

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIX M CORPORATION, INC.)	
)	
)	
Petitioner,)	PCB No. 2026-035
)	
v.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Attached Service List Via Email

PLEASE TAKE NOTICE THAT today I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, Respondent Illinois Environmental Protection Agency's Motion for Leave to File Reply and Reply in Support of Motion to Dismiss Six M Corporation's Petition for Review, true and correct copy of which is attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

By: /s/ Elizabeth Dubats
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Dated: January 6, 2026

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CERTIFICATE OF SERVICE

I, Elizabeth Dubats, an Assistant Attorney General, caused to be served on this 6th day of January, 2026, a true and correct copy of the Notice of Filing and Illinois Environmental Protection Agency's Motion for Leave to File Reply and Reply in Support of Its Motion to Dismiss Six M Corporation's Petition for Review, upon the persons listed on the Service List via electronic mail with return receipt.

/s/ Elizabeth Dubats
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**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S, MOTION FOR
LEAVE TO REPLY AND REPLY IN SUPPORT OF MOTION TO DISMISS SIX M
CORPORATION'S PETITION FOR REVIEW**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), by and through the Attorney General of the State of Illinois, KWAME RAOUL, and, pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board") procedural rules, 35 Ill. Adm. Code 101.500(e), and respectfully moves the Board or Hearing Officer for leave to file its Reply in support of Respondent's Motion to Dismiss Six M Corporation's Petition for Review, and replies instanter. In support of this motion, Respondent states as follows:

MOTION FOR LEAVE TO REPLY INSTANTER

In its Response to Motion to Dismiss ("Response"), Petitioner raises a number of red herrings without addressing the fundamental issue requiring dismissal, that, as a matter of law, requests for indemnification of a legally enforceable settlement are ultimately decided by the Illinois Attorney General, not Illinois EPA. Settlement indemnification is governed by a separate subsection of Section 57.8 of the Act that sets forth a separate process with no explicit deadline for the Attorney General's determinations. 415 ILCS 5/57.8(c); 35 Ill. Adm. Code 734.650(c). As explained in detail in Respondent's Motion to Dismiss ("Motion"), the Board's jurisdiction is limited by statute to final Illinois EPA determinations, and therefore the Board lacks jurisdiction to review the Attorney General's determination or lack thereof. Motion at 7-8. Moreover, Petitioner cannot avail itself of approval "by operation of law" if it has not and cannot allege facts supporting the basic elements of its claim. Motion at 4-7.

Section 101.500(e) of Board's procedural rules, 35 Ill. Adm. Code 101.500(e) provides in pertinent part:

The moving person will not have the right to reply, except as permitted by the Board or the hearing officer to prevent material prejudice. A motion for permission to file a reply must be filed with the Board within 14 days after service of the response.

Respondent seeks leave to reply as Petitioner raises new arguments and authority in its Response, which, though unavailing, could materially prejudice Respondent by obfuscating the issues. As such, Respondent respectfully moves the Board or Hearing Officer for leave to file its Reply in support of Respondent's Motion.

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

A. There are no content boxes Petitioner can check that creates subject matter jurisdiction over the Illinois Attorney General's indemnification determinations.

Petitioner's Response appears to suggest that petitions for review pursuant to 57.8(i) of the Act need only check the procedural boxes of 35 Ill. Adm. Code 105.408 to evade dismissal and the Board need not concern itself with such heady matters as subject matter jurisdiction until the summary judgment stage. Response at 2. However, as set forth in Respondent's Motion, the plain language of Section 57.8(c) of the Act places the authority to approve settlement indemnification squarely with the Attorney General whereas Board review is limited by statute to Illinois EPA's actions and omissions. Motion at 7-9. It is well-established that the Board can and should dismiss petitions for review where it lacks subject matter jurisdiction. *Montgomery Ward & Co. Inc. v. Illinois EPA*, PCB No. 94-289 at 2 (Mar. 16, 1995) ("A grant of a motion to dismiss for lack of subject matter jurisdiction is appropriate when the body does not have lawful authority to deal with

the particular subject.”)¹; *McAfee v. Illinois EPA*, PCB 15-84, at 6 (Dec. 4, 2014) (“The Board is a creature of statute and has only the authority granted to the Board by statute.”)²; *Newkirk v. Bigard*, 109 Ill. 2d 28, 37 (1985) (“Unlike a court, an administrative agency is a statutory creation, limited in its authority by statute.”); *Ogle County Board ex rel. County of Ogle v. Pollution Control Board*, 272 Ill. App. 3d 184, 192 (2nd Dist. 1995) (in the administrative law context the term jurisdiction includes the statutory scope of authority, which “may properly be considered the inherent power of an agency to make or enter the particular order involved”). Respondent’s Motion accepts all well-pleaded facts of the Petition and argues that it is deficient as a matter of law. The Board need not worry about the looming 120-day final decision deadline under Section 40(a)(2) of the Act, 415 ILCS 5/40(a)(2), that Petitioner portends, because it can dismiss the Petition for lack of subject matter jurisdiction at any time. *Belleville Toyota v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 333-34 (2002) (“The issue of subject matter jurisdiction cannot be waived. Therefore, the issue may be raised at any time.”) (internal citations omitted).

