

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

CHRONISTER OIL CO. d/b/a QIK-N-EZ,)	
Petitioner,)	
)	
v.)	PCB 2024-050
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

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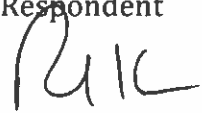
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PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Rich Kim
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Dated: January 30, 2025

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**ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE
RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Rich Kim, Assistant Counsel and Special Assistant Attorney General, and hereby submits **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** to the Illinois Pollution Control Board ("Board").

I. STANDARD FOR ISSUANCE AND REVIEW

A motion for summary judgment should be granted where the pleadings, depositions, admissions on file, and affidavits disclose no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); McDonald's Corporation v. Illinois Environmental Protection Agency, PCB 04-14 (January 22, 2004), p. 2.

Section 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.8(i)) grants an individual the right to appeal 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, the general appeal section for permits, has been used by the legislature as the basis for this type of appeal to the Board. Thus, when reviewing an Illinois EPA determination of ineligibility for reimbursement from the

Underground Storage Tank Fund, the Board must decide whether the application, as submitted, demonstrates compliance with the Act and Board regulations. Rantoul Township High School District No. 193 v. Illinois EPA, PCB 03-42 (April 17, 2003), p. 3.

In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must look to the documents within the Administrative Record ("Record" or "AR").

II. BURDEN OF PROOF

Pursuant to Section 105.112(a) of the Board's procedural rules (35 Ill. Adm. Code 105.112(a)), the burden of proof shall be on the petitioner. In reimbursement appeals, the burden is on the applicant for reimbursement to demonstrate that incurred costs are related to corrective action, properly accounted for, and reasonable. Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003), p. 9.

III. ISSUES

The Petitioner raised three issues in its Motion for Summary Judgment.

1. Did the submittal require a PLA certification in order to be approved?

Based upon the express language of the Act and regulations thereunder, and the facts presented, the answer is **YES**.

2. Could costs be paid for work that took place prior to the date that IEMA was notified of the 2020 release?

The Agency does not contest this issue. However, since the Petitioner did not submit a PLA certification in its payment submittal, this issue is moot.

3. Were the \$30,281.22 in Excavation, Transportation and Disposal costs marked in the Agency notes duplicative charges?

The Agency does not contest this issue. However, since the Petitioner did not submit a

PLA certification in its payment submittal, this issue is moot.

IV. LAW

Sec. 57.7(c) Agency review and approval.

(3) In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(4) For any plan or report received after June 24, 2002, any action by the Agency to disapprove or modify a plan submitted pursuant to this Title shall be provided to the owner or operator in writing within 120 days of the receipt by the Agency or, in the case of a site investigation plan or corrective action plan for which payment is not being sought, within 120 days of receipt of the site investigation completion report or corrective action completion report, respectively, and shall be accompanied by:

(A) an explanation of the Sections of this Act which may be violated if the plans were approved;

(B) an explanation of the provisions of the regulations, promulgated under this Act, which may be violated if the plan were approved;

(C) an explanation of the specific type of information, if any, which the Agency deems the applicant did not provide the Agency; and

(D) a statement of specific reasons why the Act and the regulations might not be met if the plan were approved.

Any action by the Agency to disapprove or modify a plan or report or the rejection of any plan or report by operation of law shall be subject to appeal to the Board in accordance with the procedures of Section 40. If the owner or operator elects to incorporate modifications required by the Agency rather than appeal, an amended plan shall be submitted to the Agency within 35 days of receipt of the Agency's written notification.

Sec. 57.8(a) Payment after completion of corrective action measures. The owner or operator may submit an application for payment of activities performed at a site after completion of the requirements of Sections 57.6 and 57.7, or after completion of any other required activities at the underground storage tank site.

(6) For purposes of this Section, a complete application shall consist of:

(F) 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.

Section 734.210 Early Action

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.

Section 734.335 Corrective Action Plan

d) 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 of 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.

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.

V. FACTS

If the Board looks solely to the Administrative Record, there exists no issue of material fact. Chronister Oil Company ("Chronister") owns an active self-service fueling station, which operates under the name Qik-N-EZ, located at 2800 North Peoria Road, Springfield, Sangamon County, Illinois. (AR 26; AR 29) During the 1990s, three releases of gasoline were reported for the site - 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 (AR1); 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 (AR2); and 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 (AR3). Chronister acquired an ownership interest in the site and elected to proceed as owner for the 1996 and 1999 Incidents on November 5, 2019. (AR4) They did not file an election to proceed for the 1994 Incident at that time. (AR4)

On November 23, 2020, the Office of the State Fire Marshall ("OSFM") issued a permit for the removal of two USTs, and a permit for the abandonment of the third tank for Incident 96-1540. (AR17) Tank removal was conducted by Perry Environmental with CW³M oversight. (AR17) Early action activities were conducted and coordinated by Perry Environmental personnel from December 7, 2020 through December 14, 2020. (AR17) During tank removal for Incident 96-1540, evidence of a new release was observed resulting in a new incident reporting, which IEMA assigned as Incident Number 2020-1063 on December 9, 2020. (AR9) On January 20, 2021, CW³M submitted, on behalf of Petitioner, a 45-Day Report for the 2020 Incident.

