ILLINOIS POLLUTION CONTROL BOARD
June 18, 2026

PIA AVCENTER LLC d/b/a BYERLY AVIATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 24-78
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by M. D. Mankowski):

PIA Avcenter LLC d/b/a Byerly Aviation (Byerly Aviation) filed an appeal asking the Board to review a determination of the Illinois Environmental Protection Agency (IEPA or Agency). IEPA's determination concerns Byerly's aviation center at the Peoria International Airport, 6100 Dirksen Parkway in Peoria, Peoria County. Byerly Aviation provides aviation fuel, jet fuel, and gasoline for airport activities. On August 3, 2023, Byerly reported releases to the Illinois Emergency Management Agency (IEMA) from underground storage tanks (UST) at its facility.

Following the report of leaks from its USTs, on August 7, 2023, Byerly Aviation submitted an application to the Office of the State Fire Marshal (OSFM) to remove five USTs. OSFM issued the permit on the same day. Byerly removed the tanks on August 23 and 24, 2023. Following the removal, Byerly applied with OSFM for a determination of its eligibility to be reimbursed from the State's Underground Storage Tank Fund. OSFM approved payment of costs in excess of Byerly's $5,000 deductible. Byerley then submitted an application for payment of early action costs from the UST Fund in the amount of $224,349.27. On May 10, 2024, IEPA issued a final determination which awarded Byerly $181,772.96 and cut $42.576.31 from the request.

After appealing this determination to the Board, Byerley Aviation filed a motion for summary judgment, after which IEPA filed a cross-motion for summary judgment. Both parties assert that there are no genuine issues of material fact necessitating a hearing. The Board disagrees. For the reasons described below, the Board finds there remains issues of material fact that need to be addressed at a hearing.

In this opinion, the Board first provides this case's procedural history and rules on requests contained within Byerly's motion for summary judgment. The Board then sets forth the uncontested facts of the case, followed by the questions of material facts that remain. Next, the Board provides the relevant legal background on UST regulation, appeals of IEPA UST Fund determinations, and the standards for considering motions for summary judgment. That is followed by the Board's analysis and order.

PROCEDURAL HISTORY

On June 18, 2024, Byerly Aviation filed a petition for review (Pet.) of the May 10, 2024 IEPA determination. On August 8, 2024, the Board accepted the petition as a timely petition for hearing and directed IEPA to file the entire record of its determination. On July 9, 2025, IEPA filed its record (AR).

On January 28, 2026, Byerly filed a motion for summary judgment (Byerly Mot.). On March 17, 2026, with the hearing officer's permission, IEPA filed a cross-motion for summary judgment, or in the alternative a response to Byerly's motion for summary judgment (IEPA Mot.). On March 31, 2026, Byerly timely filed a response (Resp.)

Requests for Official Notice

Within its motion for summary judgment, Byerly asks that the Board take official notice of four documents. IEPA did not respond to Byerly's request. Section 101.630 of the Board's procedural rules allow as follows:

a) Official notice may be taken of:

  1) Matters of which the circuit courts of this State may take judicial notice; and

  2) Generally recognized technical or scientific facts within the Board's specialized knowledge.

b) Parties will be notified of the material noticed under subsection (a) and they will be given an opportunity to contest that material.

c) The Board may use its experience, technical competence, and specialized knowledge in evaluating evidence. 35 Ill. Adm. Code 101.630.

Exhibit A is an October 1993 IEPA Owner/Operator Billing Certification Form. Byerly reports the form was found in *Leaking Underground Storage Tanks* (IICLE, Feb. 1994). Byerly cites to two previous Board cases where the Board has taken official notice of National Fire Protection Association standards (PAK-AGS v. IEPA, PCB 15-14, slip op. at 3 (Dec. 4, 2014)) and IEPA forms downloaded from the Agency's website (Dersch Energies v. IEPA, PCB 17-3, slip op. at 5 (June 17, 2021).

The Board searched the Illinois Institute for Continuing Legal Education, www.iicle.com, for the title of the program or publication, and did not find the document. In PAK-AGS, the petitioner filed the cover page of the NFPA standards, along with the chapter at issue. In Dersch, the petitioner provided the website address where the IEPA form could be located. The Board reserves ruling on taking official notice of the form and Byerly is directed to provide additional information on where a copy of the form can be located.

