

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EAST-WEST PROPERTIES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 24-072
	)	(LUST Fund Appeal)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

NOTICE OF FILING/PROOF OF SERVICE

Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218
E-mail: don.brown@illinois.gov

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
60 E. Van Buren Street, Suite 630
Chicago, IL 60605
Brad.Halloran@illinois.gov

Richard Kim
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
E-mail: richard.kim@illinois.gov

PLEASE TAKE NOTICE that on September 11, 2026, I electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the Petitioner's Motion for Summary Judgment, a copy of which is herewith served upon the above parties of record or of interest in this cause. The undersigned hereby certifies that a true and correct copy of this Notice of Filing/Proof of Service,

together with a copy of the document described above, were today served on Respondent and the assigned Hearing Officer by electronic and/or physical mail to the addresses listed above, on this 11th day of September, 2026.

Respectfully submitted,
EAST-WEST PROPERTIES, LLC, Petitioner

By: /s/ Stephen F. Hedinger
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
Telephone: (217) 544-1144
Fax: (217) 522-3173
E-mail: sfhedinger@sorlinglaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EAST-WEST PROPERTIES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 24-072
	)	(LUST Fund Appeal)
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner, EAST-WEST PROPERTIES, LLC (hereinafter "East-West"), through its undersigned attorneys, Sorling Northrup, Stephen F. Hedinger of counsel, and pursuant to 35 Ill. Adm. Code 101.516, moves this Board for a summary judgment in its favor and against Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (hereinafter "Illinois EPA"), on its Petition for Review of LUST Fund Determination. In support of this motion, East-West states as follows:

Introduction

East-West operates a gasoline service station with underground storage tanks ("USTs") containing petroleum. On August 1, 2023, East-West duly reported a release of petroleum products from one or more of the USTs at the property to the Illinois Emergency Management Agency (IEMA) (Incident Number 20230615), and East-West thereafter performed early action at the property, including removal of the three USTs determined to have leaked and of contaminated soils surrounding the USTs. On November 1, 2023, East-West submitted to the Illinois EPA a request for reimbursement from the Leaking Underground Storage Tank Fund (the "LUST Fund")

for the costs incurred in conducting the early action, and by letter dated April 4, 2023 (hereinafter the "Final Action letter"), the Illinois EPA authorized only partial payment of the amounts requested by East-West. Following an extension of the time to file an appeal granted by this Board, East-West filed its Petition for Review of LUST Fund Determination, seeking reversal of the Illinois EPA's denial of certain of the costs it had rejected, and East-West now submits this motion, supported by the record submitted by the Illinois EPA, requesting a summary judgment reversing certain of the Illinois EPA's denials.

FACTS

East-West operates the gas station facility located at 8100 S. Ashland, Chicago (Illinois EPA facility ID Number 031715025), that reported a suspected underground storage tank release to IEMA on August 1, 2023 (#20230615) as a result of a site assessment conducted by its consultants, Perry Environmental, Inc. (PEI), using a photoionization detector ("PID"). (R. 11). PEI submitted a Reimbursement Eligibility and Deductible Application to the Office of the Illinois State Fire Marshal (OSFM) on October 18, 2023, and the OSFM's final decision, dated October 31, 2023, determined that East-West was eligible for reimbursement from the LUST Fund for the three USTs located at the site – Tank 4 (6,000 gallon kerosene), Tank 8 (6,000 gallon gasoline), and Tank 9 (14,000 gallon gasoline). (R. 545 – R. 546). PEI initiated Early Action at the site; following soil testing to confirm the suspected release, PEI prepared the site for removal of the leaking tanks, and all three were removed on September 6 and 7, 2023, under permit issued by and observation of the OSFM. (R. 548). Following removal of the USTs, the tank excavation areas were dug, and between September 8 and September 15 soil samples were taken from the excavation walls and floors (R. 573). Contaminated liquids were removed from the excavations and from the removed USTs, and the contaminated water was transported to a wastewater

treatment facility, all pursuant to the requirements of 35 Ill. Adm. Code 734.215. (R. 12). The excavation pit around Tank #4 (6,000 gallon kerosene) extended to a depth of ten feet below ground surface, and was eighteen feet wide and seventy feet in length, and the excavation pit around Tanks #8 and #9 (14,000 and 6,000 gallon gasoline) extended to a depth of fourteen feet, and was eighteen feet wide and 70 feet long. (R. 12). A total of 446 cubic yards of backfill material and 240.22 cubic yards of native soils were excavated. (R. 5 – R. 6). All contaminated soils were transported to a landfill for disposal. (R. 12). A total of twenty-seven early action soil samples were collected by PEI personnel during the tank removal, and following analysis PEI determined that a number of the samples exceeded the Tier 1 limits. (R. 12 – R. 13).

Backfill material was delivered to the site between September 11 and September 14, and the excavations were backfilled between September 12 and September 27, with a total of 37 truck loads of 3/8 inch chips and CA6 rock, amounting to 520.04 cubic yards. (R. 477 – R. 479; R. 520; R. 579; R. 587; photos of backfilling are at R.378 – R. 379).

PEI submitted both the 45-day report, detailing the site assessment and other early action activities (R. 1 – R. 389), and the Early Action Billing Package to the Illinois EPA on November 1, 2023, requesting a total of \$143,078.97 for the Early Action activities. (R. 390 – R. 559). By letter dated April 4, 2024, the Illinois EPA informed East-West that only \$111,150.12 was approved for reimbursement. (R. 591 – R. 597). Among other things, the Illinois EPA decided that the following amounts should be deducted:

- costs for removal of contaminated soils and replacement of those soils in excess of regulatory limits set forth in 35 Ill. Adm. Code 734 Appendix C, on the basis that only two USTs were associated with the

Early Action, one 6,000 gallon and one 20,000, and as undocumented. (R. 593 – R. 594, ¶ 2).

- costs for removal of USTs as exceeding the maximum reimbursement rates established by 35 Ill. Adm. Code 734 Subpart H, and as undocumented. (R. 594, ¶ 3).
- personnel costs for Early Action activities on the basis that the requested amounts were in excess of the minimum personnel costs needed to comply with the Environmental Protection Act, were associated with over-excavating to accommodate installation of new USTs, and were undocumented. (R. 595 – R. 596, ¶ 6).
- consultant's materials costs associated with use of a PID as unreasonable and undocumented. (R. 597, ¶ 9).

East-West requests, through its Petition for Review of LUST Fund Determination and by this motion, the addition of the following amounts to the reimbursement total:

- A. East-West requests reimbursement of an additional \$2,445.57 for removal of contaminated soils and replacement of those soils, because three USTs were removed from the site, not two, and East-West fully documented the expense.
- B. East-West requests reimbursement of an additional \$3,254.85 for costs for removal of USTs, because three USTs were removed, not two, and East-West fully documented the expense.

C. East-West requests reimbursement of an additional \$6,162.13¹ for early action activities because all personnel were present and performing required UST removal and Early Action activities at all times documented by the request, all work was solely for Early Action purposes, and the request was fully documented.

D. East-West requests reimbursement of an additional \$450.00 for costs associated with PID usage, which was necessary and was fully documented.

In addition, East-West requests the attorney fees it has incurred in obtaining this relief, as provided by section 57.8(l) of the Environmental Protection Act (hereinafter “the Act”), 415 ILCS 5/57.8(l).

East-West accordingly requests an additional \$15,064.41 in reimbursement for the early action activities, along with the attorney fees expended in obtaining the additional reimbursement.

RELEVANT STANDARDS

Early Action -- Section 57.7(c)(3) of the Act, 415 ILCS 5/57.7(c)(3), provides among other things that in order to approve any site investigation or corrective action plan and budget during a leaking underground storage tank remediation, the Illinois EPA must assure that the costs associated with the plan will not be used for “site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title.” 415 ILCS 5/57.7(c)(3). Subpart B of Part 734 of this Board’s regulations, 35 Ill. Adm. Code Part 734, entitled “Early Action,” includes Section 734.200, which provides in pertinent part that “[n]o work plan or corresponding budget” is “required for conducting early action activities” Section 734.210 of the Board’s regulations further addresses early action at a leaking UST site, and among other

¹ This number differs from the amount requested in East-West’s Petition for Review of LUST Fund Determination as a result of Petitioner’s further review during the drafting of this motion.

things permits the owner/operator of the LUST system, prior to submitting any other plans for the remediation to the Illinois EPA and within 45 days after confirming the release and notifying IEMA of it, to remove visibly contaminated fill material and any exposed groundwater exhibiting a sheen with the limitation that “[f]or purposes of payment of early action costs, ... fill material shall not be removed in an amount in excess of 4 feet from the outside dimensions of the tank.”

35 Ill. Adm. Code 734.210(f),(g). No budget plan or approval is required for reimbursement of Early Action costs completed within 45 days (other than free product removal, which is not relevant to this proceeding). 35 Ill. Adm. Code 734.220. Claim submittals must include an accounting of all costs, including items such as receipts, invoices and other “supporting documentation showing the dates and descriptions of the work performed.” 35 Ill. Adm. Code 734.605(b)(9).

The Illinois EPA’s review of an Early Action reimbursement request is to consider whether the request includes the required documentation, and the review extends to “any or all elements and supporting documentation relied upon by the owner or operator in developing the application for payment....” 35 Ill. Adm. Code 734.610(c). *See generally J.D. Streett & Company, Inc. v. IEPA*, PCB 22-27, slip op. at 5 – 6 (Nov. 16, 2023).

