BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CHRONISTER OIL CO. d/b/a QIK-N-EZ,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 2024-50
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

TO:

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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (h), a PETITIONER'S MOTION FOR SUMMARY JUDGMENT, a copy of which is herewith served upon Respondent.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, was today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 12th day of December, 2024. The number of pages of this filing, other than exhibits, is 22 pages.

CHRONISTER OIL CO. d/b/a QIK-N-EZ ,

BY: LAW OFFICE OF PATRICK D. SHAW

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CHRONISTER OIL CO. d/b/a QIK-N-EZ , Petitioner,	)	
v.	)	PCB No. 2024-50
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, CHRONISTER OIL CO. d/b/a QIK-N-EZ, by its undersigned counsel, moves for summary judgment pursuant to Section 101.516(b) of the Board's Procedural Rules (35 Ill. Adm. Code § 101.516(b)), stating as follows:

STATEMENT OF UNDISPUTED FACTS

Chronister Oil Company ("Chronister"), owns an active self-service fueling station, which operates under the name Qik-N-EZ, at 2800 North Peoria Road, Springfield, Sangamon County, Illinois. (A.R.026; A.R.029) During the 1990s, several releases of gasoline were reported for the site for which a No Further Remediation letter has not been issued:

- On September 21, 1994, a gasoline release was reported on behalf of Bruce Franklin to the Illinois Emergency Management Agency ("IEMA"), which assigned the release Incident Number 94-2157. (A.R.001)
- On August 26, 1996, a gasoline release was reported on behalf of Lincoln Land Oil Company to IEMA, which assigned the release Incident Number 96-1540. (A.R.002)
- On August 11, 1999, a gasoline release was reported on behalf of Lincoln Land Oil Company to IEMA, which assigned the release Incident Number 99-1895.

(A.R.003)

Chronister acquired an ownership interest in the site and elected to proceed as owner for the 1996 and 1999 Incidents on November 5, 2019 (A.R.004), and for the 1994 Incident on March 10, 2021 (A.R.153) Collectively these three incidents will be referred to as the 1990s Incidents.

At the time of the 1990s Incidents, there were three underground storage tanks at the site, none of which were removed as part of early action. (A.R.019) Site investigation activities indicated that most of the service station property exceeded Tier 1 soil remediation objectives, including in the tank pit. (A.R.208; A.R.238 (Figure 3)) In November of 2020, permission was sought from the Office of the State Fire Marshal ("OSFM") to remove or abandon these tanks in order to access and remove contaminated soil that exceeded applicable site remediation objectives. (A.R.017) On November 23, 2020, the OSFM issued a permit for the removal of two tanks, and a permit for the abandonment of the third tank which posed a risk of damaging the structural integrity of the building if removed. (A.R.017) During tank removal, evidence of a continuing release was observed which OSFM required to be reported as a new incident. (A.R.017) The release was reported by Chronister on December 9, 2020, which IEMA assigned Incident Number 2020-1063. (A.R.009)

On January 20, 2021, Petitioner submitted a 45-Day Report for the 2020 Incident. (A.R.012) The Report described how 1,183.01 cubic yards of contaminated material was excavated and transported to a landfill for disposal. (A.R.019) Soil samples were collected which confirmed the presence of contamination above the most stringent Tier 1 Clean-up Objectives. (A.R.019) Upon approval of the 45-Day Report, the consultant stated that a

corrective action plan would be developed to address all contamination at the facility for all incidents. (A.R.024) On May 26, 2021, the 45-Day Report was approved. (A.R.158)

To briefly recapitulate: In late 2020 Petitioner removed or abandoned all tanks at the site as part of corrective action for the 1990 Incidents. During this corrective action, a new release was identified and confirmed, resulting in early action activities for the 2020 Incident. While the goal was to reach a point at which there would be no differentiation between the 1990s Incidents and the 2020 Incident, this appeal concerns issues arising during the overlapping early action and corrective action work in December of 2020.

