

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIX M CORPORATION, INC.)	
)	
)	
Petitioner,)	PCB No. 2026-035
)	
v.)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Attached Service List Via Email

PLEASE TAKE NOTICE THAT today I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the "COOL" System, Respondent Illinois Environmental Protection Agency's Motion to Dismiss Six M Corporation Petition for Review, true and correct copy of which is attached hereto and hereby served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

By: /s/ Elizabeth Dubats
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Dated: December 10, 2025

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CERTIFICATE OF SERVICE

I, Elizabeth Dubats, an Assistant Attorney General, caused to be served on this 10th day of December, 2025, a true and correct copy of the Notice of Filing and Illinois Environmental Protection Agency's Motion to Dismiss Six M Corporation Petition for Review, upon the persons listed on the Service List via electronic mail with return receipt.

/s/ Elizabeth Dubats
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**RESPONDENT, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S, MOTION
TO DISMISS SIX M CORPORATION'S PETITION FOR REVIEW**

NOW COMES Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through the Attorney General of the State of Illinois, KWAME RAOUL, and pursuant to Sections 2-619.1, 2-615 and 5/2-619(a)(1) of the Illinois Code of Civil Procedure (“Code”), 735 ILCS 5/2-619.1, 2-615 and 5/2-619(a)(1) (2024), and Illinois Pollution Control Board (“Board”) Procedural Rule 101.506, 35 Ill. Adm. Code 101.506, hereby moves for the dismissal of SIX M CORPORATION’s Petition for Review of Agency LUST Decision (“Petition”). In support of this Motion, Illinois EPA states as follows:

I. INTRODUCTION

On November 5, 2025, Six M Corporation (“Six M”) filed its Petition. However, contrary to its title, the Petition does not seek review of an Illinois EPA Leaking Underground Storage Tank (“LUST”) decision at all. As detailed in paragraphs 5 and 6 of its Petition, on May 6, 2022, Six M submitted a “Request for Indemnification” seeking “payment of the \$15,750.00 petitioner paid to a third party.” This reimbursement request is related to “a series of agreements to resolve disputes with the neighboring property owner, in which *inter alia*, Petitioner paid \$15,750.00 to McIlvain

for access and property damage.” Petition at 1-2. Accepting all Petitioner’s well pleaded allegations as true, what Petitioner describes is a request for indemnification of a third-party settlement pursuant to Section 57.8(c) of the Act, not a “payment application” described in Section 57.8(a)(1) of the Act, which explicitly only applies to applications for payment “[i]n the case of any approved plan and budget” and is explicitly limited to “the amount approved in the plan.” *Compare* 415 ILCS 5/57.8(a)(1) and 57.8(c) (2024).

More importantly, Section 57.8(c) explicitly provides the Illinois Attorney General and not Illinois EPA with the authority to approve or deny requests for indemnification from the LUST Fund for third-party LUST-related property damage settlements. Unlike Illinois EPA determinations regarding LUST reimbursement for expenditures in line with Agency-approved corrective action budgets, Section 57.8(a)(1) sets no time limit for the Attorney General’s third-party settlement indemnification determinations. Because Illinois EPA “must forward” these requests to the Attorney General for review and cannot place such requests on the priority list for payment “until the Agency has received the written approval of the Attorney General”, the indemnification determination rests squarely with the Attorney General and is therefore not a final Illinois EPA action subject to the 120-day decision deadline as a matter of law. *Compare* 35 Ill. Adm. Code 734.650 and 734.610(d). Therefore, Six M’s Petition should be dismissed for failure to state a claim for which relief can be granted pursuant to Section 2-615 of the Code. 735 ILCS 5/2-615.

Furthermore, there is nothing in the Act that grants the Board jurisdiction to review the Attorney General’s determinations or the timing thereof. As the Board’s jurisdiction is limited by statute, the Board should dismiss the Petition with prejudice for lack of subject matter jurisdiction pursuant to Code Section 2-619(a)(1).

II. STANDARD FOR MOTION TO DISMISS

Section 101.506 of the Board's procedural rules provides that any motion to challenge the sufficiency of a petition, including motions to dismiss, must be filed within 30 days after the service of the challenged document. 35 Ill. Adm. Code 101.506. A petition for review is subject to dismissal if the Board determines that it is untimely, does not meet the Board's informational requirements, the petitioner fails to comply with a hearing office or Board order, the petitioner lacks standing, or “[o]ther grounds exist that bar the petitioner from proceeding.” 35 Ill. Adm. Code 105.108. In this case, the other grounds include failure to state a claim for which relief can be granted as the 120-day Agency LUST decision deadline does not apply to the Attorney General's third-party settlement indemnification determinations and the Board's lack of subject matter jurisdiction over Illinois Attorney General determinations.