Burden of Proof – As this Board explained in *Jeet Singh d/b/a Aman Food & Gas v. IEPA*, No. 23-90, slip op. at 5 (Sept. 21, 2023), “In appeals of final IEPA determinations, ‘[t]he burden of proof shall be on the petitioner. . . .’ 35 Ill. Adm. Code 105.112(a), citing 415 ILCS 5/40(a)(1), 40(b), 40(e)(3), 40.2(a) (2022); *Ted Harrison Oil v. IEPA*, PCB 99-127, slip op. at 5-6 (July 24, 2003). The standard of proof in UST appeals is the ‘preponderance of the evidence.’ *Freedom Oil [Co. v. IEPA]*, PCB 03-54, 03-56, 03-105, 03-179, 04-04 (consol.), slip op. at 59 [Feb. 2, 2006]]. ‘A proposition is proved by a preponderance of the evidence when it is more probably true than

not.’ *McHenry County Landfill, Inc. v. County Bd. of McHenry County*, PCB 85-56, 85-61, 85-62, 85-63, 85-64, 85-65, 85-66 (consol.), slip op. at 3 (Sept. 20, 1985).”

Summary Judgment – This Board may grant a summary judgment in an appeal of an Illinois EPA final determination when there is no genuine issue of material fact. 35 Ill. Adm. Code 101.515(b). “[S]ummary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other record items show no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. A genuine issue of material fact precluding summary judgment exists when the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts.” *Marine Bank Springfield Trust #53-0051 v. IEPA*, PCB 24-81, slip op. at 5 (Dec. 4, 2025) (citations and internal quotations omitted).

This Board is to construe the record strictly against the movant and liberally in favor of the opponent in evaluating the motion and, because summary judgment is a drastic remedy, it should only be granted when the right of the moving party is clear and free from doubt. *Id.*

Standard of Review -- The Board must decide whether East-West’s submission to Illinois EPA demonstrated compliance with the Act and the Board’s rules. *Jeet Singh d/b/a Aman Food & Gas v. IEPA*, No. 23-90, slip op. at 5 (Sept. 21, 2023) (citing *Illinois Ayers Oil Co. v. IEPA*, PCB 03-214, slip op. at 8 (April 1, 2004), and *Kathe’s Auto Service Center v. IEPA*, PCB 96-102, slip op. at 13 (Aug. 1, 1996)). “The Board’s review is generally limited to the record before IEPA at the time of its determination.” *Jeet Singh*, slip op. at 5, citing *Freedom Oil Co. v. IEPA*, PCB 03-54, 03-56, 03-105, 03-179, 04-04 (cons.), slip op. at 11 (Feb. 2, 2006); see also *Jeet Singh*, slip op. at 5, quoting *Illinois Ayers*, PCB 03-214, slip op. at 15 (“the Board does not review [IEPA’s] decision using a deferential manifest-weight of the evidence standard,” but “[r]ather the Board

reviews the entirety of the record to determine that the [submission] as presented to [IEPA] demonstrates compliance with the Act”).

The Illinois EPA’s denial letter (herein the Final Action letter) frames the issues on appeal. *Jeet Singh*, slip op. at 5 (citing *Pulitzer Cmty. Newspapers, Inc. v. IEPA*, PCB 90-142 (Dec. 20, 1990)).

ARGUMENT

Compartment Tank Deductions

The Illinois EPA justified its deduction of \$2,445.57 (part of the \$12,077.74 deduction in ¶ 2 of the reimbursement decision, R. 593– R. 594, ¶ 2) and of \$3,254.85 (R. 594, ¶ 3) upon the mistaken belief that only two USTs, the 6,000 gallon kerosene tank and a single 20,000 gallon gasoline tank, were removed as Early Action response to the release. Illinois EPA’s explanation for deducting costs for “removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, ... and/or for costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth” in the regulations (R. 593, ¶ 3), was that “[t]he tanks associated with the above referenced Incident are one 6,000-gallon tank and one 20,000-gallon dual-compartment tank,” and that “[t]he requested costs for excavation, transportation, and disposal exceed the maximum number of cubic yards allowed for tank removal, in accordance with 35 Ill. Adm. Code 734, Appendix C. Additionally, the costs are associated with the removal, excavation, and transportation of materials beyond four feet from the outside dimensions of the associated tanks.” (R. 294, ¶ 2). Similarly, the Illinois EPA explained the deduction “for tank removal costs that exceed the maximum payment amounts set forth in Subpart H of 35 Ill. Adm. Code 734” because “[t]he requested tank removal costs exceed the Subpart H maximum reimbursement rates for removal of the tanks associated with the above

referenced Incident.” (R. 594, ¶ 3). In making these deductions, the Illinois EPA was specifically aware that tanks #8 and #9 comprised a compartment tank; an Illinois EPA email exchange with PEI on February 29, 2024 had asked PEI to confirm that “Tanks #8 & 9 is a compartment tank,” and PEI responded, “Yes, tanks #8 and 9 were a compartment tank.” (R. 561). *See also* R. 545- R. 546 (OSFM Eligibility and Deductible Determination identifying eligible USTs); R. 231- R. 236 (OSFM and City of Chicago installation permits from 1994 identifying installation of compartment tank).

East-West’s Argument For Reversal -- The Illinois EPA determination that tanks #8 and #9 comprised only a single tank is unsupportable in light of this Board’s ruling in *1411 Kingshighway, LLC v. Illinois EPA*, PCB 24-32 (June 20, 2024), which noted that the number of eligible tanks is a matter solely determined by the OSFM in reaching its eligibility and deductible determination. Here, as in *1411 Kingshighway*, the OSFM determined that the compartment tank consisted of two tanks eligible for reimbursement, and that determination is binding upon both the Illinois EPA’s reimbursement decision and this Board’s review. *1411 Kingshighway*, at 17. The OSFM determined that the release being addressed in this Early Action was the result of releases from three separate eligible tanks, #4, #8 and #9 (R. 545 – R. 546), and that determination has not been altered through appeal or any other mechanism. Accordingly, as a matter of law three separate tanks were removed from the site, and the excavations and backfilling were for three USTs, not two as proposed by Illinois EPA.

The Illinois EPA’s final decision on the Early Action Billing Package allowed only 543 cubic yards of excavation around the tanks. In fact, because three separate tanks were removed, the regulations allow for the removal of up to 572 cubic yards of surrounding soils (734 Ill. Adm. Code Appendix C -- two 6,000 tanks and one 14,000 tank). The reimbursement accordingly should

be increased by \$2,445.57 (29 additional cubic yards times \$84.33). In addition, the Illinois EPA's erroneous conclusion that only two tanks were removed, rather than three, resulted in the deduction of \$3,254.85 for tank removal costs; the Illinois EPA explained that "[t]he requested tank removal costs exceed the Subpart H maximum reimbursement rates for removal of the tanks associated with the above referenced Incident." (R. 594). However, because three tanks were removed rather than the two recognized by Illinois EPA, pursuant to 35 Ill. Adm. Code 734.810 the reimbursement amount for tank removal should have been the \$13,981.05 requested by East-West, rather than the \$10,726.20 approved by the Illinois EPA (R. 547), and accordingly an additional \$3,254.85 should be allowed at this time. The total additional reimbursement resulting from the Illinois EPA's erroneous conclusion that only two tanks were removed is therefore \$5,700.42.

Personnel Cost Deductions

Illinois EPA's Decision and Explanation -- The Illinois EPA deducted \$8,913.99 of requested personnel costs on the basis that the request exceeded the minimum requirements necessary to comply with the statute, based upon the speculation that the costs claimed were "associated with the installation of new USTs, the repair of existing USTs, and/or removal and disposal of USTs determined to be ineligible by the [OSFM]." (R. 595, ¶ 6). The Illinois EPA explained its decision on the grounds that "60.25 hours of Senior Project Manager time lacked documentation for reasonableness, exceeded the minimum requirements of the Illinois Environmental Protection Act, and are associated with new tank installation," and itemized seven separate amounts being cut with the additional explanation that the deductions were "because they lacked documentation, are unreasonable, exceed requirements, and appear to be associated with installation of new tanks." (R. 596, ¶ 6). East-West challenges the cuts relating to work performed

on September 11, 12, 13, 14 and 15, along with the deduction of 1.0 hours for "PID Table Prep."

The cuts were:

- a. "9.5 hours for a Senior Project Manager on September 11, 2023.
- b. 5.5 hours for a Senior Project Manager on September 12, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 10:30 am.
- c. 10.75 hours for a Senior Project Manager on September 12, 2023.
- d. 3.5 hours for a Senior Project Manager on September 14, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 1:30 pm.
- e. 11.5 hours for a Senior Project Manager on September 15, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 9:30 am."

(R. 596, ¶ 6).

The Illinois EPA reviewer's notes provide additional explanation for the challenged cuts:

"Cut 10.75 hours for Keebler as a SR PM on Sept 13 – lacks documentation, exceeds requirements, unreasonable, associated w/new tank install (no samples taken, don't need sr pm to handle manifests & tickets)

Cut 9.5 hours for Keebler as SR PM on Sept 11 - Lacks doc, exceeds req., unreasonable, associated w/tank install

Cut 5 hrs for Keebler as Sr PM on Sept 12 (Reduce to 4.5 – 6:30 to 11 – Lacks doc, exceeds requirements, unreasonable, associated w/install (samples done being collected by 10:30)

Cut 3.5 hours for Keebler as SR PM on Sept 14 (Reduce to 7.5 – 6:30 to 2) – Lacks doc, exceeds req, unreasonable, associated w/install (samples collected by 1:30)

Cut 11.5 hours for Keebler as SR PM on Sept 15 (reduce to 3.5 hrs – 6:30 to 10:00) -Lacks doc, exceeds req, unreasonable, associated w/install (one single sample (!!)) collected at 9:30)!

