

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

KM CORPORATION,	)	
Petitioner,	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To:	John T. Therriault, Acting Clerk	Division of Legal Counsel
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

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 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 16<sup>th</sup> day of April, 2015.

Respectfully submitted,  
KM CORPORATION, Petitioner

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
Telephone: 217/299-8484

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

KM CORPORATION,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, KM CORPORATION, pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Illinois Environmental Protection Agency’s final decision, modifying a plan and budget, and in support thereof states as follows:

1. This appeal arises from underground storage tanks formally located at the Marion Fuel Mart in Marion, Williamson County, Illinois, and assigned LPC # 1990555062.
2. On September 14, 2009, Petitioner reported a release from underground storage tanks at the site, which were later removed as part of early action.
3. Subsequently, Petitioner has performed various site investigation activities and multiple corrective action activities.
4. When the cleanup was nearing completion, the Illinois Pollution Control Board amended the standards for the Tiered Approach to Corrective Action Objectives, by adding an indoor inhalation exposure route. (R11-9, effective July 15, 2013)
5. On February 25, 2015, Petitioner submitted a corrective action plan and budget for additional excavation, transportation and disposal of contaminated soil exceeding TACO Tier

II Industrial/Commercial Inhalation cleanup objectives, and for removal of contaminated soils above the estimated groundwater plume to eliminate the vapor intrusion pathway.

6. On March 10, 2015, the Illinois EPA approved the corrective action plan and budget as submitted, but also determined that the use of a project labor agreement (PLA) is required. A true and correct copy of the determination is attached hereto as Exhibit A.

7. The determination also states that “[i]n the event that the use of a PLA will impact the project costs set forth in the approved or modified budget, a revised budget may be submitted for Illinois EPA review and decision . . . [and] if the revised costs exceed the maximum payment amounts . . . , bidding is required in order for payment from the UST Fund to exceed the Subpart H amounts.” (Ex. A, at p. 2)

8. The Project Labor Agreement Act states that:

**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.**

(30 ILCS 571/10)

9. In the Illinois EPA’s final determination, a boilerplate statement is included that a PLA would advance labor stability and minority-owned and women-owned business and minority and female employment. (Ex. A) The determination makes no findings specific to this project, nor considerations of cost, efficiency and timeliness.

10. The imposition of a PLA and competitive bidding in the final stage of the cleanup will not advance labor continuity, as there have been no labor stability problems in the long

history of the project, and the potential for discontinuing the previous labor arrangements increases labor instability. Nor will minority/female hiring be improved as the statutory competitive bidding process does not provide for those considerations. The imposition of a PLA, however, will require additional costs and delays as a result of bidding, negotiating the PLA and submittal of a revised budget.

11. The Agency has not made "a statement of specific reasons" that it determined a project labor agreement is necessary for this project given all of the statutory considerations. (415 ILCS 5/57.7(c)(4)).

12. The Agency has not made a "written, publicly disclosed finding . . . setting forth the justification for use of the project labor agreement." (30 ILCS 571/30) An example of such a finding by the Illinois Department of Transportation is attached hereto as Exhibit B.

13. Furthermore, the Board has not promulgated a procedure pursuant to Section 57.14A of the Act governing the administration of project labor agreements, nor do the existing rules provide standards for the Agency to exercise any discretionary power as required by the Administrative Procedure Act. (5 ILCS 100/5-20) By not proposing new rules reflecting the statutory changes, the Agency has effectively mandated competitive bidding, which is required to be optional. (415 ILCS 5/57.7(c)(3)(C))

14. The Agency's determination was received March 12, 2015, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, KM CORPORATION, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board

direct the Agency to approve the plan and budget absent any requirement to use a project labor agreement, (e) the Board award payment of attorney's fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

KM CORPORATION,  
Petitioner

By its attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Ste. 325  
Springfield, IL 62701  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-2829

BRUCE RAUNER, GOVERNOR

LISA BONNETT, DIRECTOR

217/524-3300

CERTIFIED MAIL

MAR 10 2015

7012 0470 0001 2974 1616

Marion Fuel Mart  
Attn: Nick Patel  
1801 West Main Street  
Marion, Illinois 62959

RECEIVED  
03-12-15

#T0904029

Fuel Mart -  
Marion

Re: LPC #1990555062 -- Williamson County  
Marion/Marion Fuel Mart  
2400 West Main Street  
Leaking UST Incident No. 20091001  
Leaking UST Technical File

