system with respect to special and hazardous wastes." *Id.*

WM also alleges that Browning-Ferris Indus., Inc. v. PCB, 127 Ill. App. 3d 509 (3d. Dist. 1984), supports its position that "local siting approval is only required when a facility first becomes a special or hazardous waste facility, and not when it seeks to accept different types of special or hazardous waste, or accept waste from different sources." WM Mot. at 9. In Browning-Ferris, WM asserts that the court held that an original permit that prohibited certain types of special waste also "implicitly approve[d] the site's ability to handle special waste while not explicitly permitting a particular stream." *Id.* at 9-10, Browning-Ferris, 117 Ill. App. 3d at 511. Therefore, according to WM, the application to handle special waste "did not trigger 3.330(b)(3) and IEPA could not require local siting approval as a condition for the permit." WM Mot. at 10. WM argues that the current case is similar to Browning-Ferris because WM was already sited and permitted to accept and dispose of special wastes. *Id.*

Additionally, WM cites to Sierra Club v. PCB, 403 Ill. App. 3d 1012 (3d Dist. 2010)[2], in support of its interpretation of Section 3.330(b)(3). WM contends that the court in Sierra Club found that a hazardous waste treatment facility seeking delisting of a type of hazardous waste it had not previously accepted or managed did not require re-siting because the facility was not dealing with special or hazardous waste for the first time. WM Mot. at 10, Sierra Club, 403 Ill. App. 3d at 1022. As in Sierra Club, WM asserts that Prairie Hill is already permitted to manage special waste. WM Mot. at 10. WM contends that since it is currently authorized to dispose of the same special waste from the same generator at the leachate evaporator, Section 3.330(b)(3) does not apply.

In response, IEPA argues WM's use of Tazewell does not support its position. IEPA contends it is simply requiring WM to comply with "the local siting requirements of the Act and allow local authorities to review Waste Management's permit application to accept off-site

[2] The case was appealed to the Illinois Supreme Court in Sierra Club v. Ill. Pollution Control Bd., 2011 IL 110882. The Illinois Supreme Court dismissed the appeal, ruling that appellants did not have standing.

leachate for the first time at its Leachate Evaporator." IEPA Resp. at 8. Next, IEPA distinguishes Browning-Ferris by noting that the court did not analyze Section 3.330 and instead focused on two case-specific facts that are not relevant to the current case. *Id.* at 8-9. IEPA alleges that the court found that the "facility's operating permit did not expressly prohibit the landfill from accepting special waste" and the permit application "made it abundantly clear" that it "intended to accept special waste at the landfill at the time the facility was initially sited." *Id.* at 9. IEPA states that Browning-Ferris actually supports IEPA's position because the court "observed that if the facility's permit had prohibited the landfill from accepting special waste 'then the applications in question here would clearly be requests for approval for the first time to handle special wastes' and require local siting approval." *Id.*, *citing* Browning-Ferris, 127 Ill. App. 3d at 511. IEPA contends that WM's leachate evaporator is clearly "only permitted to accept on-site generated leachate and therefore was exempt under Section 3.330(a)(3)" when it was first developed. IEPA Resp. at 9.

Lastly, IEPA distinguishes Sierra Club from the current case by stating that it is not arguing that local siting approval is required every time a facility is permitted to accept special or hazardous waste from a new source. Instead, IEPA is arguing that WM's leachate evaporator, which was previously exempt from the definition of a pollution control facility, is now required to obtain local siting approval under Section 3.330(b)(3) because it is "seeking to expand its operations in a way that removes its previously applicable exemption." IEPA Resp. at 10, IEPA Mot. at 16. IEPA also contends that: 1) the waste at issue in this case is clearly special waste, unlike in Sierra Club; 2) Sierra Club dealt with an adjusted standard, not a permit modification; and 3) the facility at issue in Sierra Club was permitted to accept and treat hazardous waste, unlike the current case where the leachate evaporator is permitted to dispose of and treat on-site generated waste. *Id.*

WM asserts that IEPA's arguments differentiating the case law from the current case do not interfere with WM's interpretation that the courts found that, "under Section 3.330(b)(3), once a facility is authorized to manage special or hazardous waste, it does not require local siting approval to accept a different type of special or hazardous waste, or waste from a different source." WM Reply at 7. According to WM, IEPA does not challenge this reading of Section 3.330(b)(3) but instead argues that there should be an exception to the rule for this case. *Id.*