* * *

On September 2, 2021, Petitioner's consultant submitted a billing package for early action costs for the 2020 Incident. (A.R.160) The amount sought was $13,132.65 for preparing the 45-Day report and for some laboratory analysis. (A.R.172) On December 13, 2021, the Illinois EPA substantially approved the application for payment. (A.R.200) The Illinois EPA cut $600.00 for soil borings performed before the 2020 Incident was reported to IEMA, and $221.31 for Senior Account Technician time that was agreed to by the consultant. (A.R.202)

A second billing package for early action costs for the 2020 Incident was submitted to the Illinois EPA on March 22, 2002, through Petitioner's new consultant, Green Wave Consulting, LLC. (A.R.542) The amount sought was $57,987.33, primarily for the costs of excavating and disposing of four feet of contaminated backfill material during early action. (A.R.545; A.R.549) On May 5, 2022, the Illinois EPA substantially approved the application for payment in the amount of $50,833.79. (A.R.593)

Also on March 22, 2002, Petitioner's new consultant submitted a corrective action plan

and budget for all outstanding incidents. (A.R.204) The Petitioner requested that a Project Labor Agreement not be required for the corrective action plan with justifications provided, including that "a portion of this work has been previously completed due to needs at the site, a PLA cannot be implemented retroactively." (A.R.204) The corrective action plan was primarily designed to remove contaminated soil exceeding the applicable site remediation objectives. (A.R.216) The corrective action plan proposed excavating and disposing of 6,570 cubic yards of contaminated soil in a landfill. (A.R.217) In order to access the contaminated soil, structures would first need to be removed:

> **Prior to the excavation activities, the station building and foundation will be razed to access the impacted soil beneath its footprint and the canopy will be removed. The product piping will also have to be removed per OSFM requirements as a permitted activity prior to commencement of the soil remediation. Per the OSFM regulations [41 IAC 176.330(b)] and unless otherwise directed, soil samples will be required for every 20 feet of product piping run.**

(A.R.216 (citation in original))

Confirmation soil samples would then be collected from the sidewalls and floor, as well as nine overbuden backfill samples and one soil gas sample. (A.R.217, A.R.218) Once the soil remediation actions have been concluded, the corrective action plan proposed placing 3,830 square feet of concrete and 5,420 square feet of asphalt over the backfilled excavation. (A.R.218) Afterwards three monitoring wells removed during the excavation would be reinstalled. (A.R.218)

The corrective action plan separately sought approval for the abandonment and removal of underground storage tanks in December of 2020 as this area also exceeded the applicable site remediation objectives for soil. (A.R.220) Two separate budget were included with the

corrective action plan, one for the work yet to be performed ("Attachment 8") (A.R.484) and a second for work already completed ("Attachment 9") (A.R.510). Two budgets were necessary because different maximum payment rates are applicable to each. (A.R.220)[1] The budget proposed for future corrective action activities was $867,698.08. (A.R.487) The budget for completed corrective action activities was $111,682.56, and included the costs of removing or abandoning three tanks, excavating and backfilling the excavation, as well as consulting costs for those hours and materials not expended as early action activities. (A.R.220; A.R.513 - A.R.522)

On or about June 15, 2022, the Illinois EPA made its Project Labor Agreement ("PLA") Determination. (A.R.598) The PLA Determination contained a summary of the work involved:

> **Brief Summary of Fieldwork Activities:**
>
> **The CAP proposes ET&D of 6570 cu. yds of soil, razing the station building and foundation, removing the canopy, removing product piping. The CAP proposes the collection of nine backfill samples, thirty sidewall samples, forty-three floor samples, and one soil gas sample. Reinstallation of three monitoring wells after excavation is proposed. The plan proposes 3830 square feet of six-inch thickness concrete pavement and 5420 square feet of four-inch thickness asphalt.**

(A.R.598)

These fieldwork activities are all proposed future corrective action activities detailed in the Corrective Action Plan. (A.R.216-A.R.218)

On July 22, 2022, the Illinois EPA substantially approved the corrective action plan and budget. (A.R.601) The corrective action plan was modified by requiring additional monitoring

