

**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 TABLE 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 Table 1 in the above-captioned proceeding. CWLP respectfully requests that the Board deny Complainants’ Appeal to allow Table 1 to be admitted into evidence. In support thereof, CWLP states as follows:

STATEMENT OF FACTS

- 1) On May 5, 2026, Complainants' moved to admit Table 1, an Earthjustice Table from Mark Hutson's expert report.

- 2) Table 1 was a listing of units that had been closed by removal of CCR or coal combustion residuals. May 5, 2026 Hr'g Tr. 11:1-3.
- 3) Respondent objected to the use of the Table as follows: "We're going to object to the use of Table 1. I think it's been pretty well established, even within Mr. Hutson's report, that he didn't prepare the table. He doesn't know what definitions the folks used who prepared the table to categorize one topic to another. He's not the appropriate witness to be able to lay the foundation for his exhibit." May 5, 2026 Hr'g Tr. 11:22-12:5.
- 4) Complainants' Counsel stated "I don't believe that he needs to understand how it was prepared. Experts can rely on all sorts of records without understanding how they're prepared." May 5, 2026 Hr'g Tr 129: 10-11.
- 5) Respondent further argued to the Hearing Officer: "We know that someone, not the witness, went to a Website, manipulated the data on the Website and printed it out . . . You can't go to a Website and find this table as it is." May 5, 2026 Hr'g Tr 129: 17-22.
- 6) Respondent also stated "I don't know who made the table, but somebody made it. It's not like I can just go out on the Website and find the same table." May 5, 2026 Hr'g Tr 130: 7-8.
- 7) "It's (being) offered for the proof of the matter asserted, which is lots of people are doing removal." May 5, 2026 Hr'g Tr 130: 17-18.

LEGAL STANDARD

An expert's opinion is no different than any other evidence in that it is subject to relevancy requirement of Rule 401. Fed. R. Evid. 401; *Bickerstaff v. Vassar College*, 196 F.3d 435, 81 Fair Empl. Prac. Cas. (BNA) 624, 53 Fed. R. Evid. Serv. (CBC) 462, 1999 U.S. App. LEXIS 29726 (2d Cir. 1999) Expert testimony, like all other evidence, must be relevant to be admissible.

People v. Owens, 372 Ill. App. 3d 616, 622; *Maffett v. Bliss*, 329 Ill. App. 3d 562, 574, 771 N.E.2d 445, 455-56, 264 Ill. Dec. 741 (2002).

ARGUMENT

The Hearing Officer determined that the probative value of Table 1 needed to be determined by post-hearing briefs. If the Hearing Officer determined that Table 1 should not be admitted into evidence, it would be a sound exercise of evidentiary discretion and would fall well within the permissible bounds of the hearing officer's authority. The exclusion would be based on an absence of adequate foundation for the exhibit, specifically Mr. Hutson's inability to explain who created the table, what definitions were used to categorize the data, or how the underlying information was compiled. Mr. Hutson admitted on the record that he did not prepare Table 1, did not know who made it, and could not replicate it by accessing the same website. He acknowledged that "somebody made it". This testimony demonstrates a fundamental gap in the witness's ability to authenticate the exhibit or explain its methodology. Respondent correctly argued that Mr. Hutson was not the appropriate witness to lay the foundation for the exhibit because he lacked personal knowledge of the definitions used, the data selection criteria, or the compilation process. Without this foundational knowledge, Mr. Hutson could not establish that Table 1 was of a type reasonably relied upon by experts in his field, nor could he demonstrate the exhibit's trustworthiness or reliability.

The inability to establish foundation is particularly significant where, as here, the table was not a publicly available document that could be independently verified, but rather was a custom compilation created by a third party using unspecified selection criteria and definitions. The fact that "someone, not the witness, went to a Website, manipulated the data on the Website and printed it out" further undermines the reliability of the exhibit.