Exhibit B contains additional records from OSFM, supported by an affidavit from an employee of Green Wave Consulting, LLC. Byerly Aviation filed a Freedom of Information Act request with OSFM to obtain these documents. Byerly asserts that IEPA's final determination included reviewing documents that were not included in the Agency's record filed with the Board in this matter. Byerly Mot. at 7. As these documents are public records from OSFM, Byerly asks that the Board take official notice. The Board agrees, and grants Byerly's request for official notice of the documents in Exhibit B.

Exhibit C is a February 2007 IEPA fact sheet, titled "Tiered Approach to Corrective Action Objectives (TACO) Fact Sheet 11: Metals". Byerly provides a website, https://epa.illinois.gov/topics/cleanup-programs/taco/fact-sheets/metals.html, which, when accessed, says "Fact Sheet 11: Metals This fact sheet is being reviewed and is currently unavailable. Please check again later." Byerly says "Exhibit C is a fact sheet taken from the Agency's website in 2007 and found at [address listed above]. At a time uncertain, the fact sheet was withdrawn." Byerly Mot. at 7. The Board reserves ruling on taking official notice of the fact sheet and Byerly is directed to provide additional information on where a copy of the form can be located.

Exhibit D is a January 2026 IEPA fact sheet titled "Sampling Requirements for Used Oil Underground Storage Tank Systems". Byerly provides a website address, https://epa.illinois.gov/topics/cleanup-programs/lust/publications-regs/sampling-requirements.html, and the Board was able to view the fact sheet in its entirety on the Agency's website. The Board grants Byerly's request for official notice of the document in Exhibit D.

UNCONTESTED FACTS

Both parties agree on the following facts. On July 13, 2015, Byerly Aviation filed an application for removal of all five tanks at its aviation center. Ex. B at 12. Those five tanks are: Tank 1, a 3,000 gallon gasoline tank; Tank 2, a 17,500 gallon aviation fuel tank; Tanks 3 and 4, both 15,000 gallon aviation fuel tanks; and Tank 5, a 20,000 gallon gasoline tank. *Id*. On July 14, 2015, OSFM issued a permit for removal for five USTs. AR at 1. That permit expired on January 14, 2016. *Id*. Byerly Aviation did not remove the tanks during the duration of that permit.

On August 3, 2023, at 4 p.m., a suspected release from the tanks was discovered. AR 10-12. Byerly's environmental consultant, Green Wave Consulting, reported the release the following morning, August 4, 2023, at 10:08 a.m. to IEMA. *Id*. IEMA assigned the releases an incident number. *Id*.

On August 7, 2023, Byerly applied for a permit to remove all five USTs, and OSFM issued the permit on the same day. AR at 13-15. On August 23 and 24, 2023, four tanks were removed - Tanks 2, 3, 4 and 5. AR at 99-100. In addition to the tanks, Byerly removed 1,367 cubic yards of contaminated backfill and ancillary UST piping. AR 104.

On September 29, 2023, Byerly, through its consultant, Green Wave, submitted a 45-day report, as required by 415 ILCS 5/57.6 and 35 Ill. Adm. Code 734.210(d). AR at 101-257. On October 16, 2023, Byerly submitted an eligibility and deductible application to OSFM. AR at 258-263. On October 25, 2023, OSFM issued its determination that Byerly was eligible to seek payment of costs in excess of $5,000. AR at 264-265.

On January 12, 2024, Byerly submitted an Early Action reimbursement claim to IEPA for an amount totaling $224,349.27. AR at 353-492. On May 10, 2024, IEPA issued its decision letter, deducting $42,576.31 and reimbursing Byerly a total amount of $181,772.96. AR 500-505. IEPA deducted the following from the request:

> Standard deductible $5,000.00
> UST removal planned pull $24,260.00
> Handling Ineligible $2,157.75
> Materials lack of doc/UR $113.97
> Lab lack of doc/UR $15.00
> Backfill planned pull UR $7,308.73
> Personnel Exceeds requirement, lack of doc, UR $2,714.81
> Personnel lack of doc, UR $710.
> Lack of doc $295.90. AR at 353.