[1] The maximum payment amounts for costs approved by the Agency in writing prior to the date the costs are incurred are fixed on the date the budget was received. (35 Ill. Adm. Code 734.870(d)(1)) The maximum payment amounts for costs incurred without prior written approval are fixed on the date the date the costs were incurred. (35 Ill. Adm. Code 734.870(d)(2))

well sampling, and with the requirement of a PLA. (A.R.601) The Illinois EPA determination also evaluated the two budgets separately, referencing "Attachment 8" or "Attachment 9." (A.R.602) Among other modifications, the budget for future corrective action activities was adjusted by adding $460.44 in consulting personnel costs for "preparing and securing Project Labor Agreements." (A.R.608) The budget for corrective action already completed was reduced by $0.50 for vehicle charges cost and $1,911.21 for certain engineering costs agreed to by the consultant, which reduced the total budget to $109,770.85. (A.R.609-A.R.610) There was no adjustment for preparing and securing a PLA in the budget for corrective action already performed. (A.R.609-A.R.610)

In summary, following the approval of the 45-Day report, two early action payment applications were submitted to the Illinois EPA for the 2020 Incident as well as a corrective action plan and budget for all outstanding incidents. The corrective action plan and budget in turn was divided between seeking approval for past work and costs and future work and costs. Petitioner requested that a PLA not be imposed retroactively, but the PLA determination and the Illinois EPA approval of the corrective action plan focused on that portion of the work to be performed in the future.

* * *

On July 7, 2023, Petitioner's consultant submitted a reimbursement claim for past corrective action costs in the amount of $109,770.86. (A.R.615; A.R.618)[2]

[2] The amount requested inadvertently exceeds the approved budget by a penny, which is not sought in these proceedings. For the record, the error is in the budget, which estimated the cost of excavating contaminated soil to be $55,824.98 and backfilling the excavation to be $14,961.75 (A.R.516), but mistakenly totaled these as $70,786.72 on the budget summary form. (A.R.513)

On January 3, 2024, the Illinois EPA issued its final decision refusing to pay any portion of the claim. (A.R.6810) Three grounds were given for the denial:

> **The required PLA certification was not submitted in this reimbursement package. In addition, there are requests for costs that have been previously paid, as well as for costs that were incurred prior to the IEMA date of December 9, 2020.**

(A.R.683)

Petitioner and the Illinois EPA agreed to a 90-day extension of the appeal deadline herein, which was approved by the Pollution Control Board on February 15, 2024. Petitioner filed a timely appeal on May 10, 2024, which was accepted by the Board on May 16, 2024.

On September 19, 2024, Petitioner filed a motion to amend the petition for review because it did not wish to challenge $3,162.83 in analytical costs and $1,833.56 backfill costs that had been cut by the Agency. On October 17, 2024, the Hearing Officer granted the motion.

LEGAL STANDARDS AND SCOPE OF REVIEW

The owner or operator may submit a complete application for final or partial payment once every ninety days. (415 ILCS 5/57.8) The Agency's refusal to pay the application in full or part may be appealed to the Board. (415 ILCS 5/57.8(i)) Such Agency refusal must be accompanied by an explanation of the legal provisions that may be violated if the application is approved, a statement of specific reasons why the legal provisions might be violated, and an explanation of the specific type of information, if any, the Agency deems the applicant did not provide. (35 Ill. Adm. Code § 734.610(d)) On appeal to the Board, the Agency statements and explanation frame the issues. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016) The Board must decide whether Petitioner's payment request to IEPA would violate the Act or the Board's rules. 1441 Kingshighway v. IEPA, PCB 24-32, slip op. at 5 (June 20, 2024)

Petitioner has the burden of proof in these proceedings. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016). The standard of proof in UST appeals is a "preponderance of the evidence." Id. ("A proposition is proved by a preponderance of the evidence when it is more probably true than not."). "The Board's review is generally limited to the record before IEPA at the time of its determination." Id. Accordingly, the nature of these proceedings are well suited for disposition by motion for summary judgment.

The Board has promulgated rules for summary judgments: "If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment." (35 Ill. Adm. Code § 101.516(b)) This motion for summary judgment is based upon the record filed by the Agency and the explanation given in

the Agency decision letter. A party opposing a motion for summary judgment may not rest on its pleadings, but must "present a factual basis which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219 (2d Dist. 1994).

LAW

Payment is sought for performing a corrective action plan approved for past corrective action activities. Agency review of any payment application is "limited to generally accepted auditing and accounting practices." (415 ILCS 5/57.8(a)(1)) "In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal." (Id.) There does not appear to be any contention that the corrective action plan failed to adhere to corrective action measures in the proposal, nor would that seem likely given that the plan was submitted after the work had been performed. Therefore, the Agency's review is limited to generally accepted auditing and accounting practices. Parker's Gas & More v. IEPA, PCB 19-79, slip op. at 15 (May 4, 2023) The Agency's decision identitifies three omissions in the submittal that pose entirely legal issues:

1. Did the submittal require a PLA certification in order to be approved? Petitioner submits that the PLA requirement was not imposed retroactively on past corrective action activities, nor could the Agency legally do so.

