WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD
CHARLESTON, WEST VIRGINIA

THE COURTLAND COMPANY,

Appellant,

v.

Appeal No. 25-05-EQB

DIRECTOR, DIVISION OF WATER AND WASTE MANAGEMENT, DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Appellee.

UNION CARBIDE CORPORATION'S MOTION TO DISMISS THE COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL PERMIT REGISTRATION NO. WVG612841 TO UNION CARBIDE CORPORATION

COMES NOW Intervenor[1], Union Carbide Corporation ("UCC"), by counsel, and respectfully moves this Board to enter an Order dismissing the above-styled Appeal of UCC's General Permit No. WVG612841. In support of this Motion, UCC states as follows:

UCC is entitled to the General Permit as issued by WVDEP because the former Filmont Landfill is a closed solid waste landfill. Furthermore, the General Permit is consistent with the ruling of the District Court for Southern District of West Virginia in the matter styled *The Courtland Company v. Union Carbide Corporation*, Civil Action No. 2:21-cv-0487, and is a complete relief for the limited single instance of stormwater discharge identified by Courtland in that matter. Courtland's appeal is nothing but an attempt to revive claims that were already denied by the United States District Court in Civil Action No. 2:21-cv-0487 and in the companion matter, *The Courtland Company v. Union Carbide Corporation*, Civil Action Number 2:19-cv-0894, by circumventing that Court's final Orders in those matters (previously attached to UCC's Motion to

[1] UCC's Motion to Intervene in this matter was granted on June 26, 2025.

Intervene as Exhibits A & B) and judicial due process. This appeal must be dismissed.

I. INTRODUCTION

Courtland owns a 13.8-acre property in South Charleston ("Courtland Property"), which is adjacent to the UCC properties known as Massey Railyard ("Massey") and the former Filmont Landfill ("Filmont"). Filmont began operation in or around 1950 and accepted inert and industrial wastes. The United States District Court of West Virginia has established that from the mid-1970s until approximately 1987, Filmont was operated as an inert waste landfill, and hazardous chemical waste was sent to a separate landfill. *See* Memorandum Opinion and Order dated Sep. 28, 2023 ("2023 Order") at p. 235, 297 (previously attached to UCC's Motion to Intervene as Exhibit A). "Filmont operated as a permitted, inert solid waste landfill from at least 1974 until it stopped receiving solid waste and was permanently closed in 1987." *See* 2023 Order at p. 235. The Court affirmed that UCC held a valid permit issued by the West Virginia Health Department until it expired in 1987, before the implementation of RCRA, and then underwent final closure under the supervision of the West Virginia Department of Natural Resources. *Id.*; *see also*, West Virginia Solid Waste Management Act (WVSWMA), West Virginia Code § 20-5F-3 and 20-5F-5(d).

Courtland filed lawsuits against UCC in the District Court for Southern District of West Virginia claiming, inter alia, that UCC violated the Clean Water Act ("CWA") by discharging pollutants and stormwater associated with industrial activities into nearby navigable waters.[2] Two bench trials were conducted in front of Judge Copenhaver in 2022 and 2024, including a Phase I trial for liability and a Phase II trial for damages. The Court issued two well-versed Orders on liability and damages, which Courtland has appealed to the Fourth Circuit Court of Appeals.

[2] *Courtland v. UCC*, United States District Court Southern District of West Virginia , Civil Action Nos: 2:19-cv-00894 and 2:21-cv-0487.

