

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

JESSE FOOD MART, INC.)	
Petitioner,)	
v.)	PCB 2024-073
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE

Don Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, IL 60605
don.brown@illinois.gov

Carol Webb, Hearing Officer
Illinois Pollution Control Board
2520 West Iles Avenue
P.O. Box 19274
Springfield, IL 62794-9274
carol.webb@illinois.gov

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
pdshaw1@gmail.com

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT**, copies of which are herewith served upon you.

Respectfully submitted,
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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: December 10, 2025

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ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Rich Kim, Assistant Counsel and Special Assistant Attorney General, and hereby submits **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** to the Illinois Pollution Control Board ("Board").

I. STANDARD FOR ISSUANCE AND REVIEW

A motion for summary judgment should be granted where the pleadings, depositions, admissions on file, and affidavits disclose no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); McDonald's Corporation v. Illinois Environmental Protection Agency, PCB 04-14 (January 22, 2004), p. 2.

Section 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.8(i)) grants an individual the right to appeal a determination of the Illinois EPA to the Board pursuant to Section 40 of the Act (415 ILCS 5/40). Section 40 of the Act, the general appeal section for permits, has been used by the legislature as the basis for this type of appeal to the Board. Thus, when reviewing an

Illinois EPA determination of ineligibility for reimbursement from the Underground Storage Tank Fund, the Board must decide whether the application, as submitted, demonstrates compliance with the Act and Board regulations. Rantoul Township High School District No. 193 v. Illinois EPA, PCB 03-42 (April 17, 2003), p. 3.

In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must look to the documents within the Administrative Record ("AR"). The Illinois EPA asserts that the Record as filed by the Agency and the arguments presented in this motion are sufficient for the Board to enter a dispositive order in favor of the Illinois EPA on all relevant issues. Accordingly, the Illinois EPA respectfully requests that the Board enter an order granting the Illinois EPA summary judgement.

II. BURDEN OF PROOF

Pursuant to Section 105.112(a) of the Board's procedural rules (35 Ill. Adm. Code 105.112(a)), the burden of proof shall be on the petitioner. In reimbursement appeals, the burden is on the applicant for reimbursement to demonstrate that incurred costs are related to corrective action, properly accounted for, and reasonable. Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003), p. 9.

III. ISSUE

The issue presented is whether the Petitioner's payment request to Illinois EPA would violate the Act or the Board's rules.

Based upon the express language of the Act and regulations thereunder, and the facts presented; the answer is YES.

IV. LAW

415 ILCS 5/57.1 Applicability.

(a) An owner or operator of an underground storage tank who meets the definition of this Title shall be required to conduct tank removal, abandonment and repair, site investigation, and corrective action in accordance with the requirements of the Leaking Underground Storage Tank Program.

415 ILCS 5/57.7(c) Agency review and approval.

(3) In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

35 Ill. Adm. Code 734.605 Applications for Payment

- f) Except for applications for payment for costs of early action conducted pursuant to Subpart B of this Part, other than costs associated with free product removal activities conducted more than 45 days after confirmation of free product, in no case must the Agency review an application for payment unless there is an approved budget on file corresponding to the application for payment.

35 Ill. Adm. Code 734.630 Ineligible Corrective Action Costs

Costs ineligible for payment from the Fund, include, but are not limited to:

- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;
- v) Indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs;
- cc) Costs that lack supporting documentation;

- dd) Costs proposed as part of a budget that are unreasonable;
- ee) Costs incurred during early action that are unreasonable;
- rr) Handling charges charged by persons other than the owner's or operator's primary contractor.

35 Ill. Adm. Code Section 734.635 Payment for Handling Charges

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

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

35 Ill. Adm. Code Section 734.845 Professional Consulting Services

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

35 Ill. Adm. Code Section 734.850 Payment on Time and Materials Basis

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

41 Ill. Adm. Code Section 176.330 Procedures for Site Assessments

- a) All site assessments and related reports must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist. All site assessment work shall meet accepted engineering standards or accepted

standards for the practice of professional geology and be conducted according to the best professional judgment and diligence of the supervising Licensed Professional Engineer or Licensed Professional Geologist, as the case may be.

