BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JOHN D. WARSAW Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	))))))))	PCB 2018-083 (LUST Appeal)

NOTICE

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
don.brown@illinois.gov

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
carol.webb@illinois.gov

Gary E. Schmidt
Kavanagh, Scully, Sudow, White & Frederick, P.C.
301 S.W. Adams Street
Suite 700
Peoria, IL 61602-1574
garyschmidt@ksswf.com

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **RESPONDENT'S POST-HEARING BRIEF,** copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
866-273-5488 (TDD)
Dated: **August 16, 2019**

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JOHN D. WARSAW	)	
Petitioner,	)	
	)	
v.	)	PCB 2018-083
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

RESPONDENT'S POST-HEARING BRIEF

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and hereby submits a Post-Hearing Brief in the above captioned matter.

BURDEN OF PROOF

Section 105.112(a) of the Illinois Pollution Control Board's ("Board") procedural rules (35 Ill. Adm. Code 105.112(a)) provides that the **burden of proof shall be on a Petitioner**. As the Board, itself has noted, the primary focus of a reimbursement appeal must remain on the adequacy of the permit application and the information submitted by the applicant (Petitioner) to the Illinois EPA for review. See: John Sexton Contractors Company v. Illinois EPA, PCB 88-139 (February 23, 1989), p. 5. Simply, the ultimate burden of proof will remain on the party initiating an appeal (Petitioner) and what Petition presented for the Illinois EPA to review and render an opinion upon. See: John Sexton Contractors Company v. Illinois Pollution Control Board, 201 Ill. App. 3d 415, 425-426, 558 N.E.2d 1222, 1229 (1st Dist. 1990).

Petitioner must demonstrate to the Board that it satisfied this high burden before the Board may even entertain a review of the Illinois EPA's decision. The facts below and the arguments presented will lead the Board to one conclusion, that Petitioner has **failed** to meet its burden of proof.

STANDARD OF REVIEW

Section 57.8(i) of the Environmental Protection Act ("Act") (415 ILCS 5/57.8) allows an individual to challenge a determination of the Illinois EPA to the Board pursuant to Section 40 of the Act (415 ILCS 5/40). Section 40 of the Act is the general appeal section for permits and has been used by the legislature as the basis for this type of review to the Board. When considering an Illinois EPA determination on a submitted corrective action plan and/or budget, the Board must determine whether the proposal(s), as submitted to the Illinois EPA, demonstrate compliance with the Act and Board regulations. See: Broderick Teaming Company v. Illinois EPA, PCB 00-187 (December 7, 2000).

The Board will not, and should not, consider new information not presented to the Illinois EPA. Simply put, if the information was not before the Illinois EPA that information could not have been relied upon by either the Petitioner nor Illinois EPA in review and rendering a determination on the sufficiency of the application. As such, the Illinois EPA's final decision, and the application, as submitted for review, frame the appeal. See: Todd's Service Station v. Illinois EPA, PCB 03-2 (January 22, 2004), p.4; See also: Pulitzer Community Newspapers, Inc. v. EPA, PCB 90-142 (Dec. 20, 1990). The Board must, therefore, look to the documents within the Administrative Record ("Record")[1] as the sole source of rendering an opinion on whether the Illinois EPA framed its determination consistently with

[1] Citations to the Administrative Record will hereinafter be made as, "AR___."
Citations to the Hearing Transcript will hereinafter be made as, "Trans___."

the application and law. Petitioner has not challenged the sufficiency of the Record in this matter.

ISSUE

The Illinois EPA final determinations on the application frame the issues on appeal. The issue presented in this matter is:

Whether, the Petitioner can be reimbursed for the replacement of asphalt when the work was not included in a Corrective Action Plan and Budget.

