ILLINOIS POLLUTION CONTROL BOARD
July 23, 2026

JESSE FOODMART, INC.,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 24-73
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

INTERIM OPINION AND ORDER OF THE BOARD (by A. Tin):

Jesse Foodmart, Inc. (Jesse Foodmart) filed an appeal asking the Board to review a determination of the Illinois Environmental Protection Agency (IEPA or Agency). IEPA's determination concerns Jesse Foodmart's former gas station at 275 S. Academy Street, Galesburg, Knox County. Jesse Foodmart had reported a suspected release from three underground storage tanks (USTs) at the site to the Illinois Emergency Management Agency (IEMA). Due to the proximity of the tanks to the building at the site, Jesse Foodmart applied to the Office of the State Fire Marshal (OSFM) for a permit to abandon the tanks in place.

Jesse Foodmart performed the abandonment activities under the supervision of an OSFM Tank Specialist, then applied to OSFM for a determination of its eligibility to be reimbursed from the State's Underground Storage Tank Fund. OSFM issued a determination finding that all three tanks were eligible for reimbursement from the UST Fund subject to a $5,000 deductible. Jesse Foodmart's environmental consultant submitted a request for reimbursement from the Fund for $70,407.48. IEPA issued a final determination which awarded Jesse Foodmart $46,611.39 after making 17 deductions totaling $18,796.09 from the request. Jesse Foodmart appeals to the Board nine of the 17 deductions made by IEPA.

After appealing to the Board, Jesse Foodmart filed a motion for summary judgment, and IEPA filed a cross-motion for summary judgment. Both parties assert that there are no genuine issues of material fact necessitating a hearing. The parties dispute which of them is entitled to judgment as a matter of law. Today, the Board grants in part, and denies in part, both Jesse Foodmart's motion for summary judgment and IEPA's cross motion for summary judgment. For six of the contested deductions, the Board finds there exists no genuine issue of material fact and for the remaining three deductions, the Board finds there remains issues of material fact that need to be addressed at hearing.

In this interim opinion, the Board first provides a procedural history and rules on procedural motions related to the motions for summary judgment. The Board then summarizes the uncontested facts of the case. 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 conclusions.

PROCEDURAL HISTORY

On May 9, 2024, Jesse Foodmart filed a petition for review (Pet.) of the March 29, 2024 IEPA final determination (IEPA Determination Letter). On May 16, 2024, the Board accepted the petition as a timely petition for hearing. On July 24, 2024, IEPA timely filed its administrative record (AR). On May 13, 2024, September 6, 2024, and December 2, 2024, Jesse Foodmart filed waivers of the decision deadline, under 35 Ill. Adm. Code 101.308(c)(2). On July 28, 2025, Jesse Foodmart waived its right to a decision within 180 days of filing, under 35 Ill. Adm. Code 101.308(c)(1).

On October 29, 2025, Jesse Foodmart filed a motion for summary judgment (Foodmart Mot.). On December 10, 2025, IEPA filed a cross motion for summary judgment or in the alternative response to Jesse Foodmart's motion of summary judgment (IEPA Mot.). On January 7, 2026, Jesse Foodmart filed a response to IEPA's cross motion for summary judgment (Resp.).

Although the petition initially sought review of ten deductions, Jesse Foodmart withdrew its challenge to Deduction 1 in its response to IEPA's cross-motion for summary judgment. This leaves nine deductions remaining at issue in this appeal.

Request for Official Notice

Within its motion for summary judgment, Jesse Foodmart asks that the Board take official notice of an IEPA document. IEPA did not respond to Jesse Foodmart'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.

The document is an IEPA document titled "Remediation Categories List" that can be accessed on IEPA's website at this address: https://epa.illinois.gov/topics/cleanup-programs/lust/budget-and-billing-forms.html. "The Illinois EPA budget and billing forms require work be classified according to the categories in that list, using the corresponding abbreviations.

Undersigned counsel believes that it may be helpful for the Board to have access to this List to help understand the abbreviations used in the payment application." Foodmart Mot. at 6.

The Board was able to view the document in its entirety on IEPA's website. The Board grants Jesse Foodmart's request for official notice of this document, finding the request satisfies 35 Ill. Adm. Code 101.630.

UNCONTESTED FACTS

Both parties agree on the following facts. Jesse Foodmart was the owner of three underground gasoline storage tanks at 275 South Academy Street, Galesburg, Knox County. AR at 13, 180. Tank 1 was a 12,000-gallon gasoline tank and Tanks 2 and 3 were each 6,000-gallon gasoline tanks. AR at 04, 105, 22. At 9:00 a.m. on April 27, 2023, a soil boring was drilled to a depth of 10 feet with a borehole and a sample number of RC-1. AR at 40. On that same day, at 9:30 a.m., a suspected release of petroleum was discovered from the UST systems at the site. AR at 13. That day, the environmental consultant hired by Jesse Foodmart reported the suspected release to the IEMA, and the suspected release was assigned Incident Number 2023-0338. AR at 1, 2. IEPA acknowledged notification of the release on April 28, 2023. AR at 3.

On May 2, 2023, OSFM received a request to grant a permit for the removal of the USTs. AR at 7. A subsequent request was submitted to OSFM on May 5, 2023, to grant a permit for abandonment in place of the USTs and their piping after it was determined that removal of the USTs may undermine the nearby building due to their proximity. AR 5-6. The May 2, 2023 request was amended on May 5th to reflect the new plan of removing only the piping. *Id.* Both permits were granted by OSFM on May 7, 2023. *Id.* and at AR at 7. The permit for abandonment in place was assigned Permit # 00481-2023ABN. *Id.* The permit for the removal of the piping was assigned Permit # 00464-2023REM. AR at 7.