(AR12) The Report indicated approximately 1183.01 cubic yards of contaminated backfill was removed and transported to a landfill for disposal from December 7, 2020 through December 18, 2020. (AR19) The 45-Day Report indicated that there were two separate excavations. (AR19) The initial excavation was conducted to remove/abandon the three tanks that were still in place under Early Action. (AR19; AR35 (Drawing 3A)) A secondary excavation was conducted to provide space for new tanks to be inserted. (AR19; AR36 (Drawing 3B)) Upon approval of the 45-Day Report, CW³M indicated that a Corrective Action Plan would be developed to address all contamination at the facility for all incidents. (AR12; AR24) On March 10, 2021, Chronister submitted an election to proceed as owner for Incident Number 94-2157. (AR153) The 45-Day Report was approved by the Illinois EPA on May 26, 2021. (AR.158)

On September 2, 2021, CW³M submitted an initial billing package for early action costs for the 2020 Incident, seeking \$13,132.65 for preparing the 45-Day Report and for some laboratory analysis. (AR160-AR199) On December 13, 2021, the Illinois EPA substantially approved the application for payment, cutting \$600.00 for soil boring performed before the 2020 Incident was reported to IEMA, and \$221.31 for Senior Account Technician time that was agreed to by the consultant. (AR200-AR203)

On March 22, 2022, Petitioner's new consultant, Green Wave Consulting, Inc. ("Green Wave"), submitted a second billing package to the Illinois EPA for early action costs for the 2020 Incident. (AR542) The amount sought was \$57,987.33, of which \$47,306.82 was for the costs of excavating and disposing of contaminated backfill during early action. (AR545; AR549-550) The total amount of contaminated soil within 4 feet of the outside dimension of the tanks and thus eligible for early action reimbursement was 458 cubic yards. (AR35 (Drawing 3A); AR549) On May 5, 2022, the Illinois EPA approved the application for payment in the amount of \$50,833.79,

with no deductions for excavating and disposing of four feet of contaminated soil. (AR593-AR597)

Also on March 22, 2022, Green Wave submitted a corrective action plan and budget for all outstanding incidents. (AR204) The Petitioner requested that a Project Labor Agreement not be required for the corrective action plan. (AR204) The corrective action plan was primarily designed to remove contaminated soil exceeding the applicable site remediation objectives. (AR216) The corrective action plan proposed excavating and disposing to 6,570 cubic yards of contaminated soil in a landfill. (AR217; AR239 (Figure 4))

The corrective action plan also sought approval of corrective action activities that occurred in December 2020, including “remediation/disposal and backfilling costs for the excavation/backfilling volume over that allowed for during Early Action for the two (2) tanks that were removed, ...”. (AR220; AR235 (Figure 1-B)) Two separate budgets were included with the corrective action plan, one for the work yet to be performed (“Attachment 8”) (AR484) and a second for work already completed in December 2020 (“Attachment 9”) (AR510). The budget for proposed future corrective action activities was \$867,698.08. (AR487) The budget for completed corrective action activities was \$111,682.56. (AR220, AR513-AAR522)

On July 22, 2022, the Illinois EPA modified the corrective action plan by requiring additional monitoring well sampling, and with the requirement of a Project Labor Agreement (PLA). (AR601-AR611) The budget for corrective action activities already completed was modified to \$109,770.85. (AR609-AR610) The Illinois EPA determined that the corrective action plan and both budgets were subject to the requirements of a PLA. (AR601-AR610). The Petitioner did not appeal this final decision.

On July 7, 2023, Green Wave submitted a reimbursement claim for past corrective action costs for all four incidents in the amount of \$109,770.86. (AR615-AR680) In its reimbursement claim, Petitioner sought 730.12 cubic yards for excavation, transportation, and disposal of contaminated soil and 557.65 cubic yards for backfilling the excavation. (AR621) Petitioner did not submit a certification that past work done under the corrective action plan was performed under a Project Labor Agreement. (AR615-AR680)

On January 3, 2024, the Illinois EPA issued its decision denying payment of the reimbursement claim pursuant to Section 57.8(a)(6)(F) of the Environmental Protection Act. (AR681-AR684) The Illinois EPA determined the application for payment was incomplete because it did not include a certification from the owner or operator that the corrective action was (i) performed under a project labor agreement and (ii) implemented in a manner consistent with the terms and conditions of the Project Labor Agreements Act as required in the Illinois EPA's July 22, 2022 final decision letter approving with modifications the corrective action plan. (AR683)

Petitioner and the Illinois EPA agreed to a 90-day extension of the appeal deadline, which was approved by the Pollution Control Board on February 15, 2024. This case was appealed 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 in backfill costs that had been cut by the Illinois EPA. On October 17, 2024, the Hearing Officer granted the motion.

