

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, Instantly, Its Reply in Support of Its Motion in Limine to Limit Proceeding to Issues Raised in Appeal and Waste Management of Illinois, Inc.'s Reply in Support of Its Motion in Limine to Limit Proceedings to Issues Raised in Appeal, copies of which are herewith served upon you.

Dated: May 7, 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, *Instantly*, Its Reply in Support of Its Motion in Limine to Limit Proceeding to Issues Raised in Appeal and Waste Management of Illinois, Inc.'s Reply in Support of Its Motion in Limine to Limit Proceeding to Issues Raised in Appeal was electronically filed on May 7, 2026 with the following:

Don Brown, Clerk of the Board
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Chicago, IL 60605
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and copies were sent via e-mail on May 7, 2026 to the parties on the service list.

Dated: May 7, 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 IN LIMINE TO LIMIT
PROCEEDING TO ISSUES RAISED IN APPEAL**

Petitioner, Waste Management of Illinois, Inc. (“WMIL”), requests that the Illinois Pollution Control Board (“Board”) grant this Motion for Leave to File, Instanter, its Reply in support of its Motion *in Limine* to Limit Proceeding to Issues Raised in Appeal, pursuant to Sections 101.500 and 101.514 of the Illinois Pollution Control Board’s Procedural Rules. 35 Ill. Adm. Code 101.500(e), 101.514. A reply brief is warranted because Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) raised new arguments in its Response, asserting that the Board must allow the Agency to determine the scope of WMIL’s appeal, rather than WMIL. WMIL will be materially prejudiced if it is not permitted to reply. In support of its motion seeking leave to file, *instanter*, WMIL submits its Reply and states:

1. On March 26, 2026, WMIL moved *in limine* to limit the proceedings of the appeal to the issues raised in WMIL’s appeal.

2. On April 2, 2026, Illinois EPA filed its unopposed motion to extend the response date to WMIL's Motion *in Limine*.

3. On April 23, 2026, Illinois EPA filed its response to WMIL's Motion *in Limine*, claiming that the Agency's denial letter determines the scope of the appeal, which can extend beyond the issues WMIL has raised on appeal into other matters covered in the Agency's denial letter under *ESG Watts v. Pollution Control Board*, 286 Ill. App. 3d 325, 335 (3d Dist. 1997).

4. Illinois EPA's response appears to misunderstand the purpose of a Motion *in Limine* and confuses WMIL's motion with a discovery motion.

5. The Agency's misunderstanding stems from the difference between the denial letter, which "frames the issues in a permit appeal" (*ESG Watts v. Pollution Control Board*, 286 Ill. App. 3d 325, 335 (3d Dist. 1997) and the narrower scope of the "the general issue presented" within the appeal. (*Oscar Mayer & Co. v. Illinois EPA*, PCB 78-14, at ¶ 6-7 (Jun. 8, 1978) citing *Owens-Illinois, Inc. v. Illinois EPA*, PCB 77-288 (Feb. 2, 1978)). By moving *in limine*, WMIL does not seek to hamper Illinois EPA's proper discovery inquiry. Rather, WMIL seeks to ensure that the scope of that inquiry is contained to evidence relevant to the general issues presented in WMIL's appeal.

6. WMIL has prepared its Reply in support of its Motion *in Limine* which is attached hereto. 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.

7. This Motion is timely filed on May 7, 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 Board grant Respondent's Motion for Leave to File *Instanter*, its Reply in Support of its Motion *in Limine*, and accept the attached Reply as filed on this date.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS

Petitioner,

By: /s/ Kristen L. Gale
One of its Attorneys

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WASTE MANAGEMENT OF ILLINOIS, INC.'S REPLY IN SUPPORT OF ITS MOTION IN LIMINE TO LIMIT PROCEEDING TO ISSUES RAISED IN APPEAL