FACTS

An Incident was reported to the Illinois Emergency Management Agency ("IEMA") on August 11, 1998 concerning a release at the Warsaw Itco Gas Station located on Route 122, Minier, Tazewell County, Illinois. IEMA number 981987 was issued. (AR 0009). The 20-day report was filed on September 8, 1998. The 45-day report was filed on October 9 1998. (AR 0013). As the Administrative Record illustrates, multiple Corrective Action Plans and Budgets were submitted between the filing of the 45-day report and the issuance of the No Further Remediation letter which was issued on September 12, 2017. (AR 1270). The Petitioner filed a reimbursement claim on March 13, 2018. On June 12, 2018, the Illinois EPA denied $7660.00 for paving costs not included in a budget. Petitioner appealed the denial of payment of an invoice dated July 20, 2017 from Tazewell County Asphalt Co., Inc. in the amount of $5780.00. A hearing was held in this matter on June 5, 2019.

LAW

- 415 ILCS 5/57.6. Underground storage tanks; early action.

(a) Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

(b) Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner or operator may also remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.

- 35 Ill. Adm. Code 734.210. Early Action.

a) Upon confirmation of a release of petroleum from a~~n~~ UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, must perform the following initial response actions:

1) Immediately report the release to IEMA (e.g., by telephone or electronic mail);

BOARD NOTE: The OSFM rules for the reporting of UST releases are found at 41 Ill. Adm. Code 176.320(a).

2) Take immediate action to prevent any further release of the regulated substance to the environment; and

3) Immediately identify and mitigate fire, explosion and vapor hazards.

b) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must perform the following initial abatement measures:

1) Remove as much of the petroleum from the UST system as is necessary to prevent further release into the environment;

2) Visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement or corrective action activities. If these remedies

include treatment or disposal of soils, the owner or operator must comply with 35 Ill. Adm. Code 722, 724, 725, and 807 through 815;

5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with regulations promulgated by the OSFM. In selecting sample types, sample locations, and measurement methods, the owner or operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

6) Investigate to determine the possible presence of free product, and begin removal of free product as soon as practicable and in accordance with Section 734.215 of this Part.

c) Within 20 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit a report to the Agency summarizing the initial abatement steps taken under subsection (b) of this Section and any resulting information or data.

d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:

1) Data on the nature and estimated quantity of release;

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

3) Results of the site check required at subsection (b)(5) of this Section; and

4) Results of the free product investigations required at subsection (b)(6) of this Section, to be used by owners or operators to determine whether free product must be recovered under Section 734.215 of this Part.

e) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must submit to the Agency the information collected in

compliance with subsection (d) of this Section in a manner that demonstrates its applicability and technical adequacy.

f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal* (see 41 Ill. Adm. Code 160, 170, 180, 200). *The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.* [415 ILCS 5/57.6(b)]. Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.

g) ***For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.*** (Emphasis added)

BOARD NOTE: Owners or operators seeking payment from the Fund are to first notify IEMA of a suspected release and then confirm the release within 14 days to IEMA pursuant to regulations promulgated by the OSFM. See 41 Ill. Adm. Code 170.560 and 170.580. The Board is setting the beginning of the payment period at subsection (g) to correspond to the notification and confirmation to IEMA.

h) The owner or operator must determine whether the areas or locations of soil contamination exposed as a result of early action excavation (e.g., excavation boundaries, piping runs) or surrounding USTs that remain in place meet the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

1) At a minimum, for each UST that is removed, the owner or operator must collect and analyze soil samples as indicated in subsections (h)(1)(A)_through (E). The Agency must allow an alternate location for, or excuse the collection of, one or more samples if sample collection in the following locations is made impracticable by site-specific circumstances.

A) One sample must be collected from each UST excavation wall. The samples must be collected from

locations representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified on a wall, the sample must be collected from the center of the wall length at a point located one-third of the distance from the excavation floor to the ground surface. For walls that exceed 20 feet in length, one sample must be collected for each 20 feet of wall length, or fraction thereof, and the samples must be evenly spaced along the length of the wall.

B) Two samples must be collected from the excavation floor below each UST with a volume of 1,000 gallons or more. One sample must be collected from the excavation floor below each UST with a volume of less than 1,000 gallons. The samples must be collected from locations representative of soil that is the most contaminated as a result of the release. If areas of contamination cannot be identified, the samples must be collected from below each end of the UST if its volume is 1,000 gallons or more, and from below the center of the UST if its volume is less than 1,000 gallons.

