

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

**SIERRA CLUB, PRAIRIE RIVERS
NETWORK, and NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE,**

Complainants,

V.

**CITY OF SPRINGFIELD, OFFICE OF
PUBLIC UTILITIES d/b/a CITY WATER,
LIGHT AND POWER,**

Respondent.

PCB 18-11
(Citizen Enforcement – Water)

NOTICE OF FILING

To: Don Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren St., Ste. 630
Chicago, Illinois 60605

Please take notice that today I have electronically filed with the Office of the Clerk of the Illinois Pollution Control Board **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S RESPONSE TO COMPLAINANTS' APPEAL OF HEARING OFFICER'S RULING ON ARSENIC**, which is attached and copies of which are herewith served upon you.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Dated: June 30, 2026

By: *Deborah J. Williams*

One of its Attorneys

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe, 4th Floor
Springfield, Illinois 62701
(217) 789-2116

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

SIERRA CLUB, PRAIRIE RIVERS NETWORK, and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,	)	
	)	
	)	
	)	
Complainants,	)	PCB 18-11
	)	(Citizen Enforcement – Water)
v.	)	
	)	
CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER,	)	
	)	
	)	
Respondent.	)	
	)	

**THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER,
LIGHT AND POWER’S RESPONSE TO COMPLAINANTS’ APPEAL OF HEARING
OFFICER’S RULING ON ARSENIC**

1. NOW COMES Respondent, the City of Springfield, Office of Public Utilities (the “City”) d/b/a City Water, Light and Power (“CWLP”), by and through its counsel and pursuant to 35 Ill. Adm. Code 101.518, and submits this Response to Complainants’ Appeal of Hearing Officer’s Ruling on Arsenic in the above-captioned proceeding. CWLP respectfully requests that the Board deny Complaints’ Appeal and uphold any relevant determinations by the Hearing Officer. In support thereof, CWLP states as follows:

Background and Procedural History

2. To evaluate the merits of Complaints’ Appeal, it is necessary to take that appeal in context with the overall procedural posture of this long-standing matter. On September 27, 2017, Complainants Sierra Club, Prairie Rivers Network (“Prairie Rivers”) and the National Association for the Advancement of Colored People (“NAACP”) filed a single-count Complaint with the

Illinois Pollution Control Board (“Board”) alleging that groundwater contamination has and continues to cause violations of Sections 12(a) and 12(d) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/12(a) and(d), and Sections 620.115, 620.301(a), and 620.405 of the Board’s regulations. 35 Ill. Adm. Code 620.115, 620.301(a), 620.405.

3. Complainants filed a Motion for Partial Summary Judgment on the issue of liability on January 29, 2020. CWLP filed its own Motion for Summary Judgment on the issue of remedy on the same date. Responses to the cross-motions were filed on February 13, 2020, and February 27, 2020, respectively. Both parties’ motions were denied. *See* PCB 2018-11, Interim Opinion and Order of the Board at 31–32 (June 17, 2021).

4. In its June 17, 2021 Order denying the cross motions for partial summary judgment, the Board bifurcated the liability and remedy phases in this matter, stating as follows:

“The Board directs that the hearing officer and the parties proceed expeditiously to hearing on all violations alleged in the amended complaint. ***All evidence related to the alleged violations may be admitted under 35 Ill. Adm. Code 101.626. If, after hearing, the Board finds that CWLP violated the Act or Board regulations as alleged by Citizen Groups, the Board will order a separate hearing on remedies, including civil penalties.*** See 35 Ill. Adm. Code 103.212(d) (“The Board in its discretion may hold a hearing on the violation and a separate hearing on the remedy.”).” Slip Op. at 31-32 June 17, 2021 (emphasis added).