Tank abandonment was conducted by CW^{3}M, Bandy Concrete & Excavating (Bandy), and Lenz Oil personnel on June 5, 2023 and June 6, 2023, with oversight from an OSFM Tank Specialist. AR at 14. On June 5, 2023, CW^{3}M removed concrete from the top of the USTs and began to monitor each of the tanks for potential explosive vapors. *Id.* On June 6, 2023, CW^{3}M cut an access square in the top of each of the USTs, ventilated and cleaned them, filled them with flowable fill, and backfilled above each UST with sand and gravel. *Id.* Once the OSFM Tank Specialist deemed the cleaning process to be complete, the tanks were filled with 15 tons of rock and 137.5 yards of flowable fill. *Id.*

The application for reimbursement from the Underground Storage Tank Fund was received by the IEPA on November 2, 2023. AR at 98. The application covers the period from April 1, 2023 to July 31, 2023, and the amount requested was $70,407.48. AR at 97. The OSFM eligibility letter is dated August 10, 2023, and found that Jesse Foodmart was eligible to seek reimbursement for costs in excess of $5,000 for work associated with the three USTs. AR at 89.

The IEPA Determination Letter is dated March 29, 2024. This letter indicates that IEPA was prepared to grant a voucher for $46,611.39 and provides a list of 17 deductions with descriptions of each. Of the 17 deductions made by IEPA, Jesse Foodmart appealed ten, deductions numbered 1, 4, 6, 7, 10, 11, 12, 15, 16 and 17. In its response, Jesse Foodmart withdrew its appeal of Deduction 1. Resp. at 3.

The following summarizes the deductions at issue in this appeal.

Deduction 4: IEPA deducted $10,996.58 for “tank abandonment costs, which lack supporting documentation.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund under Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(cc), and 734.630(ee). *Id.*

Deduction 6: IEPA deducted $79.06 for “vehicle charges, that lack supporting documentation.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.850(b), and 734.630(dd). *Id.*

Deduction 7: IEPA deducted $21.24 for costs for “vehicle charges, that lack supporting documentation.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(cc), 734.630(o), and 734.630(dd). *Id.*

Deduction 10: IEPA deducted $281.76 for “personnel costs which exceed the minimum requirements necessary to comply with the Act.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(v), and 734.630(cc). *Id.*

Deduction 11: IEPA deducted $704.40 for “consulting personnel costs which exceed the minimum requirements necessary to comply with the Act.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(v), and 734.630(cc). *Id.*

Deduction 12: IEPA deducted $105.66 for “consulting personnel costs which exceed the minimum requirements necessary to comply with the Act.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(v), and 734.630(ee). *Id.*

Deduction 15: IEPA deducted $166.40 for “consulting personnel costs which exceed the minimum requirements necessary to comply with the Act.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(cc), and 734.630(ee). *Id.*

Deduction 16: IEPA deducted $384.64 for “consulting personnel costs which exceed the minimum requirements necessary to comply with the Act.” IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), 734.630(cc), and 734.630(ee). *Id.*

<u>Deduction 17</u>: IEPA deducted $2,305.13 for "handling charges charged by persons other than the owner's or operator's primary contractor." IEPA Determination Letter, Attach. A. IEPA states that this cost is not eligible for reimbursement from the Fund pursuant to Section 57.7(c)(3) of the Act, Section 57.1(a) of the Act, and 35 Ill. Adm. Code 734.630(dd) and 734.630(rr). *Id.*

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, in part:

> 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 of a substance listed in this section. 415 ILCS 5/57.9(a) (2024).

415 ILCS 5/57.6(b) provides for the abandonment of USTs as follows:

Sec. 57.6. Underground storage tanks; early action.

(a) Owners and operators of underground storage tanks shall, in response to all confirmed releases, comply with all applicable statutory and regulatory reporting and response requirements.

(b) Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal. The owner or operator may also remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment for early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.

The Office of the State Fire Marshal's regulations provide as follows for abandoning USTs:

41 Ill. Adm. Code 175.840 Abandonment-in-Place

a) No tank or piping may be abandoned-in-place unless the permit applicant demonstrates eligibility for a waiver of the removal requirement for the tank and/or piping. The waiver shall be granted only in the following instances:

1) it would be infeasible to remove the UST due to loss of adjacent or subjacent support of nearby structures, such as railroad tracks, streets (as defined in Section 1-201 of the Illinois Vehicle Code [625 ILCS 5/1-201]), and other USTs;

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d) For UST or piping abandonment-in-place, the following requirements and procedures shall be followed:

1) An OSFM permit under Section 175.300 shall be obtained and the work scheduled with OSFM.

2) Except as otherwise provided in this Section, the procedures of API 1604 shall be followed for vapor freeing and inerting procedures.

3) All health and safety monitoring equipment shall be maintained according to manufacturer's specifications.

4) An exclusion zone shall be established, within which smoking is prohibited. The exclusion zone shall include all hazardous (classified) locations/areas where work related to abandonment-in-place is being conducted. The use of spark producing/non-explosion proof equipment is prohibited in the vapor hazard area prior to removal of product and sludges and attaining the LEL/oxygen levels required in subsection (d)(9).

5) Upon excavating to the top of the tank, on-site personnel shall drain product into approved drums or other approved receptacles. Any associated piping to be abandoned-in-place shall be properly secured or capped. Any piping removal shall adhere to Section 175.830. Further excavation below the top of the tank is not allowed until STSS is present and has verified that tank conditions meet the LEL/oxygen criteria of subsection (d)(9).

6) All liquids shall be removed from the tank using explosion-proof pumps or hand pumps.

7) The tank atmosphere and the excavation area shall be regularly monitored with a combustible gas indicator for flammable or combustible vapor concentration. Monitoring the UST shall be done at 3 levels in the tank: top, middle and bottom. A confined space entry permit shall be obtained prior to tank entry and SDS must be on site.

8) Vapor freeing shall be done in accordance with API 1604, except that dry ice shall not be allowed as a method of inerting tanks. When vapor freeing the tank with compressed air or using inert gases under pressure, all devices shall be bonded to the tank and the tank shall be grounded to a separate ground. When using inert

gases, the cylinder shall be equipped with a pressure gauge so that no more than 5 psi can be discharged into the tank during vapor freeing procedures. To ensure and maintain proper grounding and bonding, the connections shall be tested by the licensed contractor for continuity. This testing shall be done with equipment designed for continuity testing. When vapor freeing a tank, plastic pipes shall not be allowed as a vent tube on eductors.

