

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PIA AVCENTER LLC d/b/a BYERLY	)	
AVIATION	)	
	)	
Petitioner,	)	
v.	)	PCB No. 24-78
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

TO: Carol Webb, Hearing Officer	Richard Kim
Illinois Pollution Control Board	Division of Legal Counsel
2520 W Iles Ave	2520 W Iles Ave
Springfield, IL 62704	P.O. Box 19276
<a href="mailto:carol.webb@illinois.gov">carol.webb@illinois.gov</a>	Springfield, IL 62794-9276
	<a href="mailto:richard.kim@illinois.gov">richard.kim@illinois.gov</a>

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 (h), a PETITIONER'S RESPONSE TO ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT, a copy of which is herewith served upon Respondent.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 31<sup>st</sup> day of March, 2026. The number of pages in the e-mail transmission is 5 pages.

PIA AVCENTER LLC d/b/a  
BYERLY AVIATION,

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  
217-299-8484  
pdshaw1law@gmail.com

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**PETITIONER’S RESPONSE TO  
IEPA’S CROSS MOTION FOR SUMMARY JUDGMENT**

NOW COMES Petitioner, PIA AVCENTER LLC d/b/a BYERLY AVIATION, by its undersigned counsel, responds to IEPA’S Cross Motion for Summary Judgment pursuant to Section 101.516(a) of the Board’s Procedural Rules (35 Ill. Adm. Code § 101.516(a)), stating as follows:

**INTRODUCTION**

Petitioner filed its motion for summary judgment on January 28, 2026, and hereby incorporate it in this response. Petitioner will use this Response as an opportunity to identify specific disagreements with the Cross Motion for Summary Judgment not previously anticipated or discussed in Petitioner’s motion.

**I. The 2015 Removal Permit Does Not Preclude the Payment of Costs of Removing USTs Pursuant to a 2023 Removal Permit Following the 2023 Release.**

The Illinois EPA argues that its deduction of tank removal costs was necessitated by Board regulation. (35 Ill. Adm. § 734.630(k)) While the relevant statutory provision (415 ILCS 5/57.8(k)) is quoted in the introduction to the Cross Motion, no argument is made regarding its

applicability, presumably because the Illinois EPA believes, or hopes for, the regulation to be construed broader than the statute. The Cross Motion does not address the relationship between the regulation and the statute as discussed in Petitioner's Motion (Mot. Sum. J., at pp. 13-14), nor does the Illinois EPA discuss the controlling legal precedent in this area, Kronon Motor Sales v. Illinois Pollution Control Board, 241 Ill. App. 3d 766 (1<sup>st</sup> Dist. 1992). Petitioner's interpretation of Section 734.630(k) of the UST Regulations is consistent with both the language of the Act, as well as applicable caselaw in interpreting the Board's procedural rule as enforcing the notification requirement as a pre-condition to payment from the UST Fund.

In contrast, the Illinois EPA claims the Board's intention with its regulation was to preclude "a planned tank pull" (Cross Motion, at p. 10), without reference to any legal authority for this proposition. Furthermore, the Illinois EPA argues inconsistently that "the reason why tanks are permitted for removal" is irrelevant (Cross Motion, at p. 10), while making a concerted effort to show the reasons the tanks were pulled based upon a selection of documents in the OSFM files from 2019 and 2021. No explanation is given as to why the 2019 and 2021 references inform the treatment of the 2015 removal permit. While the Cross Motion started with the recognition that the Illinois EPA's decision was "due to the fact the tanks were permitted for removal on July 15, 2015," (Cross Motion, at p. 8), its argument progresses to ignore the 2015 permit for an argument based upon an alleged general intention to pull tanks pieced together from portions of OSFM files. As there is nothing in the language of 35 Ill. Adm. Code § 734.630(k) that supports a "planned tank pull" prohibition, this appeal is another example of the Agency enforcing an unpromulgated rule.

**II. The Illinois EPA is Precluded from Raising New Issues Not Presented in Its Decision Letter.**

The Illinois EPA raises a new issue by suggesting that Petitioner did not include the results of its August 3, 2023 “limited subsurface investigation” referenced in the 45-Day Report. (Cross Motion, at p. 11) The 45-Day Report was approved by the Illinois EPA with a finding that “the 45-day reporting requirements of Section 57.6 of the Act and 35 Ill. Adm. Code 734.210(d) have been satisfied.” (A.R.351) To the extent the Agency believed it needed information about this investigation to review the Early Action Reimbursement Claim, then it was required to identify the “specific type of information, if any, that the Agency needs to complete the review” in its decision letter. (35 Ill. Adm. Code § 734.610(d)(1)) The Agency did not do so here. The Agency has an affirmative duty to specify reasons for any denials or modifications, which ultimately will “frame the issue of fact or law in controversy” before the Board. Environmental Protection Agency v. Pollution Control Bd., 86 Ill.2d 390, 405 (1981)

**CONCLUSION**

There is no dispute that the permit for removal of the tanks for which reimbursement costs are sought was issued after notification of a release to the Illinois Emergency Management Agency, and therefore payment of those costs would not violate any provision of the Act, nor any Board regulation promulgated thereunder.

WHEREFORE, Petitioner, PIA AVCENTER LLC d/b/a BYERLY AVIATION, prays that the Board find the Illinois EPA erred in its decision, direct the Illinois EPA to pay \$37,576.31, direct Petitioner to present a statement of legal fees for the Board's consideration, and grant such other and further relief as it deems meet and just.

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Law Office of Patrick D. Shaw  
80 Bellerive Road  
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217-299-8484  
pdshaw1law@gmail.com