

ILLINOIS POLLUTION CONTROL BOARD
June 4, 2026

SIX M CORPORATION, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 26-35
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by J.A. Van Wie):

On November 5, 2025, Six M Corporation, Inc. (Six M) filed a petition for review (Pet.) concerning a May 6, 2022, application for payment of indemnification from the Underground Storage Tank (UST) Fund. The petition concerns Six M’s leaking UST site located in Farmer City, Dewitt County.

On December 10, 2025, the Environmental Protection Agency (IEPA or the Agency) filed a motion to dismiss the petition on the grounds that the petition fails to state a claim, arguing that it is not an application for repayment under Section 57.8(a) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(a) (2024)) (Act), but is instead a request for indemnification under Section 57.8(c) of the Act (415 ILCS 5/57.8(c) (2024)), and for lack of subject matter jurisdiction (Mot.). On December 23, 2025, Six M filed its response to IEPA’s motion to dismiss (Resp.). On January 6, 2026, IEPA filed a motion for leave to file *instanter* and a reply to the response (Reply).

In this opinion and order, the Board first addresses the procedural history, and grants the Agency’s motion for leave to file a reply *instanter*. The Board then provides the relevant statutory and regulatory authorities. Next, the Board summarizes the arguments raised in the Agency’s motion to dismiss and Six M’s response. The Board then provides a discussion on the issues raised in the motion and grants the Agency’s motion to dismiss on each ground. Finally, the Board issues its order.

PROCEDURAL HISTORY

On November 5, 2025, Six M filed a petition for review for repayment concerning leaking USTs at a self-service station formerly owned by Six M. On November 20, 2025, the Board accepted the petition for hearing.

On November 24, 2025, Six M filed a waiver of the decision deadline to July 12, 2026. On March 9, 2026, Six M filed a second waiver of the decision deadline to August 6, 2026. On April 3, 2026, Six M filed a third waiver of the decision deadline to October 1, 2026.

On December 3, 2025, IEPA filed an unopposed motion for extension of time to file the administrative record. On December 4, 2025, the Hearing Officer granted the motion. The Agency timely filed the administrative record on January 16, 2026.

On December 10, 2025, IEPA filed a motion to dismiss. On December 23, 2025, Six M filed a response. On January 6, 2026, IEPA filed a reply, accompanied by a motion for leave to file *instanter*.

The Agency's motion for leave to file *instanter* is granted, and the Board accepts the reply for consideration.

STATUTORY AND REGULATORY AUTHORITIES

Section 57 of the Act contains provisions for petroleum underground storage tank sites. *See* 415 ILCS 5/57 (2024). Section 57.2 of the Act defines "indemnification" in the context of petroleum underground storage tanks as:

[I]ndemnification of an owner or operator for the amount of any judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator. 415 ILCS 5/57.2 (2024).

Section 57.2 of the Act also defines "corrective action" as "activities associated with compliance with the provisions of Sections 57.6 and 57.7 of [the Act]." 415 ILCS 5/57.2 (2024).

Section 57.8 of the Act establishes the Underground Storage Tank Fund provisions for payment. *See* 415 ILCS 5/57.8 (2024). Section 57.8(a), titled "Payment after completion of correction action measures," provides that,

[t]he owner or operator may submit an application for payment for activities performed at a site after completion of the requirements of Sections 57.6 and 57.7, or after completion of any other required activities at the underground storage tank site. 415 ILCS 5/57.8(a) (2024).

Subsection (a)(1) states, in relevant part:

In the case of any approved plan and budget for which payment is being sought, the Agency shall make a payment determination within 120 days of receipt of both the complete application for payment and the report documenting completion of the activities approved in the plan, whichever is received later. Such determination shall be considered a final decision. The Agency's review shall be

limited to generally accepted auditing and accounting practices. In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal. If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application. However, in no event shall the Agency reimburse the owner or operator an amount greater than the amount approved in the plan. 415 ILCS 5/57.8(a)(1) (2024).

Finally, Section 57.8(c) provides for requests for indemnification, stating, in relevant part:

When the owner or operator requests indemnification for payment of costs incurred as a result of a release of petroleum from an underground storage tank, if the owner or operator has satisfied the requirements of subsection (a) of this Section, the Agency shall forward a copy of the request to the Attorney General. 415 ILCS 5/57.8(c) (2024).

Section 57.8(c) concludes that, “[t]he Attorney General shall review and approve the request for indemnification” if the conditions established in either the pursuant subsection (c)(1) or (c)(2) are met. *See* 415 ILCS 5/57.8(c), (c)(1), (c)(2) (2024).

PARTIES’ ARGUMENTS

IEPA’s Motion

IEPA brings its motion to dismiss pursuant to Sections 2-615, 2-619, and 2-619.1 of the Illinois Code of Civil Procedure. Mot. at 1; 735 ILCS 5/2-615, 2-619, 2-619.1 (2024). IEPA first argues that the petition fails to state a cause of action for which relief can be granted and should be dismissed pursuant to Section 2-615. Mot. at 4; *see* 735 ILCS 5/615. Though Six M filed the petition seeking reimbursement under Section 57.8(a)(1) (*see* Pet. at 3), IEPA argues that the costs for which Six M is seeking reimbursement are not a “payment application” eligible for reimbursement under Section 57.8(a)(1). Mot. at 4; *see also* 415 ILCS 5/57.8(a)(1) (2024). IEPA contends that Six M is actually requesting indemnification for third-party settlement costs governed by the indemnification determination procedures of Section 57.8(c). Mot. at 1-2, *citing* Pet. at 1, Exh. B; *see also* 415 ILCS 5/57.8(c) (2024).