- b) Owners or operators shall measure for the presence of a release where contamination is most likely to be present at the UST site by conducting sampling in the same manner and following the same procedures as required under the Illinois Pollution Control Board's Petroleum Underground Storage Tanks rules at 35 Ill. Adm. Code 734.210(h)(1) and (2). Samples must be analyzed for the same applicable indicator contaminants as required under 35 Ill. Adm. Code 734.405. All sampling must meet the same data quality and certification requirements as set forth in 35 Ill. Adm. Code 734.415 and 734.420. If soil borings are involved the owner or operator must follow the same requirements as set forth in 35 Ill. Adm. Code 734.425 and 734.435. For all UST removals, samples shall be taken in native soil with the excavation for the removal still open and prior to backfill and with the STSS still on site. For abandonment-in-place, samples may be taken prior to or on the day of abandonment-in-place and shall meet the requirements of this Section. In selecting sample types, sample locations and sample measurement methods, owners or operators shall also consider the nature of the stored substance, the type of initial alarm or cause for suspicion, if any, the method of tank removal or abandonment-in-place, the types of backfill, the depth of groundwater and other factors appropriate for identifying the presence and source of a release. Packaging for shipping or delivery should be done in a manner that will preserve the sample and prevent deterioration or dilution, as for example, putting samples in sealed containers in ice.
- c) Within 45 days after receipt of lab results from a full site assessment pursuant to subsection (b), owners or operators must designate and electronically submit to OSFM, on OSFM electronic forms (titled "Site Assessment Results" form and available at <https://sfm.illinois.gov/about/divisions/petroleum-chemical-safety/applications-and-forms.html>), a "contamination" or "no contamination" result indicating whether a release has occurred, along with associated lab results. This determination shall be based upon an evaluation of lab results to determine whether any contamination has been found. The determination must be certified by a Licensed Professional Engineer or Licensed Professional Geologist. Even if "no contamination" is being reported, the analytical report with tables and a site map showing sampling/boring locations shall be submitted to OSFM. In the event a suspected release was previously called into IEMA and is being confirmed by site assessment, the "contamination" or "no contamination" result on the Site Assessment Results form shall be provided to IEPA in addition to OSFM.
- d) In the event that sampling or other site observations disclose evidence of a release or site assessment lab results show site contamination, the owner or operator shall immediately notify IEMA and any other required entities of a suspected release, as

required by Section 176.320, and begin corrective action pursuant to 35 Ill. Adm. Code 734.

- e) Records generated from site assessments and related activity shall be kept at the site (or available within 30 minutes or before OSFM completes its inspection, whichever is later) and may not be discarded or destroyed unless and until a No Further Remediation (NFR) letter is issued by IEPA or until the site permanently ceases the activity involved in using the USTs and any site assessments required under this Part are completed and show no evidence of contamination. Owners or operators claiming that required records were destroyed, discarded or lost prior to September 1, 2010 or by a prior owner of the subject UST property shall conduct a new site assessment when the assessment is required by OSFM rules for continued or future use of the USTs.

V. FACTS

On April 27, 2023, Tod Rowe of CW³M Company, Inc. ("CW³M") traveled to Galesburg, Illinois to conduct an environmental assessment at Jesse Food Mart ("Petitioner"), a gasoline service station located at 275 South Academy Street in Galesburg. (AR13, AR180). At 9:00 a.m. that day, a soil boring was drilled to a depth of 10 feet with a borehole and sample number of RC-1. (AR18, AR40, AR63). At 9:30 a.m., a suspected release of petroleum was discovered from the UST systems – a 12,000-gallon tank and two 6,000-gallon tanks were in operation at the site, and Tod Rowe reported the release to the Illinois Emergency Management Agency ("IEMA") at 10:05 a.m. (AR1). The reported suspected release was assigned Incident Number 2023-0338 by IEMA. (AR1-AR2). Illinois EPA acknowledged notification of the release on April 28, 2023. (AR3). Also on April 28, 2023, Suburban Laboratories, Inc. ("Suburban") received sample RC-1 for analysis. (AR58-AR65).