While Courtland asserts here that the former Filmont Landfill was not closed, the District Court has held the exact opposite. *See e.g.* 2023 Order, at p.1 III. C. "1987 Closure of Filmont." The Court ruled that Filmont "began operations as a landfill in approximately 1950 until its ultimate cap and closure in 1987." *See* 2023 Order at p. 60. Similarly, while Courtland's instant appeal attempts to revive its WVSWMA claims by asserting that Filmont is an open dump under WVSWMA, the Court has already twice denied Courtland's state law claims under WVSWMA in its 2023 Order and 2024 Order, holding that Filmont did not violate any state law and thus it is not an open dump under WVSWMA. *See* 2023 Order at p. 237; *see also* Memorandum Opinion and Order dated September 27, 2024 ("2024 Order") at pp. 3-4 (previously attached to UCC's Motion to Intervene as Exhibit B). The Court also found that Filmont is not a hazardous waste site under RCRA or the West Virginia Hazardous Waste Management Act (WVHWMA). *See* 2023 Order at p. 237. Furthermore, the Court found that the Voluntary Remediation Program (VRP) is consistent with RCRA and CERCLA. *See* 2024 Order at p. 33, 39. In short, the Court found that because the purpose of the VRP is to prevent offsite migration of contaminants, and because UCC's failure to complete the VRP would prompt state environmental enforcement actions, the proper remedy under RCRA is for UCC to complete the VRP without any additional injunctive requirement. *See* 2024 Order at pp. 39-40.

With respect to the CWA claims, the Court found that Filmont did not discharge any specific pollutants through the Southern Boundary Ditch. *See* 2023 Order at p. 356, 360, 397. The Court only found UCC liable under the CWA for discharging stormwater from the former Filmont landfill associated with industrial activity on one occasion, citing a single observation by Courtland's expert, Dr. Simonton, of stormwater discharging to the Southern Boundary Ditch via a shallow ditch from the former Filmont Landfill. *See* 2023 Order at p. 361-362, 402. The Court

ordered UCC to obtain an NPDES permit for this stormwater discharge from the former Filmont Landfill and denied a permanent injunction for Courtland because there is no basis to find any irreparable harm to Courtland. *See* 2024 Order at pp. 59-61. A General Permit is consistent with the Court's ruling and is the only necessary NPDES permit for the stormwater discharges currently identified on the site, which was verified by WVDEP. UCC sought and obtained a General Stormwater Permit covering all stormwater discharges from the former Filmont Landfill following all requirements and procedures set forth by the WVDEP under the law. Following the issuance of that permit, Courtland now seeks to challenge that Permit and asks this Board overrule the findings of the United States District Court.

Therefore, UCC respectfully requests that this Board deny Courtland's appeal and sustain the General Permit issued to UCC for the former Filmont Landfill, because it is a well-established fact that it is a closed solid waste landfill and a General Permit is sufficient remedy for the limited stormwater discharge identified on the site.

II. ARGUMENT AND CITATION OF AUTHORITIES

A. Courtland Lacks Standing to Appeal the General Permit.

1. Courtland lacks standing to challenge the General Permit because it is not injured by any stormwater discharges from the Northern Boundary Ditch.

At the District Court, Courtland alleged that UCC was discharging unpermitted stormwater from the following point sources: the Southern Boundary Ditch and the Northern Boundary Ditch (with Ward Branch Seep). *See* 2023 Order at p. 329. Following the Phase I Trial, the District Court found UCC liable under the CWA for discharging stormwater from the former Filmont landfill only to the Southern Boundary Ditch. *See* 2023 Order at p. 361-362, 402. Following the Phase II Trial, the District Court found that "Courtland has failed to establish the necessity of a permanent injunction for UCC's CWA violations, but UCC shall obtain the necessary NPDES permit[] for

the unpermitted stormwater discharges" identified by the Court. *See* 2024 Order at p. 78. As of this date, the discharge identified by the District Court has been completely remediated and eliminated through reconstruction of a berm at the top of the southern and eastern sides of the former Filmont Landfill which prevents any stormwater discharge. *See* Section 2.3.2 Site Hydrology, Storm Water Pollution Prevention Plan, Oct. 2024 (available at: 1778006_0_Filmont Storm Water Pollution Prevention Plan.pdf)(last accessed July 7, 2025); *see also id.* at Figure 2. Therefore, the General Permit in dispute was only issued to cover a small area of potential stormwater discharge to the Northern Boundary Ditch.

Importantly, however, the District Court concluded that Courtland "did not adduce evidence of stormwater discharge which actually have occurred from Filmont into the Northern Boundary Ditch. No evidence of direct observation of discharge was introduced, nor was there evidence from which the Court could conclude that discharges have occurred in the past due to precipitation events. Thus, the Court [found] that while stormwater drainage features exist at Filmont, which could channel stormwater into the Northern Boundary Ditch, no stormwater discharges into the ditch have been documented." *See* 2023 Order at pp. 385-386.