IEPA also moves to dismiss the petition under Section 2-619(a)(1) for lack of subject matter jurisdiction, arguing that, as an administrative agency, the Board’s authority is expressly limited by its governing statute, which only provides for review of final IEPA action. Mot. at 7 (*citing* 415 ILCS 5/40, 5/57.8(i) (2024)). IEPA argues that because Section 57.8(c) explicitly delegates the approval of indemnification requests to the Attorney General, the Board does not have the authority to review Six M’s petition. *Id.* at 7-9. IEPA elaborates that the Board’s UST rules only grant it authority to hear appeals of final decisions of the IEPA and the office of the State Fire Marshal. *Id.* at 8 (*citing* 35 Ill. Adm. Code 105.100, 105.400, 105.402, 105.500).

Six M’s petition seeks payment of \$15,750.00 that Six M paid a neighboring property owner to resolve disputes (*see* Pet. at 1-2, par. 5, 6), which IEPA argues is a third-party settlement cost governed by Section 57.8(c) of the UST Program. Mot. at 4; 415 ILCS 5/57.8(c) (2024). IEPA asserts that “[p]ayment after completion of correction action measures” under Section 57.8(a) only refers to payments for “activities performed at a site after completion of the requirements of Section 57.6 and 57.7, or after completion of any other required activities at the [UST] site.” Mot. at 4-5; 415 ILCS 5/57.6, 57.7, 57.8(a) (2024). IEPA cites Section 57.2 for support, which defines “[c]orrective action” as “activities associated with compliance with the provisions of Sections 57.6 and 57.7.” Mot. at 5; 415 ILCS 5/57.2 (2024). IEPA claims that Section 57.8(a)(1) specifically pertains to corrective action costs incurred under an “approved plan and budget,” and further claims that any reimbursement “deemed approved” under Section 57.8(a)(1) cannot be for an amount greater than the amount approved in the plan. Mot. at 5, *citing* 415 ILCS 5/57.8(a)(1) (2024). IEPA further contends that Six M’s petition does not allege that any of the payment being sought, the \$15,750.00 that Six M paid the neighboring property owner to “resolve disputes,” was approved in a corrective action plan or budget. Mot. at 5; *see* Pet. at 3. IEPA concludes that any payment amount deemed approved under Section 57.8(a)(1) would therefore be “excessive,” and so no relief could be granted. Mot. at 5.

IEPA argues that the request in Six M’s petition is correctly characterized as a request for indemnification governed by Section 57.8(c). Mot. at 5; *see* 415 ILCS 5/57.8(c) (2024). IEPA again cites the Section 57.2 definitions for support, highlighting that Section 57.2 provides that “indemnification” means “the indemnification of an owner or operator for the amount of . . . any settlement entered into by the owner or operator, if the . . . settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from [a UST] owned or operated by the owner or operator.” Mot. at 6, *citing* 415 ILCS 5/57.2 (2024). IEPA argues that because Six M’s request for indemnification is governed by Section 57.8(c), IEPA did not have the authority to rule on the request and instead had the duty to forward the request to the Illinois Attorney General for review and approval. Mot. at 5-6; *see* 415 ILCS 5/57.8(c) (2024). IEPA claims that the settlement payment to the neighboring property owner for which Six M now seeks indemnification is clearly described in subsection (2) of Section 57.8(c). Mot. at 6; *see* 415 ILCS 5/57.8(c)(2) (2024). Accordingly, IEPA asserts that Six M’s petition is governed by a separate procedure for review outside of the 120-day IEPA review of corrective action costs. Mot. at 6.

IEPA argues that the plain language of the Act clearly distinguishes Section 57.8(c) third-party settlement indemnification costs from Section 57.8(a) reimbursement requests for corrective action costs. Mot. at 6. IEPA claims this is echoed in Section 734.650(c) of the Board’s rules implementing the UST Program, which directs IEPA to forward indemnification requests to the Attorney General for review and directs IEPA to await the Attorney General’s written approval before placing the request on its priority list for payment. *Id.*, *citing* 35 Ill. Adm. Code 734.650(c). IEPA argues that it cannot approve Six M’s indemnification request because it is required by the Act and Board regulations to forward indemnification requests to the Attorney General and to await the Attorney General’s written approval before placing the request on the priority list for payment. Mot. at 6-7. IEPA concludes that Six M’s characterization of its petition as a petition for review of IEPA’s failure to timely approve a payment application

requires an interpretation of the Act and Board regulations that would thus yield unfair and absurd results. *Id.* at 7.