9) The tank shall be regularly monitored to ensure that explosive conditions do not exist. A maximum of 5% of the LEL, or 5% or less oxygen concentration, shall be attained before the tank is considered safe for abandonment.

10) An STSS shall be on site before any tanks and piping are abandoned in place or before any hot work can proceed.

11) A sufficient number of holes or openings shall be made in the tank for abandonment-in-place procedures if existing openings are not adequate.

12) Cleaning procedures shall be in accordance with API 2015, incorporated by reference in 41 Ill. Adm. Code 174.210. Protective respiratory equipment for tank cleaning personnel shall be the type that provides positive air pressure to a full-face mask throughout the breathing cycle, in accordance with API 2015.

13) After cleaning, on-site personnel shall proceed to introduce an OSFM-approved, inert material through openings in the top of the tank to minimize any surface settling subsequent to abandonment of the tank in place. Allowed inert material shall be limited to sand, gravel, clay, bentonite or inert material mixed with portland cement to increase flowability. The portland cement concentration may not exceed 50 lbs. per cubic yard of mixed material. Tripolymer foam may only be used on compartment tanks where at least 1 compartment is not being abandoned in place and will remain in use. Any other materials must be approved by OSFM during the permit process. The procedure for filling shall be in accordance with API 1604.

14) After the tank is filled with inert material, all tank openings shall be plugged or capped unless it was necessary to cut open the tank top. The vent line shall be disconnected, capped and removed.

15) Every abandonment-in-place requires a site assessment (see 41 Ill. Adm. Code 176.330).

16) When a UST is abandoned-in-place, the owner of the UST shall keep a permanent record of the UST location, the date of abandonment-in-place and the procedure used for abandonment-in-place.

The Board's UST regulations provide as follows:

35 Ill. Adm. Code 734.210(d)(2) Early Action

d) Within 45 days after initial notification to IEMA of a release plus 14 days, the owner or operator must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in subsections (a) and (b) of this Section. This information must include, but is not limited to, the following:

2) Data from available sources or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions and land use;

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f) *Notwithstanding any other corrective action taken, an owner or operator may, at a minimum, and prior to submission of any plans to the Agency, remove the tank system, or abandon the underground storage tank in place, in accordance with the regulations promulgated by the Office of the State Fire Marshal* (see 41 Ill. Adm. Code 160, 170, 180, 200). *The owner may remove visibly contaminated fill material and any groundwater in the excavation which exhibits a sheen. For purposes of payment of early action costs, however, fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.* [415 ILCS 5/57.6(b)] Early action may also include disposal in accordance with applicable regulations or ex-situ treatment of contaminated fill material removed from within 4 feet from the outside dimensions of the tank.

35 Ill. Adm. Code 734.630 Ineligible Corrective Action Costs

m) Costs exceeding those contained in a budget or amended budget approved by the Agency;

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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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v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;

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cc) Costs that lack supporting documentation;

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ee) Costs incurred during early action that are unreasonable;

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hh) Handling charges for subcontractor costs that have been billed directly to the owner or operator

ii) Handling charges for subcontractor costs when the contractor has not submitted proof of payment of the subcontractor costs;

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rr) Handling charges charged by persons other than the owner's or operator's primary contractor;

35 Ill. Adm. Code 734.845 Professional Consulting Services

Payment for costs associated with professional consulting services will be reimbursed on a time and materials basis pursuant to Section 734.850. Such costs must include, but are not limited to, those associated with project planning and oversight; field work; field oversight; travel; per diem; mileage; transportation; vehicle charges; lodging; meals; and the preparation, review, certification, and submission of all plans, budgets, reports, applications for payment, and other documentation.

35 Ill. Adm. Code 734.850(b) Payment on Time and Materials Basis

This Section sets forth the maximum amounts that may be paid when payment is allowed on a time and materials basis.

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b) Maximum payment amounts for costs associated with activities that do not have a maximum payment amount set forth in other Sections of this Subpart H must be determined by the Agency on a site-specific basis, provided, however, that personnel costs must not exceed the amounts set forth in Appendix E of this Part. Personnel costs must be based upon the work being performed, regardless of the title of the person performing the work. Owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

35 Ill. Adm. Code 734.115 Definitions

"Handling Charges" means administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.

35 Ill. Adm. Code 734.865 Handling Charges

Payment of handling charges must not exceed the amounts set forth in Section 734.635 of this Part.

35 Ill. Adm. Code 734.635 Payment for Handling Charges

Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table:

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
$0 - $5,000	12%
$5,001 - $15,000	$600 + 10% of amt. over $5,000
$15,001 - $50,000	$1,600 + 8% of amt. over $15,000
$50,001 - $100,000	$4,400 + 5% of amt. over $50,000
$100,001 - $1,000,000	$6,900 + 2% of amt. over $100,000

35 Ill. Adm. Code 734.APPENDIX E Personnel Titles and Rates

Title	Degree Required	Ill. License Req'd.	Min. Yrs. Experience	Max. Hourly Rate
Engineer I	Bachelor's in Engineering	None	0	$75
Engineer II	Bachelor's in Engineering	None	2	$85
Engineer III	Bachelor's in Engineering	None	4	$100
Professional Engineer	Bachelor's in Engineering	P.E.	4	$110
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	$130
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	$70
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	$75
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	$88
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	$92
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	$110
Scientist I Scientist II Scientist III Scientist IV Senior Scientist	Bachelor's in a Natural or Physical Science Bachelor's in a Natural or Physical Science Bachelor's in a Natural or Physical Science Bachelor's in a Natural or Physical Science	None None None None None	0 2 4 6 8	$60 $65 $70 $75 $85
Project Manager	None	None	8[1]	$90
Senior Project Manager	None	None	12[1]	$100

Technician I	None	None	0	$45
Technician II	None	None	2[1]	$50
Technician III	None	None	4[1]	$55
Technician IV	None	None	6[1]	$60
Senior Technician	None	None	8[1]	$65
Account Technician I	None	None	0	$35
Account Technician II	None	None	2[2]	$40
Account Technician III	None	None	4[2]	$45
Account Technician IV	None	None	6[2]	$50
Senior Acct. Technician	None	None	8[2]	$55
Administrative Assistant I	None	None	0	$25
Administrative Assistant II	None	None	2[3]	$30
Administrative Assistant III	None	None	4[3]	$35
Administrative Assistant IV	None	None	6[3]	$40
Senior Admin. Assistant	None	None	8[3]	$45
Draftperson/CAD I	None	None	0	$40
Draftperson/CAD II	None	None	2[4]	$45
Draftperson/CAD III	None	None	4[4]	$50
Draftperson/CAD IV	None	None	6[4]	$55
Senior Draftperson/CAD	None	None	8[4]	$60

[1] Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.
[2] Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.
[3] Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.
[4] Equivalent work-related or college level education with significant coursework in drafting or computer aided design ("CAD") can be substituted for all or part of the specified experience requirements.