Byerly Aviation timely appealed this IEPA determination. Byerly appeals the cuts related to costs involving the removal of the USTs, removal of contaminated backfill and remaining product ($31,864.63); cuts for lab analysis and field activities related to pH analysis ($2,843.78); cuts for consulting personnel costs associated with preparing the reimbursement application ($710.15); cuts related to handling charges ($2,157.75). Both Byerly and IEPA agree that the field work costs and consulting costs should be restored, $2,843.78 and $710.15, respectively. Byerly Mot. at 17-22; IEPA Mot. at 12. As to the handling costs, IEPA agrees to restoring only the costs associated with the field work for pH testing, $610.00. IEPA Mot. at 12-13.

LEGAL BACKGROUND

USTs

Title XVI of the Act provides for the administration and oversight of the Leaking Underground Storage Tank Program, which includes requirements for reimbursement from the UST Fund. 415 ILCS 5/57 *et seq*. (2024). The UST Fund was created under the Act and may be accessed by eligible UST owners and operators to pay for the environmental cleanup of leaking USTs. *Id.* Further, Section 57.9 of the Act describes the circumstances under which owners and operators may access the UST Fund. As pertinent to this appeal, Section 57.9(a) states:

> The Underground Storage Tank Fund shall be accessible by owners and operators who have a confirmed release from an underground storage tank or related tank system . . . . 415 ILCS 5/57.9(a) (2024).

Section 57.8(k) of the Act states:

> (k) The Agency shall not pay costs of corrective action or indemnification incurred before providing notification of the release of petroleum in accordance with the provisions of this Title. 415 ILCS 5/57.8(k) (2024).

The Gasoline Storage Act (430 ILCS 15/et seq) states, in part:

> Section 15/3.5
>
> (b) The Office of the State Fire Marshal shall certify either that all underground storage tanks in a facility comply or that one or more tanks in the facility do not comply with the rules adopted by the Office of the State Fire Marshal. The Office of the State Fire Marshal shall affix evidence of compliance or noncompliance to the facility in which the underground storage tank is located.
>
> (c) Beginning December 22, 1998, no person, corporation, unit of local government, firm, or other business entity or political subdivision of the State shall knowingly deliver, deposit, fill, or otherwise place any petroleum, petroleum product, hazardous substance, or regulated substance into any underground storage tank in a facility that:
>
> (1) does not display evidence that its underground storage tanks are in compliance with the rules of the Office of the State Fire Marshal; or
>
> (2) displays evidence that one or more of its underground storage tanks are not in compliance with the rules of the Office of the State Fire Marshal.
>
> 430 ILCS 15/3.5 (2024).

The Board's regulations on USTs can be found at 35 Ill. Adm. Code 734. Relevant to this case, Section 734.630 sets forth the costs that are ineligible for reimbursement from the UST Fund.

Section 734.630 Ineligible Corrective Action Costs

> Costs ineligible for payment from the Fund include, but are not limited to:
>
> (k) Costs for removal, disposal, or abandonment of a UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the OSFM before the owner or operator provided notice to IEMA of a release of petroleum;

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(o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

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(cc) Costs that lack supporting documentation;

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(ee) Costs incurred during early action that are unreasonable;

35 Ill. Adm. Code 734.630.

OSFM's rules regarding USTs can be found, in part, in 41 Ill. Adm. Code 177.

Section 177.115 Evidence of Compliance Status for UST Facilities

(a) Evidence of compliance status for UST facilities shall consist of a tag or decal issued by OSFM. The tag or decal shall be either:

1) Red: indicating non-compliance; or

2) Green: indicating compliance.

***

(c) If more than one UST is located at the facility, and some but not all USTs are in compliance, OSFM, in its discretion, may issue a green decal that shall be affixed as provided in subsection (b) and will issue individual red tags for each of the non-compliant USTs that shall be affixed directly onto the fill pipe of the non-compliant UST or near the fill pipe of the non-compliant UST at a location approved by OSFM. When an NOV [Notice of Violation] for one or more violations of OSFM UST rules under 41 Ill. Adm. Code 172, 174, 175, 176 and this Part is not corrected after 60 days, another NOV will be written to require the application of red tags to all USTs at the facility (pursuant to Sections 3.5(b) and 3.5 (c) of the Gasoline Storage Act.

<u>Appeals of an IEPA Final Determination</u>

Byerly Aviation brought this appeal under Section 57.8(i) of the Act, which provides, in part, as follows:

(i) If the Agency refuses to pay or authorizes only a partial payment, the affected owner or operator may petition the Board for a hearing in the manner provided for

> the review of permit decisions in Section 40 of this Act. 415 ILCS 5/5.8(i) (2024); *see also* 35 Ill. Adm. Code 105, Subpart E.