Due to the 12,000-gallon tank's proximity to the building, Petitioner applied to the Office of the Illinois State Fire Marshall ("OSFM") for a permit to abandon in place on May 5, 2023. (AR5-AR6). On May 7, 2023, OSFM issued a permit for abandonment in place. (AR8). On May 8, 2023, Suburban provided CW³M with its laboratory analysis of RC-1, which validated soil contamination above the most stringent Tier 1 Clean-up Objectives (AR 19, AR54, AR58-AR65).

On May 24, 2023, 12 borings were drilled (SB-1 through SB-12) to a depth of 10 feet below ground surface each. (AR14, AR41-AR52). On June 5 and 6, 2023, tank abandonment activities were conducted by CW³M, Bandy Concrete & Excavation ("Bandy"), and Lenz Oil Service, Peoria, Inc ("Lenz") with oversight from OSFM Tank Specialist Charlene Troyer. (AR14).

On June 20, 2023, CW³M submitted, on behalf of Petitioner, a 45-Day Report. (AR9-AR88). OSFM issued its Reimbursement Eligibility and Deductible letter on August 10, 2023, finding all three tanks eligible for reimbursement from the Underground Storage Tank Fund, subject to a \$5,000 deductible. (AR89-AR90). IEPA accepted the 45-Day Report on October 24, 2023, with conditional approval of the Stage 1 Site Investigation plan. (AR91-AR-96).

On October 30, 2023, CW³M submitted a Reimbursement Claim seeking \$70,407.48 for UST Early Action activities from April 1, 2023 – July 31, 2023. (AR97-AR194). On February 28, 2024, Illinois EPA e-mailed a request for additional information, noting that the decision deadline was March 1, 2024. (AR198). Petitioner's consultant provided the 30-day waiver on February 29, 2024. (AR201). On March 7, 2024, Petitioner's consultant provided additional information by e-mail. (AR195-AR196). On March 22, 2024, Illinois EPA requested additional information including activities conducted by Bandy on June 5 and 6, 2023. (AR195). On March 29, 2024, the Illinois EPA issued its final decision letter. (AR 205). Five dates later, on April 3, 2024, Petitioner's consultant e-mailed the additional information that was requested on March 22, 2024. (AR195, AR200).

Drilling Costs

In its Reimbursement Claim, Petitioner indicated that 13 borings were drilled via PUSH injection to a depth of 10 feet each for a total of 130 feet drilled at a rate of \$25.36/ft, resulting in a total cost of \$3,296.80. (AR112). In an invoice dated May 25, 2023, Advanced Environmental Drilling

& Contracting billed for 130 feet of Geoprobe Soil Sampling, but the invoice did not specify what date the billed costs were incurred. (AR178).

Tank Abandonment Costs – Bandy Concrete & Excavation

As part of the UST abandonment costs in the Reimbursement Claim, Petitioner requested \$23,731.13 for Bandy's early action activities. (AR143).

Mileage Costs

Petitioner sought mileage reimbursement for 740 miles at \$0.59/mile totaling \$436.60. (AR124). The first trip was a one-way trip on April 27, 2023, by G.T. Rowe of 180 miles totaling \$103.20. (AR180-AR182). The next trip was round-trip by G.T Rowe on May 23, 2023, and returning on May 24, 2023, for a total of 560 miles (280 miles each way) resulting in requested mileage of \$330.40. (AR183-AR187).

Petitioner also sought mileage reimbursement for 280 miles at \$0.59/mile totaling \$165.20. (AR125). This was a round-trip by G.T. Rowe on June 5, 2023, and returning on June 6, 2023, for a total of 280 miles (140 miles each way) resulting in requested mileage of \$165.20. (AR188-AR192).

Consulting Personnel Costs – Site Assessment/Background Information

Petitioner requested reimbursement for C.L. Rowe (Senior Project Manager) for 2 hours at \$140.88/hour totaling \$281.76 for "Consulting Personnel Costs for Site Assessment/Background Information" as part of the 45-Day Report. (AR118). One hour was billed for work done on April 28, 2023. (AR180-AR181). The second hour was billed for work done on June 20, 2023. (AR189-AR190).