Dear Mr. Patel:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated February 25, 2015, was received by the Illinois EPA on February 27, 2015. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

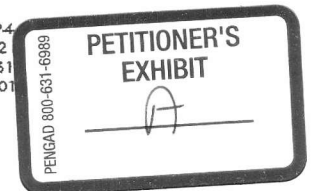
Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. This model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). Please submit a signed copy of a PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President  
Illinois AFL-CIO  
534 South Second Street, Suite 200  
Springfield, IL 62701-1764

4302 N. Main St., Rockford, IL 61103 (815) 987-7760  
595 S. State, Elgin, IL 60123 (847) 608-3131  
2125 S. First St., Champaign, IL 61820 (217) 278-5800  
2009 Mall St., Collinsville, IL 62234 (618) 346-5120

9511 Harrison St., Des Plaines, IL 60016 (847) 294-4400  
412 SW Washington St., Suite D, Peoria, IL 61602  
2309 W. Main St., Suite 116, Marion, IL 62959 (618) 992-1111  
100 W. Randolph, Suite 10-300, Chicago, IL 60601

PLEASE PRINT ON RECYCLED PAPER



Page 2

Once 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. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

In addition, the total budget is approved for the amounts listed in Attachment B. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

In the event that the use of a PLA will impact the project costs set forth in the approved or modified budget, a revised budget may be submitted for Illinois EPA review and decision. As set forth at 35 Ill. Adm. Code 734.800(a)(2), if the revised costs exceed the maximum payment amounts at 35 Ill. Adm. Code 734.Subpart H (Subpart H amounts), bidding is required in order for payment from the UST Fund to exceed the Subpart H amounts. Any bidding must be done in accordance with 35 Ill. Adm. Code 734.855, and the requirement for a PLA must be part of the invitation for bid.

**Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least three (3) working days prior to the scheduled field activities. Besides providing at least three days' notice to Leaking UST Section staff in Springfield, notification must be provided to Rob Mileur either by telephone at (618) 993-7223 or by e-mail at [Robert.Mileur@illinois.gov](mailto:Robert.Mileur@illinois.gov).**

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

Page 3

Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

If you have any questions or need further assistance, please contact Karl Kaiser at (217) 524-4650.

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

MTL::KEK\

Attachment: Attachment A (PLA)  
Attachment B (Budget)

c: Kelly Tensmeyer, Chase Environmental Group, Inc.  
BOL File



Attachment A

Re: LPC #1990555062 -- Williamson County  
Marion/Marion Fuel Mart  
2400 West Main Street  
Leaking UST Incident No. 20091001  
Leaking UST Technical File

**NOTICE OF PROJECT LABOR AGREEMENT REQUIREMENT**

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. The basis for the Illinois EPA's determination that a PLA is required for the project is set forth, as follows:

Use of a PLA will advance the State's interest in labor continuity and stability in completing the project work in accordance with the plan approved by the Illinois EPA.

Use of a PLA will advance the State's interest of advancing minority-owned and women-owned business and minority and female employment.

A PLA is not required for project work for which no payment from the UST Fund is being requested.

Pursuant to Section 57.8 of the Environmental Protection Act (415 ILCS 5/57.8), applications for payment from the UST Fund must include a certification signed by the UST owner or operator stating that the work was (i) performed under a PLA 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 (820 ILCS 130).

Attachment B

Re: LPC #1990555062 -- Williamson County  
Marion/Marion Fuel Mart  
2400 West Main Street  
Leaking UST Incident No. 20091001  
Leaking UST Technical File

SECTION 1

The following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$2,435.75	Analytical Costs
\$67,075.41	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$11,833.04	Paving, Demolition, and Well Abandonment Costs
\$21,417.38	Consulting Personnel Costs
\$5,585.95	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act and 35 Illinois Administrative Code 734.635.

