

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

**TO: Attached Service List Via Email**

PLEASE TAKE NOTICE that on April 23, 2026, I caused to be filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the attached Respondent’s Response to Petitioner’s Motion *In Limine*, hereto attached and hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

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**CERTIFICATE OF SERVICE**

I, Justin Bertsche, an Assistant Attorney General, hereby certify that on the 23rd of April, 2026, I caused to be served the foregoing Notice of Electronic Filing and Respondent's Response to Petitioner's Motion *In Limine* upon the parties named on the attached Service List via email.

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**RESPONDENT’S RESPONSE TO  
PETITIONER’S MOTION *IN LIMINE***

Pursuant to 35 Ill. Adm. Code 101.500 and 101.502, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), respectfully requests that the Hearing Officer deny Petitioner’s, WASTE MANAGEMENT OF ILLINOIS, INC. (“WMIL”), Motion *in Limine* to Limit Proceeding to Issues Raised on Appeal (“Motion *in Limine*”) because (1) Illinois EPA’s Final Determinations, not the arguments WMIL raised in its Petition, frame the issues on appeal; (2) WMIL’s motion is vague and overbroad, does not conform to the Board’s rules, and inappropriately seeks to both exclude evidence from hearing and to limit the scope of discovery; and (3) Respondent is entitled to discovery of all relevant information and information calculated to lead to relevant information. In support of its Response, Respondent states as follows:

**I. Illinois EPA’s Final Determinations, not WMIL’s Arguments in Its Petition, Frame the Issues on Appeal.**

In its Petition, WMIL raises four arguments challenging Illinois EPA’s permit approval with conditions dated July 29, 2024, (“Permit Approval”) and its final decision dated July 30, 2024, (“Final Decision”) (collectively referred to as “Final Determinations”): first, arguing Illinois EPA lacks legal authority to issue the contested permit conditions; second, objecting to the permit modification class; third, asserting a right to reduce its financial assurance; and fourth, alleging

that Illinois EPA is equitably estopped from issuing the contested permit conditions. *See* Petition to Appeal Illinois EPA’s Final Determinations, Request for Stay, and Motion to Consolidate (“Petition”) at 2, 3. In its Motion *in Limine*, WMIL asserts – without legal support – that “the only relevant issues are the issues identified in WMIL’s appeal of Illinois EPA’s Final Determinations ...” Motion *in Limine* at ¶ 9. WMIL seeks an overbroad order limiting the issues Illinois EPA can raise in support of its Final Determinations in “this matter, including further proceedings and discovery,” to just those issues WMIL raised in its Petition. Motion *in Limine* at ¶ 10. In seeking that order, WMIL tacitly asks the Board to ignore longstanding case law about the proper framing of permit appeals.

***A. The Board’s Precedent Is Clear: Illinois EPA’s Final Decision Frames the Issues on Appeal.***

The Board has routinely held that it is Illinois EPA’s “denial letter which frames the issues in a permit appeal to the Board.” *ESG Watts v. Pollution Control Board*, 286 Ill. App. 3d 325, 335 (3d Dist. 1997); *see also Waste Management of Illinois, Inc. v. Illinois Environmental Protection Agency*, PCB 25-2 at 4 (Mar. 5, 2026);<sup>1</sup> *Aqua Illinois Inc. v. Illinois Environmental Protection Agency*, PCB 23-13 at 8 (Dec. 15, 2022);<sup>2</sup> *D & L Landfill, Inc. v. Illinois Environmental Protection Agency*, PCB 15-137 (Jan. 21, 2016).<sup>3</sup> Permit appeals arising from permits granted with conditions are treated the same as permit denials under the Act. *See, e.g.*, 415 ILCS 5/40(a)(1) (2024).<sup>4</sup> A

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<sup>1</sup>A copy of the Board’s March 5, 2026, Opinion and Order is available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pcb.illinois.gov/documents/dsweb/Get/Document-115385>.

<sup>2</sup>A copy of the Board’s December 15, 2022, Opinion and Order is available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pcb.illinois.gov/documents/dsweb/Get/Document-107252>.

<sup>3</sup>A copy of the Board’s January 21, 2016, Opinion and Order is available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://pcb.illinois.gov/documents/dsweb/Get/Document-91650>.

<sup>4</sup> “If the Agency refuses to grant **or grants with conditions** a permit under Section 39 of this Act the applicant may, within 35 days after the date on which the Agency served its decision on the applicant,

common sense approach supports this longstanding Board rule. In a permit appeal, Illinois EPA must be able to present a complete and accurate picture of its permitting decision to the Board, not a picture artificially cabined by the scope of a petitioner's petition.