Consulting Personnel Costs – Release Confirmation

Petitioner requested a total of 25 hours for G.T. Rowe (Engineer III) as part of drilling consulting personnel costs at \$140.88/hour for a total of \$3,522.00. (AR119). Five hours were billed for G.T. Rowe's activities on April 27, 2023. (AR180-AR181).

Petitioner requested a total of 2 hours for C.L. Rowe (Senior Project Manager) as part of consulting personnel costs at \$140.88/hour for a total of \$281.76. (AR119). 0.5 hours were billed for C.L. Rowe's activities on May 8, 2023 (AR183). 0.25 hours were billed for C.L. Rowe's activities on May 10, 2023. (AR183).

Consulting Personnel Costs – Reimbursement Claim Preparation

Petitioner requested reimbursement for R. Haas (Senior Administrative Assistant) for 2.5 hours at \$66.56/hour totaling \$166.40 for Reimbursement Preparation. (AR122). Those activities took place on July 29, 2023. (AR193-AR194).

Petitioner requested reimbursement for V.E. Smith (Senior Professional Engineer) for 2 hours at \$193.32/hour totaling \$384.64 for PE Review & Certification of the reimbursement claim. (AR122). Those activities took place on July 27, 2023. (AR193-AR194).

Handling Costs

Petitioner requested a total of \$2,628.50 in Handling Charges in its reimbursement package based upon \$27,858.31 in total subcontractor and field purchases costs, including \$23,731.13 for Bandy Concrete & Excavation and \$1,181.18 for hotel costs. (AR127).

This case was appealed on May 9, 2024, which was accepted by the Board on May 16, 2024.

VI. ARGUMENT

A motion for summary judgement can be granted in favor of the Illinois EPA based upon the Administrative Record and the Board's decision in Abel Investments v. IEPA, PCB 2016-108.

"The Board must decide whether Abel's submittal to IEPA demonstrated compliance with the Act and the Board's rules. Illinois Ayers Oil Co. v. IEPA, PCB 03-214, slip op. at 8 (April 1, 2004); 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. Freedom Oil Co. v. IEPA, PCB 03-54, 03-56, 03-105, 03179, 04-04 (cons.), slip op. at 11 (Feb. 2, 2006); *see also* 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 [submittal] as presented to [IEPA] demonstrates compliance with the Act").

Further, on appeal before the Board, IEPA's denial letter frames the issue (Karlock v. IEPA, PCB 05-127, slip op. at 7 (July 21, 2005)), and the UST owner or operator has the burden of proof (Ted Harrison Oil v. IEPA, PCB 99-127, slip op. at 5-6 (July 24, 2003); *see also* 35 Ill. Adm. Code 105.112). The standard of proof in UST appeals is the "preponderance of the evidence." Freedom Oil Co., slip op. at 59 (Feb. 2, 2006), citing 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 (cons.), slip op. at 3 (Sept. 20, 1985) ("A proposition is proved by a preponderance of the evidence when it is more probably true than not."). *Abel at 3.*

There is no genuine issue of material fact. This case is a matter of the application of the law. The Administrative Record in this case was filed on July 24, 2024. A Certificate of Record on Appeal was filed with the Administrative Record wherein, the project manager, certified that "on information and belief that the entire record of the Respondent's decision, as defined in 35 Ill. Adm. Code 105.410(b)" was enclosed.

1. First Deduction – Drilling Costs Correctly Described as Confirmation Sampling (\$253.60).

Petitioner claims that 130 feet of drilling at \$25.36 per foot was collected on May 24, 2023.

As evidence, Petitioner points to an invoice from Advanced Environmental Drilling & Contracting dated the following day, May 25, 2023. (AR178). The invoice does not indicate any specific date when the drilling took place. However, it is clear from the Petitioner's 45 Day Report, only 12 borings were drilled (SB-1 through SB-12) to a depth of 10 feet below ground surface each (120 feet of drilling) on May 24, 2023. (AR14, AR41-AR52).