Furthermore, Courtland lacks standing to challenge the General Permit issued for stormwater discharges to the Northern Boundary Ditch due to lack of injury in fact, as ruled by the Court. *See* 2023 Order at p. 392. Specifically, the District Court held: "The requirement that a party possess standing is an 'irreducible constitutional minimum' intended to 'identify those disputes which are appropriately resolved through the judicial process.'" *See* 2023 Order at p. 386. "An environmental plaintiff may carry its burden of proving injury in fact if it utilizes the 'affected area' and has 'reasonable concerns' 'about the effects of discharges,' or those discharges directly affect a legally protected interest." *See* 2023 Order at p. 389. West Virginia law similarly requires

an "'injury-in-fact' – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical" to demonstrate standing. *See L.A. Pipeline Constr., Inc. v. Glass Bagging Enters.,* No. 15-0970, 2016 W. Va. LEXIS 795, at *8 (Oct. 27, 2016) (*citing Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W.Va. 80, 576 S.E.2d 807 (2002)). Because the Courtland Property is upstream of any discharges from the Northern Boundary Ditch, *see* 2023 Order at p. 388, the Court ruled that "[Courtland] has failed to demonstrate that [the discharges on the Northern Boundary Ditch] can adversely affect the area of concern, that is, the Courtland Property itself." *See* 2023 Order at p. 391. In other words, stormwater discharges on the Northern Boundary Ditch flow away from Courtland Property, not toward it. *See Id.* The Court therefore concluded that "Courtland has failed to demonstrate an injury-in-fact for the purpose of standing with respect to the Northern Boundary Ditch and the Ward Branch Seep." *See* 2023 Order at p. 392. Similarly, because it is impossible for Courtland to be impacted by any stormwater discharges from the Northern Boundary Ditch, Courtland does not have standing to challenge a General Permit issued for stormwater discharges from the Northern Boundary Ditch.

2. Courtland lacks standing to challenge the General Permit because underground leachate is not covered by a General Stormwater Permit.

"Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an 'injury-in-fact' […]. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court." *See L.A. Pipeline Constr., Inc.,* No. 15-0970, 2016 W. Va. LEXIS 795, at *8 (quotation marks omitted). Here, leachate from Filmont would not be remediated if the General Permit was revoked because the

General Permit does not cover underground leachate. Thus, Courtland lacks standing to appeal the General Permit based upon the alleged leachate from Filmont.

UCC is authorized to operate under WV/NPDES General Water Pollution Control Permit No. WV0111457 (General Permit Registration No. WVG612841), which only regulates stormwater. Stormwater means groundwater runoff from rain or snowmelt which comes into contact with industrial materials as it picks up pollutants and transports them to nearby storm sewer systems, and streams, lakes and rivers. *See* WVDEP, *Multi-Sector Stormwater General Permit, Overview*, WWW.DEP.WV.GOV, https://dep.wv.gov/WWE/Programs/stormwater/multisector/Pages/home.aspx (last accessed on July 7, 2025). WVDEP has made clear that the West Virginia NPDES Program is to control **surface water pollution** caused by point source discharges of wastewater from public and private sewage collection and treatment systems, industrial wastewater treatment facilities, and municipal and industrial landfills. *See* WVDEP, NPDES Individual Permits Overview, WWW.DEP.WV.GOV, https://dep.wv.gov/wwe/permit/individual/pages/default.aspx (last accessed on July 7, 2025).

Courtland asserts in its Appeal that Filmont oozes leachate into surface waters, stormwater and groundwater of the Davis Creek watershed. *See* Courtland Company's Appeal of the Grating of General Permit Registration No. WVG6128141 ("Appeal"), at ¶9. This is a misstatement of facts as there has been no evidence showing any leachate discharging in surface waters. The only leachate found in Filmont that exceeds the maximum contaminant level is arsenic in the groundwater as a result of leaching/leaking of the solid waste contained therein. *See* 2023 Order at p. 276. Arsenic is only introduced into the groundwater and does not pose "any reasonable risk of harm that someone or something may be exposed to in the event that remediation is not taken." *See* 2023 Order at p. 288. The Court could not find "any of the negative toxicological effects to

