ILLINOIS POLLUTION CONTROL BOARD
March 20, 2025

CHRONISTER OIL CO. d/b/a QIK-N-EZ,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-50
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by B. F. Currie):

On February 15, 2024, at the request of the parties, the Board extended until May 13, 2024, the time period for Chronister Oil Company, doing business as Qik-N-EZ (petitioner), to appeal a January 3, 2024 determination of the Illinois Environmental Protection Agency (IEPA). IEPA's determination concerns petitioner's leaking underground storage tank (UST) site located at 2800 North Peoria Road in Springfield, Sangamon County. On May 10, 2024, petitioner timely filed a petition asking the Board to review IEPA's determination. *See* 415 ILCS 5/40(a)(1) (2022); 35 Ill. Adm. Code 101.300(b), 105.402, 105.404, 105.406. On December 12, 2024, petitioner filed a motion for summary judgment. On January 30, 2025, IEPA filed a cross-motion for summary judgment.

For the reasons discussed below, the Board finds that there is no genuine issue of material fact and summary judgment is appropriate on the legal issue presented. The Board finds that IEPA properly denied reimbursement from the UST Fund as petitioner failed to include a Project Labor Agreement (PLA) certification. A PLA was required by IEPA as a part of the approval of the corrective action plan and budget, which petitioner did not timely appeal. Therefore, petitioner was required to include a PLA certification with its reimbursement request. The Board grants IEPA's cross motion for summary judgment and denies petitioner's motion for summary judgment.

The Board's opinion begins below with the procedural history, and then sets forth the legal background. The Board then sets forth the undisputed facts of this matter. Next, the Board discusses the issue and whether summary judgment is appropriate. The Board concludes by denying petitioner's motion for summary judgment, granting IEPA's cross-motion for summary judgment, and issuing its order.

PROCEDURAL BACKGROUND

On July 24, 2024, IEPA filed the administrative record in this proceeding (R.). On September 19, 2024, petitioner filed a "motion to amend petition for review" (Am. Pet.). IEPA did not respond to the motion. Petitioner sought to amend its challenge by withdrawing claims

for "$3,162.83 in analytical costs or $1,833.56 in backfill costs that IEPA deemed duplicative." Petitioner continued to challenge "the $30,281.22 in excavation, transportation and disposal costs the IEPA deemed duplicative on the grounds that IEPA committed a mathematical error in application of the conversion factor." Am. Pet. at 4. On October 17, 2024, the hearing officer granted this motion.

On December 12, 2024, petitioner filed a motion for summary judgement (Mot.). On January 30, 2025, IEPA filed a response and cross motion for summary judgment (IEPA Mot.). On February 13, 2025, petitioner filed a response to IEPA's filing (Resp.).

LEGAL BACKGROUND

The Board first describes the standards it applies when considering motions for summary judgment. After that, the Board sets forth the Board regulations allegedly violated, along with pertinent definitions.

Standard for Summary Judgement

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 753; Adams v. Northern Illinois Gas Co., 211 Ill. 2d 32, 43, 809 N.E.2d 1248, 1256 (2004).

When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). Summary judgment "is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt." Adames, 233 Ill. 2d at 296, 909 N.E.2d at 754; Purtill, 111 Ill. 2d at 240, 489 N.E.2d at 871.

"In a summary judgment proceeding, the burden of persuasion is always on the moving party to establish that there are no genuine issues of material fact and that moving party is entitled to judgment as a matter of law." Performance Food Group Co., LLC v. ARBA Care Ctr. of Bloomington, LLC, 416 Ill. Dec. 757, 764 (3rd Dist. 2017). The party moving for summary judgment may meet its initial burden of production by "presenting facts which, if uncontradicted, would entitle it to judgment as a matter of law." In re Estate of Sewart, 236 Ill. App. 3d 1, 8 (1st Dist. 1991). Once the party moving for summary judgment "produces such evidence, the burden of production shifts to the party opposing the motion, who . . . is required to come forth with some facts which create a material issue of fact." *Id*. "Even so, while the nonmoving party in a summary judgment motion is not required to prove [its] case, [it] must

nonetheless present a factual basis, which would arguably entitle [it] to a judgment." Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