Appeals of IEPA Determinations

Jesse Foodmart 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 Determination 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."). *See also*, Pulitzer Community Newspapers, Inc. v. IEPA, PCB 90-142, slip op. at 6 (Dec. 20, 1990). Focusing on IEPA's Determination Letter "is necessary to satisfy principles of fundamental fairness because it is the applicant who has the burden of proof" to demonstrate that the reasons for denial are inadequate. *Id.*, *citing* Technical Servs. Co. v. IEPA, PCB 81-105, slip op. at 2 (Nov. 5, 1981).

Standards for Ruling on Summary Judgment

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

Tank Abandonment Costs – Deduction 4 – $10,996.58

On June 5 and 6, 2023, Jesse Foodmart's environmental consultant, CW^{3}M, hired Bandy to perform tank abandonment activities. On June 5, 2023, CW^{3}M removed concrete from the top of the USTs and monitored the three tanks for potential explosive vapors. On June 6, 2023, CW^{3}M, cut an access square in the top of each of the USTs, ventilated and cleaned the tanks, filled the USTs with flowable fill, and backfilled above the USTs. "Once all cleaning was deemed complete by the OSFM Tank Specialist, the tanks were … filled with 15 tons of rock and 137.5 yards of flowable fill. Concrete, rock and soil debris were hauled to the Sangamon Valley Landfill for disposal." AR at 14. Bandy invoiced CW^{3}M $23,731.13 for this work, which CW^{3}M paid. *Id.* at 144, 168-170.

Jesse Foodmart requested reimbursement for 16 labor hours on June 5, 2023, but in its petition noted that the labor hours should have been eight instead. Pet. at 4. Jesse Foodmart does not object to reducing the reimbursement request by those eight hours, which would result in a reduction of $560.00 from the reimbursement amount. Petitioner continues to dispute the remainder of IEPA's deduction.

Jesse Foodmart objects to the reduction of the remaining labor, equipment, and material costs for Bandy, asserting that those costs were supported by "breakdowns, receipts and cancelled checks" included in the record. Pet. at 4. Petitioner also questions IEPA's deductions, noting that "IEPA approved Bandy's cost of purchasing rock and flowable concrete while not agreeing to pay the labor costs to haul and place those materials". Foodmart Mot. at 14.

IEPA deducted the following labor and equipment costs:

Worker/Equipment	**Hours**	**Rate per hour**	**Total Cost**
Equipment transport	8	$150	$1,200.00
Labor on 6/5/23	8	$70	$560.00
Excavator on 6/5/23	9	$195	$1,755.00
Skid Loader 6/5/23	9	$150	$1,350.00
Dump Truck 6/5/23	9	$90	$810.00
Labor 6/6/23	8	$70	$560.00
Excavator 6/6/23	10	$195	$1,950.00
Skid Loader 6/6/23	9	$150	$1,350.00
Dump Truck 6/6/23	9	$90	$810.00
TOTAL			**$10,345.00**

In addition to these amounts, IEPA also deducted one night of lodging associated with Bandy's work, totaling $91.58.[1] Together, these deducted labor, equipment, and lodging costs correspond to the portion of the Bandy invoice that IEPA disallowed.

IEPA deducted $10,996.58 from the reimbursement request, thereby cutting Bandy's labor time, equipment, and one night of lodging. IEPA reimbursed Jesse Foodmart for materials – rock and flowable cement. AR at 144.

The reimbursement request was sent to IEPA on October 30, 2023. On February 28, 2024, IEPA's reviewer reached out to CW^{3}M with questions about the documentation of these costs for June 5, and 6, 2023. AR at 198. Among the questions asked were additional information regarding the dump truck costs for June 5th and 6th and whether the charge for the machines used included labor. Within that correspondence, the IEPA reviewer asked for a 30-day waiver of the 120-day decision deadline. CW^{3}M agreed to the extension on February 29, 2024, which set the decision deadline to March 31, 2024. AR at 201.

On March 7, 2024, CW^{3}M responded to the initial questions, and on March 22, 2024, the IEPA reviewer issued additional questions. AR at 195. Those questions included, "What was Gregg Bandy personnel doing on 6/5? How was the requested equipment being utilized? … What was Gregg Bandy personnel doing on 6/6? How was the requested equipment being utilized?" AR at 195. IEPA issued its final decision on March 29, 2024. CW^{3}M did not respond to the second set of questions until April 3, 2024, after issuance of the determination. AR at 200. IEPA says, "based upon the information submitted to the Illinois EPA by the March 29, 2024

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[1] These amounts represent only the costs at issue in the deduction and do not include the materials charges that IEPA approved for reimbursement. *See* AR at 144.

final decision, the deduction of $10,996.58 in tank abandonment costs due to a lack of supporting documentation was proper." IEPA Mot. at 14.

Jesse Foodmart disagrees with IEPA and argues that the required documentation of these costs was provided. "The application, as submitted, included the invoice from the contractor identifying who performed the work, when the work was performed and how much was charged." Resp. at 4, *citing* AR at 144.