human or ecological receptors associated with [arsenic]." *See* 2023 Order at p. 289. Throughout the prolonged litigation, Courtland never presented any plausible evidence to show that arsenic or any other leachate from Filmont is contaminating surface water or stormwater. In sum, arsenic is the only leachate introduced from Filmont into the groundwater that exceeds the maximum contaminant level, which does not post any substantial or imminent risk to human health or environment. Because the General Permit only regulates surface water pollution, it does not cover the leaching/leaking of arsenic in groundwater. Resultantly, revocation of the General Permit as requested by Courtland would not redress the leachate in the groundwater, and Courtland lacks standing to appeal the General Permit based upon alleged leachate from Filmont.

B. Courtland has no Basis to Challenge the Permitting Process and A General Permit Is the Proper NPDES Permit for Filmont.

WVDEP followed the required permitting procedure in issuing the General Permit and thus Courtland has no basis to challenge the procedural due process. Courtland accused WVDEP of "violation of the CWA and the WV WPCA" in admitting Filmont into the VRP and obtaining the General Permit. *See* Appeal at pp. 4-5. However, the Court has already thoroughly examined the legality and sufficiency of VRP, and affirmatively held that the proper remedy under RCRA is for UCC to complete the VRP without any additional injunctive requirement. *See* 2024 Order at pp. 39-40. Courtland could not point to a single instance of illegality in the permitting procedure of the General Permit other than persisting the false narrative of an "active landfill." In fact, WVDEP has implemented a procedure for administrating all administrative and technical review of applications and stormwater pollution prevention plans submitted for coverage under the stormwater permits to ensure compliance with the procedural requirements. *See* WVDEP, *Stormwater Program*, WWW.DEP.WV.GOV, https://dep.wv.gov/WWE/Programs/stormwater/Pages/sw_home.aspx (last accessed on July 7,

2025). UCC complied with the requirements, including but not limited to, conducting sampling, and testing of stormwater discharges from Filmont, continued monitoring and submitting all required reports and applications. WVDEP reviewed the reports, provided opportunities for public comment, and determined that UCC has complied with all requirements for the General Permit. Therefore, WVDEP and UCC have went above and beyond to comply with the procedural requirements of issuing the General Permit step by step, and Courtland has no basis to challenge the procedural adequacy.

It is worth noting that the Court found that historical and current uses of Courtland Property itself have also polluted its own Property under the CWA. *See* 2023 Order, at p. 350. Moreover, the Court found that UCC did not discharge any specific pollutants through the Southern Boundary Ditch. *See* 2023 Order at p. 356, 360, 397. Rather, the Court found UCC liable under the CWA because Courtland's expert, Dr. Simonton, personally observed stormwater discharging to the Southern Boundary Ditch via a shallow ditch on one occasion. *See* 2023 Order at p. 361-362, 402. Notably, the District Court also found Dr. Simonton's testimony to be "minimally descriptive, being devoid of details such as when Dr. Simonton saw the discharge or what the weather conditions were like, and is unaccompanied by any documentary evidence such as photographs and videos of the same." *See* 2023 Order, at p. 362. Dr. Simonton did not conduct any sampling or study of the alleged discharges. Therefore, the Court found UCC to be in violation of the CWA as this one discharge at the former Filmont Landfill was not permitted under the CWA NPDES in accordance with 33 U.S.C. § 1342. *See* 2024 Order at p. 57.

Courtland agreed that obtaining necessary discharge permits under the CWA would render UCC in compliance of the CWA. *See* 2024 Order at p. 59. Therefore, the Court ordered UCC to obtain necessary NPDES permits for the stormwater discharges identified and denied a permanent

injunction for Courtland because there is no basis to find any irreparable harm to Courtland. *See* 2024 Order at pp. 59-61. After trial, and in accordance with the Court's Order, UCC filed a notice to the Court that it had submitted applications for NPDES Industrial Permits for Massey and Filmont. *See* 2024 Order at pp. 58-59. UCC has since obtained both Stormwater Permits from the WVDEP. It is telling that Courtland has not challenged the permit for Massey.