Cut 1.0 hour for D. Lacey (PM) for PID Table Prep -Lacks doc. (not in 45 Day!!)"

(R. 590).

In addition to the record, East-West also promulgated interrogatories upon the Illinois EPA requesting additional explanation for the cuts, and the answers to those interrogatories, attached to this motion as Ex. 1, are addressed below as a part of East-West's argument.

East-West's Argument For Reversal – The Illinois EPA's decisions concerning personnel costs are largely based upon a claimed but unsubstantiated suspicion that the charges sought were not only associated with the tank removals and early action, but for the installation of new tanks as well. This speculation is an outgrowth of the Illinois EPA's erroneous conclusion that only two tanks were removed rather than the three authorized by the OSFM, which led to the equally erroneous conclusion that excess soils were excavated in order to prepare for the installation of the new tanks. This conclusion is unsupported, and in fact is patently false and disproved by the information provided by the consultant both in the reimbursement package and in subsequent communications with the Illinois EPA. Addressing each of the Final Action letter deductions in chronological order, East-West responds as follows:

Sept. 11 -- 9.5 hours: The Illinois EPA's Final Action letter provides virtually no explanation for this deduction; the permit reviewer notes claim that the time was cut "for Keebler as SR PM on Sept 11 – lacks doc, exceeds req., unreasonable, associated with tank install." This item was not included in the permit reviewer's email requests for additional information from East-West, but in its interrogatory response, the Illinois EPA stated that it had decided to cut 9.5 hours of Sr Project Manager time of M. Keebler on that date because, "[b]ased on the OFSM Certificate of Removal, Tank #4 was removed on September 6, 2023, and Tanks #8 and 9 (a single, compartmentalized tank), was removed on September 7, 2023. Based on the 45-Day Report, there were NO samples collected on September 11, 2023. The Illinois EPA determined that this cost was not justified or reasonable, and lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA." (Resp. To Petitioner's First Set of Interrogatories, Interrogatory No. 3).

The work performed by PEI on September 11 is well documented in the record and clearly shows that it was focused on Early Action remediation, not on new tank installation. While it is true that no samples were taken that day, contrary to the Illinois EPA's apparent belief, more is involved with early action than taking samples. Invoices from Waste Management reveal that sixteen truckloads of contaminated soils were hauled to Laraway Landfill on that day, with the first load arriving at the landfill at 8:28 that morning and the last load arriving at 12:54 p.m. (R. 321 – R. 336 (load tickets); see also R. 318 (listing landfill deliveries)). That afternoon eight truckloads of backfill materials were delivered to the site, with the first load leaving the quarry at 12:19 p.m., and the last leaving at 1:50 p.m. (R. 276- R. 283). In addition, the compartment tank was loaded onto a trailer that day for removal from the site. (R. 377). Photographs of the work that day can be reviewed in the record at R. 376 – R. 377 (color versions of these photographs are attached as Ex. 2). Trucking invoices indicate that drivers for the retained trucking company, Palmer Logistics, collectively drove for nearly 65 hours on that day alone. (R. 577- R. 578). The PEI time sheets reveal that Loren Curtis was busy that day operating the track hoe to “dig and load out contaminated dirt 16 loads/Load out tank” (R. 552), that Michael Keebler (Sr Project Manager) and Dan Lacey (Project Manager) were present to perform “Soil removal & backfill activities” (Lacey also spent fifteen minutes on “Laboratory Certification/Chain of Custody Prep”) (R. 520), and that Griffin Keebler worked 9 hours that day as a laborer conducting the “Soil remediation” (R. 553).

In light of all of the work being conducted at the site that day, including the coming and going and loading and unloading of at least twenty-four semi-trucks plus the loading and removal from the site of the compartment tank, the Illinois EPA's decision to deduct 9.5 hours of the Senior Project Manager time is nothing other than arbitrary and without basis. The justification for the

deduction given in the interrogatory answer fails to provide any meaningful basis for determining that the work was not properly charged to the LUST Fund; the Final Action letter, claiming that the work that day lacked documentation, was unreasonable, exceeded requirements, and appears to have been associated with installation of new tanks (Final Action letter, Attachment A, ¶ 6.a, R. 596), was wholly fabricated and is completely arbitrary and unsupportable. The deduction must be reversed, and \$1,405.53 added as reimbursable costs ($\$147.95 \times 9.5$).

Sept. 12 -- 5.0 hours: The Final Action letter deducted 5.5 hours for work charged to the “Sr Project Manager (M. Keebler)” for “Soil Removal & Backfill Activities” conducted on September 12 (reducing the allowed amount to 4.5 hours) with the assessment that, “[b]ased on provided documentation, Early Action sampling performed on this day was completed by 10:30 am.” The reviewer notes, however, only supported the deduction of 5.0 hours, so there is no basis for the additional half hour deduction, and as a starting point the additional half hour must be added back in to the reimbursable total ($.5 \times 147.95 = \$73.98$) (R. 590). The reviewer notes further explain that the request “Lacks doc, exceeds req., unreasonable, associated w/tank install.” The Illinois EPA provided a lengthier explanation in its interrogatory answer:

“Based on the 45-Day Report and the chain-of-custody samples W-7 through W-16 were collected on this day between 8:00 AM and 10:30 AM. Based on additional information provided by PEI, time spent after 10:30 was to ‘test the soils in the baggies using the PID meter, document the PID readings, kit up all the samples into the lab provided vials and jars, place the samples on ice, etc. The remaining time onsite was to oversee and observe the soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, and traffic control.’

“The Illinois EPA views the ‘TIME COLLECTED’ column on the chain-of-custody as being the time the sample was actually collected and placed into the appropriate container or jar. The PID screening should be completed prior to ‘kitting up’ the soil into the jars or vials. There is also no indication or documentation that a PID was used to screen the soil samples. There is also no documentation to support the additional time that PEI is asserting it took to place the soil into the jars and subsequently into a cooler with ice.

“Furthermore, there is clear evidence that work associated with the installation of the new tanks was performed on September 12, 2023, as indicated on the track hoe operator's time sheet, documenting 10.50 hours for the task ‘unload shoring.’ Shoring is used to provide support to the excavation to allow the excavated area to be further expanded so that the new, larger tanks could be installed where the removed tanks were previously located. This is further supported by Figure 3 of the 45-Day Report, pointing to the ‘14' x 70' shore box excavation’ at the end of the Tank 10, which was installed on September 26, 2023. This is also further supported by Perry Environmental Inc.'s invoice which shows the charge for ‘Labor and Equipment to install and deliver shore box panels for installing new tanks safely and remove and haul back off.’ Additionally, PEI's invoice to AMPSCO Petroleum Equipment Services (Invoice #2963) explicitly says that ‘Per proposal #P23-191, Perry Environmental Inc. will provide equipment, materials, and labor to install new tanks at the Marathon Gas Station site at 8100 S. Ashland in Chicago, IL.’ Oversight of activities related to the installation of new tanks is not eligible for reimbursement from the UST Fund.

“Based on the above information, it is the Illinois EPA's opinion that that [sic] the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST incident, and lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA. There was insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank install requirements.”

(Resp. To Petitioner's First Set of Interrogatories, Interrogatory No. 3).

To summarize, the Illinois EPA justifies deducting 5.0 hours of time for the work of the Senior Project Manager because sampling was concluded by 10:30 that morning, and because the track hoe operator duties that day included unloading shoring, in addition to the substantial backfilling activities undertaken that day (as detailed below). Notably, the Illinois EPA does not explain or defend the clearly arbitrary decision to deduct time from the Senior Project Manager's billed time as a result of the other unrelated “problems” it claims to have uncovered.

As with the September 11 deduction, the record reveals that substantial work beyond that noted by the Illinois EPA was conducted on September 12. Between 6:20 a.m. and 10:45 a.m., fourteen truckloads of additional backfill materials were delivered to the site (R. 284 – R. 297; R. 478; R. 489 – R. 502). A rented bobcat, being used for moving backfill and other materials around

the site in support of the Early Action activities, required on-site maintenance that day, resulting in a delay of work (R. 558). The PEI timesheets show that Michael Keebler was present working at the site performing "Soil Removal and Backfill Activities" from 6:30 until 4:00 that day (R. 520), which corresponds with the records of backfill material deliveries. The only other PEI personnel present that day were Griffin Keebler, employed as a laborer for "Soil remediation" (present at the site from 7:00 a.m. to 4:45 p.m.), and Loren Curtis, operating the track hoe (present at the site from 6:30 a.m. until 5:00 p.m.). (R.552 – R. 553). (A photo of backfilling is at R. 378).

The Illinois EPA's interrogatory responses acknowledge that, in addition to the equipment repairs and all of the other work being done at the site by the skeleton crew of Senior Project manager, laborer and track hoe operator, PEI also took numerous soil samples that day and prepared them for shipping to the lab. (R. 30 – R. 32; R. 102 – R. 134).

Based upon this information, the Illinois EPA's deduction of 5.0 (let alone 5.5 hours) of Senior Project manager time on the grounds that sampling was completed by 10:30 a.m. is clearly unsupportable and arbitrary. The approved reimbursement should be increased by \$813.73 (5.5 x \$147.95).

