BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
WASTE MANAGEMENT OF ILLINOIS, INC.	)	
	)	
Petitioner,	)	
	)	**PCB 25-9/25-10**
	)	**(Permit Appeal - RCRA)**
	)	**(Consolidated)**
v.	)	
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
Respondent.	)	

NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Pollution Control Board Waste Management of Illinois, Inc.'s Motion for Leave to File, *Instanter*, Its Reply in Support of Its Motion to Compel Production of Documents, a copy of which is herewith served upon you.

Dated: October 9, 2026

Waste Management of Illinois, Inc.

/s/ Kristen L. Gale
One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that a true copy of the foregoing Waste Management of Illinois, Inc.'s Motion for Leave to File, *Instanter*, Its Reply in Support of Its Motion to Compel Production of Documents was electronically filed on October 9, 2026 with the following:

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and copies were sent via e-mail on October 9, 2026 to the parties on the service list.

Dated: October 9, 2026

Waste Management of Illinois, Inc.

/s/ Kristen L. Gale
One of its Attorneys

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WASTE MANAGEMENT OF ILLINOIS, INC.'S MOTION FOR LEAVE TO FILE, *INSTANTER*, ITS REPLY IN SUPPORT OF ITS MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Petitioner, Waste Management of Illinois, Inc. ("WMIL"), requests that the Hearing Officer grant this Motion for Leave to File, Instanter, its Reply in support of its Motion to Compel Production of Documents, pursuant to Sections 101.500(e) of the Illinois Pollution Control Board's ("Board") Procedural Rules. 35 Ill. Adm. Code 101.500(e). A reply brief is warranted because Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") raised new arguments in its Response, improperly claiming that it may withhold documents and information in a permit appeal record that it deems irrelevant, despite acknowledging that the rule in a permit appeal is that the Board's decision must be based on the entire record before the Agency, which consists of documents on which the Agency "relied on *or reasonably should have relied*." Agency Resp. 2, *citing Ameren Energy Resources Generating Co. v. Illinois EPA,* PCB14-41 (March 20, 2024), *slip op.* at 9.

Illinois EPA does not object to WMIL's Motion for Leave to File its Reply. In support of its motion seeking leave to file, *instanter,* WMIL submits its Reply and states:

1. On August 20, 2026, WMIL moved to compel production of unredacted copies of the Illinois EPA's notes from its meetings with the U.S. Environmental Protection Agency Post-Closure Care Working Group ("Meeting Notes").

2. On August 25, 2026, Illinois EPA filed its unopposed motion for extension of time to file its response to WMIL's motion.

3. On September 25, 2026, Illinois EPA filed its response, which improperly narrows the scope of discovery in permit appeals, and makes the self-serving claim that because it did not rely on the unredacted portions of the Meeting Notes they are not relevant and discoverable.

4. WMIL has prepared its Reply in support of its Motion to Compel, which is attached hereto. In its Reply, WMIL clarifies that even in permit appeals, the scope of discovery is broad, and includes any documents considered by the Agency, regardless of the Agency's purported reliance on the documents. Moreover, even if discovery in permit appeals were limited to information the Agency relied upon as the Agency incorrectly suggests, it is evident that the Agency specifically relied on information from the other States. As such, it was improper to redact portions of that information for the purposes of discovery because the Agency likely should have relied on it.

5. WMIL respectfully submits that the filing of the attached Reply will prevent material prejudice and injustice by allowing WMIL an opportunity to address Illinois EPA's new arguments that it could not have anticipated its Motion.

6. This Motion is timely filed on October 9, 2026, within fourteen (14) days after service of Illinois EPA's Response on WMIL, in accordance with 35 Ill. Admin. Code §101.500(e).

WHEREFORE, WMIL respectfully requests that the Hearing Officer grant Respondent's Motion for Leave to File *Instanter*, its Reply in Support of its Motion to Compel Production of Documents, and accept the attached Reply as filed on this date.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS

Petitioner,

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WASTE MANAGEMENT OF ILLINOIS, INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL PRODUCTION OF DOCUMENTS, *INSTANTER*

The Illinois Environmental Protection Agency ("Illinois EPA" or "Agency") identified no authority, because there is none, to support its contention that it may partially redact the summaries of its meetings with the U.S. Environmental Protection Agency ("USEPA") Post-Closure Care Working Group ("Meeting Notes") while apparently relying on the remainder of those Meeting Notes. Instead, under both Illinois Pollution Control Board ("Board") and Hearing Officer orders, even in permit appeals, discovery is broad to ensure that the record filed by the Agency is complete and contains all of the material before the Agency when it made its decision. *KCBX Terminals Co. v. Illinois EPA*, PCB14-110 (April 8, 2014) (B. Halloran), *slip op.*, 4, *quoting Owens-Illinois, inc. v. IEPA*, PCB77-288 (Feb. 2, 1978) *slip op.*, p. 1. *See also* 35 Ill. Adm. Code 101.616 ("All relevant information *and* information calculated to lead to relevant information is discoverable…")(emphasis added). Here, the Meeting Notes were before the Agency when it made

its decisions on the July 29, 2024 permit and July 30, 2024 permit for the Laraway Recycling and Disposal Facility ("Final Decisions"), which the Agency admits in its response and in the Agency's Review Notes. *See* Resp. p. 5, *citing* R000961, ¶2 and R000961-962. Accordingly, the unredacted Meeting Notes are material that was before the Agency when it made the Final Decisions, and are likely to lead to relevant information regarding the basis for Illinois EPA's Final Decision.