The basis for the Board's review is framed by IEPA's denial letter. Rock Valley Oil & Chemical Co., Inc. v. Office of the State Fire Marshal, PCB 98-140 (Aug. 6, 1998) ("It is well settled that the denial letter frames the issue on appeal.").

Standards for Ruling on Summary Judgment Motions

Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. 35 Ill. Adm. Code 101.516(b); Adames v. Sheahan, 233 Ill. 2d 276, 295, 909 N.E.2d 742, 753 (2009); Dowd & Dowd, Ltd. V. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998); 35 Ill. Adm. Code 101.516(b). When determining whether a genuine issue of material fact exists, the record "must be construed strictly against the movant and liberally in favor of the opponent." Adames, 233 Ill. 2d at 295-96, 909 N.E.2d at 754; Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986).

The filing of cross-motions for summary judgment does not in itself mean there are no undisputed facts. Nor does it obligate the Board grant summary judgment. "The mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate the Board to render summary judgment." Prairie Rivers Network v. Illinois Pollution Control Board, 2016 Ill. App. (1st) 150971 (Feb. 26, 2016).

ANALYSIS

After the filing of motions for summary judgment, the Board has determined that there remain factual issues that require further testimony and examination. The parties disagree as to whether the 2015 removal permit renders costs associated with removal in 2023 ineligible for reimbursement from the UST Fund. IEPA contends that because of the 2015 removal permits, the removal of the tanks was a planned removal, and thus ineligible for reimbursement. Petitioner disagrees. The Board finds that this is the central issue in this case. However, there are facts involving the history of the tanks that require additional explanation.

Past Violations / Red Tags

IEPA references a November 15, 2017 notice of violation for Tank 3, a March 26, 2021 notice of violation for Tanks 1, 2, 4, and 5, and an undated notice of violation for tanks 1, 2, 4 and 5, referenced in a record of red tag on January 31, 2023. The notices of violation are not contained in the agency record or in the additional documents obtained via FOIA from OSFM. It remains unclear why the record of red tag was removed for Tanks 1, 2, 4, and 5 on November 18, 2021. Additionally, it is unclear if Tank 3 remained red tagged after November 15, 2017, or when Tank 1 was removed.

The Board requires further explanation about the violations found in 2017, 2021 and 2023. Parties are directed to provide copies of the violation notices and any relevant testimony as to whether the violations were related to suspected releases from the tanks. Additionally, the parties are directed to provide any information or testimony as to whether these violations were remedied prior to August 2023. These are facts that the Board finds necessary to establish before making a determination on the legal issue in this matter.

2015 Permit

Byerly asks the Board to look to an appellate decision, Kronon Motor Sales v. Illinois Pollution Control Board, 241 Ill. App. 3d 766 (1st Dist. 1992), for guidance on how to apply the notification requirement. Byerly Mot. at 14. In Kronon, the UST owner had a 1,000-gallon UST on its property, that was installed in 1976. Kronon was issued a permit for removal of the tank on April 25, 1990, and the stated purpose of the removal was listed as "upgrade to current regulations." Removal began on May 8, 1990, and during the removal process, Kronon discovered gasoline releases in the soil that was being excavated. On July 6, 1990, Kronon notified Illinois Emergency Services and Disaster Agency (in subsequent years, IEMA has become the reporting agency) of a petroleum release from its tank. After removal, Kronon submitted for reimbursement from the UST Fund and IEPA found the costs associated with removal were ineligible for reimbursement because they were incurred prior to notifying the Illinois Emergency Services and Disaster Agency.[1]

The Board held that the language in its rules required that "costs incurred prior to notification of ESDA are not reimbursable." Kronon Motor Sales, Inc. v. IEPA, PCB 91-138, slip op. at 2 (Jan 9, 1992). Kronon appealed, and the Appellate Court affirmed the Board's decision. Kronon, 241 Ill. App. 3d 766, 771 (1st Dist. 1992).

The Court found the notice requirement determinative. "The only hardship is that in this case, Kronon's reimbursement is tied to the strict adherence to the notification requirement. As stated before, although this may seem a harsh result in this case, we cannot overturn the Agency's decision simply because we might have reached a different conclusion." Kronon at 771.