Furthermore, Petitioner’s argument that the Board’s November 20, 2025 order found the petition meets the requirements of 35 Ill. Adm. Code 105.408 is unavailing. Response at 2. A Board order accepting a petition for hearing does not preclude the Board from making a subsequent finding that the petition should be dismissed. *See, e.g., Timber Creek Homes, Inc. v. Village of Round Lake Park*, PCB No. 14-99, at 12-13 (Mar. 20, 2014)³.

Petitioner’s Response does not and cannot reconcile the plain language of the indemnification provisions of Section 57.8(c) of the Act, 415 ILCS 5/57.8(c) and Section 734.650 of the Board’s UST Regulations, 35 Ill. Adm. Code 734.650, which each require Illinois EPA to forward settlement indemnification requests to the Attorney general for “review and approval”

¹ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-17902>.

² Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-87055>.

³ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-83795>.

with Petitioner's claim that time limits directed only to the Illinois EPA apply. Notably, Petitioner does not provide a single example of the Board applying 57.8(a)(1)'s 120-day limit to a 57.8(c) settlement indemnification determination.

The closest Petitioner gets is a newly filed motion for extension of the time to file a petition where Illinois EPA denied an indemnification request as incomplete pursuant to 35 Ill. Adm. Code 734.650(b). *Guraya v. Illinois EPA*, PCB 2026-032 (Oct. 27, 2025). However, the applicability of 57.8(a)(1)'s 120-day limit to the Attorney General's determination under 57.8(c) is not and will not be at issue before the Board in *Guraya* because 1) the request did not get forwarded to the Attorney General, which happens after Illinois EPA determines the application is complete pursuant to 35 Ill. Adm. Code 734.650(c), and 2) the denial is dated Sept. 18, 2025, 114 days after the letter notes application received (May 27, 2025). Response at 7-13.

Furthermore, Petitioner places a lot of emphasis on Illinois EPA's citation to 57.8(a) in the *Guraya* letter, arguing that proves the 120-day limitation of 57.8(a)(1) applies to 57.8(c) settlement indemnification determinations. Response at 4. This interpretation, however, in addition to placing a lot of weight on a form letter for acceptance and denials of payments, neglects to account for the outline structure of the Act, wherein the 120-day limit is not set forth in 57.8(a), but 57.8(a)(1), a subparagraph of subsection (a). "One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. Words and phrases should not be construed in isolation, but must be interpreted in light of other relevant provisions of the statute." *Chi. All. for Neighborhood Safety v. City of Chi.*, 348 Ill. App. 3d 188, 199 (1st Dist. 2004) (internal citations omitted). It is not uncommon for statutory language to move from general to more specific when moving from section to subsection to subparagraph of a subsection. *See e.g. Id.*

Section 57.8 does contain a general paragraph before any of the subsections where one would expect rules of general applicability to all subsections to go. Specifically, the main paragraph of Section 57.8 provides:

If an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9 [415 ILCS 5/57.9], the owner or operator may submit a complete application for final or partial payment to the Agency for activities taken in response to a confirmed release. An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days.

Beneath these generally applicable requirements, the statute breaks out into alphabetical subsections each labeled specifically by topic. *E.g.*, “(a) Payment after completion of corrective action measures.” or “(c) When the owner or operator requests indemnification …”. As would be expected from a subparagraph of a subsection, 57.8(a)(1) has an even narrower caveat for its provisions, limiting them to payments “In the case of any approved plan and budget for which payment is being sought....” Petitioner does not provide any explanation for why a rule of more general applicability outside an approved plan or budget, would be hidden away in a subparagraph of a subsection that is expressly limited to costs “[i]n the case of any approved plan[s] or budget[s]”. Nor does Petitioner have any explanation for how “payment of corrective action costs incurred without an approved plan or budget” get approved as an operation of law after 120 days but the same subparagraph provides that “in no event shall the Agency reimburse the owner or operator an amount greater than the amount approved in the plan.” *Compare* Response at 4 with 415 ILCS 5/57.8(a)(1).

