

ILLINOIS POLLUTION CONTROL BOARD  
March 5, 2015

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

DISSENTING OPINION (by J. D. O’Leary):

“The fundamental principle of statutory construction is to ascertain and give effect to the legislature’s intent. . . . [W]ords and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute.” Natural Res. Def. Council, et al. v. IEPA and Dynegy Midwest Generation, PCB 13-17, slip op. at 44 (June 5, 2014), citing Town & Country Util. v. IPCB, 225 Ill.2d 103, 866 N.E.2d 227 (2007). The statutory authorities at issue in this case do not show that the General Assembly intended to bar the Agency from even considering whether to require a protect labor agreement at the site investigation step of corrective action in the Underground Storage Tank (UST) program. Accordingly, I respectfully dissent from the majority opinion.

The Project Labor Agreements Act provides that specified state agencies “shall include a project labor agreement on a public works project” when the agency determines that the agreement furthers various state interests. 30 ILCS 571/10 (2012). In Public Act 98-109, the General Assembly added language providing that, “[f]or purposes of this [Project Labor Agreements] Act, any corrective action performed pursuant to Title XVI [Petroleum Underground Storage Tanks] of the Environmental Protection Act for which payment from the Underground Storage Tank Fund is requested shall be considered a public works project.” P.A. 98-109, eff. July 25, 2013 (emphasis added).

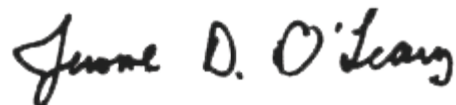
Under Title XVI of the Environmental Protection Act, Section 57.7(c)(3) addresses the Illinois Environmental Protection Agency’s review and approval of plans for site investigation and corrective action. 415 ILCS 5.57.7(c)(3). The Agency must reach determinations including the reasonableness of costs and whether those costs exceed the minimum requirements of the UST program. *Id.* With Public Act 98-109, the General Assembly added to subsection (c)(3) a requirement that “[t]he 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.” P.A. 98-109, eff. July 25, 2013.

When the General Assembly adopted Public Act 98-109, it had already defined the term “corrective action” for purposes of the UST program. Section 57.2 of the Environmental

Protection Act provides that, for Title XVI, “[c]orrective action’ means activities associated with compliance with the provisions of Sections 57.6 and 57.7 of this Title.” 415 ILCS 5/57.2 (2012). Section 57.6 addresses early action, and Section 57.7 addresses site investigation and corrective action. 415 ILCS 5/57.6, 57.7 (2012). This definition plainly intends to include each of the major steps in remediation of a site under the UST program. Public Act 98-109 did not amend the definition. I can only conclude that the General Assembly intended the broad pre-existing definition of “corrective action” to apply to the requirements adopted in Public Act 98-109. *See Town of Cicero v. Metro. Water Reclamation Dist. of Greater Chicago*, 976 N.E.2d 400, 411 (1st Dist. 2012) (“When the legislature amends one statutory provision, but not another, it is presumed to have acted intentionally.”). Consistent with that intent, Public Act 98-109 allows the Agency to determine whether site investigation will include a project labor agreement.

The petitioner has argued that “[s]ite investigation and corrective action are entirely different activities. . . .” Petitioner indicates that, because site investigation is analytical in nature and performed by professionals and laboratories, it is not appropriately performed under a project labor agreement. Petitioner suggests that a project labor agreement may be appropriate to address labor performed during corrective action by hauling contaminated soil or removing contaminated groundwater. While the UST program proceeds in stages, I am not at all persuaded that these stages are so clearly distinct from one another in every case. It is not difficult to foresee a case in which the drilling of monitoring wells becomes an element of treating or removing groundwater. Should such cases arise, the Project Labor Agreements Act simply provides the Agency with a number of factors to consider in determining whether site investigation must include a project labor agreement.

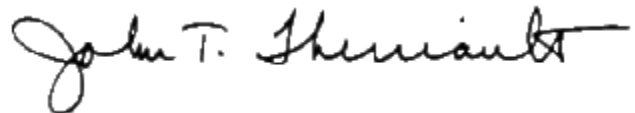
On reviewing legislative intent, as the Board must do, I see no sign that the General Assembly intended to prevent the Agency from considering whether to require a Project Labor Agreement at the stage of site investigation. For the reasons stated above, I respectfully dissent from the majority opinion to the extent that it finds the Agency lacks this authority.



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Jerome D. O’Leary

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on March 5, 2014.



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John T. Therriault, Clerk  
Illinois Pollution Control Board