2. Could costs be paid for work that took place prior to the date that IEMA was notified of a the 2020 release? Petitioner submits that the corrective action plan was approved for all outstanding incidents and was not limited to the 2020 Incident.

3. Were the $30,281.22 in Excavation, Transportation and Disposal costs marked in the Agency notes duplicative charges? Petitioner submits that they are not and that the reviewer made a mathematical error in converting an item from tons to cubic yards which had already been converted to cubic yards on the invoice.

I. THE APPLICATION FOR PAYMENT DID NOT REQUIRE A PLA CERTIFICATION.

The Illinois EPA improperly required a PLA certification in order to receive payment for approved corrective action activities performed prior to the PLA determination on July 22, 2022. Petitioner is not disputing the applicability of the PLA requirement for future corrective action activities.

According to the PLA Act, a PLA is a "pre-hire collective bargaining agreement covering all terms and conditions of employment on a specific project." (30 ILCS 571/1(b) (emphasis added)) A PLA provides the State with "a guarantee that public works projects will be completed with highly skilled workers," and with assurance of "binding procedures for resolving labor issues without labor disruption." (30 ILCS 571/1(d) and (e) (emphasis added))

A PLA shall be required "[o]n a project-by-project basis" when a State agency "has determined that the agreement advances the State's interests of cost, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment." (30 ILCS 571/10) "[A]ny decision to use a [PLA] . . . shall be supported by a written, publicly disclosed finding by the department, agency, authority, board, or instrumentality, setting forth the justification for use of the project labor agreement." (30 ILCS 571/30)

"When it has been determined that a [PLA] is appropriate," the parties "shall in good faith negotiate a [PLA] with labor organizations." (30 ILCS 571/20) At a minimum, a PLA must include include binding procedures for labor dispute resolutions "arising before the completion of work," guarantees against strikes or lockouts, assurances of reliable sources of

skilled and experienced labor, goals for apprenticeships for minorities, women and persons with disabilities, bidding provisions and any other terms the parties deem appropriate. (30 ILCS 571/25 (emphasis added))

In 2013, the PLA Act was amended to include corrective action paid from the Underground Storage Tank Fund within its coverage. (30 ILCS 571/10, added by P.A. 89-109, eff. July 25, 2013) Pursuant to corresponding amendments to the Illinois Environmental Protection Act ("the Act"), the Illinois EPA must "determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement." (415 ILCS 5/57.7(c)(3)) If so obligated, the owner/operator must certify that the work was performed pursuant to a PLA that complies with all legal obligations:

> **If the Agency determined under subsection (c)(3) of Section 57.7 of this Act that corrective action must include a project labor agreement, a certification from the owner or operator that the corrective action was (i) performed under a project labor agreement that meets the requirements of Section 25 of the Project Labor Agreements Act and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act and in full compliance with all statutes, regulations, and Executive Orders as required under that Act and the Prevailing Wage Act.**

(415 ILCS 5/57.8(6)(f))

Given this legal background, it is clear that the Petitioner cannot be required to provide a PLA certification for work performed in December of 2020 when there was no determination that a PLA would be required until 2022. Simply put, the work was not performed under a project labor agreement and cannot be certified that it was. The laws cited supra are clear, there is no requirement to obtain or comply with a PLA until and unless the relevant State agency makes a formal determination complete with supporting public findings. (30 ILCS 571/30) This formal determination is a necessary pre-condition to any obligation to negotiate the contractual terms

that would govern the performance of the work. At the time the budget for this work was submitted to the Agency for approval, the work was already complete, and the terms of the work could not be negotiated as a "pre-hire" arrangement contemplated by law. (30 ILCS 571/1(b))

However, in approving the budgets for the corrective action plan, the Illinois EPA only decided that future corrective action work needed to address the costs of "preparing and securing Project Labor Agreements." (A.R.608) There was no provision for performing and securing a PLA for past corrective action work, which would have been impossible and absurd. (A.R.609-A.R.610) Similarly, the PLA determination itself only applied to future corrective action work and did not include past corrective action work within its coverage. (A.R.598) The PLA determination is a formal decision that must be "supported by a written, publicly disclosed finding by the department, agency, authority, board, or instrumentality, setting forth the justification for use of the project labor agreement." (30 ILCS 571/30) The apparent purpose of such public-facing documentation is to assure the public that these project-specific determinations are not made for some arbitrary or improper reasons. There was no justification given for imposing the PLA on past corrective action work as such on obligation would be impossible to perform and would not further any of the interests to be gained from a PLA.