Policy Arguments. IEPA argues that the "legislature did not intend the exception for wastes generated by the operator's own activities to 'dominate and defeat the other provisions of the Act.'" IEPA Mot. at 17, *citing* Peoria Disposal Co., PCB 08-25, slip op. at 80-81; Pielet Brothers Trading Co., 110 Ill. App. 3d 752. IEPA asserts that the Board should be wary of WM's "expansive readings of Section 3.330(a) exceptions." IEPA Mot. at 17. According to IEPA, WM's interpretation of Section 3.330(a)(3) would lead to the conclusion that "no landfill that generates leachate would be a pollution control facility, regardless of how much offsite waste it received from other 'users.'" *Id.* IEPA also contends that WM's interpretation of Section 3.330 would "create a gaping hole in the Act that would effectively allow any facility to bypass local siting for first time acceptance of special and/or hazardous waste simply by generating the waste on-site first." *Id.* at 3.

WM alleges that "local governments have sufficient influence over waste facilities without requiring re-siting for every new special waste stream a landfill seeks to accept." WM Mot. at 11. WM also argues that local governments "were never intended to displace or even supplement IEPA as the permitting authority with respect to operational issues." WM Resp. at 14, *citing* IEPA v. PCB, 2018 IL App. (4th) 170144, ¶ 41. In the current case, WM asserts that Whiteside County granted local siting approval for Prairie Hill and, while the original siting approval prohibited accepting special waste, the County passed a resolution removing that condition in 2015. WM Mot. at 11, WM Reply at 6. WM alleges that if the County wanted to prohibit Prairie Hill from accepting special wastes, it could have but decided not to remove the prohibition. *Id.* Additionally, WM argues that the potential impact of the requested operating permit on Whiteside County is minimal because the leachate evaporator is operating in the same location with the same permitted capacity of leachate. WM Resp. at 15.

IEPA arguesthat "the legislature amended the Act in 1981 to give local governmental authorities a voice in landfill decisions that affect them." IEPA Reply at 1, *citing* M.I.G. Invs. V. EPA, 122 Ill. 2d 392, 400 (1988). IEPA also argues that "the legislature intended to invest local governments with the right to assess not merely the location of proposed landfills, but also the impact of alterations in the scope and nature of previously permitted landfill facilities." *Id.* According to IEPA, the local siting requirements of the Act ensure that local governments are held accountable to the public they serve. IEPA Resp. at 11-12. Here, IEPA alleges that "the public has been deprived of any opportunity to participate" since the leachate evaporator was developed and operated under the Section 3.330(a)(3) exception. Therefore, WM must show that it has met the local siting requirements of the Act. IEPA Resp. at 11.

Board Discussion and Finding

"In order to be defined as a 'new pollution control facility,' a site must first be defined as a 'pollution control facility.'" Peoria Disposal Co., PCB 08-25, slip op. at 67. The Board agrees with IEPA that the leachate evaporator would have fallen under Section 3.330(a)'s definition of a pollution control facility when it was constructed if the Section 3.330(a)(3) exception did not apply. However, the Board is tasked with a different question here – to determine whether the requested permit modification to allow the leachate evaporator to accept and treat off-site generated waste makes the leachate evaporator a "new pollution control facility."

WM argues that previous Board and Illinois court cases found that facilities seeking to add new sources of special or hazardous waste do not need to be re-sited. In Tazewell, the Board overturned Tazewell County's decision denying siting approval for a landfill expansion. In that case, the Board noted that approval by local authorities is only required when the facility that has never previously handled special or hazardous waste is proposing to do so. Tazewell, PCB 82-55, slip op. at 21. The Board also held that local authorities need only review the request to handle special or hazardous waste once and not every time a new special or hazardous waste stream was requested so as to not paralyze the system. *Id.* at 22. However, the Board is not persuaded that these statements are applicable. The Tazewell case involved siting of a facility, whereas here the leachate evaporator has not been sited.

In Browning-Ferris, the appellate court reversed a Board decision that denied BFI's application to transfer supplemental permits to handle special waste. 127 Ill. App. 3d 509. The original owners of the landfill received a development permit with a condition prohibiting the handling of hazardous wastes. *Id.* at 510. The court found that the prohibition did not extend to special waste because the original owners of the landfill made it clear in their permit applications that the site was intended to handle special wastes. *Id.* at 511. The Board is also unpersuaded that Browning-Ferris supports WM's position. In Browning-Ferris, the court established that a permittee made its intention clear when its development permit was issued. In this case, WM added an off-site source for treatment and disposal at Prairie Hill.