The Agency's claim that it did not rely on the redacted portions of the Meeting Notes is immaterial and not a basis for withholding discovery information. As noted, discovery is broad and WMIL is entitled to assess the Agency's claims. Moreover, even beyond the broad scope of discovery, Illinois EPA ignores the Board rules for permit appeals, which are clear: the record for a permit appeal consists of the documents on which the Agency relied ***or reasonably should have relied***. Given that the Agency relied on a portion of the redacted documents in reaching its final decision, it is likely that it reasonably should have relied upon the redacted material, rendering the information suitable for ultimate inclusion in the record and thus relevant.

I. No Authority Supports Illinois EPA Withholding Information It Unilaterally Deems Irrelevant

Illinois EPA did not and cannot identify any Board authority that supports its redactions of information that it unilaterally deemed irrelevant. The sole case it could find is an inapplicable tax appeal case that hinged on whether the defendant was required to disclose confidential taxpayer information that was entirely unrelated to the claims in that case. *Ttx Co. v. Whitley*, 295 Ill. App. 3d 548 (1st Dist. 1998). In *Ttx Co.*, the plaintiff sought the identity of every Illinois taxpayer who apportioned income to Illinois with a certain formula. *Id.*, at 551. The First District Court held that such information could not be compelled because the taxpayer information was confidential under the Illinois Income Tax Act, without an exception for a court. *Id.*, at 556. Further, the plaintiff had

not made claims of disparate treatment or violation of equal protection that would otherwise require consideration of the taxpayers' information. *Id.*, at 557.

Here, the Agency does not claim, because it cannot, that the Meeting Notes are confidential. Also, by its own admission, Illinois EPA found the States' information in the Meeting Notes highly relevant because Illinois EPA relied on the practices of certain States in its review of the permit. *See* Resp. p. 5, *citing* R000961, ¶2. (Illinois EPA claims that the States agreed that the post-closure care must continue). Indeed, Illinois EPA stated in its Review Notes for the permit applications that it conducted outreach to two representatives in Wisconsin and Florida on how the "states implemented extending post-closure care ta (*sic*) RCRA sites." *Id*. at R000961-962.

The Agency cannot be permitted to rely only on the practices of States that it unilaterally selected, and then argue that the practices of other States that it chose to ignore are not relevant. The simple fact that Illinois EPA reviewed practices of all the States in the Meeting Notes and chose some to follow the States, means the Agency reviewed them all as relevant and part of the Agency's consideration.

II. Discoverability is Broader than Admissibility, Requiring Production of the Unredacted Meeting Notes

The Agency also seems to be making the argument that because it has made the self-serving claim that the redacted portions of the Meeting Notes were not relied upon, and thus should not be a part of the record, the redacted portions are not relevant and thus not discoverable. But that is not the standard for discovery of information, even in permit appeals. In a permit appeal, both the Board and Hearing Officer have held that it is "proper to inquire, and discovery should be allowed, to insure (*sic*) that the record filed by the Agency is complete and contains all of the material…" before the Agency when the Agency's final decision is made, regardless of reliance. *KCBX Terminals Co. v. Illinois EPA*, PCB14-110 (April 8, 2014) (B. Halloran), *slip op.*, 4, *quoting*

Owens-Illinois, inc. v. IEPA, PCB77-288 (Feb. 2, 1978) *slip op.*, p. 1.[1] Indeed, that is the same standard in Illinois Courts. In *Brown v. Advocate Health & Hosps. Corp.*, 2017 IL App (1st) 161918, the defendant argued that it was not required to disclose its insurance documents, because evidence that a party is insured is generally inadmissible at trial, and thus the documents were not relevant. *Id.* at *14. Finding that the issue of discoverability was distinct from admissibility, the court ordered the defendant to produce the insurance documents. *Id*. at *14, *21-22. In this case, like in *Brown v. Advocate Health & Hosps*, whether the redacted portions of the Meeting Notes were relied on, or should have been relied on and thus could be in the record, is immaterial in considering their discoverability. The complete notes should be produced to ensure that the record in this appeal is complete and contains all of the material before the Agency when it made its Final Decisions.