Sept. 13 -- 10.75 hours: The Final Action letter does not include any item for September 13, but instead references the deduction of 10.75 hours to September 12 (R. 596), which was addressed in the preceding section of this motion. The reviewer notes, correspondence with PEI, and interrogatory responses, however, all associate the 10.75-hour deduction to the work performed on September 13, rather than September 12. The Illinois EPA's reviewer notes assert that the deduction of 10.75 hours from the Senior Project Manager's time for September 13, 2023, was on the grounds that the work was "associated w/new tank [install] (no samples taken don't need a Sr PM to handle manifests & tickets)" (R. 590). In the correspondence between the permit

reviewer and East-West for more clarification on the entry (R. 586), the permit reviewer asked: “2. There were no samples collected on 9/13/23 yet there were two personnel there for almost 11 hours each. What were they doing?” East-West responded that “[t]wo personnel were overseeing and observing the soil excavation activities while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, hand out landfill waste manifests to truckers for hauling contaminated soils to landfill, collect landfill weight tickets from truckers, collect quarry weight tickets from truckers delivering backfill materials, tracking quantities of contaminated soils excavated, tracking quantities of backfill materials delivered, taking photographs, and traffic control, observe cleaning up the streets and sidewalks, securing the site for safety, drive back to our rental.” (R. 586).

Despite East-West’s full explanation, and without requesting additional clarification, the time was deducted anyway, and in answering East-West’s interrogatory requesting further explanation, the Illinois EPA stated:

“Based on provided information and documentation, the Illinois EPA determined that the time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was for the purpose of meeting Illinois EPA's early action regulations, especially since no soil sampling was performed this day. Additionally, having two senior, experienced personnel onsite to complete the tasks mentioned above is unreasonable. There is also no documentation to support that the PID meter was used, and it exceeds requirements to continually screen soils intended for landfilling. Furthermore, the PID is a screening tool that can indicate the presence of volatile compounds but does not provide concrete data nor does the landfill require PID readings for acceptance of materials.”

(Resp. To Petitioner’s First Set of Interrogatories, Interrogatory No. 3).

The Illinois EPA concluded by claiming that “the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, and exceed the

requirements of the statutory and regulatory requirements to address the LUST incident, lacked supporting documentation based upon the work performed and the documentation submitted to the Illinois EPA, and the costs are associated with oversight of tank installation work. There was insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank installation work." (Id.).

Again, the Illinois EPA never informed East-West of its suspicion that the work was being performed for tank installation activities rather than Early Action remediation, so there was no reason for East-West to provide information beyond the information routinely required for LUST Fund reimbursement requests. However, the records that were in the possession of the Illinois EPA prior to the Final Action letter reveal the substantial work conducted at the Site that day. As the permit reviewer noted, in addition to the Senior Project Manager, two other employees were present that day, Loren Curtis, whose time ticket indicated that he started work as equipment operator at 6:30 a.m. and worked until 5:15 p.m., engaged with "dig out contaminated soils and load trucks" (R. 552), and Griffin Keebler, laborer, who was engaged in "Soil remediation" also between 6:30 a.m. and 5:15 p.m. (R. 553). The work performed that day included the excavation and removal of 20 loads of contaminated soil to the landfill (R. 318 – R. 320 (table); R. 337 – R. 356 load tickets); the loads were received at the landfill between 7:47 a.m. and 2:01 p.m. (R. 337 – R. 356). In addition, 10 loads of backfill material were delivered to and unloaded at the site; these deliveries left the quarry between 10:00 a.m. and 2:45 p.m. (R. 478 – R. 479 (itemized statement); R. 503 – R. 512 (load tickets), and the drivers collectively reported 65.5 hours of driving time that day. (R. 578). In addition to all of this, another rental equipment breakdown required additional on-site repair work that day. (R. 558).

The record reveals substantial Early Action work on September 13, but it does not reveal any work that could be associated with new tank installation. The deduction of 10.75 hours of Senior was unjustified, unsubstantiated, and was clearly arbitrary. The reduction should be reversed, and an additional \$1,590.46 ($\$147.95 \times 10.75$) should be authorized for reimbursement.

Sept. 14 -- 3.5 hours: The Final Action letter asserts that 3.5 hours were cut “for a Senior Project Manager on September 14, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 1:30 pm.” (R. 596). The reviewer notes state: “Cut 3.5 hours for Keebler as SR PM on Sept 14 (Reduce to 7.5 – 6:30 to 2) – Lacks doc., exceeds req., unreasonable, associated w/install (samples collected by 1:30).” In her email to PEI requesting further explanation, the permit reviewer noted that the three samples collected that day were completed by 1:30, and asked “[w]hat was the rest of the time on this day spent doing?” East-West provided a comprehensive response: ““The two personnel were oversee [sic] and observe the soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, hand out landfill waste manifests to truckers for haul contaminated soils to landfill, collect landfill weight tickets from truckers, tracking quantities of contaminated soils excavated, traffic control, observe cleaning up the streets and sidewalks, securing the site for safety, drive back to our rental.” (R. 586).

For the first time in its interrogatory answer, the Illinois EPA explained why it did not feel this explanation was sufficient:

“The Illinois EPA views the ‘TIME COLLECTED’ column on the chain-of custody as being the time the sample was actually collected and placed into the appropriate container or jar. The PID screening should be completed prior ‘kitting up’ the soil into the jars or vials. There is also no indication or documentation that a PID was used to screen the soil samples. There is also no documentation to support the additional time that PEI is asserting it took to place the soil into the jars and subsequently into a cooler with ice.

“PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

“Furthermore, based on weight tickets, the maximum amount of backfill volume within four feet of the USTs was disposed of at the landfill by the second load on this date (September 14, 2023) for a total of 546 cubic yards (under ticket number 1702693). This load was received at the landfill at approximately 8:12 am. Time to oversee excavation of materials beyond the four-foot limitation exceeds Illinois EPA's requirements, is unreasonable, and appears to be associated with the installation of new USTs.

“Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and that the costs are associated with oversight of tank installation work. There was insufficient documentation submitted to prove that the Senior Project Manager's time was not associated with overseeing tank install requirements.”

(Resp. To Petitioner's First Set of Interrogatories, Interrogatory No. 3).

According to its own explanations, then, the Illinois EPA admits that it deducted this time because it believed that the compartment tank was actually a single tank justifying the lower amount of excavation (546 cubic yards), and that accordingly the larger amount of excavation was improperly associated with expanding the excavation to accommodate the new tank rather than for Early Action activities. This decision was made despite the fact that the regulations allow for 572 cubic yards, since as a matter of law two tanks were removed that had been determined by the OSFM to be present and eligible.

Aside from its glaring error in identifying the allowable volume of material to be excavated, the Illinois EPA overlooked the substantial documented Early Action work done at the site that

day. As recognized by the permit reviewer, three soil samples were taken that day between 10:15 a.m. and 1:30 p.m. (R. 32; R. 141 – R. 146; see generally R. 135 – R. 156). Further, in addition to the Senior Project Manager, Loren Cutrtis was also on-site as track hoe operator between 6:30 a.m. and 5:50 p.m. to “dig out contaminate soil and load trucks” (R. 552), and Griffin Keebler was present between 7:00 a.m. and 5:00 p.m. for “Soil remediation” (R. 553). Nine loads of contaminated soil were excavated, loaded onto semi-trailers, and hauled to the landfill, with the first load arriving at the landfill at 8:09 that morning, and the last at 1:09 that afternoon (R. 320; R. 357 – R. 365; R. 452 – R. 460). Five loads of backfill material was delivered from the quarry to the jobsite, the first load leaving the quarry at 9:20 that morning and the last at 11:32 that morning (R. 308 - R. 312; R. 513 – R. 517; see also R. 478 – R. 479). A photo of backfilling conducted that day is at R. 378.

Hence, contrary to the Illinois EPA’s unwarranted speculation, the work on September 14 focused on Early Action activities, which were substantial, and which did not include any work on installing any new tanks. Accordingly, this reduction should also be reversed and an additional \$517.83 (3.5 x \$147.95) should be reimbursed to East-West.

Sept. 15 – 11.5 hours: The Final Action letter asserts that this time reduction was “for a Senior Project Manager on September 15, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 9:30 am.” (R. 596). The reviewer notes stated that the time was reduced to 3.5 hours, for the time period 6:30 to 10:00: “Cut 11.5 hours for Keebler as SR PM on Sept 15 (reduce to 3.5 hours – 6:30 to 10:00) – Lacks doc, exceeds req. unreasonable, associated w/install (one single sample (!!)) collected at 9:30!” (R. 590).

The Illinois EPA requested further information about this item from East-West: “Sample F6 was the only sample collected on 9/15/2023 (sample time: 9:00) yet there were 15 hours each

for two personnel on that day. Please explain.” (R. 586). In response, East-West provided this explanation: “Sample F-6 was at the end of where the soil was stockpiled and the final excavation soil removal area. The two personnel were there overseeing and observing the remaining soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials being moved around the site, hand out landfill waste manifests to truckers for haul contaminated soils to landfill, weight [sic] for the trucker to come back to collect landfill weight tickets from trucker, tracking quantities of contaminated soils excavated, taking photographs, traffic control, discussing project with owner and manager, and drive back to Springfield, IL, unload soil samples and put in refrigerator.” (R. 586).

Despite this explanation, the Illinois EPA cut the time anyway, and the interrogatory answer explaining that decisions states:

“Based on the 45-Day Report and the chain-of-custody, only one confirmation sample for the purpose of meeting 35 Ill. Adm. Code 734.210(h) sampling requirements was collected, sample F6 at 9:00 am. ... It should be noted that only two loads of soil were documented as being removed on this day, and these were the last two loads of soil removed from this site, for a total of 55.15 tons, or approximately 36.77 cubic yards using a conversion factor of 1.5 tons per cubic yard. This volume far surpasses the maximum amount of ET&D eligible from reimbursement as part of Early Action Activities. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit.

“PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

“Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST

Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and that the costs are associated with oversight of tank installation work. There was insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank install requirements.”

(Resp. To Petitioner's First Set of Interrogatories, Interrogatory No. 3).