The Board in *In re* RCRA Delisting Adjusted Standard Petition of Peoria Disposal Company, the underlying case in Sierra Club, granted an adjusted standard petition to delist a hazardous substance. AS 08-10, slip op. at 91 (Jan. 8, 2009). The Board declined to rule on whether the proposed delisting fit the definition of a new pollution control facility because siting is not a prerequisite for a delisting petition. *Id.* at 86. In the matter at hand, the Board finds this case to be inapplicable because the Board did not rule on whether re-siting is necessary when a facility is already permitted to treat special waste.

Since the Board found above that the Section 3.330(a)(3) exception no longer applies to the leachate evaporator as modified by the permit request, the leachate evaporator now qualifies as a "permitted pollution control facility" under Section 3.330(b)(3). While WM is correct that "other facilities" and "as a pollution control facility" is not written in Section 3.330(b)(3), the Board is persuaded that the legislature intended for the Section to cover situations like the current one where a pollution control facility exceeds its exception and has not received siting approval. As IEPA stated, the "legislature did not intend the exception for wastes generated by the operator's own activities to 'dominate and defeat the other provisions of the Act.'" Peoria Disposal Co., PCB 08-25, slip op. at 80-81; Pielet Brothers Trading Co., 110 Ill. App. 3d 752. The Board is convinced that Section 3.330(b)(3) should be read to include permitted pollution control facilities requesting to transfer and dispose of special waste that have not previously received siting approval.

The Prairie Hill leachate evaporator has not already received local siting approval. As IEPA stated, Prairie Hill received siting approval in 1992 and Whiteside County passed a resolution removing the special waste prohibition in 2015, long before WM submitted the application to develop and construct the leachate evaporator. IEPA authorized Prairie Hill to accept special waste under Section 3.330(a)(24), after Whiteside County passed the resolution, but that authorization only included the MSWLF unit and does not include the leachate evaporator. Therefore, the Board finds that the siting authorization for Prairie Hill to accept special waste does not extend to the leachate evaporator.

The Board notes that the leachate evaporator does fall under both the definition of a "site" and a "pollution control facility" and agrees that nothing in the Act precludes a facility from being both. While WM argues that the leachate evaporator is a unit within the Prairie Hill pollution control facility, and therefore received siting approval as part of Prairie Hill, the Board finds that the leachate evaporator is a separate pollution control facility from Prairie Hill landfill.

The Board finds that the cases cited by WM are distinguishable from the facts in this case. Neither Tazewell nor Sierra Club deal with a permit appeal. Additionally, the court's holding in Browning-Ferris is irrelevant because it deals with whether a prohibition against handling hazardous waste extends to special waste and says nothing about a facility seeking to add a new source of special or hazardous waste.

The Board finds that the leachate evaporator is a "new pollution control facility" under Section 3.330(b)(3). Therefore, the Board finds for IEPA on this issue.

Whether Siting Approval is Required for Operating Permits Under Section 39(c)

Lastly, the Board discusses whether Section 39(c) requires local siting approval for operating permits. WM argues that the plain language of Section 39(c) only requires siting approval for development and construction permits. Conversely, IEPA contends that reading Section 39(c) together with other parts of the Act and previous Board cases shows that the legislature intended to require siting approval of modifications of operating permits in certain situations.

Parties' Arguments

Plain language. In its summary judgment motion, WM argues that the plain language of Section 39(c) does not require siting approval for operating permits, only construction and development permits. WM Mot. at 12. WM cites to People ex rel. Madigan v. Kinzer for the statutory interpretation canon that when "statutory language is plain and unambiguous, the statute must be applied as written without resort to aids of statutory construction." WM Reply at 7, *citing* Kinzer, 232 Ill. 2d 179, 184 (2009). WM is only seeking a modification to its operating permit, so it contends that Section 39(c) does not apply. WM Mot. at 12.

WM contends that by not including operating permits in Section 39(c), but including operation of a facility in Section 39(a), the legislature intentionally omitted operating permits from being required to obtain siting approval. WM Mot. at 12. WM cites to Aurora Pizza Hut, Inc. v. Hayter and IEPA v. PCB. in support of its position that the Board should give effect to the legislature's intentional omission of operating permits in this case. *See* Aurora Pizza Hut, Inc. v. Hayter, 79 Ill. App. 3d 1102, 1105-06 (1979); IEPA v. PCB, 2018 IL App (4th) 170144, ¶ 41.