While the Board does not adopt the Illinois Code of Civil Procedure wholesale, the “Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance when the Board's procedural rules are silent.” 35 Ill. Adm. Code 101.100. The Board can and routinely does look to the Code for guidance regarding motions to dismiss pleadings. *People v. Professional Swine Management, LLC*, PCB No. 10-84, at 100 (February 02, 2012)¹. Illinois EPA seeks dismissal of the Petition pursuant to Section 2-619.1 of the Code. “A motion under section 2-619.1 allows a party to combine a section 2-615 motion to dismiss based on insufficient pleadings with a section 2-619 motion to dismiss based on certain defects or defenses.” *Atlas v. Mayer Hoffman McCann, P.C.*, 2019 IL App (1st) 180939, ¶25.

Section 2-619(a)(1) of the of the Code, provides for dismissal where the “court does not have jurisdiction of the subject matter of the action, provided the defect cannot be removed by a

¹ Available at <https://pcb.illinois.gov/documents/dsweb/Get/Document-75053>.

transfer of the case to a court having jurisdiction.” A Section 2-619 Motion accepts the well-pleaded facts of the Complaint, but nonetheless challenges its legal sufficiency. *Thompson v. Frank*, 313 Ill. App. 3d 661, 663 (3d Dist. 2000). Here, the Act does not provide for Board review of the Illinois Attorney General’s indemnification determinations, and as Six M is alleging a lack of final decision (Petition at ¶13), there is admittedly no final agency decision for Circuit Court Review under the Administrative Review Law. 735 ILCS 5/3-101 (2024).

A Section 2-615 Motion points out the specific defects in a pleading and asks for the appropriate relief. 735 ILCS 5/2-615. A section 2-615 motion only looks to the factual allegations of the pleading itself, and dismissal is warranted where “it is clearly apparent that no set of facts can be proven which will entitle a plaintiff to recover.” *Ill. Graphics Co. v. Nickum*, 159 Ill. 2d 469, 488 (1994). In this case, as Six M’s petition is clearly seeking relief under Section 57.8(a)(1) even though it does not allege the lack of payment in the case of an “approved plan and budget for which payment is being sought...” required by Section 57.8(a)(1), but instead alleges a request for indemnification of a third party settlement (Section 57.8(c)). 415 ILCS 5/57.8(a)(1) and (c) (2024).

III. ARGUMENT

BROUGHT PURSUANT TO 735 ILCS 5/2-615

A. Section 57.8(a)(1) does not apply to the Attorney General’s Indemnification Determinations under 57.8(c).

The Board should dismiss Six M’s Petition for failure to state a cause of action for which relief can be granted. The entire basis of Six M’s Petition for review is an alleged failure to approve payment pursuant to Section 57.8(a)(1) of the Act. 415 ILCS 5/57.8(a)(1). However, the costs the Petition describes are clearly third-party settlement costs governed by a different subsection (57.8(c)) with an entirely different procedure delegating the determination to the Illinois Attorney General and not Illinois EPA. Subsection (a) of Section 57.8 of the Act is expressly designated

“Payment after completion of corrective action measures” and refers to payments for “activities performed at a site after completion of the requirements of Sections 57.6 and 57.7 [415 ILCS 5/57.6 and 415 ILCS 5/57.7], or after completion of any other required activities at the underground storage tank site.” 415 ILCS 5/57.8(a) (2024). Title XVI of the Act defines “activities associated with compliance with the provisions of Sections 57.6 and 57.7” as “Corrective action”. 415 ILCS 5/57.2 (2024). Section 57.8(a) pertains to applications for reimbursement of these “corrective action” costs, in the case of subsection 57.8(a)(1) in particular, corrective action costs incurred under an “approved plan and budget”. *Id.* Moreover, the reimbursements “deemed approved” under Section 57.8(a)(1) if Illinois EPA fails to approve the request within 120-days is “in no event” “an amount greater than the amount approved in the plan.” Yet Six M’s petition does not allege that any of the \$15,750.00 paid the neighboring property owner “to resolve disputes” was approved in a corrective action plan or budget. Therefore, any amount deemed approved by operation of 57.8(a)(1) would be excessive.