Six M's Response

Six M responds first that IEPA's motion is improperly brought under Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615, 2-619) (2024) because the petition for review was not an "enforcement action" for which the Board may look to the Code for guidance in ruling on motions to dismiss. Resp. at 1. Six M argues that the petition for review is an appeal of an Agency decision subject to different pleading standards than enforcement actions. *Id.* at 1-2. Six M contends that while the motion asserts that the factual allegations of the petition for review are insufficient, the Agency's decision frames the issues on appeal, so all that is required for petitions for review are the Agency decision, the date of service of the Agency decision, and a "statement specifying the grounds of appeal." *Id.* at 2 (*citing* 35 Ill. Adm. Code 105.408). Six M points to the Board's acceptance of the petition for hearing on November 20, 2025, to show that the petition meets the content requirements for petitions for review. Resp. at 2.¹

Six M also contends that the motion to dismiss is improper because Section 2-615 and 2-619 motions to dismiss are common in "more open-ended proceedings" but are "inappropriate" in this type of appeal before the Board, which was originally assigned a statutory 120-day decision deadline. *Id.*; *see* 415 ILCS 5/40(a)(2) (2024). Six M further contends that a 2-619(a) motion to dismiss is meant to address issues outside of the pleadings and is not proper to address the pleadings themselves, because, "[w]hen making a [S]ection 2-619(a) motion to dismiss, a defendant (for purposes of the motion) admits the legal sufficiency of the complaint, yet asserts the existence of an external defect or defense that defeats the cause of action." Resp. at 2 (*citing* Winters v. Wangler, 386 Ill. App.3d 788, 792 (4th Dist. 2008)).

Six M argues that the Board is the right forum for petitions challenging IEPA's failure to make a final decision on an application for reimbursement within 120 days. Resp. at 3, *citing* Zervos Three v. IEPA, PCB 10-54 (Jan. 20, 2011). Six M further asserts that its petition is properly before the Board, contending that there was a final decision, approval, "by operation of law" once the 120-day deadline passed. Resp. at 3. Six M contends that if IEPA wishes to dispute that the application has been approved by operation of law, the Board is the proper forum to adjudicate IEPA's decision, as Six M alleges happened in Zervos Three. *Id.* Six M argues that Board precedent requires IEPA to give its final determination within 120 days. Resp. at 5, *citing* Metropolitan Pier & Exposition Authority v. IEPA, PCB 10-73, slip op. at 24 (July 7, 2011).

Finally, Six M contends that both corrective action and indemnification payments are governed by Section 57.8(a), because "Section 57.8(a) contains all of the general provisions for review and the means by which payment can be obtained from the UST Fund." Resp. at 3-4.

¹ The fact that the Board already "accepted" the petition under Section 105.408 of the Board's procedural rules is not a substantive decision. Accepting a petition for review is a procedural matter and not an acceptance of its contents or request for purposes of a Section 2-615 motion to dismiss.

Six M asserts that therefore “all applications for payment of indemnification costs must adhere to Section 57.8(a).” Resp. at 4; *see* 415 ILCS 5/57.8(a) (2024). Six M argues that because IEPA has cited Section 57.8(a) in its denial letters for indemnification requests, Section 57.8(a) must govern payment for them. Resp. at 4; *citing Guraya v. IEPA*, PCB 26-32 (Oct. 27, 2025). Six M further asserts that Section 57.8(a) gives IEPA the sole authority to authorize payment from the UST Fund by sending a voucher to the Comptroller. Resp. at 3; *see* 415 ILCS 5/57.8(a)(2) (2024). Six M states that the Attorney General’s only role in payment authorization in indemnification requests is determining whether “a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable.” Resp. at 3 (*citing* 415 ILCS 5/57.8(c)(2) (2024)). Six M alleges that the Board’s UST rules support this as they set forth a similar process to the Act for applications for payment of corrective action costs. Resp. at 4; *see* 35 Ill. Adm. Code 734.Subpart F.

IEPA Reply

IEPA first reiterates that the Board does not have subject matter jurisdiction over the Attorney General’s determinations on indemnification requests under Section 57.8(c) and argues that Six M’s petition is “deficient as a matter of law”. Reply at 2. IEPA argues that Section 57.8 clearly distinguishes requests for indemnification from applications for payment for corrective action. *Id.* at 6. IEPA asserts that the statutory construction of Section 57.8 does not support Six M’s contention that a Section 57.8(c) indemnification request is governed by the 120-day deadline for final IEPA decisions set forth in Section 57.8(a)(1). *Id.* at 3-4. IEPA argues that the final decision deadline is not set in Section 57.8(a), but in subsection (a)(1), and therefore applies to specific scenarios outlined in (a)(1) but does not apply to all payment applications. *Id.* at 4. IEPA distinguishes the caselaw cited by Six M and contends that Six M “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.” *Id.* at 6.

IEPA further argues that while Six M brought its petition seeking relief under Section 57.8(a)(1), the petition “does not allege the basic elements of such a claim, namely an approved plan and budget or corrective action activity.” Reply at 5; *see also* Mot. at 4-5. IEPA contends the request for relief instead describes a settlement indemnification pursuant to Section 57.8(c) of the Act. Reply at 5. IEPA concludes that “Six M fundamentally misconstrues the nature of its own request and names the wrong Respondent in the wrong forum.” *Id.* at 9.