5. On May 25, 2022 the Parties filed Joint Stipulations of fact with the Board and subsequently, on June 24, 2022, Complainants filed their “Renewed” Motion for Summary Judgment regarding the remaining issues of material fact and questions of law prior to the Board’s final decision on the issue of liability. Based on these Joint Stipulations of fact, on July 25, 2022, CWLP filed a response stating that it did not dispute the absence of remaining issues of material fact or questions of law on the issue of liability, but did make the single argument that any alleged exceedances of the Part 620 groundwater protection standards after April 21, 2021, were improper because 35 Ill. Adm. Code Part 845 (“Part 845”) became effective on that date, making CWLP no

longer subject to the Part 620 Class I groundwater protection standards for constituents regulated by Part 845. CWLP asserted that this reflected the Illinois Environmental Protection Agency's intent in proposing Part 845 groundwater protections standards that differed from those in Part 620. Complainants did not respond to or object to this characterization. On September 7, 2023, the Board found that "[w]hile the administrative record in Docket R20-19 cited by CWLP may show IEPA's intention for Part 620 standards to not apply during the active life of a CCR impoundment, the Board did not codify the Agency's intent as an exemption in Part 845." September 7, 2023 Board Order at 8. Therefore, "the plain language of the Part 845 rules does not establish an exemption from Part 620 standards." *Id.*

6. In granting summary judgment on liability, the Board specified the limitations of its ruling as follows:

"Having resolved the contested allegations in the renewed motion for partial summary judgment, the Board does not make a finding on the following allegations from the complaint and the amended complaint that the Citizen Groups are not seeking a finding on:

1. whether CWLP surface impoundments caused exceedances of groundwater quality standards at monitoring well AW-3;
2. whether exceedances of groundwater quality standards for arsenic, chromium, iron, lead, and manganese detected at downgradient monitoring wells AP-1, AP1R, AP-2, AP-2R, AP-3, and AW-3 at concentrations less than corresponding background levels were caused by CWLP surface impoundments; and
3. whether isolated manganese and arsenic concentrations detected reflect contaminant releases from CWLP surface impoundments. Mot. at 2.

Therefore, the Board makes no findings on those specific issues, and instead relies on the findings of the June 2021 Order." *Id.* at 9.

Finally, the Board issued a clear and unambiguous statement of its liability finding in this matter:

“The Board grants the Citizen Groups motion for summary judgment. The Board finds that there are no issues of genuine fact that CWLP violated Sections 12(a) of the Act and Sections 620.115, 620.301(a) and 620.405 of the Board’s groundwater rules ***for the discharge of boron, sulfate, and TDS at wells AP-1R, AP-2, AP-2R, and AP-3.***” *Id.* at 9. (emphasis added).

7. Following the Board’s 2023 opinion in this matter, stakeholders utilized the open docket in R22-18 to clarify the interaction between Part 845 and Part 620. No stakeholders commented negatively on the clarification proposal and ultimately the Board adopted language in Section 620.240(h) classifying groundwater subject to Part 845 as Class IV groundwater. *See generally, In the Matter of: Proposed Amendments to Groundwater Quality (35 Ill. Adm. Code 620)*, R22-018; *see also* 35 Ill. Adm. Code 620.240(h), Amended at 49 Ill. Reg. 488, effective March 28, 2025.

8. On June 23, 2025, CWLP filed a motion with the Board pursuant to 35 Ill. Adm. Code 101.508 requesting that the Board enter an Order Preliminary to Hearing clarifying the scope of available remedies by finding the following: “(1) CWLP’s violations of Sections 12(a) and 12(d) of the Act based on exceedances of Part 620’s Class I groundwater protection standards for boron, sulfate, and total dissolved solids ceased, at the very latest, on March 28, 2025, due to the Board’s recent amendment to Part 620; (2) Given that exceedances of boron, sulfate, and total dissolved solids have ceased as of March 28, 2025, the remedies available to Complainants are narrowed to declaratory relief and penalties, as Complainants allege only wholly past violations, which are now moot and for which injunctive relief is not available; and (3) Based on such a finding, the Board and/or its Hearing Officer will prohibit admission of any evidence related to exceedances of boron, sulfate, and total dissolved solids, or any other parameter for which there is a

standard in Part 845, occurring after March 28, 2025, in addition to any evidence supporting a request for a cease-and-desist order or other injunctive relief—CWLP respectfully requests that only evidence related to the Complainants' requested declaratory relief and penalties be permitted at the remedy hearing.” CWLP Motion Preliminary to Hearing at para. 13, page 8.