Standard of Review and Burden of Proof for Appeal

In appeals of final IEPA determinations, "[t]he burden of proof shall be on the petitioner. . . ." 35 Ill. Adm. Code 105.112(a), *citing* 415 ILCS 5/40(a)(1), 40(b), 40(e)(3), 40.2(a) (2022); Ted Harrison Oil v. IEPA, PCB 99-127, slip op. at 5-6 (July 24, 2003). The standard of proof in UST appeals is the "preponderance of the evidence." Freedom Oil, PCB 03-54, 03-56, 03-105, 03-179, 04-04 (consol.), slip op. at 59 (Feb. 2. 2006). "A proposition is proved by a preponderance of the evidence when it is more probably true than not." McHenry County Landfill, Inc. v. County Bd. of McHenry County, PCB 85-56, 85-61, 85-62, 85-63, 85-64, 85-65, 85-66 (consol.), slip op. at 3 (Sept. 20, 1985).

The standard of review is whether petitioner's submissions to IEPA demonstrate compliance with the Act and Board regulations. Illico Independent Oil Co. v. IEPA, PCB 17-84, slip op. at 8 (Dec. 20, 2018), citing Prime Location Properties, LLC v. IEPA, PCB 09-67, slip op. at 29 (Aug. 20, 2009); *see also* Ted Harrison Oil Co. v. IEPA, PCB 99-127, slip op. at 5 (July 24, 2003). The Board will not consider new information that was not before the Agency prior to its final determination regarding the issues on appeal. Illico, slip op. at 8, citing Kathe's Auto Serv. Ctr. v. IEPA, PCB 95-43, slip op. at 14 (May 18, 1995). The IEPA's denial letter frames the issues on appeal. Illico, slip op. at 8, citing Pulitzer Cmty. Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990).

Statutory Authorities

Section 57.7(c) of the Act sets forth the provisions for IEPA's review and approval. Section 57.7(c)(3) states, in pertinent part:

> (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. 415 ILCS 5/57.7(c)(3) (2022).

Section 57.7(c)(4) provides:

> (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. 415 ILCS 5/57.7(c)(3) (2022).

Section 57.8 of the Act provides that the "the owner or operator may submit a complete application for final or partial payment to" to IEPA "for activities taken in response to a confirmed release." 415 ILCS 5/57.8 (2022). Section 57.8(a) provides in pertinent part:

(a) Payment after completion of corrective action measures. The owner or operator may submit an application for payment for 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.

(1) In the case of any approved plan and budget for which payment is being sought, the Agency shall make a payment determination within 120 days of receipt of the application. Such determination shall be considered a final decision. The Agency's review shall be limited to generally accepted auditing and accounting practices. 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. If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application. However, in no event shall the Agency reimburse the owner or operator an amount greater than the amount approved in the plan.

* * *

(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. 415 ILCS 5/57.8(a) (2022).

Section 5 of the Project Labor Agreements Act (PLA Act) sets forth findings regarding PLAs. 30 ILCS 571/5 (2022). Section 5(b) provides:

> A project labor agreement, which is a form of pre-hire collective bargaining agreement covering all terms and conditions of employment on a specific project, can ensure the highest standards of quality and efficiency at the lowest responsible cost on appropriate public works projects. 30 ILCS 571/5(b) (2022).

Section 5(d) of the PLA Act states: "Project labor agreements provide the State of Illinois with a guarantee that public works projects will be completed with highly skilled workers." 30 ILCS 571/5(d) (2022).

Section 5(e) of the PLA Act provides:

> Project labor agreements provide for peaceful, orderly, and mutually binding procedures for resolving labor issues without labor disruption, preventing significant lost-time on construction projects. 30 ILCS 571/5(e) (2022).

In 2011, the PLA Act was amended to include provisions for corrective action at UST sites in the PLA requirements. That amendment is reflected in Section 10 of the PLA Act, which states:

> On a project-by-project basis, a State department, agency, authority, board, or instrumentality that is under the control of the Governor shall include a project labor agreement on a public works project when that department, agency, authority, board, or instrumentality 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. For purposes of this Act, any corrective action performed pursuant to Title XVI of the Environmental Protection Act for which payment from the Underground Storage Tank Fund is requested shall be considered a public works project. 30 ILCS 571/10 (2022).

Section 30 of the PLA Act requires a PLA agreement to be supported by a written justification for the use of a PLA. 30 ILCS 571/30 (2022).