Here, WMIL asks the Hearing Officer to ignore Board precedent which would ultimately paint an incomplete picture of Illinois EPA's permitting decision to the Board. As Respondent discusses more fully below, the relief WMIL requests is, to say the least, unclear. WMIL fails to identify any specific piece of evidence it wants excluded from hearing. WMIL attempts to use its Motion *in Limine*, an evidentiary motion, to also limit the scope of discovery without providing the Hearing Officer any legal support for that proposition. See Motion *in Limine* at ¶ 10. Because WMIL fails to identify any specific document or discovery request it wants excluded from this appeal, Respondent is left guessing what specific information WMIL wants to keep from the Board. A clue might be found in paragraph 11: "It has become clear to WMIL that Illinois EPA seeks to make arguments in the appeal that are unrelated to the regulations at issue, including arguments about whether conditions at the Laraway RDF warrant a permit extension." Motion *in Limine* at ¶ 11. That Respondent would make arguments about environmental conditions at the Site should come as no surprise to WMIL; the Final Determinations are littered with references to the Act and Board regulations governing environmental conditions at the Site, including those sources of law that formed the basis for the permit conditions at issue in this appeal. For example, the Final Decision notes that the permit conditions at issue in this appeal are based upon, among other things, leachate generation at the Site, that the Site accepted hazardous waste, the type and design of the landfill unit, the landfill gas generated at the Site, long-term care of the Site, and climate change considerations. See Record at R 000209 - R 000210. To the extent that WMIL

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petition for a hearing before the Board to contest the decision of the Agency." 415 ILCS 5/40(a)(1) (2024) (emphasis added).

seeks to preclude evidence about the Site's environmental issues from the Board through this Motion *in Limine*, its attempts should be rejected. Illinois EPA's Final Determinations, not WMIL's petition, frame the issues on appeal, *see ESG Watts*, 286 Ill. App. 3d at 335, and the environmental conditions at the Site were a substantial factor in Illinois EPA's permitting decision. *See* Record at R 000209 - R 000210. A decision in favor of WMIL would therefore prevent the Board from considering Illinois EPA's key considerations underlying its Final Determinations and would conflict with longstanding Board precedent.

***B. WMIL's Requested Relief Contravenes the Board's Rules on Appeals of Final Decisions of State Agencies.***

WMIL's requested relief raises another troubling issue: WMIL's Motion *in Limine* is silent on how the relief it seeks would impact the parties' ability to cite the record on appeal ("Record"). As Respondent discussed above and as indicated by a review of the Record, Illinois EPA considered environmental conditions at the Site when issuing its Final Determinations. *See, e.g.*, Record at R 000209 - R 000210. To the extent that WMIL now asks the Hearing Officer to exclude information which Illinois EPA already included in the Record from hearing, Sections 105.212 and 105.214 of the Board's Rules on Appeals of Final Decisions of State Agencies provides useful guidance. Those provisions require Illinois EPA to file a record of its permitting decision which includes all "information the Agency relied upon in making its final decision" and the hearing on Illinois EPA's permitting decision must "be based exclusively on the Agency record ..." 35 Ill. Adm. Code 105.212 and 105.214. Why would Sections 105.212 and 105.214 require Illinois EPA to compile a complete record of its decision and require that the hearing be based exclusively on that complete record if—as WMIL argues—the correct framing of a permit appeal are the issues raised in the petition? WMIL never answers that question. A decision in WMIL's favor would effectively render these Board rules meaningless.

Longstanding Board precedent makes clear that Illinois EPA's final decision "frames the issues in a permit appeal to the Board." *ESG Watts*, 286 Ill. App. 3d at 335. That case law is consistent with the Board's Rules on Appeals of Final Decisions of State Agencies and is supported by a common sense approach, that Illinois EPA must have an opportunity to argue its case completely and accurately and not have its arguments artificially limited to the issues raised in a petition appealing its permitting decision. Therefore, Respondent respectfully requests that the Hearing Officer deny WMIL's Motion *in Limine*.

**II. WMIL's Motion Is Vague and Overbroad, Does not Conform to the Board's Rules, and Inappropriately Seeks to Both Exclude Evidence from Hearing and to Limit the Scope of Discovery.**

The Hearing Officer should further deny WMIL's Motion *in Limine* because the relief WMIL seeks is vague and overbroad, its Motion fails to comply with the Board's rules governing the contents of motions, and WMIL's requested relief conflicts with both the Board's Discovery Rules and the Illinois Supreme Court Discovery Rules.