The Illinois Environmental Protection Agency's ("Illinois EPA" or "Agency") Final Determinations cannot and do not frame the issues on appeal, particularly for a permit as extensive as the permit here. The Agency's Final Determinations are hundreds of pages long permitting the extensive requirements for the Laraway RDF and its multiple cells. Waste Management of Illinois, Inc. ("WMIL") only appealed discreet sections of the permit regarding the extent of financial assurance following the completion of 30-years of post-closure care. *See* WMIL Appeal at p. 4. Accordingly, WMIL's motion is for judicial economy, to ensure that this proceeding is limited to the issues on appeal, and not the potentially hundreds of other irrelevant landfill operation issues within the permit. Further, Illinois EPA appears to have misunderstood WMIL's Motion *in Limine* as a discovery motion, which it is not. As such, no attempt to resolve discovery differences is required.

A. Only The Issues that are Actually Under Appeal May Be Considered.

Illinois EPA's claim that the Final Determinations¹ frame the issues in a permit appeal unreasonably expands the scope of an appeal. Here, WMIL's appeal is limited to whether the Agency has the authority to unilaterally extend post-closure care via a Class 1* permit modification or reverse years of financial assurance reductions specifically authorized by Illinois regulations. *See* WMIL Appeal, PCB 25-9, pp. 2 – 3. Because WMIL did not appeal the other sections of the permit, limiting the appeal to the regulatory interpretation of permit modifications does not prevent the Board from understanding Illinois EPA's "key considerations." Illinois EPA Response at p. 4. Instead, the limitation would prevent wasting Illinois Pollution Control Board ("Board") resources and time inherent in allowing the Agency to argue about claims that WMIL is not making. Because most appeal petitions "arise from a difference in interpretation of a regulatory definition," and the Board cannot provide an advisory opinion, the "petition affords the only avenue to secure a Board interpretation of its regulations or a finding of fact, short of an enforcement action." *Oscar Mayer & Co. v. Illinois EPA*, PCB 78-14, at ¶ 2 (Jun. 8, 1978).

Indeed, this is no different than WMIL's request for a stay as part of its appeal and demonstrates that Illinois EPA's interpretation is illogical. WMIL's request for a stay was limited to the issues it appealed. WMIL Appeal at p. 25; *See also* Order of the Board, Jan. 9, 2025 at pp. 1-2. Because of the limitation, WMIL has been operating pursuant to those permit terms that are not under appeal. For example, groundwater corrective action, groundwater monitoring, and reporting and notification requirements at Laraway RDF have all continued as required. *See* Final Determinations, WMIL Appeal Exhibit A, at Sections II, III, IV, V, IX, and X. By Illinois EPA's

¹ The "Final Determinations" are Illinois EPA's letters of July 29, 2024 and July 30, 2024, and are Exhibits A and B in WMIL's Appeal. These letters combined are over 260 pages and expound on several matters which have no bearing on the discrete issues WMIL has raised, including non-hazardous waste landfill units and ongoing corrective action requirements.

interpretation, WMIL's request and the Board's grant of stay, was for the entire permit and WMIL is not obligated to follow any part of its permit pending the appeal, which is absurd.

Further, *ESG Watts v. Pollution Control Board*, is inapplicable here because in that case, the Agency denied seven permit requests under Section 39(i)(1) of the Illinois Environmental Protection Act, meaning the entire Final Determination for those requests were at issue, including the petitioner's history of compliance. *ESG Watts*, 286 Ill. App. 3d 325, 329 (3rd Dist. 1997). Here, WMIL's appeal is limited to a discrete issue that Illinois EPA has exceeded its authority in regulatory interpretation and ignored its own regulations. In fact, the Agency's Response demonstrates the need for a limitation on the scope of the appeal. The Agency's Response takes pains to point out that the Final Determinations "are littered" with references to leachate, hazardous waste, and landfill gas. Illinois EPA Response at 3. However, WMIL is not appealing those sections of the Final Determinations, and WMIL does not argue that Laraway RDF should be free from post-closure care, rendering the Agency's identification of those issues irrelevant.