Board Discussion and Findings

Based on the documentation available to IEPA at the time of its determination, the Board finds that the costs for equipment transport, eight hours of labor, the billed hours for the excavator, skid loader, dump truck on June 5, and 6, 2023, were not adequately documented in the reimbursement application. For the requested reimbursement of costs associated with purchases of rock, flowable cement, lodging, and landfill deposits, Jesse Foodmart provided detailed receipts for each. The record does not include rental receipts for the excavator, skid loader, or dump truck on June 5 and 6, 2023. Similarly, the record does not include detailed receipts for time billed by the employees. Because these costs lacked sufficient supporting documentation prior to issuance of the Agency's March 29, 2024 determination, the Board finds they are ineligible for reimbursement from the UST Fund, under Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), (cc), and (ee).

The Board finds no genuine issue of material fact regarding Deduction 4, and that IEPA is entitled to judgment as a matter of law on this issue. Accordingly, the Board denies Jesse Foodmart's motion for summary judgment on Deduction 4 and grants IEPA's cross-motion for summary judgment on this issue.

Vehicle Costs – Deduction 6 and 7 - $100.30

In Dersch Energies, Inc. v. IEPA, PCB 17-3 (Aug. 11, 2022), the Board reviewed the record involving mileage reimbursement for travel between Springfield and Lawrenceville, a total of 310 miles of travel. Dersch, PCB 17-3, slip op. at 30. Jesse Foodmart looks to Dersch for the principle that, in the past, the Board has approved "reasonable" costs for mileage as a cost for a professional consultant. Foodmart Mot. at 16.

Section 734.605 sets forth the requirements for a "complete application" for reimbursement from the Fund. A complete application must consist of 10 elements, one of which is "[a]n accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed." 35 Ill. Adm. Code 734.605(b)(9). When reviewing the application for reimbursement, IEPA may include

> a review of any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of any plans, budgets, or reports previously submitted for the site to ensure that the application for payment is consistent with work proposed

> and actually performed in conjunction with the site. 35 Ill. Adm. Code 734.610(c).

Here, Jesse Foodmart appeals deductions numbered 6 and 7 which relate to its consultant's costs for mileage for two round trips between Springfield and Galesburg, and three one-way trips between those cities as follows:

Date	Miles	Locations	Rate in dollars	Expenditure	Record citation
4/27/23	180	Galesburg to Springfield	$.59	$106.20	AR 182
5/23/23	280	Round trip from Springfield to Galesburg	$.59	$165.20	AR 187
5/24/23	280	Round trip from Springfield to Galesburg	$.59	$165.20	AR 187
6/5/23	140	Springfield to Galesburg	$.59	$82.60	AR 192
6/6/23	140	Galesburg to Springfield	$.59	$82.60	AR 192
TOTAL	1,020		$.59	$601.80	

Deduction 6 - $79.06

IEPA's Determination Letter frames the issues on appeal. For Deduction 6, the IEPA Determination Letter deducts $79.06 for "round-trip mileage from the consultant's office to the site location of 606 miles per round trip and a total of 1 round-trip on May 24, 2023" and reimburses $357.54 for mileage for those trips. AR at 210. Jesse Foodmart argues that its reimbursement request for April 27, May 23, and May 24, 2023, was for three separate trips, totaling 740 miles. Foodmart Mot. at 15-16. "The Illinois EPA reviewer appears to have concluded that the 740 miles was for one round trip between Galesburg and consultant's office in Marion and deducted 134 miles." *Id*. at 15-16, *citing* AR 124. On the invoice, the IEPA reviewer has handwritten "[f]rom Marion, IL to site RT – 606 miles". AR 124. The invoice listed a total cost of $436.60. The reviewer hand wrote "357.5" and "-79.06". *Id*.

In its cross-motion, IEPA explains the reviewer's confusion about the listed mileage for April 27, 2023.

> This single one-way trip for 180 miles caused confusion for the Illinois EPA reviewer. For the mileage reimbursement requests for the roundtrips taken on May 23 and May 24, 2023, 280 miles was requested (or 140 miles each way). (AR187). Likewise, the mileage reimbursement requests for the two one-way trips taken on June 5 and June 6, 2023, were for 140 miles each. (AR192). As evidenced by 4 of the 5 mileage reimbursement requests, the distance from Springfield to Galesburg is 140 miles. It is unclear why Petitioner requested the additional 40 miles for the mileage reimbursement

> for the April 27, 2023, one-way trip. The Petitioner failed to provide sufficient documentation to support their request therefore, the Agency's decision to cut this mileage charge was warranted as the cost lacked supporting documentation. IEPA Mot. at 15.

In its response, Jesse Foodmart does not explain why the April 27, 2023 trip was 40 miles more than other trips between Springfield and Galesburg. Rather, it argues that IEPA raised a new issue in its cross-motion, which was not raised in the IEPA Determination Letter. Jesse Foodmart argues that the letter makes a deduction to the May 24, 2023 trip, not the April 27, 2023 trip, so IEPA's explanation about the mileage number for April 27 should be inapplicable in this case. Resp. at 5-6.

Board Discussion and Finding

CW^{3}M Company, Inc., the consultant used by Jesse Foodmart in this matter, lists its office address as 701 South Grand Avenue West, Springfield, IL. AR at 107. Jesse Foodmart is located at 275 S. Academy Street, Galesburg, IL. Foodmart Mot. at 2. For a one-way trip on April 27, and two round trips on May 23 and 24, the CW^{3}M invoice lists the mileage total at 740 miles. The record does not contain sufficient detail to determine why Marion is listed as one of the travel locations in the reviewer's notes. Without documentation in the record or in the parties' filings that the consultants traveled from a location in Marion, the Board finds that IEPA correctly used the listed address of CW^{3}M's office and Jesse Foodmart's location to calculate the mileage.

Even after explanations from the parties, there remains confusion as to which trip was denied reimbursement in the IEPA Determination Letter. *Assuming arguendo*, there is justification for the extra 40 miles requested on April 27th, at a mileage rate of $.59, that distance would result in an expense of $23.60, not $79.06. Working in reverse, a cost of $79.06, multiplied by the mileage rate of $.59 would equal 134 miles traveled, not 140 or 180. Further, the IEPA Determination Letter describes the round-trip distance "from the consultant's office to the site location of 606 miles per round trip." AR 210. It is unclear to the Board how that mileage number was calculated if a one-way trip is 140 miles between the consultant's office in Springfield to Jesse Foodmart in Galesburg.