:KEK\

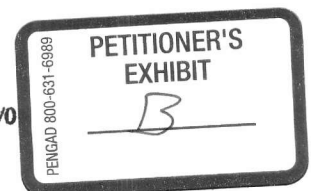
Contract Number 66D36  
DeKalb County  
Item 27

**IDOT PROJECT LABOR AGREEMENT DETERMINATION**

To: Ann L. Schneider, Secretary  
From: Omer Osman, Director  
Date: 1/17/2014  
Re: FAP 17 (IL 64), Contract Number 66D36, DeKalb County  
{February 28, 2014 }

In accordance with the Project Labor Agreement Act (30 ILCS 571), it is recommended that a project labor agreement (PLA) be utilized for the above-captioned Project. This recommendation is based on the considerations indicated below.

- 1) The Project is being awarded and administered by IDOT (i.e., not by another governmental agency).
- 2) The Project is being constructed using state or local funds only (i.e., no federal funds).
- 3) The overall size, scope, sequencing, logistics or other aspects of the Project make it particularly challenging to manage, and use of a PLA is expected to help assure that the construction work is performed properly and efficiently under the circumstances.
- 4) The duration of construction activity on the Project is expected to exceed one construction season (i.e., 110 or more working days), or the nature of the Project results in a heightened need for labor force continuity and stability over a substantial period of time.
- 5) There is a firm construction completion date established for the Project thereby increasing the adverse consequences of any work stoppage or other labor disruption.
- 6) The time required to complete the Project is expected to extend beyond the expiration date of one or more existing collective bargaining agreements covering trades likely to be involved in the Project, thereby increasing the likelihood of work stoppage(s) or other labor disruption(s) during construction of the Project.
- 7) In the absence of a PLA, there is an increased likelihood of jurisdictional disputes among unions or of conflict between unionized and non-unionized workers on the Project that could have a potentially material adverse effect on the time, cost, or quality of work performed on the Project.



Contract Number 66D36  
DeKalb County  
Item

8) This project presents specific safety concerns to the traveling public and a PLA, will ensure labor force continuity and stability, decreasing the length of the safety concern.

9) Use of a PLA is expected to result in improved access to skilled labor, improved efficiency, or improved safety performance on the Project.

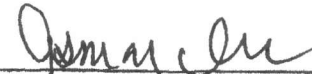
10) Use of a PLA on the Project is not expected to have a material adverse effect on the competitive bidding process.

11) Use of a PLA on the Project is not expected to have a material adverse effect on the ability of the Department to achieve other Departmental goals (e.g., utilization of disadvantaged businesses, utilization of Illinois domiciled businesses, development of competitive vendor alternatives over time, etc )

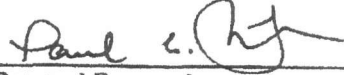
12) There are other material considerations favoring or disfavoring use of a PLA on this Project as follows:

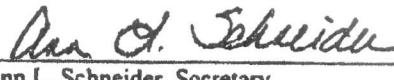

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Based upon the identified considerations, we recommend that you approve use of a PLA on this Project. Upon your approval, the Department shall undertake to negotiate in good faith a PLA with the relevant labor organization(s), and shall include in all necessary bid specifications and other documents information regarding the actual or form of PLA that is to binding upon all contractors and their employees.

Agreed:  2/24/14  
{Division Chief} (Date)

Agreed:  2/15/2014  
{Bureau of Design & Environment} (Date)

Agreed:  1/31/14  
{Regional Engineer} (Date)

Approved:  2/25/14   
Ann L. Schneider, Secretary (Date) Sarah Kurmann  
Executive Assistant

FHWA concurrence in the PLA for the above mentioned contract

Gregory G. Nadeau 1/23/2014  
FHWA Deputy Administrator (see attached approval page)

**Attachment A:**

Justification for use of Project Labor Agreement on Contract #66D36, DeKalb County

**Item 1:** The use of a Project Labor Agreement on this project is consistent with all State and Local statutory and regulatory requirements.

**Item 3:** Estimated project cost is \$2,400,000.

Any disruption in the continuity of this project due to labor issues would result in delayed deadlines that would cause safety concerns for the traveling public. Lapsing trade contract during the first stage of the project would be addressed through the use of a Project Labor Agreement. It is the Illinois Department of Transportation's finding that the large skilled workforce needed for this project can be provided by the union trades involved and is a necessary requirement for a Project Labor Agreement.

**Item 8:** The subject project is a highway safety improvement. This segment of roadway is listed on the Department's Five Percent Report and was prioritized for construction due to crashes along the existing horizontal curve.

**Item 12:** If the duration of the contract increases then additional user delay costs would be incurred from traffic operating at reduced speeds due to the work zone being in place for longer than anticipated.

