

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

ALLEN McAFEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 15-84
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE**

John Therriault, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

Carol Webb  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

Patrick Shaw  
Fred C. Prillaman  
Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323

**PLEASE TAKE NOTICE** that I have today filed with the office of the Clerk of the Pollution Control Board a **REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS**, copies of which are herewith served upon you.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,**  
Respondent

\_\_\_\_\_  
Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: December 2, 2014

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

ALLEN McAFEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 15-84
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS**

**NOW COMES** the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel, and, pursuant to 35 Ill. Adm. Code 101.500, 101.506 and 101.508, hereby respectfully moves the Illinois Pollution Control Board ("Board") to **DISMISS** the above case and in support of said motion, the Illinois EPA states as follows:

**ARGUMENT**

The Illinois Pollution Control Board is granted subject matter jurisdiction over contested cases between the Illinois EPA and the regulated community pursuant to Section 40 of the Illinois Environmental Protection Act (415 ILCS 5/1 et seq) ("EPAct"). However, the Illinois Pollution Control Board is not granted subject matter jurisdiction over contested cases under the Project Labor Agreement Act ("PLAAct").

The sole issue here is whether the Illinois EPA correctly decided that a Project Labor Agreement was necessary under the PLAAct. That determination falls squarely under the jurisdiction of the circuit courts and not the Board. Illinois EPA reimbursement decisions and technical decisions relating to plans are, as they always have been, if appealed to the Board, within

the jurisdiction of the Board to hear. Illinois EPA has not argued any differently. However, in this matter, no technical or reimbursement decision has been appealed in this case. This request for review stems solely from whether the Illinois EPA correctly determined that a Project Labor Agreement was necessary.

Petitioner offers for review arguments stemming from quite a few things; thing which frankly are simply irrelevant here. There is no evidence that a 'fact sheet' is relevant to these proceedings. Fact sheets are informational for the public and do not take the place of rulemaking. They are issued for many reasons, one of which, like here, when there is a change of law to inform the public and even the regulated community of that change. They are not internal procedures followed by the Illinois EPA and are issued by the Illinois EPA's public information section. The bidding process is mentioned as an option for reimbursement in excess of the Subpart H numbers. It is not a requirement in regards to PLAs or Prevailing Wage, but merely an alternative if the costs of those legislative requirements exceed Subpart H. All these arguments are fine at the proper time and place, but none of that is the subject of this appeal. The issues argues by the Petitioner are simply not ripe for discussion. Again, this appeal is **solely** based upon whether the Illinois EPA correctly determined that a Project Labor Agreement was necessary.

The express language of Section 57.7(3) of the EPAct is clear; the decision whether the project labor agreements are required is made under the PLAAct and not the EPAct. That Section specifically states:

"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.” (Emphasis added).**

The Illinois Supreme Court in **Envirite Corp. v. Illinois EPA**, (1994) 158 Ill. 2<sup>nd</sup> 210, 634 N.E.2<sup>nd</sup> 1035 has determined that when looking at statutory construction that “[t]he controlling principles are quite settled:

“ ‘It is a primary rule in the interpretation and construction of statutes that the intention of the legislature should be ascertained and given effect. [Citations.] This is to be done primarily from a consideration of the legislative language itself, which affords the best means of its exposition, and if the legislative intent can be ascertained therefrom it must prevail and will be given effect without resorting to other aids for construction. [Citations.] There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports.’ (Western National Bank v. Village of Kildeer (1960), 19 Ill.2d 342, 350, 167 N.E.2d 169.)” Illinois Power Co. v. Mahin (1978), 72 Ill.2d 189, 194, 21 Ill.Dec. 144, 381 N.E.2d 222. Accord County of Du Page v. Graham, Anderson, Probst & White, Inc. (1985), 109 Ill.2d 143, 151, 92 Ill.Dec. 833, 485 N.E.2d 1076.”

The language of the statute is quite clear; therefore we never resort to looking at legislative history. Nowhere, in either the PLAAct or the EPAct, is the Board granted jurisdiction by the General Assembly to be the court of initial review for decisions made by the Illinois EPA under the PLAAct.

Arguendo, if the Board even reaches Petitioner’s arguments, the Petitioner continuously states that the legislature tried to “harmonize” the processes. All evidence to the contrary, as can be seen by the legislative history attached to its pleading. Petitioner quotes a House sponsor to a Senate bill to no avail since it is clear from the transcript is the fact that the sponsor wanted to leave room for further review or interpretation by using term that were by no mean definitive on the topics. Moreover, as noted on page 192 of Petitioner’s Exhibit B, quote, “I’m not an expert language....” While Petitioner attempts to fashion an argument out of irrelevant legislative

history, which the Illinois EPA must note deals only with reimbursement issues which are not the subject of this appeal, Petitioner completely fails to note or distinguish in any way the most poignant discussion in that history. On page 193 of Petitioner's Exhibit B, Representative Bradley, the House sponsor states "... my understanding is that the Environmental Protection Agency will use the same process that the Capital Development Board uses for project labor agreements that it oversees." Completely lacking in this answer is any reference to the Board or the EPA Act.

Any appeals of the Illinois EPA decision as to whether a PLA applies should be taken under the PLA Act. Illinois EPA would assert that the proper forum for this litigation would be the court of original jurisdiction, i.e., the Circuit Court, pursuant to the Administrative Review Act, and not the Illinois Pollution Control Board. The Board simply does not have jurisdiction to hear appeals under the PLA Act. Since the Board lacks jurisdiction, this case must be dismissed.

#### **CONCLUSION**

For the reasons stated herein, the Illinois EPA respectfully requests that the Board issue an order DISMISSING the above captioned action.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,**

Respondent

---

Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: December 2, 2014

This filing submitted on recycled paper.

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on December 2, 2014, I served true and correct copies of a **REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS** via the Board's COOL system and by placing true and correct copies thereof in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. Mail drop box located within Springfield, Illinois, with sufficient First Class postage affixed thereto, upon the following named persons:

John Therriault, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601

Carol Webb  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

Patrick Shaw  
Fred C. Prillaman  
Mohan, Alewelt, Prillaman & Adami  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323

**ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,**  
Respondent

---

Melanie A. Jarvis  
Assistant Counsel  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)