

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 September 25, 2026, I caused to be filed with the Clerk of the Illinois Pollution Control Board in the above referenced case via the “COOL” system the attached Respondent Illinois Environmental Protection Agency’s Response to Waste Management of Illinois, Inc.’s Motion to Compel Production of Documents.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

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CERTIFICATE OF SERVICE

I, Nancy Tikalsky, an Assistant Attorney General, hereby certify that on the 25th of September 2026, I caused to be served the foregoing Notice of Electronic Filing and Respondents' Response to Waste Management of Illinois, Inc.'s Motion to Compel Production of Documents upon the parties named on the attached Service List via email.

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**RESPONDENT’S RESPONSE TO WASTE MANAGEMENT OF ILLINOIS, INC.’S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

NOW COMES, Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), respectfully requests that the Hearing Officer deny Petitioner’s, WASTE MANAGEMENT OF ILLINOIS, INC.’s (“WMIL”) Motion to Compel Production of Documents (“Motion to Compel”). In support of its Response, Respondent states as follows:

I. INTRODUCTION

On December 4, 2024, WMIL filed its appeal of the Illinois EPA’s July 29, 2024 permit with conditions and the related July 30, 2024, final decision for the Laraway Recycling and Disposal Facility (“Laraway RDF”) (collectively “Final Determinations”), which the Illinois Pollution Control Board (“Board”) consolidated on December 19, 2024 (“Appeals”). On August 20, 2026, WMIL filed its Motion to Compel and its Memorandum of Law in Support of Waste Management of Illinois, Inc.’s Motion to Compel Production of Documents (“Memorandum of Law”) to compel Respondent to disclose redacted Illinois EPA notes of remarks from other non-jurisdictional agencies taken during its participation in meetings with the U.S. Environmental Protection Agency (“USEPA”) and its delegates Post-Closure Care Working Group (“EPA

Working Group”) (“Meeting Notes”). The Respondent generally agrees with Petitioner’s timeline of discovery in its Motion to Compel. *See generally*, Motion to Compel.

The State fully responded to WMIL’s First Set of Requests for Document Production to Illinois EPA (“RDP”) Request No. 3 by providing the Meeting Notes certified by Illinois EPA that contained both Illinois EPA and USEPA’s remarks relevant to Illinois EPA’s Final Determinations and redactions of other non-jurisdictional agencies’ remarks not considered by Illinois EPA in its Final Determinations. Accordingly, the Hearing Officer should deny Petitioner’s Motion to Compel.

II. ARGUMENT

A. Legal Standard for Discovery

“All relevant information and information calculated to lead to relevant information is discoverable,” 35 Ill. Adm. Code 101.616. In a permit appeal, the Board has held that it is “proper to inquire, and discovery should be allowed” to ensure that the record is complete and contains all of the information that was before the Agency when it came to its final decision. *Owens-Illinois, Inc. v. Illinois EPA*, PCB 77-288, p.1 (Feb. 2, 1978). The allowance of discovery is in support of the Board’s requirement to ensure that the record include “all documents on which the Agency relied or reasonably should have relied.” *Ameren Energy Resources Generating Co. v. Illinois EPA*, PCB 14-41, 2014 Ill. ENV LEXIS 100 at *23 (Mar. 20, 2014). While it is true that great latitude is allowed in the scope of discovery, the “discovery rules also fix guidelines for a fair and orderly procedure by which discovery may be accomplished and protect against abuses and unfairness.” *Id.*

B. Redactions to documents produced in response to RDP Request No. 3 are Irrelevant.

The State fully responded to WMIL's RDP Request No. 3 by providing documents certified by Illinois EPA as Illinois EPA Meeting Notes that contained both Illinois EPA and USEPA's remarks relevant to Illinois EPA's Final Determinations and simply redacting other non-jurisdictional agencies' remarks on topics discussed not relevant to Illinois EPA's Final Determinations; and not the entire 'topics discussed' as Petitioner mischaracterizes the Respondent's redactions. *See* Motion to Compel, ¶ 4 and Exhibit D. Illinois EPA does not redact 'topic' headers nor any remarks the Illinois EPA or the USEPA may have made on any 'topic' and Petitioner doesn't provide any evidence otherwise. *See generally*, Motion to Compel, Exhibit D. Instead, Petitioner provides evidence of select topics where non-jurisdictional agencies remarks were redacted. *See generally*, Motion to Compel and Memorandum of Law, pages 3 and 4.

1. Illinois EPA did not rely on the redacted portions of the documents and are therefore outside of the Record.

To the extent that WMIL's seeks to include redacted remarks by non-jurisdictional agencies that Illinois EPA specifically excluded in its certified record ("Record") as irrelevant to its Final Determinations, WMIL asks the Board to ignore its rules on permit appeals. The Board's Rules on Appeals of Final Decisions of State Agencies, 35 Ill. Adm. Code Part 105, require Illinois EPA to file a record of its permitting decision that 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. Longstanding Board case law makes clear that Illinois EPA's final decision "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). That case law is consistent with the Board Rules on Appeals of Final Decision of State Agencies.

Moreover, the right to discovery is limited to disclosure of matters that will be relevant to the case at hand to protect against abuses and unfairness, and the Board, like a court should deny a discovery request where there is insufficient evidence that the requested discovery is relevant. *TTX Co. v. Whitley*, 295 Ill. App. 3d 548, 557 (1st Dist. 1998) (Court found that TTX's discovery requests to the Illinois Department of Revenue, a government agency, that sought tax payer information and tax records about other companies not involved in the litigation was irrelevant to determination of the claims before the trial court). Likewise, Respondent has appropriately redacted other non-jurisdictional agencies' remarks from the Meeting Notes since information on permitting Resource Conservation and Recovery Act ("RCRA") sites in other agencies' jurisdictions outside of Illinois were not relied upon by Illinois EPA when making its Final Determinations or involved in this Appeal. Just because other non-jurisdictional agencies made remarks in the USEPA Working Group Meeting Notes does not make them relevant to Illinois EPA Final Determinations, especially where it expressly did not rely on them.