9. On November 5, 2025, the Hearing Officer issued an order denying Respondent's Motion to the Board Preliminary to Hearing. On November 19, 2025, Respondent filed a Motion for Interlocutory Appeal from Hearing Officer Order, which was denied by the Board on January 22, 2026. In the denial Order the Board provided the following guidance to the parties:

“However, CWLP is asking to exclude evidence which may or may not be probative in deciding the scope of remedy. The Board finds the hearing officer correctly denied the motion and affirms that denial. CWLP may renew its objections to specific lines of inquiry or specific evidence at hearing; however, the Board will not simply deny admission of evidence in this manner. The hearing officer, in the course of the hearing, is better able to make those determinations.” January 22, 2026 Board Order Slip. Op. at 3.

10. Because the Board treated CWLP's Motion for clarification of the scope of available remedies as an evidentiary motion regarding what evidence to admit at the hearing and did not rule on the legal issue of whether this case now involves wholly past violations and how that impacts the available remedies, the Board has left the Hearing Officer and the Parties the difficult task of addressing evidentiary matters during the remedy hearing without a ruler against which to judge the legal standard for relevant evidence. Prior to initiation of the remedy hearing in this matter, Respondent filed a Motion in Limine with the Hearing Officer in an attempt to resolve some of these matters in advance of the in person hearing seeking to: (1) exclude evidence of alleged exceedances of groundwater standards for parameters other than boron, sulfate and TDS and (2) exclude evidence of alleged exceedance of groundwater standards at monitoring wells not

identified in the Complaint or Board Order on liability. CWLP Motion in Limine at p. 11. CWLP argued that “Even if the Hearing Officer were to find such information to be relevant, it would be prejudicial to CWLP, would cause a confusion of the issues and would require a relitigating of the liability issues at the remedy phase as CWLP would be required to put on rebuttal evidence on these issues.” Id. at para. 18.

11. On April 27, 2026, the Hearing Officer issued an Order denying Respondent’s Motion in Limine but providing clear direction to the parties for conducting the Hearing:

“This is a hearing on remedy, not liability. The focus at hearing should be on evidence related to a remedy for CWLP’s violation of Section 12(a) of the Act, and Part 620 for the discharge of boron, sulfate and TDS at wells AP-1R, AP-2, AP-2R and AP-3.

However, additional evidence may be introduced that is not directly related to the aforementioned violations. In the December 21, 2017 Board order accepting the case for hearing, the Board directed the hearing officer to advise the parties that the hearing should present facts that enable the post-hearing briefs to propose a remedy that addresses 33(c) factors and to propose a civil penalty, including a specific total dollar amount, and the portion of that amount attributable to the respondent’s economic benefit, if any, from delayed compliance, and supporting its position with facts and arguments that address 42(h) factors.

Evidence of the continued presence of any constituent named in the amended complaint, including for well AW-3 (now RW-3) is relevant and admissible for the post-hearing analysis of 33(c)/42(h). ***However, evidence may be limited at hearing for constituents other than boron, sulfate and TDS. As complainants previously stipulated that they would not pursue the cause of the presence of the other constituents, testimony and evidence at hearing may be limited to that necessary to argue 33(c)/42(h) factors in their post hearing brief. In other words, evidence should be summarized rather than detailed in a manner that would normally be used to establish liability.*** (Emphasis added).

As mentioned above, CWLP’s post-hearing brief may argue that Part 845 is a defense to Part 620 violations as part of its analysis of 42(h). To that end, expert testimony or other evidence is admissible at hearing as needed for either party to argue this issue in their posthearing brief.

Again, the purpose of this hearing is to assist the Board in fashioning a remedy for the violation of Section 12(a) of the Act and Part 620 for the discharge of boron, sulfate, and TDS at the aforementioned wells. Evidence of other constituents,

including those found in well AW-3, will be admitted with limitations to argue 33(c)/42(h) factors in the post-hearing brief.”