B. The Board Can Dismiss Petitions for Review for Failure to State a Claim Upon Which the Board Can Grant Relief.

The Board rules clearly provide that a petition for review is subject to dismissal if the Board determines that it is untimely, does not meet the Board’s informational requirements, the petitioner fails to comply with a Hearing Officer or Board order, the petitioner lacks standing, or “[o]ther grounds exist that bar the petitioner from proceeding.” 35 Ill. Adm. Code 105.108. While it is broadly true that “[t]he pleading

requirements for administrative review are less exacting than for other causes of action" *Mueller v. Bd. of Fire & Police Comm'rs*, 267 Ill. App. 3d 726, 734 (2d Dist. 1994), the Board can and does dismiss petitions for review it finds to be "frivolous" which includes "request[s] for relief that the Board does not have the authority to grant". 35 Ill. Adm. Code 101.202. This is precisely the basis of Respondent's 2-615 Motion. Motion at 4-7 ("The Board should dismiss Six M's Petition for failure to state a cause of action for which relief can be granted."). Respondent's Motion does not require the Board to apply exacting pleading requirements; but rather, consistent with Board standards, argues that Petitioner's claims must be legally possible. Moreover, the Board can and has looked to caselaw applying the pleading standards of Section 2-615 of the Illinois Code of Civil Procedure when ruling on dismissal of a petition for review. For example, in *Timber Creek Homes, Inc.*, the Board set forth the legal framework for deciding a motion to dismiss as follows:

In deciding a motion to dismiss, the Board considers all well-pled facts contained in the pleading as true, and draws all inferences from the facts in favor of the non-movant. *American Disposal*, PCB 11-60 slip op. at 33, citing *Veolia ES Zion Landfill, Inc. v. City Council of the City of Zion*, PCB 11-10, slip op. at 2 (Nov. 4, 2010) (citations omitted). "[I]t is well established that a cause of action should not be dismissed with prejudice unless it is clear that no set of facts could be proved which would entitle the plaintiff to relief." *Smith v. Central Illinois Regional Airport*, 207 Ill. 2d 578, 584-85, 802 N.E.2d 250, 254 (2003). Dismissal of the petition is proper only if it is clear that no set of facts could be proven that would entitle complainant to relief. See *People v. Stein Steel Mills Services, Inc.*, PCB 02-1 (Nov. 15, 2001); *Shelton v. Crown*, PCB 96-53 (May 2, 1996); *Krautsak v. Patel*, PCB 95-143 (June 15, 1995).

PCB No. 14-99, at 10-11. As detailed in the Motion, the Petition seeks relief under Section 57.8(a)(1) of the Act, which is explicitly reserved for situations where Illinois EPA fails to make a timely reimbursement determination for corrective action activities incurred under an "approved plan and budget", but does not allege the basic elements of such a claim, namely an approved plan and budget or corrective action activity. Motion at 4-5. Instead, the Petition alleges it has not received notice of "the Agency's final action on the application for payment" with respect to indemnification for payments to "resolve disputes with the neighboring property owner ... for access and property damage" which describes a settlement indemnification pursuant to Section 57.8(c) of the Act. Petition at 5 and 13.

All the Board cases that Petitioner cites in its Response are easily distinguishable from the matter at hand as none involve settlement indemnification under Section 57.8(c) of the Act. *Metropolitan Pier and Exposition Authority v. Illinois EPA* did not involve a request for settlement indemnification requiring Attorney General review and approval but instead dealt with a denial of reimbursement of certain corrective action costs which had been part of an Illinois EPA approved reimbursement budget, just as Section 57.8(a)(1) specifies. PCB No. 10-73, at 8 (July 7, 2011).⁴ The Board simply concluded that the 120-day deadline applicable to Illinois EPA reimbursement of approved corrective action costs includes the completeness determination. *Id.* at 24. Likewise, *Zervos Three v. Illinois EPA* concerned Illinois EPA determinations regarding reimbursement for corrective action activities and did not involve Attorney General settlement indemnification determination under Section 57.8(c) of the Act. PCB 10-54 (Jan. 20, 2011).⁵ As there is no set of facts Petitioner can allege that makes an Attorney General settlement indemnification determination an Illinois EPA determination regarding reimbursement of corrective action costs from an approved plan and budget, the Petition should be dismissed with prejudice.

Conclusion

Section 57.8(c) explicitly delegates the approval of third-party settlement indemnification to the Attorney General and there is no set of facts that Petitioner could allege that would require approval of its request by default under Section 57.8(a)(1) of the Act or confer the Board subject matter jurisdiction to even hear the claims. Petitioner's Response presents no authority that contests or controverts the plain language of the Act. As such, the Board should dismiss the Petition.

⁴ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-72938>.

⁵ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-71219>.

Respectfully submitted,

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