

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

KB SULLIVAN INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 2021-078
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE

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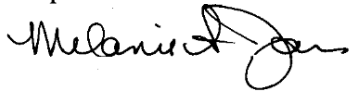
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PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT**, copies of which are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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
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217/782-5544
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Dated: June 23, 2022

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KB SULLIVAN INC.,)	
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**ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE
RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and hereby, as an alternative to its Motion to Dismiss and in an effort to expedite the review of the case, submits **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION OF 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. ISSUE

The issue presented is whether the Petitioner can be reimbursed for \$2,125.96 for costs that lack supporting documentation and exceed the minimum requirements of the Act?

Based upon the express language of the Act and regulations thereunder, and the facts presented, the answer is **NO**.

IV. FACTS

If the Board looks solely to the Administrative Record, there exists no issue of material fact. This case is a matter of the application of the law. On February 17, 2012, the Illinois EPA received a Corrective Action Plan and Budget. (R 0001-R0140). This Corrective Action Plan and Budget was approved by the Agency on May 16, 2012. (R0267-R0271). No additional technical

documentation has been provided to the Illinois EPA from February 17, 2012 until the date of the filing of this pleading. That equals over 124 months or 10 years and 4 months without a technical document being filed showing any progress or work performed on the site.

A reimbursement claim (R0290-R0342) was filed on October 20, 2020 requesting \$2,125.96 in personnel and miscellaneous material costs. (\$2,108.37 in personnel costs and \$17.08 in material costs plus \$.51 in handling charges. R0310). Most of the work was listed as being performed in furtherance of a HAA, an ELUC and a CACR. (R0312).

Illinois EPA denied this request on February 5, 2021 by stating the following:

\$2,125.96, deduction for all costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that the costs will not be used for activities in excess of those necessary to meeting the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirement of Title XVI of the Act.

The claim requests cost associated with a Corrective Action Completion Report. To date the IEPA has not received this Corrective Action completion Report and has not received any technical documentation since February 17, 2012. (R0346).

This case was appealed to the Board March 19, 2021 and Petitioner's Motion for Summary Judgement was filed on June 10, 2022.

V. ARGUMENT

There exists no issue of material fact. This case is a matter of the application of the law. The Administrative Record and its contents, or lack of contents, speaks for itself. Section 57.7 (b)(6) of the Act is codified within Section 734.355(a) of the Board's Underground Storage Tank regulations. That section states as follows:

Section 734.355 Status Report

- a) *If within 4 years after the approval of any corrective action plan the applicable remediation objectives have not been achieved and the owner or operator has not submitted a corrective action completion report, the owner or operator shall submit a status report for Agency review. The status report shall include, but is not limited to, a description of the remediation activities taken to date, the effectiveness of the method of remediation being used, the likelihood of meeting the applicable remediation objectives using the current method of remediation, and the date the applicable remediation objectives are expected to be achieved [415 ILCS 5/57.7(b)(6)].*

The last technical document relevant to this incident was submitted over 10 years and 4 months ago. There should have been filed at least **TWO** status reports during that time detailing the progress at the site. No status reports have been filed. The Illinois EPA has no idea of what, if any, remediation activities have been taken to date. The request for reimbursement includes no such narrative as to what work has been accomplished except for short descriptions such as "HAA" and "ELUC" and a "CACR". Now the Agency has interpreted those codes for their usual meaning, but there is no description of the work performed and no CACR or Corrective Action Completion Report has been submitted to the Agency to show what work has been completed.

It has been over **TEN years** and the Illinois EPA simply cannot reimburse for costs it does not know why the work is being done now or if it is accomplishing anything. These costs lack supporting documentation and the Agency cannot determine if they are appropriate or not after this period of inactivity at the site.

VI. CONCLUSION

The facts and the law are clear and in favor of the Illinois EPA. Requesting reimbursement for costs after such an extended period without explanation or a status report as

required by Illinois law lacks supporting documentation and exceeds the minimum requirements of the Act and is therefore unreasonable.

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



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Dated: June 23, 2022

This filing submitted on recycled paper.

CERTIFICATE OF SERVICE


I, the undersigned attorney at law, hereby certify that on **June 23, 2022**, I served true and correct copies of **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT** via the Board's COOL system and email, upon the following named persons:

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