***A. The Relief WMIL Requests is Vague and Overbroad.***

As Respondent discussed above, WMIL fails to identify a single piece of evidence it wants excluded from hearing. Instead, WMIL asks the Hearing Officer to grant a vague and overbroad order "limiting the issues of this appeal to whether the Agency correctly interpreted and administered regulations concerning the extension of post-closure care, permit modification classification, and financial assurance." Motion *in Limine* at page 4. WMIL leaves both the Hearing Officer and the Respondent in the dark about the precise ramifications of such an order. WMIL's vague ask points to an additional problem: if the Hearing Officer were to grant WMIL's requested relief, the parties would still need the Board or the Hearing Officer to determine whether any particular piece of evidence was excluded from hearing by virtue of the Hearing Officer's

decision, which would introduce inefficiencies into the hearing that a motion *in limine* typically seeks to avoid (i.e., narrowing issues for hearing). *See, e.g., People v. Zimmerman*, 2018 IL App (4th) 170695, ¶ 134 (emphasizing the benefits of motions *in limine* for purposes of judicial efficiency). An example might help illustrate the point. If Illinois EPA sought to introduce into evidence WMIL's RCRA Leachate Level Reports, *see* Record at R 001029 – R 001066, and WMIL sought to exclude that evidence on the basis of the relief it requests here, the Board or Hearing Officer would still have to adjudicate whether those Leachate Level Reports were admissible going to whether “the Agency correctly interpreted and administered regulations concerning the extension of post-closure care, permit modification classification, and financial assurance.” Motion *in Limine* at page 4. This particular example also serves to illustrate that the Board or the Hearing Officer would also need to reconcile the conflict between Illinois EPA's Record containing all the information it relied upon in reaching its Final Determinations pursuant to 35 Ill. Adm. Code 105.212, the Board's requirement that the hearing be based exclusively on the Illinois EPA's Record pursuant to 35 Ill. Adm. Code 105.214, and the order WMIL's requests in its Motion *in Limine*. To avoid this situation and comply with applicable law, the Hearing Officer should deny WMIL's Motion *in Limine*.

***B. WMIL's Motion in Limine fails to Comply with the Board's Rules Governing the Contents of Motions.***

WMIL's Motion *in Limine* fails to conform to the Board's rules on the contents of motions.

Section 101.504 of the Board's General Rules provides as follows:

**Contents of Motions and Responses**

All motions and responses must state the grounds upon which the motion is made and must concisely state the position or relief sought. Facts asserted that are not of record in the proceeding must be supported by oath, affidavit, or certification consistent with Section 1-109 of the Code of Civil Procedure. A brief or memorandum in support of the motion or response may be included.

35 Ill. Adm. Code 101.504. WMIL's Motion *in Limine* misses the mark in three ways. First, this provision requires that every motion "must state the grounds upon which the motion is made ..."  
*Id.* Here, WMIL has not provided the grounds for how its Motion *in Limine*, an evidentiary motion, can also limit the scope of discovery, notably without following either the Board's or the Illinois Supreme Court's rules for limiting discovery. *See, e.g.*, 35 Ill. Adm. Code 101.616(b), (d); Illinois Supreme Court Rule 201(c), (k). Second, this section provides that motions must "concisely state the position or relief sought." *Id.* Here, as described above, WMIL fails to concisely state the relief it seeks because its requested relief is vague and overbroad and will lead to additional adjudication when WMIL seeks to exclude any particular piece of evidence from hearing. Third, this Board rule requires parties to support "by oath, affidavit, or certification" any "[f]acts asserted that are not of record in the proceeding." *Id.* Here, WMIL asserts that "[i]t has become clear to WMIL that Illinois EPA seeks to make arguments in the appeal that are unrelated to the regulations at issue, including arguments about whether conditions at the Laraway RDF warrant a permit extension." Motion *in Limine* at ¶ 11. But WMIL fails to identify any particular support for its assertion and fails to include any oath, affidavit, or certification in support of that fact. Because WMIL's Motion *in Limine* fails to comply with Section 101.504 of the Board's General Rules, 35 Ill. Adm. Code 101.504, Illinois EPA respectfully requests that the Hearing Officer deny WMIL's Motion *in Limine*.

**III. Illinois EPA is Entitled to Discovery of All Relevant Information and Information Calculated to Lead to Relevant Information.**

WMIL argues, without legal support, that "this matter, including further proceedings **and discovery**, should be limited to Illinois EPA's interpretation and administration of each of these regulations." Motion *in Limine* at ¶ 10 (emphasis added). Contrary to WMIL's request, Illinois

EPA is entitled to full discovery of relevant information and information calculated to lead to relevant information. Moreover, WMIL has ignored the Board's Discovery Rules, the Illinois Supreme Court Discovery Rules, and confuses the standards of relevance for purposes of evidence and discovery.