Additionally, WM asserts that Section 39(c) requires siting approval of "the location of a facility" and here the location of the facility already has siting approval. WM Mot. at 13. WM argues that it does not seek expansion or changing the location of the facility and so siting approval is not required under Section 39(c). *Id.*

In response, IEPA distinguishes IEPA v. PCB from the current case by asserting that it deals with a different subsection, 3.330(b)(2), than is at issue in the current case. 2018 IL App (4th) 170144; IEPA Resp. at 14.

Viewing the Statute as a Whole. In response to WM's plain language argument, IEPA argues that the legislature intended to require siting approval of modifications of operating permits in certain situations. IEPA Resp. at 13. According to IEPA, courts must "construe the statute as a whole and cannot view words or phrases in isolation but, rather, must consider them in light of other relevant provisions of the statute." IEPA Mot. at 13, *citing* James v. Geneva Nursing & Rehabilitation Center, LLC, 2024 IL 130042, ¶ 29. IEPA argues that reading Section 39(c) together with the exceptions in Section 3.330(b) shows that the legislature deliberately required siting approval of modifications to existing facilities. IEPA Resp. at 13; IEPA Mot. at 13-14. IEPA asserts that there would be no point to including existing facilities that accept new categories of waste in the definition of "new pollution control facilities" if siting requirements were limited to construction and development permits. IEPA Mot. at 14. IEPA also points out that two of the three definitions of a "new pollution control facility" involve already permitted facilities, which show that existing facilities may undergo significant enough physical and operation changes to warrant sitting approval. IEPA Reply at 7.

WM argues that other parts of Section 39 are consistent with the interpretation of limiting siting requirements to construction and development permits. WM Resp. at 6-7. WM asserts that Section 39 lays out the conditions for IEPA to issue permits for the construction, installation, or operation of any type of facility. *Id.*; 415 ILCS 5/30(a) (2024). WM argues that it is notable that the legislature then chose to exclude operating permits from Section 39(c). WM Resp. at 7. Additionally, WM contends that Section 39.2's reference to "the proposed facility" implies that local siting review is taking place before any physical change, not a purely operational one. *Id.*

WM also argues that excluding operating permits from the siting approval requirements in Section 39(c) is consistent with 3.330(b). WM Reply at 7-8. WM contends that the sections are not redundant because there are "circumstances where a construction or development permit would be required for a facility that is new under 3.330(b)(3) and (2)." *Id.* at 8. Under Section 3.330(b)(2), "an existing pollution control facility can become 'new' and require re-siting, but only with respect to 'the area of expansion beyond the boundary'", which would typically require some development or construction. WM Resp. at 7. Under Section 3.330(b)(3), "an existing pollution control facility that has never managed any special or hazardous waste in any way before becomes 'new' when it is converted to become a special or hazardous waste facility", which would normally involve development or construction. *Id.* at 7-8. WM argues that its leachate evaporator was already developed and constructed and will operate in the same manner, with the same capacity, and manage the same type of waste. *Id.* at 8. Since WM's requested permit does not require any development or construction, WM asserts that this is not the type of permit the legislature intended to require siting approval for.

United Disposal of Bradley. IEPA contends that WM's development permit for the leachate evaporator is limited to leachate generated on-site, and WM should not be able skirt around the siting requirements by only seeking to modify its operating permit. IEPA Resp. at 13; IEPA Mot. at 14. In support of its position, IEPA cites to United Disposal of Bradley, Inc. v. IEPA, in which the court held that United Disposal needed to request the same modification to its development permit that it was seeking to its operating permit and receive siting approval

before IEPA could grant United Disposal a modified operating permit. *See* United Disposal of Bradley, Inc. v. IEPA, PCB 03-235, slip op. at 18 (June 17, 2004) *aff'd* United Disposal of Bradley, Inc. v. PCB, 363 Ill. App. 3d 243 (3d Dist. 2006).