DISCUSSION

Failure to State a Claim

In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers v. Calhoun*, PCB 04-204, slip op. at 2 (July 22, 2004); *see also In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184, 680 N.E.2d 265, 268 (1997); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 438, 546 N.E.2d 580, 584 (1989). “To determine whether a cause of action has been stated, the entire pleading must be considered.” *LaSalle National Trust N.A. v. Village of Mettawa*, 249 Ill. App. 3d 550, 557, 616 N.E.2d 1297, 1303 (2nd Dist. 1993), *citing A, C & S*, 131 Ill. 2d at

438, 546 N.E.2d at 584 (“[T]he whole complaint must be considered, rather than taking a myopic view of a disconnected part[.]” *quoting* People ex rel. William J. Scott v. College Hills Corp., 91 Ill. 2d 138, 145, 435 N.E.2d 463, 466-67 (1982)).

“[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); *see also* Chicago Flood, 176 Ill. 2d at 189, 680 N.E.2d at 270 (“[T]he trial court must interpret all pleadings and supporting documents in the light most favorable to the nonmoving party.”); People v. Peabody Coal Co., PCB 99-134, slip. op. at 1-2 (June 20, 2002); People v. Stein Steel Mills Services, Inc., PCB 02-1, slip op. at 1 (Nov. 15, 2001).

Section 101.506 of the Board’s procedural rules generally provides for “motions to strike, dismiss, or challenge the sufficiency of any pleading filed with the Board.” 35 Ill. Adm. Code 101.506. Further, the Board “may entertain any motion the parties wish to file that is permissible under . . . the Code of Civil Procedure.” 35 Ill. Adm. Code 101.500(a). The Board may look to the Code of Civil Procedure “for guidance where the Board’s procedural rules are silent.” 35 Ill. Adm. Code 101.100(b).

Authority Cited for Bringing Petition

Six M initially characterizes this petition for review as an appeal of IEPA’s failure to notify Six M of its final decision within 120 days of submission of an application for payment governed by Section 57.8(a)(1) of the Act. Pet. at 1; *see* 415 ILCS 5/57.8(a)(1) (2024); *see also* 35 Ill. Adm. Code 101.302(d). The Board notes that Six M’s characterization of the petition appears to contain typographical errors when referencing the authority under which it is brought. The Board will first address this discrepancy before proceeding with its analysis.

Six M’s petition states in its opening paragraph that it is brought pursuant to “Section 57.8(I)” of the Act, “415 ILCS 5/57.8(I)”. Pet. at 1. However, there is no Section 57.8(I) of the Act. Later, the petition cites Section 57.8(a)(1) as the basis for its appeal, alleging that because Six M has not received any notice of the Agency’s final action on the application for payment within the 120 days provided by Section 5.78(a)(1), “[the application for payment] is deemed approved by operation of law. (415 ILCS 5/57.8(a)(1))” Pet. at 3-4, par. 12, 13. The Agency’s response characterizes the petition as a “[p]etition for review [of] an alleged failure to approve payment pursuant to Section 57.8(a)(1) of the Act.” Mot. at 4; 415 ILCS 5/57.8(a)(1) (2024). Section 57.8(a)(1) requires the Agency to make a payment determination on an application “[i]n the case of any approved plan and budget for which payment is being sought” within 120 days of receipt of the application for payment. 415 ILCS 5/57.8(a)(1) (2024). Section 57.8(a)(1) also provides that such a determination is a “final decision” of the Agency. *Id.* Section 57.8(a)(1) further provides that, if the Agency fails to make such a final decision on a payment application within 120 days, the payment application shall be deemed approved by operation of law and the Agency will be required to reimburse the applicant. *Id.* The Board construes Six M’s petition as being brought under Section 57.8(a)(1). *See* 415 ILCS 5/57.8(a)(1) (2024).

Section 57.8(a)(1) Applications for Payment

Six M brought this petition as an appeal of the Agency's failure to notify Six M of its final decision on an application for payment pursuant to Section 57.8(a)(1). Pet. at 1. Section 57.8(a)(1) applies to applications for payment for corrective action measures completed pursuant to an approved plan and budget. 415 ILCS 5/57.8(a)(1) (2024). However, facts alleged in the petition clearly describe that the application at issue is Six M's May 6, 2022 request for indemnification for Six M's payment to a third party. Pet. at 2, par. 6. Six M argues that all requests for payment from the UST Fund are governed by Section 57.8(a). *Id.*, par. 10. Six M relies on this assertion to support its next contention, that the 120-day timeframe in which IEPA must make a final decision on payment applications described in subsection (a)(1) applies to indemnification requests. *Id.*, par. 12; *see* 415 ILCS 5/57.8(a)(1) (2024).