Hearing Officer Order (April 27, 2026) Slip. Op. at p. 3.

Complainants’ Appeal of the Hearing Officer’s Ruling Should be Denied

12. In their appeal of the Hearing Officer’s statements from the May 5, 2026 hearing, Complainants’ claim that the Hearing Officer “reversed course” in ruling that additional discussion about arsenic was not needed for the remedy. Motion for Appeal at p. 2. CWLP strongly disputes Claimants’ argument that the Hearing Officer “subsequently reversed course.” Though Respondent still believes its Motion in Limine should have been granted, the Hearing Officer was clear and consistent in her denial of the motion and the application of that Order. It was Complainants who chose to ignore the clear guidance provided in the Hearing Officer Order to take liberties with the latitude they were given and fail to provide an explanation of the statutory factors that were applicable when an objection was raised. Complainants were cautioned that evidence of contaminants for which no liability finding of causation by CWLP had limited relevance and should be presented cautiously and in limited fashion with that fact in mind and in order to present evidence to support Section 33(c) and 42(h) factors. Instead of incorporating these instructions, Complainants simply insisted they were granted permission to present the evidence and that it was being presented for 33(c) factors without clearly articulating the relevance.

13. If there was a course reversal, it is Complainants that can be said to have reversed course while also significantly limiting the relevance of their own evidence during the hearing when they identified for the Record that only Section 33(c) factors are relevant and not Section 42(h) factors, because they are not seeking a monetary penalty. This change occurred when CWLP

put an objection on the Record, as both the Board and Hearing Officer had clearly directed would be appropriate, to maintain the lines drawn in response to its Motion in Limine:

“Ms. Williams: I’m going to object again to explain the relevance of arsenic background wells and what factor under Section 42(h) this testimony is relevant for.

Ms. Bugel: Section 33(c), not 42(h).

Ms. Williams: Okay. I mean, 42(h) is the penalty factors, right? Am I citing it correctly?

Ms. Webb: Honestly, I can’t keep it straight.

Ms. Bugel: **42(h) is the penalty factors, but our pre-hearing memo made clear that we’re not asking for a penalty. *We’re just asking for removal as the remedy.*”**

See, May 5, 2026 Hearing Transcript at pages 104 line 12 to page 105 line 1.

14. Although Complainants reference the relevance of arsenic to their presentation of Section 33(c) factors in their appeal, they did not present a clear argument to the Hearing Officer as to which provisions in Section 33(c) of the Act the evidence of arsenic data on the CWLP site that has not been proven to be caused by the ash ponds would be relevant. Instead, Complainants attempt to quote statements from the Record to assert as they do on page 6 of their appeal motion that “CWLP’s ash pond system is the source of the arsenic contamination.” Appeal at p. 5-6. Instead of providing a legal basis for their arguments, Complainants’ use their Appeal to make the same inflammatory statements that attempt to make inevitable the waste of Board and City resources that Respondent has been trying to avoid ---- a need to relitigate the liability phase by presenting evidence that the variable occurrences of elevated arsenic are naturally occurring and not caused by the ash ponds. This evidence was presented to Complainants’ four years ago and the Parties agreed to seek a liability finding from the Board on the parameters that were agreed to be caused by the ash ponds. While now, at this late stage in the proceedings, Complaints admit

they are asking the Board not to issue a declaratory order and penalties, but to order “removal as a remedy.” If the only reason the parties are still litigating this case after nearly a decade is to push the bounds of the Board’s cease and desist order authority, this should give the Board pause as to whether it was helpful to reserve important legal findings for post-hearing briefs that can easily be resolved prior to wasting resources of multi-day remedy hearings.

The Arsenic Evidence is Not Material or Relevant and is Prejudicial

15. Section 101.626 of the Board’s rules provides that:

“the hearing officer will admit evidence that is admissible under the rules of evidence as applied in the civil courts of Illinois, except as otherwise provided in this Part or 35 Ill. Adm. Code 105.