C) One sample must be collected from the floor of each 20 feet of UST piping run excavation, or fraction thereof. The samples must be collected from a location representative of soil that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a length of piping run excavation being sampled, the sample must be collected from the center of the length being sampled. For UST piping abandoned in place, the samples must be collected in accordance with subsection (h)(2)(B) of this Section.

D) If backfill is returned to the excavation, one representative sample of the backfill must be collected for each 100 cubic yards of backfill returned to the excavation.

E) The samples must be analyzed for the applicable indicator contaminants. In the case of a used oil UST, the sample that appears to be the most contaminated as a result of a release from the used oil UST must be analyzed in accordance with Section 734.405(g) of this Part to determine the indicator contaminants for used oil. The remaining samples collected pursuant to

subsections (h)(1)(A) and (B) of this Section must then be analyzed for the applicable used oil indicator contaminants.

2) At a minimum, for each UST that remains in place, the owner or operator must collect and analyze soil samples as follows. The Agency must allow an alternate location for, or excuse the drilling of, one or more borings if drilling in the following locations is made impracticable by site-specific circumstances.

A) One boring must be drilled at the center point along each side of each UST, or along each side of each cluster of multiple USTs, remaining in place. If a side exceeds 20 feet in length, one boring must be drilled for each 20 feet of side length, or fraction thereof, and the borings must be evenly spaced along the side. The borings must be drilled in the native soil surrounding the USTs and as close practicable to, but not more than five feet from, the backfill material surrounding the USTs. Each boring must be drilled to a depth of 30 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 30 feet below grade.

B) Two borings, one on each side of the piping, must be drilled for every 20 feet of UST piping, or fraction thereof, that remains in place. The borings must be drilled as close as practicable to, but not more than five feet from, the locations of suspected piping releases. If no release is suspected within a length of UST piping being sampled, the borings must be drilled in the center of the length being sampled. Each boring must be drilled to a depth of 15 feet below grade, or until groundwater or bedrock is encountered, whichever is less. Borings may be drilled below the groundwater table if site specific conditions warrant, but no more than 15 feet below grade. For UST piping that is removed, samples must be collected from the floor of the piping run in accordance with subsection (h)(1)(C) of this Section.

C) If auger refusal occurs during the drilling of a boring required under subsection (h)(2)(A) or (B) of this Section, the boring must be drilled in an alternate location that will allow the boring to be drilled to the required depth. The alternate location must not be

more than five feet from the boring's original location. If auger refusal occurs during drilling of the boring in the alternate location, drilling of the boring must cease and the soil samples collected from the location in which the boring was drilled to the greatest depth must be analyzed for the applicable indicator contaminants.

D) One soil sample must be collected from each five-foot interval of each boring required under subsections (h)(2)(A) through (C) of this Section. Each sample must be collected from the location within the five-foot interval that is the most contaminated as a result of the release. If an area of contamination cannot be identified within a five-foot interval, the sample must be collected from the center of the five-foot interval, provided, however, that soil samples must not be collected from soil below the groundwater table. All samples must be analyzed for the applicable indicator contaminants.

3) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have been met, and if none of the criteria set forth in subsections (h)(4)(A) through (C) of this Section are met, within 30 days after the completion of early action activities the owner or operator must submit a report demonstrating compliance with those remediation objectives. The report must include, but not be limited to, the following:

A) A characterization of the site that demonstrates compliance with the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants;

B) Supporting documentation, including, but not limited to, the following:

i) A site map meeting the requirements of Section 734.440 of this Part that shows the locations of all samples collected pursuant to this subsection (h);

ii) Analytical results, chain of custody forms, and laboratory certifications for all samples collected pursuant to this subsection (h); and

iii) A table comparing the analytical results of all samples collected pursuant to this subsection

(h) to the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and

C) A site map containing only the information required under Section 734.440 of this Part.