This petition before the Board lacks required elements of a 57.8(a)(1) application for payment. First, Six M has not shown that its request falls within the scope of an "approved plan and budget for which payment is being sought" after completion of corrective action measures at the site for this incident. *See* 415 ILCS 5/57.8(a)(1). Six M contends that on July 13, 2006, all tanks were removed from the Site as "part of early action activities," but "remediation of the releases" at the Site was delayed by a third party, neighboring property owner James McIlvain. Pet. at 1, Par. 4-5. Six M references PCB 12-35, an enforcement action brought by the Attorney General on behalf of the People concerning the leaking UST incident at the site. Pet. at 1, Par. 4-5; *see* People v. Six M Corporation, PCB 12-35. In PCB 12-35, Six M and the Attorney General entered into a stipulation and settlement agreement, which required McIlvain to allow Six M access to the site for cleanup. Pet. at 5; *see* People v. Six M, PCB 12-35. The settlement was filed on January 24, 2023, and accepted by the Board on April 6, 2023. People v. Six M Corporation, PCB 12-35, stip. at 11 (Apr. 6, 2023); *see* Pet. at 2, par. 7. While Six M contends that early action activities were completed prior to entering into the settlement, the cost for which Six M seeks repayment from IEPA is the cost of indemnification for Six M's third-party settlement payment to McIlvain. Pet. at 1, par. 3-5; Pet., Exh. A.

Second, the petition cannot be considered an appeal of an IEPA final decision under Section 57.8(a)(1) because it fails to show that it meets the content requirements of 57.8(a)(1). Section 57.8(a)(1) provides a statutory deadline for a final Agency decision on an approved plan and budget for which payment is being sought. It requires the Agency to notify an applicant of its determination on repayment within 120 days of receipt of the application for payment and documentation of completion of the corrective action activities approved in the plan. *See* 415 ILCS 5/57.8(a)(1) (2024). In this case, Six M has not shown that they complied with the requirements of 57.8(a)(1) by submitting documentation of corrective action activities completed under Section 57.6 or 57.7 to IEPA for review before making the May 6, 2022 request for indemnification. *See* Pet. Exh. A. The cover page of Six M's request for indemnification does not state that it seeks payment for completed corrective action activities or reference to an approved plan or budget. *See id.* The facts alleged in the petition do not clearly support the finding that this is an appeal of a Section 57.8(a)(1) IEPA final decision on an application in the case of an approved corrective action plan and budget for which payment is being sought.

Because Six M does not allege or show that it made a request for repayment for corrective action and submitted the necessary documentation of corrective action activities to IEPA under Section 57.8(a), and because Six M does not allege that IEPA failed to issue a final decision on issuing payment for that corrective action, the Board finds that Six M is not appealing a payment determination by IEPA that would be considered a “final decision” subject to the 120-day payment determination deadline in Section 57.8(a)(1). Taking all well-pled allegations of fact in the petition as true and drawing all reasonable inferences from them in favor of the petitioner, the Board finds that Six M’s allegations do not state a cause of action for reimbursement under Section 57.8(a)(1).

Indemnification

IEPA argues that the “payment” that Six M seeks is indemnification for a settlement payment made to a third party that is not subject to the 120-day deadline for final determinations on payment applications for approved corrective action plans and budgets. Six M alleges that it submitted to IEPA a “Request for Indemnification pursuant to Section 57.8(a) of the Act [citation omitted], seeking payment of the \$15,750.00 [Six M] paid to a third party,” which it further alleges IEPA received on May 11, 2022. Pet. at 2, par. 6, 11; *see also*, Pet. Exh. A (cover page of Six M’s indemnification request), B (screenshot of Agency database on repayment). Six M points to both Section 57.8(a) and 57.8(c) as relating to indemnification requests, but states “requests for payment of indemnification are made pursuant to Section 57.8(a) [], which governs all applications for payment.” *Id.*, par. 10 (*citing* 415 ILCS 5/57.8(a), (c) (2024)).

Six M relies solely on the Agency denial letter in Guraya v. IEPA for support that indemnification payments from the UST Fund can only be given final approval by the Agency because the Agency’s denial letter in Guraya cites Section 57.8(a). Resp., Exh. A. This reliance misconstrues the construction of Section 57.8 and the requirements for payment applications set by the Board’s UST rules. Guraya was a case before the Board where petitioner requested an extension to file an appeal of IEPA’s denial of a payment application for indemnification. Guraya v. IEPA, PCB 26-35. The Board made no ruling in that case, but merely extended an appeal period for 90 days under Section 40 of the Act. *See id.*; 415 ILCS 5/40(a)(1) (2024). The Agency determination letter in Guraya clearly states that Guraya’s application for indemnification was rejected as incomplete because it failed to include information required for applications for payment under Section 57.8(a)(6) of the Act, and for indemnification specifically under Section 734.650(a)(1) and (d) of the Board’s UST rules. Resp., Exh. A at 3-5; *see* 415 ILCS 5/57.8(a)(6) (2024), 35 Ill. Adm. Code 724.650(a)(1), (d). IEPA concluded that the application for payment of costs of indemnification was not complete in accordance with Section 734.650(b) of the Board’s UST rules. IEPA did not have a complete indemnification request to forward to the Attorney General for review and approval. 35 Ill. Adm. Code 734.650(c); 415 ILCS 5/57.8(c) (2024). Without the approval of the Attorney General, IEPA cannot authorize an indemnification request for repayment by sending a voucher to the Comptroller. *See* 415 ILCS 5/57.8(a)(2) (2024), 35 Ill. Adm. Code 734.650(c) (“The owner or operator’s request for indemnification must not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General”).