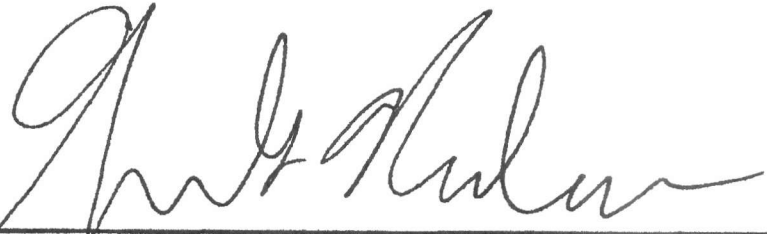
The trades that will be used on this project include but are not limited to the following: Laborers, Operators, and Teamsters.

**PLA Request**

**Approval of Project Labor Agreement**

**Disapproval of Project Labor Agreement**

**Reason for disapproval:**

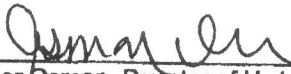
  
\_\_\_\_\_  
**Signature**

1/23/14  
\_\_\_\_\_  
**Date**

FAP 17  
DeKalb County  
Contract No 66D36  
Item 27

Execution Page

Illinois Department of Transportation

  
\_\_\_\_\_  
Omer Osman, Director of Highways

  
\_\_\_\_\_  
Tony Small, Director of Finance & Administration

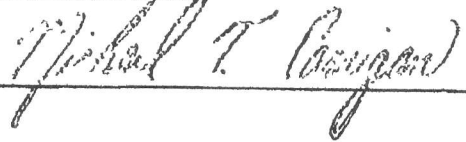
  
\_\_\_\_\_  
Michael A. Forti, Chief Counsel

  
\_\_\_\_\_  
Ann L. Schneider, Secretary

2/25/14  
(Date)

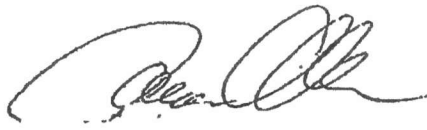
  
Sarah Kurmann  
Executive Assistant

Illinois AFL-CIO Statewide Project Labor Agreement Committee, representing the local unions listed below:


  
\_\_\_\_\_

1-28-14  
(Date)

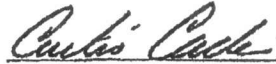
List Union Locals:




Jim Allen  
Bricklayers



Terry Lynch  
Heat & Frost Insulators & Allied  
Workers

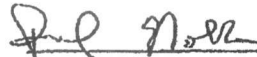


Curtis Cade  
United Association



Richard Mathis  
Roofers

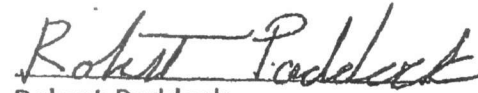
\*  
Ed Christensen, Elevator  
Constructors



Paul Noble  
IBEW



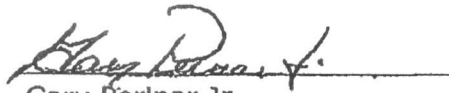
Terry Fitzmaurice  
Painters



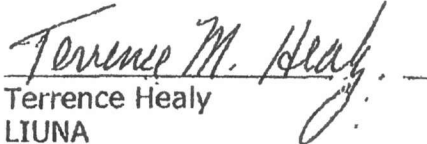
Robert Paddock  
IUOE



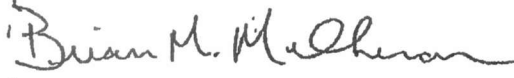
Pat Gleason  
Teamsters



Gary Perlnar Jr.  
Carpenters



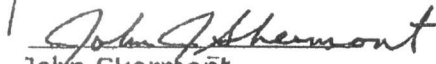
Terrence Healy  
LIUNA



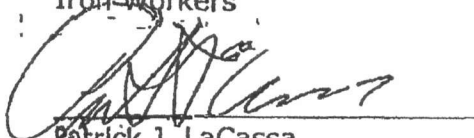
Brian Mulheran  
Sheet Metal Workers



David Beard  
Iron Workers



John Skermont  
Boilermakers



Patrick J. LaCassa  
OPCMIA

\*only if Elevator Constructors master agreement  
language is attached to PLA