The Illinois EPA correctly determined that the missing mysterious 13th soil boring at a depth of 10 feet occurred on April 27, 2023. (AR18, AR40, AR63). That was the only other drilling date, according to the 45 Day Report. (AR9-AR88). Petitioner denies that this soil boring was drilled for the purpose of a release confirmation. However, the borehole and sample number (RC-1) clearly identifies this as a release confirmation sample. (AR40, AR63). In fact, in the Analytical Results section (Appendix D) of the 45 Day Report, RC-1 is clearly identified as a Release Confirmation Sample. (AR54). The other 12 borings are identified as Early Action Samples. (AR55-AR57).

The exact timing of the events of April 27, 2023, are critical. That morning, Tod Rowe from CW³M traveled to Galesburg, Illinois to conduct an environmental assessment for Petitioner. (AR13). In its Statement of Undisputed Facts, Petitioner claims that the soil samples were collected following the reporting of the suspected leak to the Illinois Emergency Management Agency. (Mot. at 2). That is clearly not what happened based on the Administrative Record.

At 9:00 a.m. that day, CW³M drilled a soil boring to a depth of 10 feet with a borehole and sample number of RC-1. (AR18, AR40, AR63). At 9:30 a.m., CW³M discovered a suspected release of petroleum from the UST systems and Tod Rowe reported the release to IEMA at 10:05 a.m. (AR1). The soil boring, which Petitioner called RC-1, was drilled prior to the discovery of the suspected release and subsequent reporting to IEMA.

Petitioner applied and received a permit from OSFM for abandonment in place on May 7, 2023. (AR5-A6, AR 8). The next day, on May 8, 2023, Suburban provided CW³M with its laboratory analysis of RC-1, identified as a Release Confirmation Sample, which confirmed soil contamination above the most stringent Tier 1 Clean-up Objectives (AR 19, AR54, AR58-AR65). Therefore, the Agency's decision to cut the confirmation sampling (\$253.60) on April 27, 2023, was correct.

The technical documentation submitted to the IEPA demonstrates that 12 soil borings were conducted to a depth of 10 feet for the collection of the required soil samples and not 13 as requested for reimbursement. The documentation also documents that one soil boring was conducted to a depth of 10 for the sole purpose of determining if a release occurred. The one soil boring conducted for release confirmation was conducted prior to reporting a release to IEMA. Therefore, the Agency's decision to cut the soil boring for confirmation sampling (\$253.60) on April 27, 2023, was correct as this boring was conducted prior to the release being reported to IEMA.

2. Fourth Deduction – Tank Abandonment Costs Properly Deducted (\$10,436.58).

On October 30, 2023, CW³M submitted a Reimbursement Claim seeking \$70,407.48 for UST Early Action activities from April 1, 2023 – July 31, 2023. (AR97-AR194). Included in the reimbursement package was an invoice from Bandy Concrete & Excavation dated June 11, 2023, in the amount of \$23,731.13. (AR144).

On February 28, 2024, the Agency reviewer emailed CW³M several questions about the tank abandonment activities on June 5 and 6, including a request for additional information on the Bandy invoice and personnel. (AR198). In that email, it was noted that the 120-day deadline for the site was March 1, 2024, and the reviewer requested a 30-day waiver to allow time for CW³M to respond.

(Id.). CW³M provided the 30-day extension the following day, February 29, 2024. (AR201). Therefore, the new decision deadline was March 31, 2024.

On March 7, 2024, CW³M responded to the reviewer's initial questions. As part of that response, it was determined that there was only 1 Bandy laborer on site instead of 2, so the laborer hours should be 8 instead of 16. (AR196). On March 22, 2024, the Agency reviewer had additional follow-up questions regarding the activities of Bandy personnel on June 5 and 6, as well as the equipment utilization. (AR195).