- a. Evidence. The hearing officer may admit evidence that is material, relevant, and would be relied upon by prudent persons in the conduct of serious affairs, unless the evidence is privileged.”

35 Ill. Adm. Code 101.626.

16. For evidence to be admitted at the remedy hearing in this matter it must be “material” and “relevant.” Evidence is material when it is offered to prove a theory at issue or is probative. *Migliore v. County of Winnebago* (1974) 24 Ill. App. 3d 799, 803, 321 N.E.2d 476, 480. Illinois courts have consistently defined “material” facts as those that might influence the outcome of the case. For instance, a material fact is one that could affect the result of the case when viewed in light of the substantive law governing the claim or defense. *Robinson v. City of Chicago*, 2025 IL App (1st) 232174 (2025); *Thia v. Triumvera 600 Naples Court Condo. Ass’n*, 2020 IL App (1st) 192408 (2020). Evidence or facts that do not pertain to a matter at issue under the substantive law are considered “immaterial” and should be excluded from consideration. 1 Illinois Evidence Courtroom Manual § 401.5 (2026).

17. Illinois law defines relevant evidence as evidence having "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401. This standard is codified in Illinois Rule of Evidence 401 and has been consistently applied in Illinois case law. See *People v. Safranek*, 2025 IL App (4th) 240967 (2025); *People v. Gordon*, 2017 IL App (3d) 140770 (2017); *Swift v. Schleicher*, 2017 IL App (2d) 170218 (2017). "Relevancy is established where a fact offered tends to prove a fact in controversy or renders a matter in issue more or less probable." *People v. Monroe*, 66 Ill. 2d 317, 321; quoting *Marut v. Costello*, 34 Ill. 2d 125, 128. Relevant evidence means that the evidence tends to make a fact more or less probable than without the evidence or the fact is of consequence in determining the action. Fed. R. Evid. 401; *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, P34; *DiCosola v. Bowman*, 342 Ill. App. 3d 530, 535, 794 N.E.2d 875, 879, 276 Ill. Dec. 625 (2003); *Modelski v. Navistar Int'l Transp. Corp.*, 302 Ill. App. 3d 879, 886. Irrelevant evidence is not admissible. Fed. R. Evid. 401. If the proposed evidence will not assist in resolving the question of fact, the evidence should be excluded. *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, P34; *First Midwest Trust Co. v. Rogers*, 296 Ill. App. 3d 416, 430, 701 N.E.2d 1107, 1116, 233 Ill. Dec. 833 (1998). Irrelevant evidence is evidence which does not possess a tendency to make existence of fact to be proved more probable or less probable. Fed. R. Evid. 401; *United States v. Quinto*, 582 F.2d 224, 42 A.F.T.R.2d (RIA) 5601, 1978-2 U.S. Tax Cas. (CCH) ¶ 9633, 78-2 U.S. Tax Cas. (CCH) ¶ 9633, 3 Fed. R. Evid. Serv. (CBC) 1097, 1978 U.S. App. LEXIS 9717 (2d Cir. 1978).

18. The Board clearly ordered that the liability in this matter was for the discharge of boron, sulfate and TDS. The Board specifically and intentionally did not make a finding of liability for other parameters including arsenic, chromium, iron, lead, and manganese. Evidence

related to alleged exceedances of arsenic or other parameters not included in the liability order in this matter would not be relevant or material to this remedy hearing. However, CWLP has made this argument previously and the Board and the Hearing Officer chose to allow Complainants latitude to present limited arsenic evidence on the assumption it could be tied to a factor relevant to the Board's remedy determination under either Section 33(c) or 42(h) of the Act. 415 ILCS 5/33(c) and 42(h).