4) If the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants have not been met, or if one or more of the following criteria are met, the owner or operator must continue in accordance with Subpart C of this Part:

A) There is evidence that groundwater wells have been impacted by the release above the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants (e.g., as found during release confirmation or previous corrective action measures);

B) Free product that may impact groundwater is found to need recovery in compliance with Section 734.215 of this Part; or

C) There is evidence that contaminated soils may be or may have been in contact with groundwater, unless:

i) The owner or operator pumps the excavation or tank cavity dry, properly disposes of all contaminated water, and demonstrates to the Agency that no recharge is evident during the 24 hours following pumping; and

ii) The Agency determines that further groundwater investigation is not necessary.

- 35 Ill. Adm. Code 734.335(d). Corrective Action Plan.

Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 or this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. ***However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.*** (Emphasis added)

BOARD NOTE: Owners or Operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part.

- 35 Ill. Adm. Code 734.630(m). Ineligible Corrective Action Costs.

Costs exceeding those contained in a budget or amended budget approved by the Agency. (Emphasis added.

ARGUMENT

The Petitioner requests reimbursement for the replacement of an asphalt surface in the amount of $5,780.00. Neither the Petitioner, nor its consultant, included this amount in a budget for approval by the Illinois EPA. Since a No Further Remediation letter has been issued for the site, the Petitioner can no longer submit a budget for approval of the amount requested. Therefore, pursuant to the Act and Board regulations thereunder, the Illinois EPA is unable to reimburse the Petitioner for this cost.

The Board, in Broadus Oil v. IEPA, (2006) PCB 2004-031, PCB 2005-043, granted summary judgement in favor of the Agency under a very similar fact scenario. In Broadus, the Petitioner submitted an amended budget after the issuance of an NFR letter. The Illinois EPA denied the budget amendment because it was submitted after the NFR letter was issued and denied reimbursement for costs that exceeded approved budget amounts. The Board held in Broadus that "the budget amendment must be submitted prior to the Agency's issuance of an NFR Letter for that budget amendment to be reviewed by the Agency." The general rule is that all corrective action plans and budgets need to be submitted and approved prior to performing the work. The Board cautioned that not doing so and completing work without an approved plan and budget may lead to costs not being

reimbursed. (Broadus, p.8). Since 734.630(m) of the Board's regulations provides that "costs exceeding those contained in a budget or amended budget approved by the Agency," are ineligible costs, the Agency could not reimburse for costs not approved in a budget. The budget in the Broadus case was denied because it was submitted after the issuance of the NFR letter and therefore those costs were not able to be reimbursed.

The Courts have clearly held that "an administrative agency is a creature of statute, any power or authority claimed by it must find its source within the provisions of the statute by which it is created." (Bio–Medical Laboratories, Inc. v. Trainor, (1977), 370 N.E.2d 223.) Both the Board and the Illinois EPA have been created by the Illinois General Assembly through the Act with specific authorities and duties. Therefore, both agencies are creatures of statute and cannot legally go beyond the statutes in carrying out their duties. (Granite City Div. of Nat. Steel Co. v. PCB, 155 Ill. 2d 149, 171, 613 N.E.2d 719, 729 (1993); *see also* Bevis v. PCB, 289 Ill. App. 3d 432, 437, 681 N.E.2d 1096, 1099 (5th Dist. 1997); McHenry County Landfill, Inc. v. IEPA, 154 Ill. App. 3d 89, 95, 506 N.E.2d 372, 376 (2nd Dist. 1987)).

Neither the Illinois EPA nor the Board have been given the authority to grant equitable relief. The Illinois EPA can only reimburse for corrective action under Title XVI of the Act in accordance with the provision of that Title and the regulations promulgated thereunder. Sections 734.355(d) (35 Ill. Adm. Code 734.335(d)) and Section 734.630(m) (35 Ill. Adm. Code 734.630(m)) state that while an owner or operator may conduct corrective action in accordance with the Act and regulations prior to submittal of a plan or budget, a plan or budget must be submitted to the Illinois EPA for review and approval, rejection, or modification prior to payment for any related costs or the issuance of a No Further Remediation Letter ("NFR"). In fact, costs exceeding those contained in a budget or

amended budget approved by the Illinois EPA is expressly listed as an ineligible cost under Section 734.630(m).