The fact that the Agency reviewed an application pursuant to Section 57.8(a) in Guraya merely reflects the first part of the Agency's duty to review a petitioner's application for payment from the UST Fund when the petitioner seeks indemnification. The petition for review before the Board in Guraya was ultimately denied because Guraya failed to timely file an appeal. Guraya v. IEPA, PCB 26-35 (Feb. 5, 2026). It therefore establishes no Board precedent. The Board is not bound by IEPA's actions where the Board has not made a ruling. *See* Village of Fox River Grove v. IEPA, PCB 97-156 (Board need not give deference to IEPA's historical interpretations) (*aff'd*, 299 Ill. App. 3d 869, 702 N.E.2d 656 (2nd Dist. 1998)). The Board finds that Six M's reliance on Guraya v. IEPA is unconvincing and misplaced.

The Board also finds that the additional caselaw relied on by Six M does not support the argument that the Board is the right forum for petitions concerning indemnification payments because none of the cases concern payments for settlement indemnification under Section 57.8(c) of the Act. *See* Reply at 6. In Zervos Three v. IEPA, the Board ordered IEPA to pay \$97,049.28 for failing to notify the applicant of final action on a payment application within 120 days, but it concerned an application for reimbursement for corrective action activities and did not involve an Attorney General determination on indemnification under Section 57.8(c). PCB 10-54, slip op. at 30 (Jan. 20, 2011).

"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). The Board agrees with IEPA that 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. Reply at 4; *see, e.g., id.*

To determine whether the 120-day deadline in Section 57.8(a)(1) governs requests for indemnification, the Board first looks to the statutory construction of Section 57.8. Section 57.8 is titled "Underground Storage Tank Fund; payment; options for State payment; deferred correction election to commence corrective action upon availability of funds," and establishes the types of payments that may be made by the Agency from the UST Fund and when that payment may be deferred. 415 ILCS 5/57.8 (2024). Section 57.8(a) is titled "Payment after the completion of corrective action measures," and provides that an "owner or operator may submit an application for payment for activities performed at a site after the completion of the requirements of Section 57.6 and 57.7, or after completion of any other required activities" at the site. 415 ILCS 5/57.8(a) (2024). The plain language shows that Section 57.8(a) is a specification of a *type* of payment that may be made under Section 57.8: payment after completion of corrective action measures. Section 57.8(a)(1) further specifies the Agency's duties when it receives applications for payment after completion of corrective action measures in a specific instance: when the application for payment seeks payment for an approved corrective action plan and budget. *See* 415 ILCS 5/57.8(a)(1) (2024). Next, Section 57.8(b), titled "Commencement of site investigation or corrective action upon availability of funds," describes instances where a plan or budget may be approved but the owner or operator may elect to defer payment from the UST Fund until funds are available. *See* 415 ILCS 5/57.8(b) (2024).

Section 57.8(c), however, does not describe payments for corrective action measures. Section 57.8(c) allows owners or operators to request indemnification for payment of costs incurred as a result of a leaking UST release. *See* 415 ILCS 5/57.8(c) (2024). To request indemnification, an owner or operator must first satisfy the requirements of Section 57.8(a) to submit a payment application to IEPA. *See id.* Upon receiving this completed application, IEPA must forward the indemnification request to the Attorney General for review and approval. *See id.* The Attorney General will only approve indemnification requests in two instances: if “(1) there is a legally enforceable judgment entered against the owner or operator and such judgment was entered due to harm caused by a release of petroleum from an underground storage tank and such judgment was not entered as a result of fraud; or (2) a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable.” 415 ILCS 5/57.8(c), (c)(1)-(2) (2024).

While Section 57.8(c) requires compliance with the payment application requirements of Section 57.8(a) to submit indemnification requests, the plain language of the UST Program makes clear that payments for indemnification are not the same as payments for corrective action. First, Section 57.2 separately defines “indemnification” and “corrective action.” *See* 415 ILCS 5/57.2 (2024). Indemnification applies to final orders, judgments, determinations, or settlements entered into if those final orders, judgments, determinations or settlements arise out of damage caused by a leaking UST site. *See* 415 ILCS 5/57.2. Corrective action is activities associated with compliance with early action (Section 57.6) or an IEPA-approved plan to remediate a leaking UST site pursuant to a site investigation plan approved by IEPA (Section 57.7). *See* 415 ILCS 5/57.2, 57.6, 57.7 (2024).

Second, these defined terms only ever appear in Section 57.8 alone or contrasted with each other. The word “indemnification” does not appear anywhere in Section 57.8(a) or its subsections, including subsection (a)(1). And Section 57.8(c) does not contain the words “corrective action,” “plan,” or “budget” when discussing payments for indemnification. Further establishing that they are different costs and different payments, the terms only appear in later subsections of Section 57.8 discussing payments from the UST Fund when contrasted as “corrective action or indemnification” (emphasis added). *See* 415 ILCS 5/57.8(d) (“costs of corrective action or indemnification”), (e) (“costs of corrective action or indemnification”), (g)(2) (“costs of corrective action or indemnification”), (h) (“payment of any amount from the [UST] Fund for corrective action or indemnification”), (j) (“costs of corrective action or indemnification”), (k) (“costs of corrective action or indemnification”) (2024). Finally, even Six M’s petition recognizes the distinction. *See* Pet. at 2, par. 9 (“The Underground Storage Tank Fund was created to pay **both corrective action and indemnification** (415 ILCS 5/57.11(a)(5) (2024))” (emphasis added)).