With a decision deadline of March 31, 2024, the Illinois EPA issued its final decision letter on March 29, 2024. (AR205-AR216). In its decision, the Illinois EPA deducted \$10,996.58 for tank abandonment costs, due to a lack of supporting documentation. (AR209). On April 3, 2024, Petitioner's consultant e-mailed the additional information that was requested on March 22, 2024. (AR195, AR200). This additional information was provided to the Illinois EPA five days after the decision letter was issued and three days after the 120-day plus 30-day waiver expired. Therefore, based upon the information submitted to the Illinois EPA by the March 29, 2024, final decision, the deduction of \$10,996.58 in tank abandonment costs due to a lack of supporting documentation was proper.

3. Sixth and Seventh Deductions – Mileage (\$100.30).

Petitioner sought reimbursement for mileage for two separate remediation categories. (AR124-AR125). The first mileage request was for a total of 740 miles at \$.59/mile for a total of \$446.60 for EA-SB-Field. (AR124). The second mileage request was for a total of 240 miles at \$.59/mile for a total of \$166.20 for UST-OS. (AR125).

On April 27, 2023, Tod Rowe (Engineer III) traveled from Springfield to Galesburg to conduct an environmental assessment for the Petitioner. (AR13, AR182). As mentioned above, at 9:00 a.m. that day, a soil boring was drilled to a depth of 10 feet with a borehole and sample number of RC-1. (AR18, AR40, AR63). At 9:30 a.m., a suspected release of petroleum from the UST systems was discovered and Tod Rowe reported the release to IEMA at 10:05 a.m. (AR1). The soil boring, which Petitioner called RC-1, was drilled prior to the discovery of the suspected release and subsequent reporting to IEMA. Therefore, Petitioner only requested mileage reimbursement for the return one-way trip totaling 180 miles on April 27, 2023. (AR182).

This single one-way trip for 180 miles caused confusion for the Illinois EPA reviewer. For the mileage reimbursement requests for the roundtrips taken on May 23 and May 24, 2023, 280 miles was requested (or 140 miles each way). (AR187). Likewise, the mileage reimbursement requests for the two one-way trips taken on June 5 and June 6, 2023, were for 140 miles each. (AR192). As evidenced by 4 of the 5 mileage reimbursement requests, the distance from Springfield to Galesburg is 140 miles. It is unclear why Petitioner requested the additional 40 miles for the mileage reimbursement for the April 27, 2023, one-way trip. The Petitioner failed to provide sufficient documentation to support their request therefore, the Agency's decision to cut this mileage charge was warranted as the cost lacked supporting documentation.

4. Tenth Deduction – Site Assessment/Background Information (\$281.76).

As an initial matter, in its Motion for Summary Judgment, Petitioner has the Tenth Deduction for Site Assessment/Background Information in the amount of \$704.40. This is believed to be a scrivener's error as that amount is the Eleventh Deduction below.

Petitioner requested reimbursement for C.L. Rowe (Senior Project Manager) for 2 hours at \$140.88/hour totaling \$281.76 for "Consulting Personnel Costs for Site Assessment/Background Information" as part of the 45-Day Report. (AR118). One hour was billed for work done on April 28, 2023. (AR180-AR181). The second hour was billed for work done on June 20, 2023. (AR189-AR190).

It should be worth noting that were 4.5 hours for an Engineer III for 45-Day Report Development and 18.75 hours for a Senior Scientist for 45-Day reporting in the reimbursement claim, so it was unclear what role C.L Rowe played in 45-Day Reporting, therefore the Illinois EPA correctly deducted the Senior Project Manager's time for Site Assessment/Background information for lack of supporting documentation and exceeding the minimum requirements of the Act where a Site Assessment Report is an Office of the State Fire Marshal requirement, not the Illinois EPA. (AR118, AR211-AR212, 41 Ill. Adm. Code § 176.330).

5. Eleventh and Twelfth Deductions – Drilling to Confirm Release (\$810.06).

On April 27, 2023, Tod Rowe (Engineer III) traveled from Springfield to Galesburg to conduct an environmental assessment for the Petitioner. (AR13, AR182). As mentioned above, at 9:00 a.m. that day, a soil boring was drilled to a depth of 10 feet with a borehole and sample number of RC-1. (AR18, AR40, AR63). At 9:30 a.m., a suspected release of petroleum from the UST systems was discovered and Tod Rowe reported the release to IEMA at 10:05 a.m. (AR1). The soil boring, which Petitioner called RC-1, was drilled prior to the discovery of the suspected release and subsequent reporting to IEMA.