Regulatory Authorities

Section 734.210(f) of the Board's rules restates the statutory provision and clarifies it. Section 734.210(f) provides:

> *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. 35 Ill. Adm. Code 734.210(f).

Section 734.335(d) requires for inclusion in the 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 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. 35 Ill. Adm. Code 734.335(d).

FACTS

Petitioner owns an active self-service gas station operating under the name Qik-N-EZ in Springfield, Sangamon County. R. at 026, 029. Several releases of gasoline were reported for the site in the 1990s. Those releases were:

1. September 21, 1994, a gasoline release was reported to the Illinois Emergency Management Agency (IEMA) and was assigned Incident Number 94-2157;

2. August 26, 1996, a gasoline release was reported to IEMA and was assigned Incident Number 96-1540; and,

3. August 11, 1999, a gasoline release was reported to IEMA and was assigned Incident Number 99-1895. R. at 001-3.

A No Further Remediation Letter (NFR) has not been issued for those incidents. Petitioner acquired ownership of the UST site, and on November 5, 2019, and March 10, 2021, elected to proceed as owner for the 1990s incidents. R. at 004, 153.

At the time of the 1990s releases, the site included three USTs that were not removed as part of early action. R. at 019. Site investigation activities indicated that most of the service station property exceeded Tier 1 soil remediation objectives, including in the tank pit. R. at 208; R. at 238 (Figure 3)). On November 23, 2020, the Office of State Fire Marshal (OSFM) issued a permit for the removal of two of the remaining tanks and a permit for the abandonment of the third tank. R. at 017. During tank removal, OSFM observed a release and required reporting the release as a new incident. *Id*. On December 9, 2020, petitioner reported the release to IEMA and Incident Number 2020-1063 was assigned. R. at 009.

On January 20, 2021, petitioner submitted a 45-day report for Incident Number 2020-1063. R. at 012. The report described how 1,183.01 cubic yards of contaminated material was excavated and transported to a landfill for disposal. R. at 019. Soil samples were collected and confirmed the presence of contamination above the most stringent Tier 1 objectives. R. at 019. Petitioner's consultant reported that a corrective action plan would be developed to address all contamination at the facility for all incidents, after the approval of the 45-day report. R. at 024. IEPA approved the 45-day report on May 26, 2021. R. at 158.

On September 2, 2021, petitioner's consultant CW^3M, submitted a billing package for early action costs for the Incident Number 2020-1063. R. at 160. The amount sought was $13,132.65 for preparing the 45-Day report and for laboratory analysis. R. at 172. On December 13, 2021, IEPA substantially approved the application for payment. R. at 200. IEPA cut the budget by $600.00 for soil borings performed before the Incident Number 2020-1063 was reported to IEMA, and cut $221.31 for senior account technician time. R. at 202. Petitioner did not appeal the IEPA decision.

On March 22, 2022, petitioner submitted a second billing package for early action costs for the Incident Number 2020-1063 using a new consultant, Green Wave Consulting, LLC.

(Green Wave). R. at 542. The billing package sought $57,987.33 - primarily for the costs of excavating and disposing of four feet of contaminated backfill material during early action. R. at 545, 549. On May 5, 2022, the IEPA approved the application for payment in the amount of $50,833.79. R. at 593. Petitioner did not appeal the IEPA decision.

On March 22, 2022, Green Wave also submitted a corrective action plan and budget for all outstanding incidents. R. at 204. Petitioner requested that a PLA not be required for the corrective action plan. Petitioner provided justifications for not requiring it, including that because "a portion of this work has been previously completed due to needs at the site, a PLA cannot be implemented retroactively." R. at 204. The corrective action plan was primarily designed to remove contaminated soil exceeding the applicable site remediation objectives. R. at 216. The corrective action plan proposed excavating and disposing of 6,570 cubic yards of contaminated soil in a landfill. R. at 217. The plan included removing existing structures at the site to allow for access to the contaminated soil. R. at 216. After removal of structures, confirmation soil samples would be collected from the sidewalls and floor, as well as nine overburden backfill samples and one soil gas sample. R. at 217-18. Once the soil sampling was concluded, the corrective action plan proposed placing 3,830 square feet of concrete and 5,420 square feet of asphalt over the backfilled excavation. R. at 218. Three monitoring wells removed during the excavation would be reinstalled. R. at 218.