Under Illinois evidentiary principles, the underlying information upon which an expert relies must be sufficiently trustworthy to make the reliance reasonable. People v. Hooker (In re Hooker), 2012 IL App (2d) 101007, 360 Ill. Dec. 334, 968 N.E.2d 1087 The hearing officer acts within its discretion in determining whether the underlying facts or data meet minimum standards of reliability as a condition of admissibility. Aguinaga v. Chicago, 243 Ill. App. 3d 552, 183 Ill. Dec. 648, 611 N.E.2d 1296 (1993)

Even if Table 1 possessed some minimal relevance, the Hearing Officer determined that its probative value needed to be determined by post-hearing briefs. Complainants offered Table 1 "for the proof of the matter asserted, which is lots of people are doing removal." May 5, 2026 Hr'g Tr 130: 17-18. However, what other facilities have allegedly done with their Coal Combustion Residual ("CCR") units has limited, if any, relevance to what the appropriate remedy should be for the specific violations as issue at Respondent's facility. The table purports to show industry practices but provides no context regarding the factual or regulatory circumstances under which those alleged removals occurred, the characteristics of the units in question, or whether the situations are comparable to Respondent's facility.

The probative value of such generalized industry information is minimal at best. Whether other facilities undertook CCR removal does not tend to prove or disprove whether Respondent's actions complied with applicable environmental standards. The relevance threshold requires that evidence have a tendency to make a fact of consequence to the determination of the action more or less probable. People v. Bliefnick, 2024 IL App (4th) 230707, 481 Ill. Dec. 416, 254 N.E.3d 1005 Table 1 fails this test because it does not address Respondent's specific compliance obligations or actions or in other ways address a remedy the Board has authority to order.

In contrast, the prejudicial impact of admitting Table 1 is substantial. As Respondent argued, the table was compiled by Earthjustice—an advocacy organization that is not a neutral source—and provided to the expert by counsel. The table's provenance raises serious questions about potential bias in data selection and categorization. Without knowing what definitions were used to classify a unit as "closed by removal" or what criteria were applied to include or exclude facilities, the Board would be asked to rely on advocacy-driven compilations of uncertain accuracy.

Moreover, admitting Table 1 would inject collateral issues into the proceedings and create substantial confusion. The Board would be required to evaluate the methodology used to create the table, assess whether the included facilities are comparable to Respondent's situation, and determine whether the alleged removals were undertaken under similar regulatory frameworks. This would result in undue delay and waste of time—precisely the concerns addressed by Rule 403. People v. Bliefnick, 2024 IL App (4th) 230707, 481 Ill. Dec. 416, 254 N.E.3d 1005, People v. Williams, 2020 IL App (1st) 162512, 445 Ill. Dec. 774, 168 N.E.3d 649 The danger of unfair prejudice is heightened by the fact that the table was offered for the truth of the matter asserted. Complainants sought to use the table to establish that "lots of people are doing removal," but without adequate foundation or the ability to cross-examine the actual compilers of the data, Respondent would be unfairly prejudiced by the admission of this hearsay-like compilation.

Illinois courts have consistently held that a court need not allow an expert to state the underlying basis of his opinion when the probative value of that basis is substantially outweighed by its prejudicial impact or tendency to create confusion. People v. Lofton, 2021 IL App (1st) 181618, 457 Ill. Dec. 681, 195 N.E.3d 817, Aguinaga v. Chicago, 243 Ill. App. 3d 552, 183 Ill.

Dec. 648, 611 N.E.2d 1296 (1993) Here, the Hearing Officer determined that its probative value would need to be determined by post-hearing briefs.

Conclusion

The Hearing Officer's refusal to include Table 1 without post-hearing brief was a proper exercise of evidentiary discretion that should be upheld by the Board. Mr. Hutson's inability to explain who created the table, what definitions and criteria were used, or how the data was compiled left the exhibit without adequate foundation. The minimal probative value of this generalized industry information was substantially outweighed by the dangers of unfair prejudice, confusion, and waste of time.

The Board should deny Complainants' motion for interlocutory appeal. This decision will ensure that the Board's proceedings remain focused on reliable, relevant evidence that undergoes meaningful adversarial testing, thereby promoting the fair and efficient resolution of this enforcement action.

Respectfully submitted,

THE CITY OF SPRINGFIELD,
a municipal corporation

Deborah J. Williams

By:

One of its Attorneys

Dated: June 30, 2026

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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 9 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

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