Once again, therefore, the Illinois EPA's deduction was premised not upon a review of the Senior Project Manager's time, but on a suspicion that some of his and other workers' time was spent enlarging the excavation to accommodate the new tanks to be installed rather than performing Early Action activities. Once again, as well, this suspicion was because the Illinois EPA incorrectly determined the size of the authorized excavation on the erroneous belief that only two UST's were removed, rather than three. The Illinois EPA's analysis completely overlooked several important factors, including, as discussed previously, the fact that the appropriate excavation for the removal of the leaking tanks was far greater than acknowledged by the Illinois EPA.

One obvious piece of context ignored by the Illinois EPA was that after September 15, PEI did not return to the site for two weeks, and therefore the September 15 work included all demobilization efforts and work to secure the site (see, e.g., R. 531 (Sleep Inn invoice showing departure date of 9/15)). In addition to that necessary work, on that day another two loads of contaminated soils were excavated and deposited at the landfill, the first arriving at the landfill at 8:12 a.m., and the second at 11:30 a.m. (R. 461 – R. 462; R. 367). One final sample was taken at 9:00 a.m. (R. 147 – R. 148). Once the excavating was complete, the tons of backfill materials that had been deposited onsite the previous several days were filled into the excavations, the site was cleaned up, equipment and tools were loaded, and the consultants returned to Springfield to properly label and take care of the samples that had been taken.

Contrary to the Illinois EPA's stated basis for this reduction, therefore, ample evidence was presented of substantial Early Action work on September 15, and no evidence exists that claimed time was utilized instead for tank installation. The reduction should be reversed and an additional \$1,701.43 (11.5 x. \$147.95) should be allowed.

PID Table Prep. -- 1.0 hour: The Illinois EPA cut 1.0 hour of Project Manager time, discussed as part of a \$695.35 deduction "for costs for personnel, which lack supporting documentation" (R.594, ¶ 4), because "[p]rovided documentation did not support all the hours requested for reimbursement," including "[o]ne hour for a Project Manager for 'PID Reading Table.' There is no documentation to support this task." (R. 595, ¶ 4.b). The reviewer notes add: "Cut 1.0 hours for D. Lacey (PM) for PID Table Prep – Lacks doc. (not in 45 Day!!)" (R.590).

The Illinois EPA's interrogatory answer provides additional explanation: "1.0 hour was deducted from the requested 3.75 hours for the Project Manager (D. Lacey) for the preparation of the 'PID Reading Table.' This was deducted because a PID reading table was not included in the certified and submitted 45-Day Report and was never provided to the Illinois EPA. Based on the submitted timesheet, D. Lacey created a PID reading table on September 25, 2023. The lack of submittal of a PID reading table resulted in a deduction of \$133.15. If a deliverable cannot be provided to the Illinois EPA (e.g. a data table), the Illinois EPA believes there is insufficient documentation to support the requested costs and that such costs are unreasonable." (Resp. to Petitioner's First Set of Interrogatories, Interrogatory No. 3).

East-West notes that it did not include the PID table because the regulations do not require it as a standard submittal, and because the Illinois EPA did not ask for it. The reading table is attached as Ex. 3 (if there is any question of its authenticity, East-West will be pleased to provide a supporting affidavit, but Ex. 3 is exactly the same document that East-West would have provided

had Illinois EPA requested it prior to issuing the Final Action letter). The deduction of \$133.15 should therefore be reversed.

PID Charge Deduction

Illinois EPA's Decision and Explanation — The Illinois EPA cut the requested reimbursement by an additional \$450, sought for use of a PID. Citing 35 Ill. Adm. Code 734.630(cc) and (ee), the Illinois EPA applied the “deduction for costs for consultant’s materials, which lack supporting documentation,” and added that, “[s]ince there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act,” that the claimed costs “are not reasonable as submitted,” and that “[t]here is insufficient documentation to support PID usage.” (R. 597).

In response, East-West notes that the Illinois EPA never informed it that the PID Reading Table would be required to document the reimbursement requests, and that table is not routinely required inasmuch as PID screening is a routine and necessary part of the assessment of the extent of contamination. Accordingly, East-West at this time submits that table as Ex. 3, showing the PID meter reading dates used to test soil sampled during Early Action activities, which documents that a PID meter was used for more than the six days requested. Numerous references to PID usage are included throughout the supporting documentation available for the Illinois EPA’s review, including within the 45-Day Report, which described (under Engineer’s Seal) the sampling progression during the Early Action activities: “PEI personnel collected twenty-seven (27) Early Action soil samples during the UST removal activities. Sixteen (16) wall samples (W-1 through W-16) at around six (6) to eight (8) ft-bgs; six (6) floor samples (F-1 through F-6) just under the bottom of the tanks at around ten to fourteen (10 to 14) ft-bgs, and five (5) piping samples (P-1

through P-5) just under the piping around three (3) to four (4) ft-bgs. The soil samples were screened using a PID, placed in a cooler with ice, and transported under chain-of-custody to Waypoint Analytical, LLC (Waypoint).” (R. 12). Accordingly, no basis exists for this reduction, and the allowed reimbursement should be increased by an additional \$450.

Attorney Fees

East-West specifically requests recovery of its attorney fees incurred in pursuing this reimbursement relief in accordance with 415 ILCS 5/57.8(l), both in its Petition for Review of LUST Fund Determination and in this motion. Although the Act provides that recoverable costs do not generally include attorney fees, section 57.8(l) does provide this Board with discretion to award reimbursement of those fees where “the owner operator prevails before the Board.” This Board has exercised that discretion in numerous LUST Fund reimbursement cases, but only upon conclusion of the initial phase of the case resulting in the owner operator prevailing on some issue or issues, upon which the Board generally directs the petitioner to “file a statement of legal fees that may be eligible for reimbursement and its arguments that the Board should exercise its discretion to direct IEPA to reimburse those fees from the UST Fund.” *Marine Bank Springfield Trust #53-0051 v. Illinois EPA*, PCB 24-81, slip op. at 6 (Dec. 4, 2025). East-West requests that, following ruling on issues favorable to East-West in this motion, this Board direct East-West to submit the supplemental argument and supporting materials to recover the attorney fees it has incurred in obtaining the relief granted.

WHEREFORE Petitioner, EAST-WEST PROPERTIESS, LLC, requests that this Board reverse the above deductions applied by the Respondent, Illinois Environmental Protection

Agency, to the request for Early Action reimbursement submitted by Petitioner, and award to Petitioner its attorney fees incurred in seeking and obtaining relief from the erroneous deductions, and award in favor of Petitioner all such further relief as this Board determines appropriate and available.

Respectfully submitted,

EAST-WEST PROPERTIES, LLC, Petitioner

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
Telephone: (217) 544-1144
Fax: (217) 522-3173
E-mail: sfhedinger@sorlinglaw.com

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

EAST-WEST PROPERTIES, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 2024-072
	)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S
RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, by one of its attorneys, Rich Kim, Assistant Counsel and Special Assistant Attorney General, and hereby submits its responses to Petitioner's First Set of Interrogatories, as follows:

1. Identify all persons providing information responsive to these interrogatories, including the name and title of the person and the interrogatories for which information was provided.

Answer:

1. Becky Fiedler, Environmental Protection Specialist IV
2. Brian Bauer, Senior Public Service Administrator – Interrogatories #3, #4, #8

2. Identify by date, amount billed and approved, and person or persons who performed the work on behalf of East-West Properties, LLC, all amounts requested in the Reimbursement Request for labor that You believe to have been performed and/or documented in accordance with statutory and regulatory requirements and eligible for reimbursement, and for each such identification, state the reasons for Your belief.

Answer:

As are identifiable in the record, the following Consulting Personnel Costs were approved and reimbursed from the Leaking UST Fund, and were performed and/or documented in accordance with statutory and regulatory requirements and eligible for reimbursement, along with the reasons why:



Electronic Filing: Received, Clerk's Office 04/24/2025

- Seven hours for the Sr PM (M. Keebler) at a rate of \$147.95 per hour for “UST Removal Coordination, Management, Preparation, and Scheduling” for a total of \$1,035.65 were billed and reimbursed. Based on the submittal, these costs are comprised of 5 hours on August 28, 2023 (1:00 pm to 6:00 pm) and two hours on August 29, 2023 (10:00 am to 12:00 pm). These costs were reimbursed because based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 68 hours for the Sr PM (M. Keebler) at a rate of \$147.95 per hour for “Travel Time, Job Preparation, UST Removal & Backfill Activity coordination, oversight, mapping, and soil sampling” were reimbursed for a total of \$10,060.60. A total of 129.25 hours were requested. The 68 hours and associated costs are comprised of the following:
 - 10 hours on September 5, 2023 (7:00 am to 5:00 pm) for “UST Removal Activities”. Ten hours were requested, and all were reimbursed.
 - 8.5 hours on September 6, 2023 (7:00 am to 3:30pm) for “UST Removal Activities.” 8.5 hours were requested, and all were reimbursed.
 - 11 hours on September 7, 2023 (7:00 am to 6:00 pm) for “UST & Soil Removal Activities.” Eleven hours were requested, and all were reimbursed.
 - 11.5 hours on September 8, 2023 (6:30 am to 6:00 pm) for “Soil Removal Activities.” 11.5 hours were requested, and all were reimbursed.
 - 3.5 hours on September 10, 2023 (4:00 pm to 7:30 pm) for “Job Preparation & Drive to site.” 3.5 hours were requested, and all were reimbursed.
 - 4.5 hours on September 12, 2023 (6:30 am to 11:00 am) for “Soil Removal & Backfill Activities.” 9.5 hours were requested, and 4.5 hours were reimbursed.
 - 7.5 hours on September 14, 2023 (6:30 am to 2:00 pm) for “Soil Removal & Backfill Activities.” Eleven hours were requested, and 7.5 hours were reimbursed.
 - 3.5 hours on September 15, 2023 (6:30 to 10:00) for “Soil Removal & Backfill Activities.” 15 hours were requested, and 3.5 hours were reimbursed.
 - 8 hours on September 25, 2023 (10:30 am to 6:30 pm) for “Backfill Activities”. Eight hours were requested and all were reimbursed.