The legal impossibility of imposing the PLA requirement retroactively works in tandem with the fact that the PLA determination only applied to future corrective action activities. When courts interpret statutory language, it presumes the legislature "did not intend absurd, inconvenient, or unjust consequences." Landis v. Marc Realty, 235 Ill.2d 1, 12 (2009) While the Illinois EPA is not a legislative body, it should still be given the presumption that it did not intend the "absurd, inconvenient, or unjust consequences" of retroactivity, particularly where the

evidence in the record indicates the PLA determination was only meant for future corrective action activities.

Retroactivity is disfavored in the law, and even when a statute is clearly retroactive, fundamental fairness may preclude its enforcement as such. In a pollution control facility siting decision, the Illinois Appellate Court ruled that a law written with retroactive effects could not be so applied when fundamental fairness required otherwise:

> **In the case at bar, we believe justice, fairness and equity require that persons who comply with the law not as it might be but as it is then in effect, and in this instance obtain the required permit after expenditure of funds, should not have that permit nullified by retroactive application of a statute subsequently enacted.** .

American Fly Ash v. Tazewell County, 120 Ill. App. 3d 57, 59 (3rd Dist. 1983)

In that case, a landfill developer applied for a permit, which the Illinois EPA approved on October 27, 1981, but on November 12, 1981, a law was passed requiring siting approval from local government as a pre-condition to obtaining a permit from the Illinois EPA for all regional pollution control facilities permitted after July 1, 1981. Id. at 58. Similar to the PLA process, the siting matter at issue in American Fly Ash involved a two-step process. First, the applicant must obtain siting approval from the local government and then that siting approval is made part of an application to the Illinois EPA for a permit to develop a landfill. But American Fly Ash had already received its developmental permit from the Illinois EPA by the time the local government siting approval requirement was passed into law. In the present case, the Illinois EPA made its PLA determination after the corrective action work had been completed. Justice, fairness and equity similarly prohibit retroactive application of the PLA requirement, particularly when the the PLA determination does not make explicit that it was intended to be retroactive. Cf.

Chemrex v. Pollution Control Board, 257 Ill. App. 3d 274, 278-279 (1st Dist. 1994) (public policy against retrospective law is particularly strong when statutory language fails to explicitly mandate retroactivity).

In summary, the payment of past corrective actions costs cannot be denied for want of a PLA certification because this would impose an impermissible retroactive application of a legal obligation that did not exist when the work was performed, particularly given that the PLA determination itself only addressed future corrective action costs.

II. The Corrective Action Billing Package was not solely for the 2020 Incident.

The Illinois EPA additionally deducted unspecified "costs that were incurred prior to the IEMA date of December 9, 2020." (A.R.683) In doing so, the Illinois EPA relies on Section 57.8(k) of the Act which states "the Agency shall not pay costs of corrective action or indemnification incurred before providing notification of the release of petroleum." (415 ILCS 5/57.8(k); see also 35 Ill. Adm. Code § 734.630(n) (notification to be given to IEMA))

Petitioner disputes that December 9, 2020 is the applicable IEMA date, as that is only the most recent incident being remediated. (A.R.001 (notice given Sept. 21, 1994); A.R.002 (notice given Aug. 26, 1996); A.R.003 (notice given Aug. 11, 1999); A.R.009 (notice given Dec. 9, 2020). Which incidents are relevant is determined by the approved corrective action plan pursuant to which payment is sought. PAK-AGS v. IEPA, PCB 2015-014 (Dec. 4, 2014) Here, the corrective action plan was submitted for all outstanding incidents, i.e. Incidents 942157, 961540, 991895 and 20201063. ((A.R.204 (cover letter); A.R.205 (title page); A.R.207 (first page); A.R.274 & A.R.277 (Certifications) The associated budget also listed all outstanding

incidents. ((A.R.511 (Agency form); A.R.523 (Certification)) When the Illinois EPA approved the corrective action plan and budget, the decision letter referenced all outstanding incidents. (A.R.601) Similarly, the reimbursement package at issue herein sought payment associated with all outstanding incidents. (A.R.616) The Illinois EPA reviewer of the reimbursement package listed all of the incidents and the reporting date in their notes. (A.R.614 (Agency form))