B. WMIL's Request Relief Has No Implication for the Board's Rules.

The Agency asks why it must file a record if the issues raised on appeal can determine what evidence is relevant. Illinois EPA Response at 4. The Board has already answered this question: "It is well-settled that our review in most types of permit appeals, including this one, is not *de novo* but is limited to information submitted to the Agency during the Agency's statutory review period and is not based on information developed by the permit applicant, or the Agency, after the Agency's decision." *ESG Watts v. Illinois EPA*, PCB 94-243, at 3 (Mar. 21, 1996). The record simply prevents *post hoc* rationalizations by the Agency and provides the outer boundary of the appeal. However, the Final Determinations and Record do not dictate what is relevant to the issues raised in the appeal.

The Agency proposes the entry of leachate reports into evidence as an example of its argument, but this scenario demonstrates why the Hearing Officer should grant WMIL's Motion. Illinois EPA decries the judicial effort needed to allow entry into evidence of the leachate reports but offers nothing on why those leachate reports might be relevant to this case. Illinois EPA Response at 4-5. There is nothing in the leachate reports which would make it more or less likely that the Agency has the inherent authority to extend post-closure care without Board approval via a Class 1* permit, and there is nothing in the leachate reports which would make it more or less likely that Agency regulations truly prohibit annual reduction in financial assurance.

C. WMIL's Arguments Are Not Statements of Fact Requiring Support.

Illinois EPA's complaint that WMIL has not supported its statements is misplaced. WMIL's concern that the Agency intends to pursue irrelevant arguments is not a fact to be certified, but an argument in favor of its motion. Illinois EPA's Response bears out the validity of this concern—the Agency's focus on leachate, hazardous waste acceptance, landfill gas, and type and design of the landfill indicate that Illinois EPA will pursue irrelevancies. Illinois EPA Response at 3. For example, it is unclear how evidence concerning the type and design of Laraway RDF would impact the Agency's regulatory interpretations to extend post-closure care without the Board's decision or end previously granted annual reductions in financial assurance. WMIL Petition at 8 – 17. Laraway RDF's type and design have remained the same since it received a Resource Conservation and Recovery Act permit in 2010, when Illinois EPA routinely granted annual financial assurance reductions, and in 2025 when the Agency found that the same regulations cannot support annual financial assurance reductions. *Id.* at 3 - 8. Accordingly, the type and design of Laraway RDF, and other information related to the operation of the landfill, are not germane to the issues at hand in this appeal.

D. This is Not a Discovery Dispute.

Illinois EPA is concerned that WMIL has not pointed to irrelevant discovery requests or certified its efforts to resolve a discovery dispute. Illinois EPA Response at 8 – 9. However, WMIL has no need to enumerate any specific requests as irrelevant or make any certify any of its actions, because this is not a discovery dispute under 35 Ill. Adm. Code 101.616(a) or Illinois Supreme Court Rule 201(b)(1). It is a motion *in limine*, which the Agency acknowledges is an evidentiary motion. Illinois EPA Response at 7. Illinois EPA should expect that discovery in this case, and in every case, would be limited to that which is relevant. “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 concerning the permit application that was before the Agency when the denial statement was issued.” *Oscar Mayer* at ¶ 6-7, citing *Owens-Illinois, Inc. v. Illinois EPA*, PCB 77-288 (Feb. 2, 1978). By moving *in limine*, WMIL does not seek to hamper Illinois EPA’s proper discovery inquiry.

E. CONCLUSION

The Hearing Officer should approve WMIL’s Motion in Limine and issue an 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, because this limitation confines this matter to the narrow scope of the appeal.

Respectfully submitted,

WASTE MANAGEMENT OF ILLINOIS,
INC.

Petitioner,

By: /s/ Kristen L. Gale
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