Petitioner's corrective action plan also addressed the abandonment and removal of underground storage tanks from previous corrective action in December of 2020. R. at 220. This area exceeded the applicable site remediation objectives for soil. *Id*. Green Wave prepared two separate budgets with the corrective action plan, one for the work yet to be performed ("Attachment 8" at R. 484) and a second for work already completed ("Attachment 9" at R. 510). The budget proposed for future corrective action activities was $867,698.08. R. at 487. The budget for completed corrective action activities was $111,682.56, including the costs of: 1) removing or abandoning three tanks, 2) excavating and backfilling the excavation, and 3) consulting costs for those hours and materials not expended as early action activities. R. at 220; R. at 513 – 22.

On June 15, 2022, IEPA determined that a PLA must be included in the request for reimbursement. R. at 598. IEPA's determination contained a summary of the work involved:

> 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. R. at 598.

These fieldwork activities are all proposed future corrective action activities detailed in the Corrective Action Plan. R. at 216-18.

On July 22, 2022, the IEPA approved the corrective action plan and budget, modifying the plan by requiring additional monitoring well sampling and also requiring a PLA. R. at 601. IEPA's determination evaluated the two budgets separately, referencing "Attachment 8" or "Attachment 9." R. at 602. Modification to the budget for future corrective action activities was the addition of $460.44 in consulting personnel costs for "preparing and securing Project Labor Agreements." R. at 608. The budget for corrective action that had already been completed was reduced by $0.50 for vehicle charges cost and $1,911.21 for certain engineering costs agreed to by the consultant, reducing the total budget to $109,770.85. R. at 609-10. Petitioner did not appeal the IEPA decision.

On July 7, 2023, Green Wave submitted a reimbursement claim for past corrective action costs in the amount of $109,770.86. R. at 615, 618. The cover letter specifically states that the activities for which reimbursement is requested were performed before IEPA determined that a PLA was required for corrective action at this site. R. at 615. On January 3, 2024, IEPA issued its final decision denying reimbursement for the following reasons:

> 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. R. at 683.

DISCUSSION

In ruling on a motion for summary judgment, the Board first determines if there is a genuine issue of material fact, so the Board will first examine that question. If there is no genuine issue of material fact, the Board proceeds to the legal analysis. That discussion follows the factual analysis.

Question of Fact

Petitioner argues that the motion for summary judgment is based on the record as filed by IEPA, and the findings in the IEPA's decision letter. Mot. at 9-10. IEPA agrees that if the Board reviews the administrative record there is no issue of material fact. IEPA Mot. at 6, 10. The Board reviewed the record and the parties' arguments. The issue presented in this appeal of the IEPA's decision is a legal issue involving IEPA's application of the law to the undisputed facts. Specifically, the issue is whether a PLA can be required for corrective action undertaken at a site when the work was completed before the submission of the plan and budget. Therefore, the Board finds that summary judgment is appropriate.

Legal Analysis

Petitioner frames the issues in this appeal as:

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

2. Could costs be paid for work that took place prior to the date that IEMA was notified of Incident Number 2020-1063; and

3. Were the $30,281.22 in excavation, transportation and disposal costs marked in the IEPA's notes duplicative charges? Mot at 11.

IEPA, in contrast, believes that the second two issues are moot due to petitioner's failure to include the PLA. IEPA Mot. at 3-4.

The Board finds that IEPA's January 3, 2024, denial letter frames the issues on appeal before the Board. Illico, slip op. at 8. The denial letter specifically states that the application for payment is incomplete because it did not include a certification that the corrective action was performed under a PLA. R. at 683. Therefore, the Board finds that the requirement to submit a PLA is a threshold issue, and addresses that issue below.

Requirement for a Project Labor Agreement

The Board previously reviewed the PLA Act in connection with UST activities and found that corrective action at UST sites is subject to PLA requirements. *See* McAfee v. IEPA, PCB 15-84, slip op. at 16 (Mar. 5, 2015). The issue presented to the Board in this proceeding is whether IEPA can require the submission of a PLA for completed actions. On July 22, 2022, IEPA issued a conditional approval of petitioner's corrective action plan. This approval letter made clear that first, a PLA would be required. The letter outlines the steps to obtain a PLA and says, "[o]nce the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin." R. at 602. Second, the July 22, 2022 letter makes clear that when the petitioner completes the work and submits a request for reimbursement from the UST fund, it "will be required to certify that work for which a PLA is required was performed under a PLA." *Id*.