In its reimbursement claim, Petitioner sought payment of \$704.40 for 5 hours at \$140.88/hour for Tod Rowe's activities on April 27, 2023, under the Remediation Category "EA-SB-Field" for "Drilling". (AR119, AR181-AR182). It is approximately a 2-hour drive from Springfield to

Galesburg or 4 hours round trip. It was reasonable for the Agency reviewer to assume that the additional hour sought for reimbursement was solely for "Drilling", as noted in the Consulting Personnel Costs Form provided by Petitioner. (AR119). It is further evidenced by the timeline of events above – the single soil boring was drilled at 9:00 a.m. and the suspected release was reported to IEMA at 10:05 a.m. (AR1, AR 18, AR40, AR63).

In addition to the above, the Illinois EPA deducted the Senior Project Manager's time on May 8 and May 10, 2023 (0.75 hours total), for reviewing the analytical results of the soil sample collected on April 27, 2023, prior to the reporting to IEMA of the suspected release. (AR119, AR183, AR185). As discussed above, this time was to review the lab report for sample RC-1 confirming a release, which is time associated with a Site Assessment, which is required by OSFM and not Illinois EPA. It is clear that the time requested for the Senior Project Manager on May 8 and May 10, 2023 is associated with review of release confirmation sampling based on the date of the lab report containing the release confirmation sampling results (May 8, 2023) as well as the fact that the soil borings that were drilled to meet the requirements of 35 Ill. Adm. 734.210(h)(2) were advanced nearly two weeks after the Senior Project Manager incurred the costs for analytical review.

The Illinois EPA correctly deducted the 5 hours of Senior Project Manager's time for overseeing the soil boring to determine if a release occurred as these costs were mostly incurred prior to the reporting to IEMA and exceed the minimum requirements of the Act and the regulations. Illinois EPA also correctly deducted the 0.75 hours of Senior Project Manager's time for Site Assessment/Background information for lack of supporting documentation and exceeding the minimum requirements of the regulations where a Site Assessment Report is an Office of the State Fire Marshal requirement, not the Illinois EPA. (AR211-AR212, 41 Ill. Adm. Code § 176.330).

6. Fifteenth and Sixteenth Deductions – Timing Issues (\$551.04).

In its reimbursement claim, Petitioner sought payment of \$166.40 for 2.5 hours at \$66.56/hour for R. Haas' activities as Senior Administrative Assistant on Saturday, July 29, 2023, under the Remediation Category "EA-Pay" for "Reimbursement Preparation". (AR122, AR193). A Senior Administrative Assistant is someone without any special licensing requirement with experience in "administrative or secretarial services," such as copying, assembling and distributing reimbursement requests. (35 Ill. Adm. Code Part 734.APPENDIX E.) The Illinois EPA correctly deducted the 2.5 hours of Senior Administrative Assistant time on July 29, 2023, totaling \$166.40 for lack of documentation since it is unclear how these costs were incurred and where the Senior Professional Engineer did not sign and certify the application for payment until October 26, 2023, almost 3 months after the Senior Administrative Assistant activities claimed by Petitioner. (AR101, AR214).

In its reimbursement claim, Petitioner sought payment of \$384.64 for 2 hours at \$192.32/hour for V.E. Smith's activities as Senior Professional Engineer on July 27, 2023, under the Remediation Category "EA-Pay" for "PE Review & Certification". (AR122, AR193). The Illinois EPA correctly deducted the 2 hours totaling \$384.64 for lack of documentation, where *The Owner/Operator & Professional Engineer/Geologist Billing Certification Form* was not signed and certified by V.E. Smith until October 26, 2023, almost 3 months after the "certification" activities claimed by Petitioner. (AR101, AR214-AR215). The Illinois EPA correctly deducted the 2 hours of Senior Professional Engineer on July 27, 2023, for lack of supporting documentation as it is again unclear how these costs were incurred.