Multiple budgets were submitted to the Illinois EPA during the pendency of the remediation at Petitioner's site. None of those budgets included the replacement of the asphalt in the costs requested for approval. An NFR letter was issued to Petitioner on September 12, 2017. As set forth in Section 734.355(d), a budget including the asphalt costs needed to be submitted to the Illinois EPA prior to the issuance of that NFR letter. That was not done. After the NFR letter was issued, a budget could no longer be submitted due to the provisions of the regulations. Illinois EPA could not reimburse for the asphalt replacement when the reimbursement claim was submitted because the cost was not approved in a budget and reimbursement would violate Section 734.630(m). As a creature of statute, the Illinois EPA could not give equitable relief to the Petitioner, even if the cost for asphalt replacement, if it had been included in an approved budget, would have been reimbursable.

The Petitioner argues that the cost for asphalt should be reimbursed under the early action provisions of the Act and regulations because the site was "opened in 1999 under Early Action and left open during implementation of two corrective action plans until 2017". Unfortunately, early action has a definitive ending under the Act and the replacement of the asphalt occurred well after the end of the early action timeframe. Section 57.6(b) of the Act (415 ILCS 5/57.6(b)), states as follows:

> Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, ***and prior to submission of any plans to the Agency***, remove the tank system or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner or operator may also remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank. (Emphasis added)

Further, Section 734.210(e) of the regulations (35 Ill. Adm. Code 734.210(e)), which sets forth the work to be performed during early action, states:

> ***For purposes of payment from the Fund, the activities set forth in subsection (f) of this Section must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days.*** The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action. (Emphasis added)

For work to be considered within the early action timeframe, it must be performed within 45 days after the initial notification of IEMA of a release plus 14 days. There is a provision allowing for extension of the early action timeframe for special circumstances if that extension is approved by the Illinois EPA in writing. A request for extension was never submitted by the Petitioner. Therefore, the early action timeframe was concluded within 45 days, plus 14 days, for a total of 59 days after the notification of a release to IEMA. That notification took place on August 11, 1998. By calculating the timeframes under the Act and regulations, early action ended on October 9, 1998, the exact day that the Petitioner through its consultant filed the 45-day report with the Illinois EPA. The invoice submitted with the reimbursement claim is dated July 20, 2017. (AR 1361). The asphalt work was completed over 18 years after the end of the early action timeframe and cannot be reimbursed under the provisions of early action in the Act and regulations.

Since the relevant law prohibits the Illinois EPA to reimburse for costs not approved in a budget and conducted well outside of the early action timeframe, it cannot reimburse the costs in this case.

CONCLUSION

The Board and the Illinois EPA have been created by the Illinois General Assembly through the Act with specific authorities and duties. Therefore, both agencies are creatures of statute and cannot legally go beyond the statutes in carrying out their duties. Neither the Illinois EPA nor the Board have been given the authority to grant equitable relief. Since the Act and regulations clearly prohibit the Illinois EPA from reimbursing the asphalt costs in this case, the only avenue remaining for the Petitioner would be equitable relief, which the Agency does not have authority to consider in reimbursement claims. Further, since the Petitioner's early action theory of recovery fails under the plain language of the Act, equity is its only basis for a claim that the Illinois EPA was incorrect in its June 12, 2018 decision denying reimbursement. The Board, however, has not been granted the authority to grant equitable relief, so that argument for overturning the Agency's decision must also fail.

WHEREFORE: for the above noted reasons, the Illinois EPA respectfully requests the Board **AFFIRM** the Illinois EPA's June 12, 2018 Decision.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
Dated: **August 16, 2019**

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

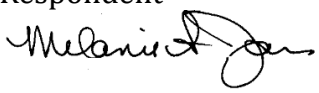
I, the undersigned attorney at law, hereby certify that on **August 16, 2019**, I served true and correct copies of **RESPONDENT'S POST-HEARING BRIEF** via the Board's COOL system and email, upon the following named persons:

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
don.brown@illinois.gov

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
carol.webb@illinois.gov

Gary E. Schmidt
Kavanagh, Scully, Sudow, White & Frederick, P.C.
301 S.W. Adams Street
Suite 700
Peoria, IL 61602-1574
garyschmidt@ksswf.com

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
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866-273-5488 (TDD)