The Board finds that there exists a genuine issue of material fact involving Deduction 6. Therefore, the Board denies both motions for summary judgment on Deduction 6 and directs the parties to proceed to hearing on this issue.

Deduction 7 - $21.24

For Deduction 7, the IEPA Determination Letter deducts $21.24 for "round-trip mileage from the consultant's office to the site location of 244 miles per round-trip and a round-trip on June 5, 2023" and reimburses $143.96. Jesse Foodmart seeks reimbursement for a one-way trip on June 5th "to the location and hotel" for 140 miles and a one-way return trip from "the location and hotel" on June 6th for 140 miles. Mot. at 16.

The reviewer's handwritten notes on the invoice say, "[f]rom Springfield, IL to Site 244 RT". AR at 125. The reviewer approved "143.96 and deducted $21.24" from Jesse Foodmart's $165.20 request. AR at 125. Jesse Foodmart argues "[w]hile it may be theoretically possible to travel from one to another in 244 miles, the trip also included stops for meals, supplies, fuel and lodging. Also, the shortest distance through Peoria in terms of time is by using the I-474 bypass and not the slower route through downtown Peoria." Foodmart Mot. at 16. For these deductions, Jesse Foodmart argues "[t]hese cuts are erroneous in that the Illinois EPA's own math is inconsistent from day to day. Furthermore, the Illinois EPA's calculation fail[s] to take into account stops for gas, food, hotel and field purchases." Pet. at 4. The lodging receipt lists the hotel address as 2160 East Main Street, Galesburg, Illinois. AR at 131.

Board Discussion and Finding

The record supports Jesse Foodmart's explanation that stops for purchasing supplies and meals may be reimbursable under the UST Fund. However, the reimbursement application does not include receipts or location information for any such purchases. The record also reflects that IEPA used inconsistent mileage estimates between Springfield and Galesburg in evaluating the May 23-24 and June 5-6 travel. Because the milage documentation and IEPA's calculations differ across the relevant dates, the Board finds a genuine issue of material fact exists regarding Deduction 7. The Board therefore denies both motions for summary judgement on this issue and directs the parties to proceed to hearing.

Site Assessment/Background Information – Deduction 10 - $281.76

Jesse Foodmart requested reimbursement for one hour of work performed by a Senior Project Manager on April 28, 2023, and one hour of work performed on June 20, 2023. That manager's hourly rate was $140.88, and Jesse Foodmart requested $281.76 for the work performed. AR at 180-181, 189-190.

IEPA deducted $281.76 with handwritten notes on the invoice saying "$281.76 for Sr PM for OSFM SA". AR 220.

Jesse Foodmart argues that this employee performed work under 35 Ill. Adm. Code 734.210(d)(2) – gathering information on site assessment and background information. The initial hour of work was documented in CW^3M's invoice as occurring on April 28, 2023, the day after IEMA was notified of the release. AR at 180. The second hour was performed on June 20, 2023, and was for preparation of the 45-Day Report. AR at 189. Jesse Foodmart argues that the reviewer's handwritten notes show they were in error – believing the work was performed for an OSFM Site Assessment.

IEPA argues that it was unclear what role this Senior Project Manager played in the 45-Day Report, so the reviewer deducted those two hours of time for a site assessment. IEPA also argues the work performed was for an OSFM Site Assessment Report, not a 45-day Report. IEPA Mot. at 16. The reimbursement claim included 4.5 hours for an Engineer III and 18.75 hours for a Senior Scientist to prepare the 45-day report. AR at 118. IEPA argues that "it was unclear what role [Senior Project Manager] played in 45-Day Reporting, therefore the Illinois

EPA correctly deducted the Senior Project Manager's time for Site Assessment/Background information for lack of supporting documentation and exceeding the minimum requirements of the Act where a Site Assessment Report is an Office of the State Fire Marshal requirement, not the Illinois EPA." IEPA Mot. at 16.

Board Discussion and Findings

Based on the documentation available to IEPA at the time of its determination, the Board finds that the record does not support reimbursing two hours of the Senior Project Manager's time due to lack of documentation of the work performed. Although Jesse Foodmart asserts that this work was related to site assessment activities and preparation of the 45-Day Report, there is no documentation to support those arguments. Because the record lacks adequate supporting documentation for this cost, the Board finds the expense ineligible for reimbursement from the UST Fund.

The Board further finds no genuine issue of material fact regarding Deduction 10 and that IEPA is entitled to judgment as a matter of law on this issue. Accordingly, the Board denies Jesse Foodmart's motion for summary judgment on this issue, and grants IEPA's cross-motion for summary judgment as to Deduction 10.

Consultant Personnel Costs – Deductions 11 and 12 – $810.06

IEPA deducted a total of $810.06 for consulting personnel costs associated with "drilling to determine and confirm the presence of a release." Jesse Foodmart argues that those release confirmation samples are required by the Act and that it only sought reimbursement for work performed after reporting the release to IEMA. Pet. at 5.

IEPA deducted five hours of Tod Rowe's (Engineer III) time on April 27, 2023 (the day of the release report). IEPA Mot. at 16. IEPA said it was reasonable for the reviewer to assume that the five hours of time included the four hours of travel between Springfield and Galesburg and one hour of drilling the boring sample. *Id*. The record's description of his work during that time is, "drilling." AR at 119. IEPA deducted all five hours of Mr. Rowe's time at $140.88 per hour, for a total deduction of $704.40.

IEPA also deducted 0.75 hours of the Senior Project Manager's time on May 8 and 10, 2023, stating that this time was spent reviewing "the lab report for sample RC-1 confirming a release, which is time associated with a Site Assessment, which is required by OSFM and not IEPA." IEPA Mot. at 17.

Jesse Foodmart argues that IEPA incorrectly assumed the only activity performed on April 27, 2023 was drilling. Instead, Jesse Foodmart contends that the record shows the Engineer III also engaged in mapping the facility and gathering information about the site's characteristics. Resp. at 7 (citing AR 013). Jesse Foodmart argues that mapping was later used to explain tank-removal limitations to OSFM (AR 6) and for planning and reporting purposes, and that the activities involved in confirming a suspected release are required by both OSFM and IEPA. *Id*. at 8.