III. The Unredacted Meeting Notes Must Be Produced Under the Rules for Contents of the Record for Permit Appeals

Even if an evaluation of whether the Agency relied or should have relied on the unredacted information in the Meeting Notes were the standard for discovery, which it is not, because the Agency actually relied on and should have relied on the redacted and unredacted portions in the Meeting Notes, the entire Meeting Notes are discoverable.[2] Indeed, the Agency's claim that WMIL is asking the Board to violate its own rules on permit appeals is specious at best and ignores the Board decision it relies on. See Resp. pp. 2-3, *citing Ameren Energy Resources Generating Co. v.*

[1] The Agency's attempt to distinguish the Hearing Officer's decision in *KCBX Terminals Co. v. Illinois EPA*, PCB14-110 (April 8, 2014) (B. Halloran) by claiming that in that case the notes were regarding the petitioner's facility, is fundamentally flawed. As stated above, the Agency fully admits that it relied upon the Meetings with the other States, which are summarized in the Meeting Notes, as part of its Final Decisions, rendering the information highly relevant. R000961-962.

[2] Because the Meeting Notes are incomplete as produced, WMIL reserves its right to move to include the Meeting Notes in the record at a later date.

Illinois EPA, PCB14-41 (March 20, 2014), *slip op.* at 9.[3] *Ameren Energy Resources* specifically outlines the Board's rules for inclusion of information in the record on permit appeals, demonstrating that the redacted information should be included in the record, and thus is relevant. In *Ameren Energy Resources*, the petitioner moved to strike from the record of the permit appeal a memorandum that had been drafted by the Agency before the final decision had been made, because there was no evidence that the Agency relied on the memorandum. *Id.* at 9. The Board stated that the rule for a permit appeal is that "that the Board's decision in a permit appeal…must be based on the entire record before the Agency." *Id.* at 8. The Board further stated "the Agency must provide the Board with a complete record that includes all documents on which the Agency relied or reasonably should have relied." *Id.* at 9. Because the memorandum was regarding the permit application that was the subject of the appeal, the Board found that whether the Agency relied on the memorandum was "beside the point" in the context of the motion to strike because the memorandum was before the Agency at the time of the decision and thus should be included in the record. *Id.*

Here, again by its own admission, Illinois EPA states that the positions of the other States were before the Agency as part of its review claiming that the States "agree that post-closure care must continue…" Resp. p. 5, *citing* R000961, ¶2. Further, the Agency states in its Review Documents that it called representatives from Wisconsin and Florida as part of its review of the permit applications. R000961-962. Accordingly, as in *Ameren*, because the other State's information was

[3] The Agency's reliance on *ESG Watts v. IPCB*, 286 Ill. App. 3d. 325 (3d Dist. 1997) is inapt because that case did not discuss discovery in a permit appeal, or even the contents of the record. Instead, the court confirmed the Board's decision to uphold the Agency's decision to deny a permit to the appellant due to the appellant's history of non-compliance, including 19 administrative citations and a circuit court enforcement action resulting in a $350,000 penalty. *Id.* at 329.

before the Agency at the time of its Final Decisions, and because the Agency demonstrably considered the other State's information, it should be included in the record and thus is relevant.

The Agency also makes a self-serving assertion, without any explanation, that it only relied on or should have relied on the unredacted portions of the Meeting Notes, thus the unredacted portions are not relevant. Resp. p. 6. In fact, it derides WMIL's claims that the redacted information potentially includes disagreements with the Agency's decisions, nonsensically stating that WMIL does not know the contents of the redacted material, and questions what could be discovered from the redacted information. *Id.*, at 6-7. WMIL, of course, does not know the contents of the redacted material, which is the purpose of the Motion to Compel. Moreover, the more appropriate question is what is the Agency desperately seeking to hide by shielding the opinions of some States but not others? Further, given that the redacted information in the Meeting Notes contains information that the Agency considered and rejected, it could be information on which the Agency "*should have relied on*," which the Agency must produce. [4]

IV. Conclusion

There is no legal authority that allows the Agency to unilaterally decide what portions of documents it deems relevant in discovery when the entire document was considered. Rather, the Board, and the Hearing Officer have consistently held discovery is broad even in permit appeals, and includes information in front of the Agency when it was making its decision, regardless of

[4] In comparison, the Agency's claim in its Response that it relied on the 2016 USEPA Delegation Agreement ("Delegation Agreement") is dubious at best because the agreement is not in the record nor referenced in the record. Resp. pp. 4-5. Instead, the Agency has belatedly moved to supplement the record in this appeal and two other permit appeals on the same issues. As WMIL stated in its objection, the Agency did not rely on the Delegation Agreement, and should not have been relied upon because it is an unpromulgated rule. *See* WMIL's Objection to Respondent's Motion to Supplement Record, *WMIL v. Illinois EPA*, PCB25-9/25-10 (Oct. 8, 2026).

whether it ultimately relied upon the information. The Hearing Officer should grant WMIL's motion to compel and order the Agency to produce the Meeting Notes without redactions.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS, INC.

Petitioner,

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