2. Remarks from non-jurisdictional agencies not relied upon by Illinois EPA in making the Final Determinations are irrelevant.

In the making the Final Determinations, the law and guidance of the same that the Illinois EPA relied on were Illinois laws and regulations including those pursuant to federal RCRA laws, its Memorandum of Agreement Between the State of Illinois and the USEPA, Region 5 executed in 2016 ("Delegation Agreement"), and USEPA guidance in managing RCRA sites. *See generally*, Memorandum of Agreement Between the State of Illinois and the United States

Environmental Protection Agency, Region 5 executed in 2016 hereto attached as Exhibit 1.¹ If there were remarks by other non-jurisdictional agencies that contradict USEPA guidance, it would be irrelevant as Illinois EPA has an obligation under its Delegation Agreement to follow federal RCRA laws when managing RCRA sites. The Delegation Agreement, Federal RCRA laws along with USEPA guidance thereof, and Illinois laws and regulations, not other non-jurisdictional agency viewpoints, governs Illinois EPA's administration of the Illinois RCRA program. As provided in the Delegation Agreement, Illinois EPA's implementation of the Illinois RCRA program, which includes portions of the federal RCRA program delegated by the federal government to the states, must be done "in a manner equivalent to and consistent with the Federal program" and must be no "less stringent than the Federal Program." *Id.* at 2. The Delegation Agreement also requires Illinois EPA to "[c]arefully consider key Federal program guidance (and any updates) in conducting the RCRA Corrective Action Program." *Id.* at 13. As such, the Delegation Agreement goes to the heart of Illinois EPA's decision-making authority with regards to the Illinois RCRA program, not other non-jurisdictional agencies' viewpoints and programs.

In its Motion to Compel, WMIL argues that the redacted remarks may contain information from other non-jurisdictional agencies that contradict Illinois EPA's Final Determinations. *See* Motion to Compel, ¶ 7. Yet, the Final Determinations documents submitted in the Record Petitioner relies on, specifically state that USEPA and the participating States involved in the USEPA Working Group agree that post-closure care must continue to be implemented where waste remains in place. *See* Motion to Compel, Exhibit A, R00961, ¶ 2.

¹ On September 24, 2026, the Petitioner filed a Motion to Supplemental the Record with the Delgation Agreement

So, what could possibly be discovered from other non-jurisdictional agencies who all agree with the USEPA on such a post-closure care maxim?

Similarly, Illinois EPA referencing other USEPA delegate agency actions in Illinois EPA Review Notes simply provides verification of USEPA support for other delegates actions similar to Illinois EPA's consideration of the same. *See* Motion to Compel, Exhibit A, R000961 - R000962. This is not evidence that Illinois EPA relied on non-jurisdictional agencies' remarks in the USEPA Working Group, but that it relied on USEPA approval of the permit condition Illinois EPA was considering in its Final Determinations.

Notwithstanding the foregoing arguments, these Final Determinations are complex enough without bringing in viewpoints concerning other non-jurisdictional agencies' viewpoints other than the State of Illinois and the USEPA.

3. Petitioner's other arguments do not support compelling the irrelevant remarks from non-jurisdictional agencies.

First, Petitioner's reliance on KCBX case is misplaced. *See KCBX Terminals Co. v. Illinois EPA*, PCB 14-110, p. 1 (April 8, 2014) (B. Halloran) (Board upheld Hearing Officer's decision requiring Agency to produce meeting notes that the Agency asserted were not relevant because the notes discussed the petitioner's request). Here, the Meeting Notes are not the basis of a direct request of the Petitioner in any form, but from biweekly professional USEPA RCRA meetings providing guidance to its delegate agencies, including the Illinois EPA, wholly unrelated to the Petitioner's specific facility. *See* Motion to Compel, Exhibit D. The Respondent has provided all remarks by USEPA and Illinois EPA in the Meeting Notes that it relied on or should have been relied upon when considering its Final Determinations for the Laraway RDF. *See Id.*; *See Ameren Energy Resources Generating Co*, 2014 Ill. ENV LEXIS 100 at *23; and *see generally*, Motion to Compel, Exhibit D.

Second, the fact that Illinois EPA provided an update to the USEPA Working Group about an entirely separate facility (IEPA 000052) and that Illinois EPA corresponded with other states' regulators (IEPA 000055-000058) has no bearing on Illinois EPA's authority to issue its Final Determinations. *see* Motion to Compel, Exhibit D, IEPA 000052, 000055-000058. Accordingly, Illinois EPA produced all documents responsive to RDP Request No. 3, which properly redacted irrelevant remarks in Meeting Notes made by other non-jurisdictional agencies.

Finally, Petitioner claims that the redacted remarks of non-jurisdictional agencies "appear to ... disagree with the [Illinois EPA's] interpretation of post-closure requirements and their basis," *See* Memorandum of Law, page 7 ¶ 1. This supposition should be given no weight, as Petitioner does not know the contents of the redacted remarks of other non-jurisdictional agencies. Moreover, whether they agreed with Illinois EPA or not has no bearing on the fact that the redactions themselves are a clear indication that Illinois EPA did not rely on them in making the Final Determinations, and as such that information is not likely to lead to any admissible evidence and are irrelevant.

III. CONCLUSION

For the foregoing reasons, the Hearing Officer should deny Petitioner's Motion to Compel in its entirety.

Respectfully submitted,

Respondent,
ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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