Board Discussion and Findings

Based on the documentation available to IEPA at the time of its determination, the Board finds that the record does not support reimbursing the five hours billed for the Engineer III on April 27, 2023, or the 0.75 hours billed for the Senior Project Manager on May 8 and May 10, 2023. The IEPA Determination Letter explains that these costs were denied because they exceeded the minimum requirements necessary to comply with the Act, lacked supporting documentation, and constituted early-action costs that were unreasonable or indirect costs billed as direct costs. AR at 212; 35 Ill. Adm. Code 734.630(o), (v), (cc), (ee).

The record shows that the Engineer spent approximately four hours driving round trip from Springfield and Galesburg and approximately one hour drilling boring sample RC-1 and reporting the suspected release to IEMA. AR 180-82. Under the Board's UST regulations, early-action reimbursement begins only after the release has been reported to IEMA. *See* 35 Ill. Adm. Code 734.210; 734.625. Activities performed prior to the IEMA report, including travel and drilling, fall outside reimbursable early-action costs. On April 27, drilling began at approximately9 a.m.; a release was suspected at 9:30 a.m.; and the release was reported to IEMA at 10:05 a.m. AR 1, 13, 18, 40. Activities occurring prior to the 10:05 a.m. report, including the Engineer's initial travel and drilling, are therefore ineligible for reimbursement. IEPA approved reimbursement only for the Engineer's return trip to Springfield later that day. Accordingly, the Board finds that requested reimbursement for the Engineer's five hours of time is ineligible under Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o), (cc), (ee), and (v). The Board further finds no genuine issue of material fact regarding Deduction 11 and that IEPA is entitled to judgment as a matter of law on this issue.

The IEPA Determination Letter further states that the 0.75 hours billed for the Senior Project Manager were denied because the costs exceeded minimum statutory requirements, lacked documentation, were unreasonable early-action costs, or constituted indirect corrective action costs billed as direct costs. AR at 212–13; 35 Ill. Adm. Code 734.630(o), (cc), (ee), (v). The record shows that the Senior Project Manager used this time to review analytical results for the soil sample collected on April 27, 2023. AR at 220. This review activity is part of preparation of an OSFM Site Assessment under 41 Ill. Adm. Code 176.330 and is not reimbursable under the UST Fund's early-action provisions. Because this cost lacked supporting documentation and reflects an OSFM requirement rather than reimbursable early-action activity, the Board finds the requested reimbursement for the Senior Project Manager's 0.75 hours of time ineligible for payment from the UST Fund. The Board further finds no genuine issue of material fact regarding this portion of Deduction 12 and that IEPA is entitled to judgment as a matter of law on this issue.

Timing Deduction – Deductions 15 and 16 – $551.04

IEPA deducted a total of $551.04 for consulting personnel costs associated with preparing the reimbursement package. The IEPA Determination Letter deducted 2.5 hours of the Senior Administrative Assistant's time ($166.40) and deducted 2 hours of the professional engineer's time to review and certify the reimbursement request ($384.64). AR at 214-215. The IEPA Determination Letter says both costs lack documentation.

IEPA says it correctly deducted the Senior Administrative Assistant's time "since it is unclear how these costs were incurred and where the Senior Professional Engineer did not sign and certify the application for payment until October 26, 2023, almost three months after the Senior Administrative Assistant activities claimed by Petitioner." IEPA Mot. at 18.

Jesse Foodmart argues that the same documentation was submitted for these two costs as was successfully used for other labor costs that were deemed reimbursable by IEPA. In the absence of a specific listed default of these requests, Jesse Foodmart hypothesizes that the reviewer confused the date the services were performed with the date when they were billed. Foodmart Mot. at 23. "The consultant's invoices indicate that the reimbursement package was being prepared on June 20th, June 23rd, June 26th, July 11th, July 12th, July 21st, July 24th, July 25th and July 26th". *Id*. at 23, *citing* AR at 189, 193. The reimbursement package is required to be certified by a Licensed Professional Engineer. *See* 35 Ill. Adm. Code 734.605(b)(1). Jesse Foodmart says that the Senior Professional Engineer billed on July 27, 2023, for their work reviewing and certifying the reimbursement application. Foodmart Mot. at 24. The Senior Administrative Assistant billed on July 29, 2023, for administrative or secretarial services "such as copying, assembling and packaging the application after it had been approved." *Id*. The application was then signed by the Senior Professional Engineer on October 26, 2023, and by the owner on October 27, 2023. *Id*., *citing* AR at 101.

Board Discussion and Findings

Based on the documentation available to IEPA at the time of its determination, the Board finds that the record does not include clear documentation of the connection between the 2.5 hours of time for the Senior Administrative Assistant's time on July 29, 2023, and submittal of the reimbursement package nearly three months later on October 26, 2023. Therefore, the Board finds that the requested reimbursement of 2.5 hours of time is ineligible for reimbursement from the UST Fund for purposes of summary judgment. The Board further finds no genuine issue of material fact regarding Deduction 15 and that IEPA is entitled to judgment as a matter of law on this issue.

Given the reimbursement package must be certified by a Licensed Professional Engineer under 35 Ill. Adm. Code 734.605(b)(1), the Board finds it reasonable that the Engineer would work on the package prior to submittal to IEPA and bill for that time as it was incurred.

Based on the record, the Board finds that the $384.64 in Senior Professional Engineer time was improperly deducted. The Board further finds no genuine issue of material fact regarding Deduction 16 and that Jesse Foodmart is entitled to judgment as a matter of law on this issue. This finding resolves Deduction 16 for purposes of summary judgment only and does not constitute a final reimbursement directive.

Therefore, the Board, in examining the record, grants in part and denies in part both the motion for summary judgment and the cross-motion for summary judgment consistent with the findings above.