Byerly interprets the Court's ruling in Kronon as follows, "[w]hile the opinion noted that a permit for removal of the tank was issued on April 25, 1990 for purposes of 'upgrade to current regulations,' … this date and plan had no significance as there was no obligation to give notice until contamination was observed. In other words, the Act does not penalize planning, it penalizes the failure to timely notify the proper authorities." Byerly Mot. at 11. Byerly argues the Board should apply the same metrics here – though Byerly had a previous removal permit, it notified IEMA within 24 hours of discovering hydrocarbon impacted soil on August 3, 2023. All costs were incurred by Byerly after notifying IEMA of the release.

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[1] The Kronon decision occurred prior to a revision of the Act. "We note, too, that the situation encountered here is not likely to recur because the legislature amended the Act, effective September 6, 1991, to specifically state that corrective action costs incurred before providing ESDA notification shall not be eligible for payment." Kronon at 770.

Attached to the Affidavit are OSFM records showing that the Illinois EPA erred in believing that the Petitioner planned to remove the tanks in 2015. Instead, Petitioner was planning for periodic testing of the tanks which would necessitate their removal if they failed. A certification audit performed by OSFM on August 7, 2014, indicated that the site was in regulatory compliance. Ex. B at p1-6. The audit also noted that four of the tanks used interior lining to satisfy tank corrosion protection requirements which had last passed inspection in September 29, 2010. Beginning January 1, 2011, interior linings were no longer an acceptable form of corrosion protection for new tanks. 41 Ill. Adm. Code 175.500(a). While existing tanks were grandfathered from the new requirements, they needed to pass a comprehensive multi-criteria inspection every five years to maintain the exemption. Byerly Mot. at 15.

The Board can imagine a scenario where a UST owner planned a renovation of its property – not in response to cleaning up a leaking underground storage tank, but for reasons to do with the facility's operations. This hypothetical owner could have secured a permit for removal of a tank, then decided against the renovations, or perhaps decided to delay renovations and that permit expired. If, eight years later, a leak was found in one of its tanks, does that prior unused permit preclude any reimbursement from the UST Fund? The Board finds that it needs additional explanation and testimony from the parties before making that determination.

"Planned Pull"

Byerly makes an argument that by referencing the term "planned tank pull," IEPA is attempting to enforce an unpromulgated rule. Resp. at 2-3, Byerly Mot. at 8, 22. "The 'planned tank pull' language arose from Illinois EPA forms that predate the Board's underground storage tank regulations. The phrase does not appear in the Illinois Environmental Protection Act, the Board's regulations, nor the Agency decision letter." Byerly Mot. at 8.

The term is used in IEPA's cross-motion for summary judgment (IEPA Mot. at 10) and is found in the record in the reviewer's notes in AR 355 ("Planned Pull, Permit for removal originally issued 7/14/15 & not executed") and in the Early Action Reimbursement Claim, AR 460 (handwritten note, unsigned, striking the among of $24,260.00 and saying "Planned pull"). Byerly's Exhibit A also references the term, but the Board has reserved ruling on whether to take official notice of that document. In its cross-motion, IEPA argues "The Record is clear the tanks in question were permitted for removal by OSFM on July 14, 2015. The Board included the 'permitted for removal or abandonment' language in Section 734.630(k) for this exact scenario – a planned tank pull." IEPA Mot. at 10.

The effect of viewing the case through this lens, Byerly argues, is to ignore the statutory directive in Section 57.8(k) of the Act and instead construct a prohibition against a "planned tank pull" in 35 Ill. Adm. Code 734.630(k). Resp. at 3. The Board finds that the facts as applied here need additional explanation at hearing.

Field Work and Handling Costs

Both parties agree that field work costs associated with pH sampling and consulting costs should be restored, $2,843.78 and $710.15, respectively. As to the handling costs, IEPA agrees to restoring only the costs associated with the field work for pH testing, $610.00. The Board reserves ruling on restoring these costs.

CONCLUSION

The Board finds that there remain issues of material fact in this matter and therefore denies both motions for summary judgment. The Board directs the hearing officer to proceed to hearing.

ORDER

1. The Board denies Byerly Aviation's motion for summary judgment.

2. The Board denies IEPA motion for summary judgment.

3. The Board directs the hearing officer to proceed to hearing.

4. The Board takes official notice of Exhibit B and D and reserves ruling on whether to take official notice of Exhibit A and C.

5. The Board reserves ruling on allowing the reimbursement request as to field work and handling costs.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 18, 2026, by a vote of 4-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board