These above costs for the Senior Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 76.75 hours for the Scientist IV (D. Lacey) at a rate of \$110.95 per hour for “Travel Time, Job Preparation, UST Removal & Backfill Activity coordination, oversight, mapping, and soil sampling assistance” were reimbursed, for a total of \$8,515.41. There were 76.75 hours requested and 76.75 hours reimbursed for the aforementioned task and employee. The 76.75 hours are comprised of the following:
 - 3 hours on September 5, 2023 (2:30 pm am to 5:30 pm) for “UST Removal Activities”. Three hours were requested and all were reimbursed.

Electronic Filing: Received, Clerk's Office 04/24/2025

- 9 hours on September 6, 2023 (6:30 am to 3:30 pm) for "UST Removal Activities." Nine hours were requested and all were reimbursed.
- 11.50 hours on September 7, 2023 (6:30 am to 6:00 pm) for "UST & Soil Removal Activities." 11.50 hours were requested and all were reimbursed.
- 10 hours on September 8, 2023 (7:00 am to 5:00 pm) for "Soil Removal Activities." Ten hours were requested and all were reimbursed.
- 8 hours on September 11, 2023 (8:00 am to 4:00 pm) for "Soil Removal & Backfill Activities." Eight hours were requested and all were reimbursed.
- 9 hours on September 12, 2023 (7:00 am to 4:00 pm) for "Soil Removal & Backfill Activities." Nine hours were requested and all were reimbursed.
- 5.25 hours on September 25, 2023 (1:45 pm to 7:00 pm) for "Job Preparation & Drive to site." 5.25 hours were requested and all were reimbursed.
- 11 hours on September 26, 2023 (6:30 am to 5:30 pm) for "Backfill Activities." 11 hours were requested and all were reimbursed.
- 10 hours on September 27, 2023 (6:30 am to 4:30 pm) for "Backfill Activities." Ten hours were requested and all were reimbursed.

These above costs for the Scientist IV were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 36.75 hours for the Technician II (Eckhoff) at a rate of \$73.97 per hour for a total of \$2,718.4 for "Travel Time, Job Preparation, UST Removal & Backfill Activity coordination, oversight, mapping, and soil sampling assistance" were reimbursed. There were 36.75 hours requested and 36.75 hours reimbursed for the aforementioned task and employee. This includes the following:
 - 10.75 hours (6:30 am to 5:45 pm) on September 13, 2023 for "Soil Removal & Backfill Activities." 10.75 hours were requested and all were reimbursed.
 - 11 hours (6:30 am to 5:30 pm) on September 14, 2023 for "Soil Removal & Backfill Activities." 11 hours were requested and all were reimbursed.
 - 15 hours (6:30 am to 9:30pm) on September 15, 2023 for "Soil Removal & Backfill Activities." 15 hours were requested and 15 hours were reimbursed.

These above costs for the Technician II were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 2.75 hours for the Project Manager (D. Lacey) at a rate of \$133.15 per hour, for a total of \$366.16 for "Laboratory Certifications/Chain of Custody, PID Reading Table, and Photographic Documentation of UST Removal Activity Preparation" were reimbursed. There were 3.75 hours originally requested for this employee to complete the described tasks; 2.75 of these hours were reimbursed. Time requested and reimbursed includes:
 - 0.25 hours on September 11, 2023.
 - 2.50 hours on September 20, 2023.

Electronic Filing: Received, Clerk's Office 04/24/2025

These above costs for the Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 0.5 hours for the Project Manager (J. Fortado) at a rate of \$133.15 per hour, for a total of \$66.58 per hour, for "Soil Sample Shipment Preparations" were reimbursed. There were 0.5 hours requested for J. Fortado to complete this task and all this requested time was reimbursed. Time requested and reimbursed includes:
 - 0.25 hours on September 11, 2023.
 - 0.25 hours on September 15, 2023.

These above costs for the Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 1.0 hour for the Technician II (G. Keebler) on September 27, 2023 at a rate of \$133.15 per hour, for a total of \$73.97, for "Analytical Table Preparation" was requested and reimbursed. These costs for the Technician II were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 1.50 hours for the Senior Technician (L. Curtis) on September 22, 2023 at a rate of \$96.16 per hour, for a total of \$144.24, for "Analytical Table Preparation" were requested and reimbursed. These costs for the Senior Technician were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 2.0 hours for the Senior Project Manager (M. Keebler) on August 23, 2023 at a rate of \$147.95 per hour, for a total of \$295.90, for "Prepare and assemble 45-Day Report" were requested and reimbursed. These costs for the Senior Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 24 hours for the Senior Project Manager (C. Rochford) at a rate of \$147.95 per hour, for a total of \$3,550.80, for "Prepare and assemble 45-Day Report" were reimbursed. The claim originally requested 25 hours. Costs reimbursed are for work performed on:
 - August 11, 2023 (2.5 hours).
 - September 19, 2023 (3.5 hours).
 - September 21, 2023 (1.5 hours).
 - September 26, 2023 (0.50 hours).
 - September 28, 2023 (8 hours).
 - September 29, 2023 (8 hours).

Electronic Filing: Received, Clerk's Office 04/24/2025

These above costs for the Senior Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 3.75 hours for the Senior Project Manager (M. Keebler) at a rate of \$147.95 per hour, for a total of \$554.81 for "Prepare OSFM Eligibility and Deductibility Application" were requested and reimbursed. Costs were incurred on:
 - September 20, 2023 (3.0 hours).
 - October 6, 2023 (0.75 hours).

These above costs for the Senior Project Manager were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 5.0 hours for the Senior Draftsperson (M. Keebler) at a rate of \$88.76 per hour, for a total of \$443.80, for "Site Map and drawing Preparations" were requested and reimbursed. These costs are associated with 5.0 hours that occurred on September 19, 2023. These costs for the Senior Draftsperson were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 1.0 hour for the Senior Admin. Assistant (M. Keebler) at a rate of \$66.58, for a total of \$66.58, per hour for "Copying & Submitting Report to Client" was requested and reimbursed. This hour occurred on October 6, 2023. These costs for the Senior Admin. Assistant were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.
- 15.0 hours for the Senior Account Technician (J. Fortado) at a rate of \$81.36 per hour, for a total of \$1,220.40 for "Billing Package Preparation" were requested and reimbursed. Costs were incurred on:
 - October 9, 2023 (2.50 hours).
 - October 10, 2023 (4.25 hours).
 - October 11, 2023 (4.0 hours).
 - October 12, 2023 (4.25 hours).

These above costs for the Senior Account Technician were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 4.0 hours for the Senior Professional Engineer (M. Keebler) at a rate of \$192.33 per hour, for a total of \$769.32, for "Billing Package Review and Certification" were requested and reimbursed. This task occurred on October 13, 2023 for 4 hours. These costs for the Senior Professional Engineer were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

- 2.0 hours for the Senior Admin. Assistant (J. Fortado) at a rate of \$66.58 per hour, for a total of \$133.16, for "Copying & Submitting Billing Package to P.E. and Client" were requested and reimbursed. These tasks were performed on:

- October 12, 2023 (1.0 hour).
- October 16, 2023 (1.0 hour).

These above costs for the Senior Admin. Assistant were reimbursed because, based on the documentation provided, they appeared reasonable and to be directly associated with the tasks required to address the Leaking UST Incident 20230615.

3. Identify by date, amount billed, and the person or persons who performed the work on behalf of East-West Properties, LLC, all amounts requested in the Reimbursement Request for labor that you believe not to have been performed and/or documented in accordance with statutory and regulatory requirements and not eligible for reimbursement, and for each such identification, state the amount that You believe not to be eligible for reimbursement, and the reasons for Your belief.

Answer:

- 60.25 hours for the Sr Project Manager (M. Keebler) at a rate of \$147.95 per hour for "Travel Time, Job Preparation, UST Removal & Backfill Activity coordination, oversight, mapping, and soil sampling" were not reimbursed, for a total of deduction of \$9,061.94. The deductions were as follows:
 - One hour for which the submitted timesheet did not support. The request was for a total of 129.25 hours for M. Keebler to perform the aforementioned tasks; however, the submitted timesheet only supported 128.25 hours. Because this cost was not on the timesheet submitted, the Illinois EPA believes this request is not documented or justified.
 - 9.5 hours for "Soil Removal & Backfill Activities" on September 11, 2023. Based on the OFSM Certificate of Removal, Tank #4 was removed on September 6, 2023, and Tanks #8 and 9 (a single, compartmentalized tank), was removed on September 7, 2023. Based on the 45-Day Report, there were NO samples collected on September 11, 2023. The Illinois EPA determined that this cost was not justified or reasonable, and lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA.

- 5.0 hours for "Soil Removal & Backfill Activities" on September 12, 2023. Based on the 45-Day Report and the chain-of-custody samples W-7 through W-16 were collected on this day between 8:00 AM and 10:30 AM. Based on additional information provided by PEI, time spent after 10:30 was to *"test the soils in the baggies using the PID meter, document the PID readings, kit up all the samples into the lab provided vials and jars, place the samples on ice, etc. The remaining time onsite was to oversee and observe the soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, and traffic control."*

The Illinois EPA views the "TIME COLLECTED" column on the chain-of-custody as being the time the sample was actually collected and placed into the appropriate container or jar. The PID screening should be completed prior to "kitting up" the soil into the jars or vials. There is also no indication or documentation that a PID was used to screen the soil samples. There is also no documentation to support the additional time that PEI is asserting it took to place the soil into the jars and subsequently into a cooler with ice.