At the payment stage, the Agency is without authority to modify the Agency's approval of a corrective action plan for all outstanding incidents. "Agency approval of any plan and associated budget . . . shall be considered final approval for purposes of seeking and obtaining payment from the [UST] Fund if the costs associated with the completion of any such plan are less than or equal to the amounts approved in such budgets." (415 ILCS 5/57.7(c)(1)) Here, the Agency went beyond an audit of the invoices and receipts and improperly restricted costs to only those for the 2020 Incident for a plan that also applied to the 1990 Incidents.

In PAK-AGS v. IEPA, PCB 2015-014 (Dec. 4, 2014), the Board ruled that the proper time to determine which incidents are relevant is at the planning and budget stage, not when reviewing the billing package. Id. at p. 20. In that case, the approved plan and budget only addressed contamination from one of two incidents at the site, and the Agency improperly tried to require the other incident at the payment stage in order to charge a higher deductible. Here, the plan and budget referenced all outstanding incidents, but at the payment stage the Illinois EPA arbitrarily limited reimbursable costs to those that occurred after the last incident was reported. The Illinois EPA has no authority to do that.[3]

[3] In contrast, the deduction for early action costs for the 2020 Incident properly cut soil borings advanced on December 8, 2020.

The Illinois EPA decision letter does not identify the corrective action costs that it believed to have been incurred prior to notification, but as detailed in TABLE ONE herein, the Agency reviewer highlighted costs dated December 6, 7 & 8, 2020 on supporting invoices. The Agency reviewer also highlighted certain costs dated December 9, 2020, but does not cut them elsewhere in the submittal, suggesting that the reviewer may have ultimately decided not to cut those costs incurred on the specific date the 2020 Incident was reported.

TABLE ONE

Date	Description	Units	Cost	Record
12/6/2020	Engineer III	3.00 Hours	$402.36	A.R.665
12/7/2020	Senior Proj. Manager	0.50 Hours	$67.06	A.R.665
12/7/2020	Engineer III	8.50 Hours	$1,140.02	A.R.665
12/7/2020	Expense – PID	1 Day	$75.00	A.R.668
12/7/2020	Expense – Mileage	25 Miles	$14.50	A.R.668
12/8/2020	Landfill Invoice	43.89 Tons	$1,185.03	A.R.665
12/8/2020	Backfill Invoice	71 Tons	$663.87	A.R.642
12/8/2020	Trucking Invoice	7.25 Hours	$616.25	A.R.656
12/8/2020	Engineer III	8.50 Hours	$1,140.02	A.R.665
12/8/2020	Expense – PID	1 Day	$75.00	A.R.668
12/8/2020	Expense – Mileage	25 Miles	$14.50	A.R.668
12/9/2020	Engineer III	10.50 Hours	$1,408.26	A.R.665 (But see A.R.660)
12/9/2020	Expense – Mileage	25 Miles	$14.50	A.R.668 (But see A.R.661)

All of the above costs were presented in the budget (A.R.516; A.R.521; A.R.522), which was approved by the Agency, and those costs, along with supporting invoices, were subsequently

submitted to the Agency for approval. (A.R.621; A.R.660; A.R.661)

In summary, the correction activities that took place a few days before the 2020 Incident was reported were not incurred prior to notification of IEMA, as the corrective action activities were approved in the plan and budget for the 1990s Incidents as well.

III. Petitioner Challenges One of the Three Correction Action Costs Identified in the Administrative Record as Duplicative.