***A. Illinois EPA is Entitled to Full Discovery of All Relevant Information.***

Parties are entitled to full discovery of relevant information. *See* 35 Ill. Adm. Code 101.616(a); *see also* Illinois Supreme Court Rule 201(b)(1). Relevance in the context of discovery means both what is admissible at trial and what leads to what is admissible at trial. *See Monier v. Chamberlain*, 35 Ill. 2d 351, 357 (1976); *see also* 35 Ill. Adm. Code 101.616(a). WMIL identifies no specific discovery requests that it believes are irrelevant. In fact, its Motion *in Limine* largely overlooks the different relevance standards for evidence and discovery. "Evidence is relevant for trial purposes if it has 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. *See* Ill. R. Evid. 401 (eff. Jan. 1, 2011). In contrast, relevance for discovery purposes includes not only that which is admissible at trial, but also that which leads to admissible evidence." *Zagorski v. Allstate Ins. Co.*, 2016 IL App (5th) 140056, ¶ 22. Because Illinois EPA is entitled to full discovery of all relevant information and because WMIL has failed to identify a single irrelevant discovery request, the Hearing Officer should deny WMIL's Motion *in Limine*.

***B. WMIL's Motion in Limine Ignores the Board's Discovery Rules and the Illinois Supreme Court Rules for Limiting Discovery.***

WMIL fails to provide any legal support for its request that the Hearing Officer limit the scope of discovery in a motion *in limine*. *See* Motion *in Limine* at ¶ 10. Moreover, WMIL attempts to use this Motion as a shortcut to limit discovery, rather than availing itself of its options under either the Board's Discovery Rules or the Illinois Supreme Court Discovery Rules. If a party is

concerned that its counterpart is abusing the discovery process, it can seek a protective order or request supervision of discovery. *See* 35 Ill. Adm. Code 101.616(d); *see also* Illinois Supreme Court Rule 201(c)(1) and (2). Here, WMIL has not sought any protective order or requested supervision of discovery pursuant to 35 Ill. Adm. Code 101.616(d) or Illinois Supreme Court Rule 201(c)(1) and (2). Additionally, under Illinois Supreme Court Rules, parties are required to “make reasonable attempts to resolve differences over discovery. **Every motion with respect to discovery** shall incorporate a statement that counsel responsible for trial of the case after personal consultation and reasonable attempts to resolve difference have been unable to reach an accord ...” Illinois Supreme Court Rule 201(k) (emphasis added). Here, WMIL has not incorporated any statement that counsel responsible for trial of the case has made a reasonable attempt to resolve differences. In fact, WMIL does not identify a single discovery request it contends is inappropriate or that would be subject to the relief it seeks in its Motion.

WMIL cites to *Aqua Illinois Inc. v. Illinois Environmental Protection Agency* for the proposition that in a permit appeal “the only issues relevant are those related to ‘whether the Agency correctly interpreted and administered regulations.’” *See* Motion in Limine at ¶ 8; *Aqua Illinois Inc. v. Illinois Environmental Protection Agency*, PCB 23-13 at 8 (Dec. 15, 2022). WMIL next cites to *People v. Morgan* for its statement about the standard of relevance for evidence, 197 Ill. 2d 404, 455-56 (2001), and then cites to *Sander v. Dow Chemical Company* for the proposition that discovery “should only be utilized to ‘illuminate the actual issues in the case.’” *Sander v. Dow Chem. Co.*, 166 Ill. 2d 48, 64 (1996). *See* Motion in Limine at ¶ 8. These cases do nothing to move the needle in WMIL’s favor. What are the issues in this case? As Respondent discussed above, longstanding Board case law makes clear, Illinois EPA’s final decision “frames the issues in a permit appeal to the Board.” *ESG Watts*, 286 Ill. App. 3d at 335. Here, Illinois EPA’s evaluation

of environmental conditions at the Site within the context of WMIL's obligations under applicable post-closure care laws framed its Final Determinations and are therefore relevant both as a matter of evidence and discovery. And WMIL has not argued otherwise with respect to any particular discovery request. Because WMIL's Motion *in Limine* seeks to circumvent both the Board's Discovery Rules and the Illinois Supreme Court's Discovery Rules, Respondent respectfully requests that the Hearing Officer deny WMIL's Motion *in Limine*.

WHEREFORE, because Illinois EPA's Final Determinations frame the issues on appeal, because WMIL's Motion is vague and overbroad, does not conform to the Board's rules, and inappropriately seeks to both exclude evidence from hearing and to limit the scope of discovery, and because Respondent is entitled to discovery of all relevant information, Respondent, Illinois EPA, respectfully requests that the Hearing Officer deny WMIL's Motion *in Limine*.

Respectfully submitted,

Respondent,  
ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

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