Complainants now admit that there are only two factors they are trying to demonstrate with this evidence: Sections 33(c)(i) and (v). 415 ILCS 5/33(c)(i) and (v). Section 33(c)(i) refers to the "character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people." While 33(c)(v) refers to "any subsequent compliance." Section 33(c)(i) is a very broad and general provision that allows the Board to take into account relevant information in reaching every type of Board decision under its purview. To use this generic provision, to say that evidence of an exceedance that is not proven to be a violation of the Act is relevant to determining the remedy for a violation that is proven would be an unnecessarily overly broad reading of the Act that would allow almost any evidence to be admitted without limitation. CWLP agrees that 33(c)(v) regarding evidence of subsequent compliance is an important factor in this case. But Complainants' reliance on this provision to present evidence of unproven exceedances at the remedy phase is circular and disingenuous. CWLP has not objected to any evidence of boron, sulfate and TDS levels subsequent to the liability finding and up to and including March 28, 2025. CWLP also intends to present extensive evidence of compliance with the Board's Part 845 to demonstrate subsequent full compliance with the Act.

19. Under Illinois Rule of Evidence 402, only relevant evidence is admissible, and irrelevant evidence is inadmissible. *People v. Bliefnick*, 2024 IL App (4th) 230707 (2024).

(testimony as to victims state of mind were not relevant to Defendant's guilt). Respondent does not dispute Complaints' argument that the Board frequently uses "looser" rules of evidence than the Courts. That is understood by all practitioners before the Board. However, that loosened standard of what can be relevant should not be used to eliminate the protections of Illinois Rule of Evidence 403 that even relevant evidence should be excluded, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. *People v. Safranek*, 2025 IL App (4th) 240967 (2025), *People v. Gordon*, 2017 IL App (3d) 140770 (2017); *Swift v. Schleicher*, 2017 IL App (2d) 170218 (2017) (in medical malpractice case, Doctor's personal practice was not relevant to his opinion testimony where it did not contradict his opinion); *Martin v. City of Chicago*, 2024 IL App (1st) 220747-U, P23; *Smith v. Lubin*, 2013 IL App (1st) 111430-U, P27. Evidence is required to be excluded when "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Ill. R. Evid. 403 (eff. Jan 1, 2011); *Jacobs v. Yellow Cab Affiliation, Inc.*, 2017 IL App (1st) 151107, P34; *Demos v. Ferris-Shell Oil Co.*, 317 Ill. App. 3d 41, 53, 740 N.E.2d 9, 18, 251 Ill. Dec. 179 (2000).

20. The Hearing Officer understood that even under a "relaxed" standard, evidence claiming CWLP was responsible for elevated levels of parameters not included in the liability finding could be outweighed by its unfair prejudice, confusion of the issues and causing undue delay and waste of time. As Respondents argued in the Motion in Limine:

"For Complainants to raise the issue at this late date of the case that Respondents have caused exceedances not included in the Board's Order creates unfair prejudice for CWLP. In addition to its prejudicial nature, such testimony would require CWLP

cross-examine Complainants' witness and present testimony in its case rebutting evidence of these allegations which will cause a waste of time and resources for a matter that has already been pending for over eight years. In bifurcating the issues of liability and remedy the Board did not intend to double its work. It intended to streamline the issues so that this remedy hearing will only have to address the remedy for the specific violations found in the liability phase. The parties worked cooperatively to narrow the issues at the liability phase to obviate the need for a hearing. To relitigate these already resolved issues is prejudicial, can cause confusion of the issues and a waste of time and resources."

Motion in Limine at para. 15. The Hearing Officer made a reasonable attempt at fairness and economy by asking the Complainants to be cautious in their presentation to avoid such prejudice to CWLP and they were unwilling to do so. The Board should not ignore the real prejudice to CWLP, both in terms of the inflammatory nature of the unproven allegations Complainants are bringing forward at this late date and the waste of City of Springfield resources in defending against irrelevant allegations after the City attempted to reach a reasonable compromise with the Complainants to move this matter along efficiently at the liability stage.

21. There remains a genuine issue of fact as to whether detected arsenic values at CWLP's groundwater monitoring wells are naturally occurring variations or whether they could be caused by the ash ponds or another unidentified source. The parties agreed in 2022 to make this genuine issue of fact an "immaterial" one through the joint stipulations of fact that allowed the parties to resolve this matter without a liability hearing. Even if the Hearing Officer were to now find Complainants' claims these arsenic values are violations of the Act and caused by CWLP to be relevant, it would be prejudicial to CWLP, would cause a confusion of the issues and would require a relitigating of the liability issues at the remedy phase as CWLP would be required to put on rebuttal evidence on these issues. The Board's loosened rules of evidence do allow for evidence to be admitted that may not be clearly relevant or material, but that cannot be used to allow evidence which is prejudicial to the other party. To use the most generic provision

of the Section 33(c) as a basis to introduce prejudicial evidence takes the loosened evidence standard a step too far.