Handling Charges – Deduction 17 – $2,305.13

Handling charges is a defined term and means the "administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases." 35 Ill. Adm. Code 734.115. Here, Jesse Foodmart requested $2,628.50 in handling charges for reimbursement and IEPA deducted $2,305.13 as ineligible for reimbursement. Jesse Foodmart based its handling charge calculation on a total subcontractor and field purchase cost of $27,856.31, which includes Bandy ($23,731.13), hotel costs ($1,179.18), landfilling ($251.22), utility location ($1,025), liquid waste disposal ($1,440), OSFM permit ($204.50) and postage ($25.28). AR at 127.

IEPA determined the eligible handling charges by recalculating the handling charge base after excluding costs it found ineligible for reimbursement. IEPA states that it excluded the Bandy charges ($23,731.13) because they lacked sufficient supporting documentation and excluded hotel costs ($1,179.18) because they are direct professional consulting costs rather than costs eligible for handling charges. IEPA Mot. at 19-20. The IEPA Determination Letter also states that handling charges associated with the subcontracted flowable fill and CA6 materials were reduced. The record, however, does not explain how those adjustments were incorporated into the handling charge calculation or otherwise demonstrate how they resulted in the $2,305.13 deduction.

Jesse Foodmart argues the $2,305.13 deduction was improper because the IEPA's determination that the handling charges are unreasonable was "without basis." Foodmart Mot. at 30. Jesse Foodmart further argues that lodging is a direct cost, similar to postage, and should be included in the cost basis used to calculate handling charges. Resp. at 9. According to Jesse Foodmart, excluding lodging from the handling charge calculation has the effect of "imposing an unpromulgated, and therefore invalid, rule." *Id.* Jesse Foodmart also argues that the arithmetic underlying the $2,305.13 deduction does not correspond to the adjustments described in the IEPA Determination Letter and contends that the amount deducted necessarily implies the exclusion of landfill disposal costs, even though the IEPA Determination Letter does not identify landfill disposal costs as ineligible. Pet. Mot. at 25-27.

Board Discussion and Findings

The Board finds that a genuine issue of material fact exists for Deduction 17. The IEPA Determination Letter identifies several reasons for reducing the requested handling charges, including exclusion of the Bandy charges, exclusion of hotel costs, and reduction of handling charges associated with the subcontracted flowable fill and CA6 materials. The record does not provide the calculation or methodology necessary to reconcile those exclusions with the $2,305.13 deduction.

The record also does not reconcile IEPA's treatment of the Bandy invoice in Deduction 17 with its treatment of the same invoice in Deduction 4. Although IEPA allowed reimbursement for certain Bandy related materials costs in Deduction 4, IEPA does not explain why the handling charge calculation excluded the entire Bandy invoice rather than only the portions determined to be ineligible.

Although Jesse Foodmart argues that the amount deducted necessarily reflects exclusion of landfill disposal costs, the IEPA Determination Letter does not identify landfill disposal as an excluded cost. Nor does IEPA's motion explain the determination letter's reference to reducing handling charges associated with the subcontracted flowable fill and CA6 materials or otherwise reconcile the arithmetic underlying the deduction with the explanation provided in the determination letter.

Without a clear explanation of the methodology used to calculate the deduction, the Board cannot determine on summary judgment whether the requested handling charges were properly reduced under the applicable provisions of the Act and Board regulations. Accordingly, the Board finds that a genuine issue of material fact remains regarding Deduction 17. The Board therefore denies both motions for summary judgment on this issue and directs the parties to proceed to hearing.

Procedural Clarifications for Future Submittals and Determinations

The Board offers the following procedural clarifications, which do not affect the outcome of this decision but may assist the parties in the preparation and review of future payment applications.

First, several of the deduction descriptions in IEPA's final determination rely on standardized or broadly framed regulatory citations. While such references may be intended to capture all applicable provisions, Section 734.610(d)(1) contemplates that, when invoking "lack of supporting documentation," the Agency will specify the type of information required to complete review. 35 Ill. Adm. Code 734.610(d)(1). Providing such specificity helps ensure that owners and operators understand the basis for a deduction and allows the Board, on appeal, to more readily determine whether the application, as submitted to the Agency, demonstrated compliance with the Act and Board regulations.

Second, the Board observes that the parties exchanged requests for clarification and supplemental information late in the statutory review timeline. The Act requires the Agency to issue a determination within 120 days of receiving a complete application, unless extended by written waiver. When documentation gaps are identified near the end of the review period, applicants may have limited opportunity to assemble supplemental materials before expiration of the decision deadline. Early identification of documentation issues or, where appropriate, a written notice of incompleteness under Section 734.610(d) may help establish clearer expectations and reduce misunderstandings regarding the status of an application and the running of the statutory review period. Likewise, applicants and their consultants should ensure that all necessary supporting documentation is included in the initial application to facilitate an efficient

Agency review. These observations are offered solely to support efficient administration of Title XVI and do not alter the Board's legal conclusions on the merits.

CONCLUSION

The Board finds there exists a dispute of material fact as to three issues, and no dispute of material fact as to the remaining six issues. The Board partially grants and partially denies both Jesse Foodmart's motion for summary judgment and IEPA's cross motion for summary judgment. For the reasons described above, the Board directs the hearing officer to proceed to hearing on those issues to resolve the issues of material fact.

This interim opinion constitutes the Board's findings of fact and conclusion of law.

ORDER

1. Jesse Foodmart's challenge to Deduction 1 is withdrawn and is no longer before the Board.

2. Jesse Foodmart's request for official notice is granted.

3. Jesse Foodmart's motion for summary judgment is granted in part and denied in part. The motion is granted as to Deduction 16 for purposes of summary judgment and denied as to Deductions 4, 10, 11, 12, and 15. The motion is denied without prejudice as to Deductions 6, 7, and 17, which shall proceed to hearing because genuine issues of material fact remain.

4. IEPA's motion for summary judgment is granted in part and denied in part. The motion is granted as to Deductions 4, 10, 11, 12, and 15, denied as to Deduction 16, and denied without prejudice as to Deductions 6, 7, and 17, which shall proceed to hearing because genuine issues of material fact remain.

5. The Hearing Officer is directed to proceed to hearing on the issues remaining regarding Deductions 6, 7, and 17.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on July 23, 2026, by a vote of 4-0.

Don A. Brown

Don A. Brown, Clerk
Illinois Pollution Control Board