UCC has conducted necessary sampling and testing on the former Filmont Landfill as required under WVDEP's CWA permitting process. Working with WVDEP, UCC diligently finalized the application for Filmont and completed all necessary sampling. The completed permit application for the NPDES permit for Filmont was submitted to WVDEP on October 24, 2024 and a permit was issued on March 27, 2025. Because Filmont is a historical solid waste landfill properly closed in 1987, it predates the enactment of RCRA, WVSWMA and WVHWMA. Therefore, Filmont is not a hazardous waste site under RCRA or WVHWMA, or an open dump under WVSWMA, as explicitly ruled by the Court. *Infra* Sections C and D. Therefore, a general permit is consistent with the Court's ruling and is the only necessary NPDES permit for the single stormwater discharge associated with the former Filmont Landfill. Because there is no standard industrial classification (SIC) code for a closed landfill, the permit was issued under general SIC code 9999 for all other industrial discharges.

C. Filmont Is A Historical Industrial Landfill that Underwent Final Closure in 1987.

While Courtland alleges in its Appeal to this Board that Filmont is not a closed industrial landfill, the District Court has ruled the exact opposite. *See e.g.* 2023 Order, at p.1 III. C. "1987 Closure of Filmont." The Court has established that Filmont was closed in 1987 and a RCRA permit was not required for the Filmont site because Filmont was closed before enactment of RCRA. In addition, UCC did send a CERCLA 103(c) notice in 1980 and thus fulfilled that

CERCLA requirement. Therefore, the Court held that the VRP is a sufficient remedy for remedying any RCRA violations on Filmont. *See* 2024 Order at p. 32. Quite simply, it is a well-established fact that Filmont is a historical solid waste landfill closed in 1987.

The Court has further established that "Filmont operated as a permitted, inert solid waste landfill from at least 1974 until it stopped receiving solid waste and was permanently closed in 1987." *See* 2023 Order at p. 235. UCC held a valid permit issued by West Virginia Health Department until it expired in 1987, and then underwent final closure under the supervision of the West Virginia Department of Natural Resources. *See Id.; see also*, West Virginia Solid Waste Management Act (WVSWMA), West Virginia Code § 20-5F-3 and 20-5F-5(d). The Court found that Filmont "began operations as a landfill in approximately 1950 until its ultimate cap and closure in 1987." *See* 2023 Order at p. 60. "From at least 1974 until its closure in 1987, Filmont operated as an inert landfill." *See* 2023 Order, at p. 67. In fact, "as conceded by Dr. Simonton, there is no evidence that UCC buried industrial grit at Filmont from any source, including the SCSTC [South Charleston Sewage Treatment], after 1979." *See* 2023 Order, at p. 70. Moreover, "Courtland has offered no evidence explaining how or why this industrial grit would constitute hazardous waste for the purpose of RCRA. [...] the concentrations of arsenic, chromium, lead and mercury detected within the grit are well below the toxicity characteristic concentrations listed for those substances that would render the same hazardous under RCRA." *See* 2023 Order, at p. 72. Because there is no evidence that UCC continued to intentionally dispose of any industrial grit at Filmont after 1979, and "only facilities where hazardous waste is intentionally placed into land or water after November 19, 1980" requires a RCRA disposal permit, a RCRA permit was not required for Filmont. *See* 2023 Order, at p. 73. In fact, "the evidentiary record is wholly devoid of any evidence that UCC intentionally disposed of hazardous waste at Filmont from 1980 onward." *See* 2023

Order, at p. 76. The Court concluded that "the record evidence appears to reflect that UCC worked actively with the WVDEP to ensure its compliance with its inert waste landfill permit for Filmont." *See* 2023 Order, at p. 75.

In addition, in the early 1980s, the standard practice at the USEPA was for USEPA personnel to fill out a Preliminary Assessment form respecting the identified sites upon receipt of the CERCLA 103(c) Notice. *See* 2023 Order, at p. 85. UCC sent a CERCLA 103(c) Notice to USEPA in June of 1980, and thus complied with the then CERCLA 103(c) requirement. *See* 2023 Order, at p. 87.