Furthermore, there is clear evidence that work associated with the installation of the new tanks was performed on September 12, 2023, as indicated on the track hoe operator's time sheet, documenting 10.50 hours for the task "unload shoring." Shoring is used to provide support to the excavation to allow the excavated area to be further expanded so that the new, larger tanks could be installed where the removed tanks were previously located. This is further supported by Figure 3 of the 45-Day Report, pointing to the "14' x 70' shore box excavation" at the end of the Tank 10, which was installed on September 26, 2023. This is also further supported by Perry Environmental Inc.'s invoice which shows the charge for "Labor and Equipment to install and deliver shore box panels for installing new tanks safely and remove and haul back off." Additionally, PEI's invoice to AMPSCO Petroleum Equipment Services (Invoice #2963) explicitly says that "Per proposal #P23-191, Perry Environmental Inc. will provide equipment, materials, and labor to install new tanks at the Marathon Gas Station site at 8100 S. Ashland in Chicago, IL." Oversight of activities related to the installation of new tanks is not eligible for reimbursement from the UST Fund.

Based on the above information, it is the Illinois EPA's opinion that that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, and lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA. There was insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank install requirements.

- 10.75 hours for "Soil Removal & Backfill Activities" on September 13, 2023. There was no Early Action sampling performed on September 13, 2023. When asked for additional information, PEI stated time on this date for consulting personnel was to *"verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, hand out landfill waste manifests to truckers for hauling contaminated soils to landfill, collect landfill weight tickets from truckers, collect quarry weight tickets from truckers delivering backfill materials, tracking quantities of contaminated soils excavated, tracking quantities of backfill materials delivered, taking photographs, and traffic control, observe cleaning up the streets and sidewalks, securing the site for safety, drive back to our rental."*

PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that the time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was for the purpose of meeting Illinois EPA's early action regulations, especially since no soil sampling was performed this day. Additionally, having two senior, experienced personnel onsite to complete the tasks mentioned above is unreasonable. There is also no documentation to support that the PID meter was used, and it exceeds requirements to continually screen soils intended for landfilling. Furthermore, the PID is a screening tool that can indicate the presence of volatile compounds but does not provide concrete data nor does the landfill require PID readings for acceptance of materials.

Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, and exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and the costs are associated with oversight of tank installation work. There was insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank installation work.

- 3.5 hours for "Soil Removal & Backfill Activities" on September 14, 2023. Based on the 45-Day Report and the chain-of-custody samples, three samples were collected for meeting the requirements of 35 Ill. Adm. Code 734.210(h). These were samples F-3 through F-5, which were collected at 10:15 AM, 10:30 AM, and 1:30 PM, respectively. Additional information provided by PEI states that time on this day is for *"The two personnel were oversee and observe the soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials stockpiling, hand out landfill waste manifests to truckers for haul contaminated soils to landfill, collect landfill weight tickets from truckers, tracking quantities of contaminated soils excavated, traffic control, observe cleaning up the streets and sidewalks, securing the site for safety, drive back to our rental."*

The Illinois EPA views the "TIME COLLECTED" column on the chain-of-custody as being the time the sample was actually collected and placed into the appropriate container or jar. The PID screening should be completed prior to "kitting up" the soil into the jars or vials. There is also no indication or documentation that a PID was used to screen the soil samples. There is also no documentation to support the additional time that PEI is asserting it took to place the soil into the jars and subsequently into a cooler with ice.

PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

Furthermore, based on weight tickets, the maximum amount of backfill volume within four feet of the USTs was disposed of at the landfill by the second load on this date (September 14, 2023) for a total of 546 cubic yards (under ticket number 1702693). This load was received at the landfill at approximately 8:12 am. Time to oversee excavation of materials beyond the four-foot limitation exceeds Illinois EPA's requirements, is unreasonable, and appears to be associated with the installation of new USTs.

Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and that the

costs are associated with oversight of tank installation work. There was insufficient documentation submitted to prove that the Senior Project Manager's time was not associated with overseeing tank install requirements.

- 11.5 hours for "Soil Removal & Backfill Activities" on September 15, 2023. Based on the 45-Day Report and the chain-of-custody, only one confirmation sample for the purpose of meeting 35 Ill. Adm. Code 734.210(h) sampling requirements was collected, sample F6 at 9:00 am. Additional information provided by PEI states that on September 15, 2023, *"personnel were there overseeing and observing the remaining soil excavation while still taking samples to verify if the soils were contaminated using the PID meter, oversee the backfill materials being moved around the site, hand out landfill waste manifests to truckers for haul contaminated soils to landfill, weight for the trucker to come back to collect landfill weight tickets from trucker, tracking quantities of contaminated soils excavated, taking photographs, traffic control, discussing project with owner and manager, and drive back to Springfield, IL, unload soil samples and put in refrigerator."* It should be noted that only two loads of soil were documented as being removed on this day, and these were the last two loads of soil removed from this site, for a total of 55.15 tons, or approximately 36.77 cubic yards using a conversion factor of 1.5 tons per cubic yard. This volume far surpasses the maximum amount of ET&D eligible from reimbursement as part of Early Action Activities. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit.

PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to expanding the excavation limits for the purpose of installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. Over excavation occurred to fit the new, larger tanks into the existing tank pit. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and that the costs are associated with oversight of tank installation work. There was

insufficient documentation submitted to document that the Senior Project Manager's time was not associated with overseeing tank install requirements.

- 10.5 hours for "Backfill Activities" on September 26, 2023. All four new tanks – note that Tanks #11, 12, and 13 are a singular tank separated into 3 compartments – were installed on this day by Perry Environmental Services. Additional information provided by PEI stated that "the two personnel were overseeing and observing backfilling the tank excavation area with pea gravel, traffic control to allow the skid steer machine to move rock safely from southside of property where the clean backfill materials were stockpiled to the northside of the property, while using the street to haul on, travel from hotel and back." The Illinois EPA reimbursed 11 hours for a Scientist IV for "backfill activities" on this day. Additionally, it is impossible to establish that the time for the Senior Project Manager was not onsite for overseeing installation of the new USTs. Furthermore, all early action sampling activities had been completed for 11 days. Additional documentation provided to the Illinois EPA states that there was a one-week delay with the delivery of the new tanks to this site, which explains why the tank pits were left open for so long following removal of the old tanks, which were associated with the above referenced Incident. Additional time and delays are associated with installation of new tanks, and any costs associated with these activities are ineligible for reimbursement from the Leaking UST Fund per 35 Ill. Adm. Code 734.630(l) and Section 57.7(c)(3) of the Act.

PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, and exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lack supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, and that the costs are associated with oversight of tank installation work. There was insufficient documentation submitted to prove that the Senior Project Manager's time was not associated with overseeing tank install requirements.

- 9.5 hours for "Backfill Activities" on September 27, 2023. Information from PEI states that *"On 9-27-23, the two personnel drove to the site, then oversaw and observed the final backfilling the tank excavation area with pea gravel, traffic control to allow the skid steer machine to move rock safely from southside of property where the clean backfill materials were stockpiled to the northside of the property, while using the street to haul on, travel back to Springfield, IL."* By this date, all sampling requirements set forth in 734.210(h) were met, and the new tanks were installed the previous day. The Illinois EPA reimbursed 9 hours for a Scientist IV for "backfill activities" on this day.

PEI served as the UST removal contractor; the environmental consultant for the above referenced incident; and was subcontracted to provide equipment, materials, and labor for new UST installation. Based on provided information and documentation, the Illinois EPA determined that time spent onsite was primarily for work related to installing new tanks. Note that two new 12,000-gallon tanks, one of which is comprised of three compartments, was placed in the same pit that Tanks 8 and 9 were removed from. There is no indication that the work performed was solely for the purpose of meeting Illinois EPA's early action regulations.

Based on the above information, the Illinois EPA determined that the costs deducted on this day for the Senior Project Manager were not directly associated with activities related to tank removal or the requirements to address the above referenced LUST Incident, are unreasonable, and exceed the requirements of the statutory and regulatory requirements to address the LUST Incident, lacked supporting documentation based on the work performed and the documentation submitted to the Illinois EPA, are associated with oversight of tank installation work. There was insufficient documentation submitted to prove that the Senior Project Manager's time was not associated with overseeing tank install requirements.

- 1.0 hour was deducted from the requested 3.75 hours for the Project Manager (D. Lacey) for the preparation of the "PID Reading Table." This was deducted because a PID reading table was not included in the certified and submitted 45-Day Report and was never provided to the Illinois EPA. Based on the submitted timesheet, D. Lacey created a PID reading table on September 25, 2023. The lack of submittal of a PID reading table resulted in a deduction of \$133.15. If a deliverable cannot be provided to the Illinois EPA (e.g. a data table), the Illinois EPA believes there is insufficient documentation to support the requested costs and that such costs are unreasonable.
- One out of the 25 requested hours was deducted from the Senior Project Manager (C. Rochford) for "Prepare and assemble 45-Day Report" because the submitted timesheets only documented 24 hours by C. Rochford for preparing and submitting the 45-Day Report. This resulted in a deduction of \$147.95. Because this cost was not on the timesheet submitted, the Illinois EPA believes this request is not documented or justified based on statutory and regulatory requirements.