Petitioner began corrective action work on the site in December of 2020, but did not submit a corrective action plan to IEPA until March of 2022. IEPA approved the proposed plan on July 22, 2022. On July 22, 2022, petitioner was put on notice by IEPA that a PLA would be required for work done at the site. Board rules warn UST owners and operators that they may proceed with corrective action work prior to receiving approval from IEPA, however they may not be entitled to full payment from the Underground Storage Tank Fund. *See* 35 Ill. Adm. Code 734.335(d).

Petitioner agrees that a PLA certification for future corrective action is appropriate and applicable; however, petitioner argues IEPA cannot require that a UST owner or operator obtain a PLA to receive payment for approved correction action performed prior to receiving the IEPA approval on July 22, 2022. Mot. at 12. Petitioner argues that, until IEPA determines that a PLA is required, there is no requirement to obtain a PLA. Mot. at 13. Further, petitioner claims it cannot provide a PLA for work performed before IEPA determined a PLA was required. *Id*.

Petitioner also argues that IEPA's July 22, 2022 PLA determination applied only to future work and not the work already completed. Mot. at 14. Petitioner maintains that to require a PLA for work already completed would be a retroactive application of the statutory provisions. Mot.at 14-15. Petitioner argues that "retroactivity is disfavored in the law" and that fundamental fairness could preclude retroactive application. Mot. at 15.

IEPA maintains that while an owner or operator may undertake corrective action without an approved plan or budget, the owner or operator does so at the risk that IEPA may not approve the work. *Id*., *citing* 35 Ill. Adm. Code 734.335(d). IEPA argues that the corrective action plan and budget submitted on March 22, 2022, was for all outstanding work and the work that had been completed in December 2020. IEPA approved the plan and budget with some modifications including adding a requirement for a PLA. R. at 601.

IEPA argues that disapproval or modification of any plan or report may be appealed to the Board in under Section 40 of the Act. 415 ILCS 5/57.7(c)(4). Because petitioner did not appeal the July 22, 2022 IEPA final decision letter requiring a PLA, IEPA argues that petitioner cannot now challenge the requirement that a PLA be provided. IEPA Mot. at 11-12. IEPA argues that by choosing to immediately excavate additional contaminated soil in December 2020 to allow for space for new tanks to be installed, petitioner assumed the risk that it may not be entitled to full payment from the UST Fund when it proceeded to conduct corrective action activities without an approved plan and budget. IEPA Mot. at 11.

IEPA maintains that petitioner started corrective action in December 2020 and its corrective action plan was not submitted until March 2022. IEPA Mot. at 11. The plan sought approval for future work as well as the past work completed. IEPA Mot. at 11-12. IEPA asserts that 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." IEPA Mot. at 12.

In reply, petitioner maintains that IEPA failed to address several issues raised by petitioner in its motion including retroactivity of applying a PLA to work already performed, and the activities identified in the PLA determination were all future corrective action. Reply at 3. Petitioner argues it was not required to appeal the July 22, 2022 decision as that decision approved the plan and budget. *Id*. Petitioner claims that IEPA does not dispute that it would be impossible to provide a PLA certification for work performed before a PLA determination was made. Replay at 4. Therefore, petitioner argues it makes little sense to approve a budget for past corrective action activities if a PLA was required. *Id*. Therefore, petitioner argues that the PLA determination only applied to future corrective action work, and there was nothing to appeal on July 22, 2022. *Id*.

The Board disagrees with petitioner that the PLA certification requirement made by IEPA on July 22, 2022, was only for work that would occur in the future. To support its position, petitioner relies on a "Brief Summary of Field work Activities" included on the PLA determination by the IEPA reviewer. R. at 588; Mot. at 4. Petitioner argues that the summary discusses future corrective action. *Id*. However, that is only a brief summary of work, and it

does not reference the entire corrective action plan and budget. A review of IEPA's letter approving the corrective action plan and budget indicates that the letter specifically states a PLA "is required" and notes a model PLA is available on IEPA's website. R. at 601-2. Furthermore, Attachment A to that July 22, 2022 letter says:

> Please be advised that, pursuant to Section 57.7(c)(3) of the Environmental Protection Act (415 ILCS 5/57.7(c)(3)), the Illinois EPA has determined that a project labor agreement (PLA) is required for the work included in the plan for which the UST owner or operator is seeking payment from the Underground Storage Tank (UST) Fund. R. at 605.