As a result of the CERCLA 103(c) notice, and through continued discussion and correspondence with the EPA and WVDEP, environmental investigation and remediation work has continued at Filmont under CERCLA. UCC monitored groundwater, soil and surface water at Filmont and Massey from 2005 until the present. The Human Health Risk Assessment and Ecological Risk Evaluations conducted found no risk of harm to humans or the environment from anything at the Filmont Landfill. *See* 2023 Order at p. 178. While Filmont was found in violation of RCRA Subtitle D Solid Waste, it was limited to arsenic in the groundwater off-site that exceeds the applicable standards promulgated by USEPA, there was no issue or detection of arsenic in stormwater. *See* 2023 Order at pp. 273-274. The Court concluded that there is no imminent or substantial reasonable possibility of endangerment on health or the environment arising from the contaminated groundwater in Filmont. *See* 2023 Order at p. 293-294.

UCC applied to enter its Filmont/Massey sites into the VRP in February 2021, and the sites were accepted by WVDEP into the VRP on July 9, 2021. *See* 2024 Order at p. 25. The Court has explicitly denied Courtland's persistent argument that UCC has improperly entered the VRP or that the VRP is not a sufficient remedy for the RCRA violation. *See* 2024 Order at p. 30. To the

contrary, the Court found VRP substantially compliant with a CERCLA quality cleanup inasmuch as it aims to prevent offsite migration and is designated to protect human health and the environment, and implement permanent solutions. *See* 2024 Order at p. 32. Therefore, the proper remedy for the RCRA violation was to permit UCC to complete the VRP without additional injunctive requirements. *See* 2024 Order at p. 40.

Therefore, Courtland's argument in the appeal that Filmont was "never closed" in accordance with RCRA or CERCLA is baseless and has been explicitly denied by the District Court, twice, following the presentation of voluminous evidence in two phases of trial in 2022 and 2024. The former Filmont Landfill simply did not need a RCRA permit because it was closed prior to RCRA, in accordance with a valid and enforceable permit issued by the West Virginia Health Department. Courtland tried in the federal matter and tries again here to expand the limited CWA issues into CERCLA/RCRA issues despite the District Court having already ruled that UCC's completion of the ongoing VRP, with no additional injunctive relief, is the appropriate remedy under RCRA. Courtland's appeal here seeks to have this Board endorse a legal position and request for injunctive relief that is not required by law, was denied by United States District Court Judge Copenhaver, and has little or no bearing on the issuance of the General Stormwater Permit to UCC here.

D. Filmont Is Not A Hazardous Waste Disposal Facility Under WVHWMA or An Open Dump under WVSWMA.

Courtland's appeal here also asserts another failed theory from its federal lawsuits against UCC. Namely, Courtland argues that UCC committed violations of the West Virginia Solid Waste Management Act, ("WVSWMA") and the West Virginia Hazardous Waste Management Act ("WVHWMA") even though these claims were all denied by the District Court. The District Court

concluded that UCC is not a hazardous waste disposal facility as that term is defined in RCRA and WVHWMA. *See* 2023 Order at p. 237.

Courtland also attempted to invoke the WVSWMA regarding open dumping. However, the District Court has already ruled that "Filmont operated as an inert solid waste landfill from at least 1974 until its final closure in 1987 under a solid waste disposal permit issued by the West Virginia Department of Health." *See* 2023 Order at p. 297. WVSWMA made it clear that "solid waste disposal permits issued by the West Virginia Department of Health to landfills already in existence in 1983, such as Filmont, were to operate in full force and effect until such permits expired by operation of law on June 10, 1988." *See* 2023 Order at p. 299. Because UCC chose to close Filmont in accordance with its valid and enforceable permit, UCC was never required to operate the landfill under another permit. *See* 2023 Order at p. 299. Therefore, the Court concluded that Filmont is not an open dump in violation of WVSWMA. *See* 2023 Order at p. 314.

After the Phase I trial, Courtland sought to revive its claims under the WVSWMA by asserting that Filmont is an open dump under WVSWMA again in the Phase II trial. *See* Order at p. 4. The Court ruled again that UCC was not a WVSWMA open dump inasmuch as UCC was no longer actively placing material in the Filmont site. *See* 2024 Order at p. 4.