The Petitioner's Motion for Summary Judgement was filed on December 12, 2024. On December 18, 2024, the Illinois EPA requested an extension of time to file a response to

Petitioner's Motion for Summary Judgment, without objection from the Petitioner. On December 18, 2025, the Hearing Officer entered an Order extending the deadline to January 31, 2025.

VI. ARGUMENT

There is no genuine issue of material fact. In late November 2020, OSFM issued a permit for the removal of two USTs and abandonment of one UST at the site. (AR17) It is important to point out there were two separate excavations conducted in December 2020, according to Petitioner's 45-Day Report. (AR19) A total of approximately 1183.01 cubic yards of contaminated backfill was removed and taken to the landfill from December 7, 2020 through December 18, 2020. (AR19) Early action activities for the tank removals/abandonment were conducted from December 7, 2020 through December 14, 2020 for the three tanks that were still in place at that time. (AR17) The total amount of contaminated soil within 4 feet of the outside dimension of the tanks and thus eligible for early action reimbursement pursuant to Section 734.210(f) was 458 cubic yards. (AR35 (Drawing 3A); AR 549) The Illinois EPA has reviewed and approved eligible early action costs that include the 458 cubic yards. (AR593-AR597)

The secondary excavation in December 2020 was then conducted to provide space for new tanks to be inserted. (AR19; AR36 (Drawing 3B)) This secondary excavation of approximately 725 cubic yards of soil clearly falls under corrective action activities related to new tank installation. Petitioner chose to conduct corrective action activities in December 2020, prior to having an approved corrective action plan. Section 734.335(d) allows an owner or operator to proceed to conduct corrective action activities prior to the submittal or approval of an otherwise required corrective action plan or budget. However, owners or operators are clearly warned in the Board Note that proceeding to conduct corrective action activities prior to an approved plan or budget may result in less than full payment from the Fund.

The Corrective Action Plan and Budget submitted on March 22, 2022, for all outstanding incidents requested that a Project Labor Agreement not be required for the corrective action plan. (AR 204) As part of this plan, Petitioner sought approval for corrective action activities that occurred in December 2020, including “remediation/disposal and backfilling costs for the excavation/backfilling volume over that allowed for during Early Action for the two (2) tanks that were removed, ...”. (AR220; AR235 (Figure 1-B)) The budget submitted included those corrective action activities already completed in December 2020. (AR220, AR513-AAR522) On July 22, 2022, the Agency subsequently approved the plan, including the December 2020 corrective action activities, with modifications to include the requirement of a Project Labor Agreement. (AR601) The budget for the December 2020 corrective action activities was slightly reduced by the agency as well. (AR609-AR610).

Agency disapproval or modification of any plan or report shall be subject to appeal to the Board in accordance with the procedures of Section 40. (415 ILCS 5/57.7(c)(4)). Petitioner did not appeal the July 22, 2022, IEPA final decision letter requiring a Project Labor Agreement certification with any payment submittal. In its July 7, 2023, corrective action payment submittal for work done in December 2020, Petitioner did not submit a Project Labor Agreement certification for the corrective action performed. (AR615-680; 415 ILCS 5/57.8(a)(6)(F))

In choosing to immediately excavate additional contaminated soil in December 2020 to provide space for new tanks to be installed, Petitioner assumed the risk that it may not be entitled to full payment from the Fund when it proceeded to conduct corrective action activities prior to the submittal or approval of a corrective action plan or budget. (35 Ill. Adm. Code § 734.335(d)) Petitioner started corrective action in December 2020 and its corrective action plan was submitted in March 2022. The plan sought approval for future work as well as the past

work completed. Therefore, the PLA requirement was for the entire plan, both future and completed work. Otherwise, an owner or operator could always circumvent a PLA certification requirement by simply proceeding with corrective action activities before submitting a corrective action plan or budget.

VII. CONCLUSION

The facts and the law are clear and in favor of the Illinois EPA. Petitioner chose to conduct corrective action activities prior to submitting its corrective action plan or budget, which was modified to include a Project Labor Agreement requirement. Petitioner did not appeal this modification. Petitioner did not submit PLA certification in its payment submittal for corrective action work completed in December 2020. Petitioner failed to submit a complete application for payment in accordance with the Environmental Protection Act.

WHEREFORE: for the above noted reasons, the Illinois EPA respectfully requests the Board (1) **DENY** Petitioner's Motion for Summary Judgment and (2) **GRANT** summary judgment in its favor.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Rich Kim

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Dated: January 30, 2025

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on **January 30, 2025**, I served true and correct copies of **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** via the Board's COOL system and email, upon the following named persons:

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