Attachment A does allow that a "PLA is not required for project work for which no payment from the UST Fund is being requested." *Id*. The plan reviewed by IEPA was a corrective action plan and budget for the entire site. R. at 204. IEPA's decision letter does not distinguish between work already completed and work still to be accomplished. Therefore, the Board finds that IEPA's July 22, 2022 decision is unambiguous, and a PLA was required for reimbursement of work performed as a part of corrective action at the site.

Petitioner did not appeal IEPA's July 22, 2022 decision that a PLA certification was required for reimbursement. As a general principle, a condition imposed in a previous permit, which is not appealed to the Board, may not be appealed in a subsequent permit. Jersey Sanitation Corp. v. IEPA, PCB 00-82 slip op 7 (June 21, 2001), aff'd IEPA v. Jersey Sanitation Corp., 336 Ill. App. 3d 582, 593, 784 N.E.2d 867, 876 (4th Dist. 2003) (finding conditions in post-closure care permits could be appealed even though identical conditions were appealed in prior operating/closure permits). Illustrations of that general principle are found in the following Board cases: Phillip 66 Company v. IEPA, PCB 12-101 (Mar. 21, 2013); Bradd v. IEPA, PCB 90-173 (May 9, 1991); Centralia Environmental Services, Inc. v. IEPA, PCB 90-173 (Oct. 25, 1990); and Panhandle Eastern Pipe Line Company v. IEPA, PCB 98-102, slip op. at 13 (Jan. 21, 1999), aff'd Panhandle Eastern Pipe Line Company v. IEPA and IPCB, 314 Ill. App. 296, 734 N.E.2d 18 (4th Dist. 2000). Thus, the law is clear that failure to appeal a provision in an IEPA decision letter cannot be challenged after the appeal period established in the statute. *See* 415 ILCS 5/57.7(c)(3) (2022).

Petitioner offers several arguments as to why the imposition of a PLA in the July 22, 2022 decision letter could only possibly apply to future work. The Board is cognizant of those arguments. However, the time to raise those arguments would have been in an appeal of the decision by IEPA to require a PLA in July of 2022. Undertaking corrective action at a site, without a corrective action plan and budget in place is acceptable. The rules make clear, though, undertaking such action could result in failure to receive reimbursement. *See* 35 Ill. Adm. Code 734.335(d). It is also clear that a PLA may be required for corrective action and PLAs have been a part of the UST program since 2011. *See* 30 ILCS 571/10 (2022). Thus, petitioner assumed the risk that it would not be reimbursed when completing corrective action prior to receiving approval from IEPA for its corrective action and budget.

Remaining Challenges

Because the petitioner failed to challenge IEPA's July 22, 2022 decision to require a PLA certification for corrective action activities, the Board cannot determine if it is appropriate to require a PLA certification for work completed prior to the submission of the corrective action plan and budget. That issue is not before the Board in this matter. Likewise, as the denial letter deemed the submittal package incomplete without the PLA certification, the Board will not further review the challenges regarding costs be paid for work that took place prior to the date that IEMA was notified of Incident Number 2020-1063 and the potential duplicate charges in excavation, transportation, and disposal costs. Mot. at 11.

CONCLUSION

The Board finds that there is no genuine issue of material fact, and IEPA is entitled to judgment as a matter of law. The Board finds that IEPA properly denied reimbursement from the UST Fund as petitioner failed to include a Project Labor Agreement (PLA) certification. A PLA was required by IEPA as a part of the approval of the corrective action plan and budget, which petitioner did not appeal. Therefore, petitioner was required to include a PLA certification with its reimbursement request. The Board grants IEPA's cross motion for summary judgment and denies petitioner's motion for summary judgment.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

1. The Illinois Environmental Protection Agency's cross motion for summary judgement is granted.

2. Petitioner's motion for summary judgment is denied.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); *See also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statue, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motion for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *See also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

<table>
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I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 20, 2025, by a vote of 5-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board