According to WM, United Disposal does not support IEPA's ignoring of the plain language of Section 39(c). WM distinguishes United Disposal from the current case by stating that neither the Board nor the court "found that Section 39(c) allows IEPA to require local siting approval as a condition of modification to an operating permit." WM Reply at 8. According to WM, the Board only found that the applicant required a development permit and therefore proof of local siting approval. *Id.* WM contends that since it did not apply for a development permit, and IEPA did not require it to obtain one, unlike in United Disposal, it cannot be required to obtain siting approval for only an operating permit. *Id.*

WM also differentiates United Disposal from the current case by pointing out that United Disposal sought the removal of its service area limitation, which would have significantly increased its capacity to transfer waste through its facility. WM Resp. at 8. In contrast, WM argues that it is not seeking an increase in the leachate evaporator's capacity. *Id.* at 8-9.

Board Discussion and Finding

At issue is whether Section 39(c) applies to operating permits when the plain language only includes development and construction permits under the siting approval requirements. As WM states, courts will look to the plain language of a statute and use that unless the language is ambiguous. IEPA argues that the language is ambiguous and the Board should look at the language in light of the statute as a whole. IEPA asserts that since modifications to existing pollution control facilities are considered new pollution control facilities under Section 3.330(b), this section shows that the legislature intended for permit modifications, including operational changes, to require re-sitting. In contrast, WM points out that Section 39(c)'s exclusion of operating permits, considered in light of Section 39(a) inclusion of operating permits, shows that the legislature deliberately did not include modification of operating permits under the siting approval requirements. The Board acknowledges these statutory construction arguments, but finds United Disposal dispositive in this case.

In United Disposal, IEPA denied United Disposal's operating permit request and required United Disposal to submit a development permit reflecting the changes requested in the operating permit, along with re-siting approval. PCB 03-235, slip op. at 46. In that case, the court held that the development permit must reflect the operating permit and it upheld IEPA's denial. The court stated that not every modification of an operating permit requires re-siting, but the nature of United Disposal's change required siting approval. *Id.* Here, as in United Disposal, WM requested a change to its operating permit but did not request the same change in its development permit. WM requested an increase in its capacity for its leachate evaporator to 40,000 gallons of leachate per day, but its development permit is only for 20,000 gallons of leachate per day. While IEPA did not require WM to submit a development permit when it denied WM's operating permit request, the Board nonetheless finds that WM should have requested the same change in its development permit, necessitating siting approval. Doubling

the amount of leachate that the evaporator treats and transporting leachate from other facilities is a large enough change to the nature of the evaporator that siting approval is required. Therefore, the Board finds that IEPA was correct in denying WM's operating permit request.

The Board finds this ruling consistent with the legislative intent behind the statute, which is to ensure that local municipalities have a say over the waste disposal operations in their area. The County of Kane and Waste Management v. IEPA, PCB 96-85, slip op. at 15 (Feb. 1, 1996), M.I.G., 122 Ill. 2d at 400, Am. Fly Ash Co., 120 Ill. App. 3d 57. Here, WM is requesting a modification increasing the leachate that its leachate evaporator will treat and bringing in leachate from other facilities. The Board is persuaded that the legislature intended for local municipalities to have a say in this kind of situation.

The Board finds that siting approval is required in this case. The Board grants IEPA's summary judgment motion and denies WM's summary judgment motion on this issue. Additionally, the Board directs WM to submit a development permit modification to IEPA reflecting its operating permit modification, in addition to obtaining siting approval.

CONCLUSION

The Board finds that there is no genuine issue of material fact and summary judgment is appropriate. The Board denies WM's summary judgment motion. The Board grants IEPA's summary judgment motion.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Board denies WM's motion for summary judgment.

2. The Board grants IEPA's motion for summary judgment.

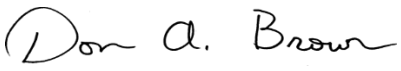
IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2024); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of

Any Petition for Review Filed with the Appellate Court	
Parties	**Board**
Taft, Stettinius & Hollister, LLP Attn.: Philip L. Comella Ryan G. Rudich 111 E. Wacker Drive, Suite 2600 Chicago, Illinois 60601 pcomella@taftlaw.com rrudich@taftlaw.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren St. Suite 630 Chicago, Illinois 60605 Don.brown@illinois.gov
Office of the Illinois Attorney General Attn.: Elizabeth Dubats Justin Bertsche Assistant Attorney General Environmental Bureau 69 W. Washington St., 18th Floor Chicago, Illinois 60602 Elizabeth.Dubats@ilag.gov Justin.Bertsche@ilag.gov	

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



Don A. Brown, Clerk
Illinois Pollution Control Board