- Two hours were deducted for the Project Manager (D. Lacey) for "45-Day Report Attachment Preparation Assistance", for a deduction of \$266.30. These hours were deducted because they were not documented on the submitted time sheet, and there was no documentation to support what the Senior Project Manager needed help with, why the Senior Project Manager required assistance preparing attachment(s), nor what attachments the Project Manager assisted with. Because this cost was not on the timesheet submitted, the Illinois EPA believes this request is not documented or justified based on statutory and regulatory requirements.
 - Four hours for the Senior Professional Engineer for "45-Day Review and Certification" were deducted because the costs were incurred past the 45 plus 14-day Early Action time frame, resulting in a deduction of \$769.32. This task was performed on October 5, 2023. Excluding costs for preparing reimbursement requests, costs associated with completing Early Action requirements, including reporting, must be completed within 45 plus 15 days of reporting the incident to IEMA.
4. Identify any and all information, including documents included and documents not included in the Record, verbal information, or information of any other type and from any other source, upon which You relied in rejecting and deducting from amounts approved for payment from the Reimbursement Request the following amounts set forth in Attachment A to the Final Action:

Paragraph 6 of Attachment A -- \$8,913.99

Paragraph 8 of Attachment A -- \$450.00

Answer:

Paragraph 6 of Attachment A -- \$8,913.99

- 45-Day Report
- Early Action Billing Package
- Email Correspondence with
PEI
- OSFM facility database and installation records.
- PEI Invoice #2953
- Agency File

Paragraph 8 of Attachment A -- \$450.00

- 45-Day Report
- Informal communications with the assigned LUST Project Manager.
- Early Action Billing Package
- OSFM facility database and installation records.
- PEI Invoice #2953
- Agency File

5. State and explain the basis for the statements included on Bates page 590 of the Record, in the seventh line from the bottom, that:
"Cut 10.50 hours for Keebler (sr pm) on 9/26 (backfill activities)
-Lacks doc, unreasonable, exceeds req. associated w/tank install"

Answer:

These are review notes. It corresponds to Attachment A of the response letter to claim number 74311, more specifically, deduction 6f. The basis is that the time appears to correspond to the Senior Project Manager to oversee installation of the new tanks. There is insufficient documentation provided to the Illinois EPA showing that the Senior Project Manager was working solely on activities related to the LUST Incident and that his time was not associated with tank installation activities or oversight.

6. State and explain the basis for the statements included on Bates page 590 of the Record, in the fifth line from the bottom, that:
"Cut 9.5 hours for Keebler (sr pm) on 9/27 (backfill activities)
-Lacks doc, unreasonable, excess req., associated w/tank install"

Answer:

These are review notes. It corresponds to Attachment A of the response letter to claim number 74311, more specifically, deduction 6e. There is insufficient documentation provided to the Illinois EPA showing that the Senior Project Manager was working solely on activities related to the LUST Incident and that his time was not associated with tank installation activities or oversight.

7. State and explain the basis for the statements included on Bates page 590 of the Record, in the second line from the bottom, that:

"Cut 450.00 for PID: Lacks doc, unreasonable"

Answer:

These are review notes. They clearly correspond to Attachment A of the response letter to claim, more specifically, deduction 9. The basis for this comment was the lack of documentation to show that the PID was used for requested number of days.

8. State and explain in detail the bases and reasons supporting the statements included in the second, fifth, and sixth paragraphs of the paragraph number 6 of Attachment A of the Final Action, and identify all information, facts, and sources of information supporting the statements, as well as all assumptions You made to support the statements. Without limiting the scope of this interrogatory, in particular state and explain in detail the bases and reasons supporting the assertions that identified activities "are associated with the installation of new USTs, the repair of existing USTs, and/or removal and disposal of USTs determined to be ineligible by the Office of the State Fire Marshal," and that identified hours of Senior Project Manager time "are associated with new tank installation."

Answer:

PEI was subcontracted by the tank install contractor, as is clearly evidence on PEI Invoice #2953. Installation records and documentation available from the Office of the Illinois State Fire Marshal document when tank installation occurred, based on information from the OSFM and the documentation submitted. The new tanks were installed in the same, enlarged UST pit, as is evidenced by the information available from the OSFM, 45-Day Report, and invoicing and documentation included in the reimbursement request. As activities associated with tank installation activities occurred on the days for which costs associated with the Senior Project Manager were deducted, there was insufficient documentation to support that the Senior Project Manager was not overseeing installation activities, considering that the PEI was subcontracted to provide install services.

9. State and explain in detail the bases and reasons supporting the statements included in paragraph number 9 of Attachment A of the Final Action, and identify all information, facts, and sources of information supporting the statements, as well as all assumptions You made to support the statements. Without limiting the scope of this interrogatory, in particular state and explain in detail the bases and reasons supporting the assertions that there is "no supporting documentation" for the identified costs, and that "[t]here is insufficient documentation to support PID usage."

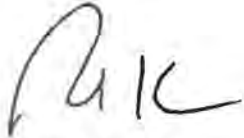
Answer:

The sources of information were all included in the record. There was no documentation provided to the Illinois EPA to show that the PID was used to screen the samples collected. There were no field notes nor table showing the PID reading levels.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

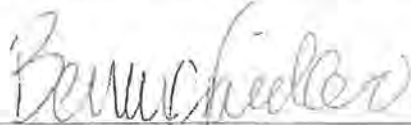
A handwritten signature in black ink, appearing to read 'Rich Kim'.

Rich Kim
Assistant Counsel/Special Assistant Attorney General
Division of Legal Counsel
2520 West Iles Avenue
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
Dated: April 24, 2025

CERTIFICATION

I, Becky Fiedler, with the Illinois EPA, Bureau of Land, Leaking Underground Storage Tank Section, depose and state, at follows:

Under penalties as provide by law pursuant to Section 1-109 of the Code of Civil Procedure, I certify that the statements set forth in the responses to interrogatories one through nine are true and correct, except as to matters therein stated to be on information and belief and as to such matters I certify as aforesaid that I verily believe the same to be true.

A handwritten signature in cursive script, appearing to read "Becky Fiedler", is written over a horizontal line.

Becky Fiedler

PHOTOGRAPHIC LOG

PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #1

DATE: 9/6/23

VIEW: Southeast

DESCRIPTION: Uncovering Kerosene Tank.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #2

DATE: 9/6/23

VIEW: North

DESCRIPTION: Blowing Down Gasoline Tank.



Blumberg No. 5118

EXHIBIT

2

PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #3
DATE: 9/6/23
VIEW: South
DESCRIPTION: Removing Kerosene Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #4
DATE: 9/6/23
VIEW: Southeast
DESCRIPTION: Cutting Open Kerosene Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #5
DATE: 9/6/23
VIEW: Southeast
DESCRIPTION: Cleaning Out Kerosene Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #6
DATE: 9/6/23
VIEW: East
DESCRIPTION: Pumping Water out of excavation around Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #7
DATE: 9/7/23
VIEW: East
DESCRIPTION: Blowing Down Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #8
DATE: 9/7/23
VIEW: South
DESCRIPTION: Piping Removal.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #9

DATE: 9/7/23

VIEW: Southeast

DESCRIPTION: Piping Removal.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #10

DATE: 9/7/23

VIEW: Southeast

DESCRIPTION: Uncovering/Blowing Down Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #11

DATE: 9/7/23

VIEW: East

DESCRIPTION: Removing Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #12

DATE: 9/7/23

VIEW: East

DESCRIPTION: Pumping Contaminated Water out of Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #13
DATE: 9/7/23
VIEW: East
DESCRIPTION: Removing Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #14
DATE: 9/7/23
VIEW: East
DESCRIPTION: Cutting Open Gasoline Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #15
DATE: 9/11/23
VIEW: East
DESCRIPTION: Extent of Excavation around Kerosene Tank.



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #16
DATE: 9/11/23
VIEW: Southeast
DESCRIPTION: Digging out Contaminated Soil/Loading Trucks.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #17

DATE: 9/11/23

VIEW: East

DESCRIPTION: Digging out Contaminated Soil/Loading Trucks.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #18

DATE: 9/11/23

VIEW: Northeast

DESCRIPTION: Tank Loaded onto Semi Trailer.



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #19

DATE: 9/12/23

VIEW: South

DESCRIPTION: Backfilling Tank Excavation with Gravel



PROJECT: East West Properties, LLC-Ashland Ave

PHOTOGRAPH #20

DATE: 9/14/23

VIEW: South

DESCRIPTION: Backfilling Tank Excavation with Gravel



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #21
DATE: 9/26/23
VIEW: South
DESCRIPTION: Backfilling Tank Excavation with Gravel



PROJECT: East West Properties, LLC-Ashland Ave
PHOTOGRAPH #22
DATE: 9/26/23
VIEW: South
DESCRIPTION: Backfilling Tank Excavation with Gravel



Confirmation Sampling PID Results		
Sample Description	PID Reading (ppm)	Date Completed
F-1	571	9-8-23
F-2	23.4	9-8-23
F-3	0	9-14-23
F-4	0	9-14-23
F-5	0	9-14-23
F-6	0	9-15-23
W-1	174	9-8-23
W-2	1297	9-8-23
W-3	825	9-8-23
W-4	909	9-8-23
W-5	738	9-8-23
W-6	798	9-8-23
W-7	78.7	9-12-23
W-8	122	9-12-23
W-9	438	9-12-23
W-10	248	9-12-23
W-11	44.3	9-12-23
W-12	35.5	9-12-23
W-13	972	9-12-23
W-14	15.1	9-12-23
W-15	327	9-12-23
W-16	11.1	9-12-23
P-1	534	9-6-23
P-2	1593	9-7-23
P-3	1670	9-7-23
P-4	424	9-7-23
P-5	1748	9-7-23