22. Complaints make numerous inflammatory and false or at the least unproven statements in their appeal regarding this issue. CWLP will not repeat them all here in an attempt to limit the prejudicial nature of these unproven claims by repeating them. For example, Complainants claim “While arsenic was not a subject of the liability phase of this case, continued arsenic contamination at the coal ash site also shows that CWLP has not come into compliance with the Illinois regulations regarding groundwater contamination.” Appeal at p. 9. This argument is both inflammatory and incorrect. It requires the Board to assume that arsenic levels are caused by the ash ponds and that the Part 620 regulations for arsenic are still applicable to this site. By allowing Complainants leeway to argue immaterial and prejudicial facts, they have simply continued to take more leeway. Ultimately, the Board will have to conclude that all violations found in the liability order are in the past as of the adoption of amendments to Part 620 in 2025 and as such, the only remedy available to Complainants are the one they are telling us they do not seek --- penalties for past violations. Although it’s beyond the scope of this Appeal of the Hearing Officer ruling, CWLP hopes the Board can find a way to put an end to this abuse of process and waste of resources by making it clear to the parties that the Board does not have authority to order the one thing the Complainants are asking for the Board to order --- injunctive relief of removal of ash as a remedy to wholly past violations of the Act.

Relief Requested

Under any set of facts, Complainants would be on shaky legal ground to argue the Board has authority to order the removal of ash at the Respondents’ facility as part of its “cease and desist” order authority for an ongoing violation. But under these circumstances, where the

violations are wholly past, where both U.S. EPA and Illinois EPA are undertaking a comprehensive program of review, permitting and approval of the closure of the CWLP Ash Ponds, to argue the sole remedy they seek from this matter is an order of “removal as remedy” is an abuse of the Board’s process. This abuse should not be allowed to expand and continue by requiring the parties to relitigate alleged exceedances that were resolved at the liability stage and would be wholly past and not ongoing even if they could be proven.

For the reasons stated herein and to avoid prejudice to the Respondent and a waste of the Board’s limited time and resources and confusion of the issues before the Board, Respondent, City of Springfield, Office of Public Utilities d/b/a City Water, Light and Power respectfully requests that the Board uphold the Hearing Officer’s limitation on the presentation of evidence of arsenic in the remedy hearing in this matter as immaterial, prejudicial and a waste of time and resources for all Parties involved.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Deborah J. Williams

Dated: June 30, 2026

By:

One of its Attorneys

Deborah J. Williams
Special Assistant Corporation Counsel
Office of Public Utilities
800 East Monroe, 4th Floor
Springfield, Illinois 62701
(217) 789-2116

CERTIFICATE OF SERVICE

The undersigned, Deborah J. Williams, an attorney, certifies that I have served electronically upon the Clerk and by email upon the individuals named in the attached Service List, a true and correct copy of the **NOTICE OF FILING** and **THE CITY OF SPRINGFIELD, OFFICE OF PUBLIC UTILITIES d/b/a CITY WATER, LIGHT AND POWER'S RESPONSE TO COMPLAINANTS' APPEAL OF HEARING OFFICER'S RULING ON ARSENIC**, from the email address deborah.williams@cwlp.com of this 18 page document before 5:00 p.m. Central Time on June 30, 2026 to the email address provided on the attached Service List.

Deborah J. Williams

SERVICE LIST PCB 18-11

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois
62794-9274
carol.webb@illinois.gov

Faith E. Bugel
1004 Mohawk
Wilmette, Illinois
60091
fbugel@gmail.com

Priyam Desai
Staff Attorney
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
priyam.desai@sierraclub.org