The Illinois EPA additionally deducted unspecified costs "associated with duplicate billings." (A.R.683) These unspecified costs could only be identified after Petitioner received the administrative record, which indicated issues raised with respect to three items:

a) **Analytical Costs**. Lab results totaling $3,162.83 included in a submission by a previous consultant. (A.R.620) Petitioner does not challenge this cut.

b) **Backfill Costs**. The Agency reviewer's notes cut 68.34 cubic yards of backfill costs from the 557.65 cubic yards requested. (A.R.621) At $26.83 per cubic yard, this cut is worth $1,833.56. (Id.) Petitioner does not challenge this cut.

c) **Excavating, Transportation and Disposal ("ET&D") Costs**. The Agency's reviewer's notes cut 396.04 cubic yards for ET&D costs, which at $76.46 per cubic yard, is worth $30,281.22. (A.R.621) The Agency reviewer mistakenly converted tons to cubic yards for an invoice item already converted to cubic yards. (A.R.623) Petitioner challenges this cut as based upon a mathematical error.

* * *

Chronister contracted with Perry Environmental to perform underground storage tank

services, such as excavating contaminated soils, removing and abandoning tanks in place, and backfilling the excavation. (A.R.623) A portion of these costs were submitted as part of early action reimbursement claims in March of 2022. (A.R.542) With respect to ET&D costs, there are limits to the volume of contaminated soil that can be removed at the early action stage (35 Ill. Admin. Code § 734.825(b)), so that while the early action billing package includes invoices demonstrating that 1,188.12 cubic yards of contaminated soil were removed (A.R.558), only 458 cubic yards were sought to be paid from the UST Fund as early action. (A.R.549) The Agency approved and paid the costs of the 458 cubic yards as early action costs. (A.R.601)

The corrective action budget sought payment for the 730.12 cubic yards of ET&D costs remaining after the 458 cubic yards had been paid as part of early action. (A.R.516) The Agency approved this amount in the budget. (A.R.601) The billing package for corrective action sought payment for 730.12 cubic yards for ET&D costs approved in the budget. (A.R.621) It included landfill invoices (A.R.626-A.R.632) and an invoice from Perry Environmental. (A.R.623)

The mistake made by the Agency reviewer is based upon a misunderstanding of this line item in the Perry Environmental invoice:

Quantity	Description	Rate	Amount
1,188.12	Excavate contaminated soils, transport and haul to landfill for disposal per IEPA regulations (cubic yards) or 1,782.18 tons	76.46	90,843.66

(A.R.623 (emphasis added))

Usually, the handling and disposal of soils and backfill material is charged by the ton. E.g., Parker's Gas & More v. IEPA, PCB 19-79, slip op. at 5 (May 4, 2023) However, the relevant regulatory standards are written in cubic yards, and consequently the Board has adopted

"[a] conversion factor of 1.5 tons per cubic yard [that] must be used to convert tons to cubic yards." (35 Ill. Adm. Code § 734.825(a))

However, the Perry invoice had already converted 1,782.18 tons into 1,188.12 cubic yards utilizing this conversion factor (1,782.18 tons divided by 1.5 equals 1,188.12 cubic yards). The Illinois EPA appears to have mistakenly assumed that the 1,188.12 units were given in tons and divided 1,188.12 cubic yards by 1.5 to reach 792.08 cubic yards. (A.R.623 (handwritten notes)) Given that 458 cubic yards had already been paid in early action, the reviewer notes would consequently only authorize 334.08 cubic yards for corrective action.

In summary, the Agency reviewer, presumably by compulsion of habit, used the conversion factor to converted a sum from tons to cubic yards that was already expressed as cubic yards. The correct calculation is that 1,188.12 cubic yards have been remediated, with 458 cubic yards paid in early action, leaving 730.12 to be paid as corrective action.

CONCLUSION

The Agency approved a budget for corrective action activities originating from work performed in December of 2020 in the amount of $109,770.85. (A.R.513; A.R.609-610) Petitioner does not appeal $4,996.39 of those costs (Mot. Amend Petition), leaving $104,774.46 that Petitioner requests the Board order the Agency to pay.

WHEREFORE, Petitioner CHRONISTER OIL CO. d/b/a QIK-N-EZ, prays that the Board find the Illinois EPA erred in its decision, direct the Illinois EPA to pay $104,774.46, direct Petitioner to present a statement of legal fees for the Board's consideration, and grant such other and further relief as it deems meet and just.

CHRONISTER OIL CO.d/b/a QIK-N-EZ,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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