Having evaluated the statutory construction and plain language of Section 57, and taking all well-pled allegations of fact in the petition as true and drawing all reasonable inferences from them in favor of the petitioner, the Board finds that payments for corrective action and payments for indemnification are not the same type of payment from the UST Fund. While completing the general requirements for applications for payment of Section 57.8(a) is required to request indemnification, it is Section 57.8(c), not Section 57.8(a), that governs indemnification payments.

Lack of Subject Matter Jurisdiction

A defendant may file a motion to dismiss on the grounds that the court “does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.” 735 ILCS 5/2-619(a)(1) (2024). In ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all reasonable inferences from them in favor of the non-movant. *See, e.g., Beers*, PCB 04-204, slip op. at 2; *see also Chicago Flood*, 176 Ill. 2d at 184, 680 N.E.2d at 268; *A, C & S*, 131 Ill. 2d at 438, 546 N.E.2d at 584. The Board has stated that “[a] motion to dismiss, like a motion for summary judgment, can succeed where the facts, taken in a light most favorable to the party opposing the motion, prove that the movant is entitled to dismissal as a matter of law.” *BTL Specialty Resins v. Illinois Environmental Protection Agency*, PCB 95-9 (Apr. 20, 1995). “[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 Ill. Reg'l. Airport*, 207 Ill. 2d 578, 584-85, 802 N.E.2d 250, 254 (2003).

The Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board’s procedural rules are silent. 35 Ill. Adm. Code 101.100. Section 2-619(a)(1) of the Code of Civil Procedure provides for dismissal where the “court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a transfer of the case to a court having jurisdiction.” 735 ILCS 5/2-619(a)(1) (2024). A Section 2-619 motion to dismiss accepts the well-pleaded facts of the complaint, but nonetheless challenges its legal sufficiency. *Thompson v. Frank*, 313 Ill. App. 3d 661, 663 (3d Dist. 2000).

IEPA argues that the Board lacks the authority to review an Attorney General decision, or lack of a decision, regarding a request for indemnification forwarded to it by IEPA. The Board is a creature of statute and has only the authority granted to the Board by statute. *Allen McAfee v. IEPA*, PCB 15-84, slip op. at 6 (Dec. 4, 2014); *see also Granite City Division of National Steel Company v. IPCB*, 155 Ill. 2d 149, 162, 613 N.E.2d 719, 724 (1993). “The best evidence of legislative intent is the statutory language itself, which must be given its plain and ordinary meaning.” *Ultsch v. Ill. Mun. Retirement Fund*, 226 Ill. 2d 169, 181 (Ill. 2007); *Allstate Ins. Co. v. Menards, Inc.*, 202 Ill. 2d 586, 591 (Ill. 2002) (“The statute’s plain language is the best indicator of the legislature’s intent.”), *citing Lulay v. Lulay*, 193 Ill. 2d 455, 466 (2000). In the administrative law context, the term jurisdiction also 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.” *Ogle County Board ex rel. County of Ogle v. Pollution Control Board*, 272 Ill. App. 3d 184, 192 (2nd Dist. 1995). Having already determined that this is a request for indemnification, not an application for payment for an approved corrective action plan and budget, the Board now must determine whether the Board has the statutory authority to review the Attorney General’s decision on Six M’s request for indemnification.

Section 5 of the Act (415 ILCS 5/5 (2024)) establishes the Board and grants it authority to conduct proceedings. *See* 415 ILCS 5/5(d) (2024). In addition to having the authority to hear appeals of IEPA’s final determinations on permit applications, the Board has the authority to hear “petitions for review of final determinations which are made pursuant to this Act or Board rule

and which involve a subject which the Board is authorized to regulate.” 415 ILCS 5/5(d) (2024). For instance, the Board has found that the general grant of authority is sufficient to allow the Board to review IEPA’s decision involving the sale of emission reduction credits, where the Board regulates the program, even if the statute does not include a specific appeal right. *See Chicago Coke Company v. IEPA*, PCB 10-75, slip op. at 7-8 (Sept. 2, 2010). “Under the Act, the Agency decides whether to approve proposed cleanup plans and budgets for leaking UST sites, and if the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board.” *McAffee v. IEPA*, PCB 15-84, slip op. at 6; *see* 415 ILCS 5/40, 57.7(c)(4) (2024); 35 Ill. Adm. Code 105.Subpart D.

However, when the owner or operator requests indemnification for payment of costs incurred resulting from a leaking UST, if the owner or operator has satisfied the requirements of 415 ILCS 5/57.8(a) to complete corrective action, the Agency shall forward a copy of the request to the Attorney General. *See* 415 ILCS 5/57.8(c) (2024). The Attorney General has the sole statutory authority to approve requests for indemnification payments. 415 ILCS 5/57.8(c) (2024); 35 Ill. Adm. Code 734.650(c). Approval from the Attorney General is mandatory before a request for indemnification may be placed on the priority list for payment from the UST Fund. 35 Ill. Adm. Code 734.650(c). In this case, on June 28, 2022, the Agency approved a corrective action plan and budget proposed by Six M as part of the stipulation and settlement agreement in the People’s enforcement action PCB 12-35. *See People v. Six M Corporation, Inc., and Thomas Maxwell*, PCB 12-35 (Apr. 6, 2023). The terms of the settlement in PCB 12-35 required Six M to implement the corrective action plan. *See id.*