7. Seventeenth Deduction – Handling Charges (\$2,305.13).

“Handling Charges” are the “administrative, insurance, and interest costs and a reasonable profit for procurement, oversight, and payment of subcontracts and field purchases.” (35 Ill. Adm. Code § 734.115). Petitioner requested a total of \$2,628.50 in Handling Charges in its reimbursement package, based upon \$27,858.31 in total costs, including \$23,731.13 for Bandy Concrete & Excavation and \$1,179.18 for hotel costs. (AR127). The Agency deducted a total of \$2,305.13 for handling charges. (AR215).

Bandy Concrete: In its reimbursement claim, Petitioner sought \$23,731.13 in subcontractor costs from Bandy Concrete & Excavation. (AR127). The Illinois EPA deducted the entire amount of subcontractor costs for lack of documentation and thus ineligible for reimbursement. (AR215).

As mentioned in the discussion of the Fourth Deduction earlier, the Illinois EPA reviewer emailed CW³M on March 22, 2024, with additional follow-up questions regarding the activities of Bandy personnel on June 5 and 6, as well as the equipment utilization. (AR195). With an approaching decision deadline of March 31, 2024, the Illinois EPA issued its final decision letter on March 29, 2024. (AR205-AR216). In its decision, the Illinois EPA deducted \$10,996.58 for tank abandonment costs, due to a lack of supporting documentation. (AR209). On April 3, 2024, Petitioner’s consultant e-mailed the additional information that was requested on March 22, 2024. (AR195, AR200). This additional information was provided to the Illinois EPA five days after the decision letter was issued and three days after the 120-day plus 30-day waiver expired. Therefore, based upon the information submitted to the Illinois EPA by the March 29, 2024, final decision, the deduction of \$10,996.58 in tank abandonment costs due to a lack of supporting documentation was proper, as was the deduction for subcontractor handling charges.

Hotel Costs: In its reimbursement claim, Petitioner sought handling charges associated with a total of \$1,179.18 in hotel costs. (AR127). Petitioner provided invoices for 4 separate rooms at the Holiday Inn Express & Suites in Galesburg - 2 for one night each, and 2 for two nights each. (AR128-AR135). In the Handling Charges Form, Petitioner categorized the hotel costs as field purchases. (AR127).

The Illinois EPA deducted the requested handling charges associated with the entire \$1,179.18 because hotel costs are not eligible for handling. (AR215). Lodging is a direct cost for completing professional consulting services and helping enable field work and field oversight. (734 Ill. Adm. Code § 734.845). Under the Petitioner's theory that hotel costs are part of field purchases, they would then be able to claim handling charges for per diem, meals, mileage and other travel expenses as well.

There is no genuine issue of any material fact, and the Illinois EPA is entitled to judgment as a matter of law. The record before the Illinois EPA at the time of its March 29, 2024, final determination is clear that Petitioner's submittal for payment did not demonstrate compliance with the Act or the Board's rules.

VII. CONCLUSION

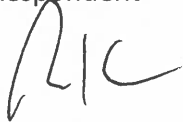
The facts and the law are clear and in favor of the Illinois EPA. Petitioner's payment request to Illinois EPA for the 10 payment cuts in question would violate the Act or the Board's rules.

WHEREFORE: for the above noted reasons, the Illinois EPA respectfully requests the Board (1) **DENY** Petitioner's Motion for Summary Judgment and (2) **GRANT** summary judgment in its favor.

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: December 10, 2025

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 10, 2025, I served true and correct copies of **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT** via the Board's COOL system and email, upon the following named persons:

Don Brown, Clerk
Illinois Pollution Control Board
60 E. Van Buren Street
Suite 630
Chicago, IL 60605
don.brown@illinois.gov

Carol Webb, Hearing Officer
Illinois Pollution Control Board
2520 West Iles Avenue
P.O. Box 19274
Springfield, IL 62794-9274
carol.webb@illinois.gov

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
pdshaw1@gmail.com

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



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