Similarly, here Courtland tries to revive its WVSWMA and WVHWMA claims here by asserting that Filmont is an open dump under these statutes. These arguments have been fully discussed in two trials and have twice been denied by the District Court. Courtland is now desperately trying to expand the appeal of the CWA permit into a full-blown remedy of its ill-fated state law claims. Therefore, Courtland's argument in this appeal regarding WVSWMA and WVHWMA must be denied.

E. This Board Lacks Subject Matter Jurisdiction to Override the Rulings of A Federal Court Because Interpretation of Statutes is Exclusively A Judicial Function.

By arguing that Filmont should be treated as an active landfill, Courtland is essentially asking this Board to override the rulings of a Federal Court. Here, the Court interpreted various federal and state statutes based upon traditional canons of statutory construction and concluded that Filmont operated as an inert waste landfill and was permanently closed in 1987. *See* 2023 Order at p. 235. The recent U.S. Supreme Court case *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 369, 144 S. Ct. 2244, 2247 (2024) has overturned the *Chevron*[3] deference on agency's interpretations, and made it abundantly clear that "the interpretations of the meaning of statutes, as applied to justiciable controversies, remained exclusively a judicial function." *Loper Bright Enters*, 603 U.S. at 369 (quotation marks omitted). Thus, "agency interpretations of statutes --- like agency interpretations of the Constitution --- are *not* entitled to deference." *Id.* at 371. "Perhaps most fundamentally, Chevron's presumption is misguided because agencies have no special competence in resolving statutory ambiguities. Courts do." *Id.* at 373. "By forcing courts to instead pretend that ambiguities are necessarily delegations [to agencies], *Chevron* prevents judges from judging." *Id.* at 374. *Loper* essentially asks Courts to independently interpret statutes with no deference to agency's interpretations. *Id.* at 401. Quite simply, interpretation of statutory ambiguities is inherently a judicial function, not a delegation to agencies.

Here, a Federal Court has already exercised its judicial power by rendering two well iterated Orders which interpreted RCRA, CERCLA, WVSWMA, and WVHWMA, and applied its

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[3] *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984) is a landmark case which provided that Courts should defer to permissible agency interpretations of statutes those agencies administer, when the statutes are ambiguous on congressional intent.

statutory interpretations to the facts presented in this case. *See generally* 2023 Order, 2024 Order. It would constitute an unlawful intrusion of the judicial power if an executive branch overrides the statutory interpretations and rulings of a Court. Here, Courtland is essentially attempting to bypass the judicial appeal process by attempting to have this Board override the 2023 and 2024 Orders. Because the Court has ruled that Filmont is a closed non-hazardous landfill, it would be unlawful for this Board to rule the opposite, as requested by Courtland.

III. CONCLUSION

Courtland lacks standing to appeal the General Permit because it is not impacted by stormwater discharges from the Northern Boundary Ditch. Courtland also lacks standing to appeal the General Permit based upon the underground leachate because a General Stormwater Permit only covers surface water. While Filmont was found in violation of the CWA, it was only for one documented instance of stormwater discharge and no specific pollutants were released. The General Permit is the appropriate remedy for the single CWA violation and all the procedural requirements have been diligently completed. In conclusion, it is an established fact that Filmont operated as a permitted, inert solid waste landfill and was permanently closed in 1987. It predates the enactment of RCRA, WVSWMA and WVHWMA, and thus is not a hazardous waste site under RCRA or WVHWMA, or an open dump under WVSWMA. Therefore, a General Permit as issued by WVDEP here is sufficient and consistent with the rulings of the United States District Court of West Virginia. Courtland's appeal is nothing more than an attempt to revive its doomed state law arguments and must be dismissed.

UNION CARBIDE CORPORATION

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Appellee.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of July, 2025, the foregoing ***UNION CARBIDE CORPORATION'S MOTION TO DISMISS THE COURTLAND COMPANY'S APPEAL OF THE GRANTING OF GENERAL PERMIT REGISTRATION NO. WVG612841 TO UNION CARBIDE CORPORATION*** was served on the following counsel of record by U.S. Mail and electronic mail as follows:

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