Six M states that the stipulation and settlement agreement in PCB 12-35 “recognized negotiating access to perform the approved remedial activity with neighbor James McIlvain as part of Six M’s compliance activities to date.” Pet. at 2, par. 7. On May 6, 2022, Six M sought indemnification for the \$15,750 paid to McIlvain “for access and property damage.” *Id.* at 1, par. 5; *id.*, Exh. A. Now, Six M characterizes the lack of IEPA response to its application for payment of costs of indemnification as IEPA’s failure to make a final decision on a payment application under 57.8(a)(1). Six M argues that Board caselaw supports this application of Section 57.8(a)(1). Resp. at 3; *see Metropolitan Pier & Exposition Authority v. IEPA*, PCB 10-73, (July 7, 2011). Six M contends that the Board “rejected” IEPA’s “avoidance tactic” for the 120-day decision deadline in *Metropolitan Pier*. Resp. at 3; *see Metropolitan Pier*, PCB 10-73, slip op. at 24 (July 7, 2011). The Board is not persuaded that *Metropolitan Pier* applies here. As IEPA correctly distinguishes in its reply, *Metropolitan Pier* concerned a denial of reimbursement for corrective action costs that were part of an approved corrective action plan and budget – in other words, specifically the scenario envisioned by Section 57.8(a)(1) – and not an indemnification request under Section 57.8(c). *Metropolitan Pier & Exposition Authority v. IEPA*, PCB 10-73, slip op. at 8 (July 7, 2011); Reply at 7.

Section 57.8 clearly distinguishes requests for indemnification, described in Section 57.8(c), from applications for payment for approved corrective action plans and budgets when corrective action has been shown to be completed, described in Section 57.8(a)(1). Section 57.8(a)(1) states that “final decisions” by IEPA are limited to payment determinations on applications for payment for approved corrective action plans and budgets. *See* 415 ILCS 5/57.8(a)(1) (2024). While Section 57.8 applies to all payments from the UST Fund, subsection

57.8(a)(1) is the only portion of Section 57.8 that contains the 120-day deadline for final decisions on applications for payment for completed corrective action measures. By contrast, subsection 57.8(c), which describes indemnification requests, does not have a deadline for final decisions or provision for default payments by operation of law.

Further, indemnification requests are clearly distinct from applications for payment under subsection (a)(1) because subsection (c) requires that any request for indemnification can only be made *after* a petitioner has first completed the corrective action measures in an approved corrective action plan and budget, and then only *after* the petitioner submits an application for payment for those approved completed corrective action measures. Finally, while subsection (c) requires IEPA to review indemnification requests for completeness and forward completed applications to the Attorney General, subsection (c) gives the Attorney General the sole authority to decide whether to approve the requests. IEPA therefore could not be subject to a 120-day deadline to approve and pay indemnification requests because IEPA does not have the statutory authority to make final decisions on those requests. Section 57.8(c) plainly gives that to the Attorney General. The Board does not have the authority to substitute its judgment for the Attorney General on whether to approve and pay indemnification requests. The Board therefore does not have jurisdiction over appeals of the Attorney General's payment determination on an indemnification request.

The Board notes that the Act and Board's rules do impose a duty on IEPA to review indemnification requests for completeness and to then forward completed requests to the Attorney General for review and payment determination. 415 ILCS 5/57.8(c) (2024); 35 Ill. Adm. Code 734.650. The petitioner does not challenge IEPA's compliance with the requirements of Section 57.8(c) of the Act or Section 734.650 of the Board's rules. Rather, it challenges a "final action" to make an approval determination on an indemnification request, which can only be made by the Attorney General. Because Six M's petition seeks review of an indemnification request, and only the Attorney General has the authority to make a final decision approving payment of indemnification requests, the Board finds there is no final action on the application for payment by IEPA that is subject to Board review. Further, the Board finds that because it does not have subject matter jurisdiction over the Attorney General's decision or lack thereof, it lacks authority to grant the relief requested by Six M that the May 6, 2022 request for indemnification be approved by operation of law.

CONCLUSION

For the reasons detailed above, the Board grants the motion to dismiss.

ORDER

1. The Board grants the Agency's motion to dismiss for failure to state a claim.
2. The Board grants the Agency's motion to dismiss for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2024); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

Names and Addresses for Receiving Service of Any Petition for Review Filed with the Appellate Court	
Parties	Board
Patrick D. Shaw Law Office of Patrick D. Shaw Six M Corporation 80 Bellerive Road Springfield, IL 62704 Pdshaw1law@gmail.com	Illinois Pollution Control Board Attn: Don A. Brown, Clerk 60 E. Van Buren Street Suite 630 Chicago, Illinois 60605 Don.Brown@illinois.gov
Elizabeth Dubats, Assistant Attorney General Environmental Bureau Illinois Attorney General's Office Illinois Environmental Protection Agency 115 S. LaSalle St., 23rd Floor Chicago, IL 60603 Elizabeth.Dubats@ilag.gov	

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 4, 2026, by a vote of 4-0.



Don A. Brown, Clerk

Illinois Pollution Control Board