In contrast, Title XVI of the Act defines indemnification as follows:

“Indemnification” means indemnification of an owner or operator for the amount of any judgment entered against the owner or operator in a court of law, for the amount of any final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or for the amount of any settlement entered into by the owner or operator, if the judgment, order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from an underground storage tank owned or operated by the owner or operator.

415 ILCS 5/57.2 (2024) (emphasis added). Section 57.8(c) of the Act governs requests for indemnification and provides as follows:

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

General. The Attorney General shall review and approve the request for indemnification if:

- (1) there is a legally enforceable judgment entered against the owner or operator and such judgment was entered due to harm caused by a release of petroleum from an underground storage tank and such judgment was not entered as a result of fraud; or
- (2) **a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable.**

415 ILCS 57.8(c) (2024) (emphasis added). The cardinal rule of statutory construction is to ascertain and give effect to the legislature's intent, and the plain language of the statute is the best indication of that intent. *Acme Markets, Inc. v. Callanan*, 236 Ill. 2d 29, 37-38 (2009). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning." *Roselle Police Pension Board v. Village of Roselle*, 232 Ill. 2d 546, 552 (2009). The plain language of the Act distinguishes third party settlement indemnification costs and sets forth a separate procedure for review and approval outside of the 120-day Illinois EPA review of corrective action costs in subsection (a).

Moreover, imposition of subsection (a)(1)'s limit on requests for indemnification under subsection (c) would yield unfair and absurd results as Illinois EPA's ability pay such costs is entirely at the mercy of the Attorney General's determination. Section 57.8(c) requires Illinois EPA to forward such requests to the Attorney General for review and approval. Under the Board's regulations implementing Section 57.8(c), the Agency is prohibited from placing such requests on the priority list for payment without written approval from the Attorney General. Section 734.650(c) of the Board's LUST regulations provides as follows:

c) If the application for payment of the costs of indemnification is deemed complete and otherwise satisfies all applicable requirements of this Subpart F, **the Agency must forward the request for indemnification to the Office of the Attorney General for review and approval in accordance with Section 57.8(c) of the Act.** The owner or operator's request for indemnification **must not be placed on the priority list for payment until the Agency has received the written approval of the Attorney General.** The approved application for payment must then enter the

priority list established at Section 734.615(e)(1) of this Part based on the date the complete application was received by the Agency in accordance with Section 57.8(c) of the Act.

35 Ill. Adm. Code 734.650 (emphasis added). The Board “has the power to construe its own rules and regulations to avoid absurd or unfair results.” *Illinois EPA v. Jersey Sanitation Corp.* 336 Ill. App. 3d 582, 589 (4th Dist. 2003). Petitioner’s interpretation of the statute and Board regulations would yield the unfair and absurd result of forcing approval of costs outside of an Illinois EPA approved corrective action budget or plan in conflict with Section 57.8(a)(1)’s express limit of reimbursement to pre-approved planned costs and without written approval from the Illinois Attorney General as required by Section 57.8(c).

BROUGHT PURSUANT TO 735 ILCS 5/2-619(a)(1)

B. The Board Does not have Jurisdiction to Review the Attorney General’s Determinations or Absence thereof.

As an administrative agency created by the legislature, the scope of the Board’s administrative review jurisdiction is limited by statute. *E.O.R. Energy, LLC v. Pollution Control Bd.*, 2015 IL App (4th) 130443, ¶ 69 (“[a]s creatures of statute, administrative agencies—such as the EPA and the Board—have only the powers that their enabling statute confers.”). Section 3.105 of the Act defines Agency as “the Environmental Protection Agency established by this Act.” 415 ILCS 5/3.105. Section 57.8(i), which provides Board review pursuant to Section 40 of the Act, only does so “[i]f the Agency refuses to pay or authorizes only a partial payment.” 415 ILCS 57.8(i) (2024) (emphasis added). Likewise, Section 40 of the Act, also only provides for Board review where “the Agency refuses to grant or grants with conditions.” 415 ILCS 5/40 (2024) (emphasis added). Neither section grants the Board jurisdiction over the Attorney General’s indemnification determinations.

The lack of Board's jurisdiction over the Attorney General's determinations as opposed to Illinois EPA and the Office of the State Fire Marshal ("OSFM") is similarly reflected in the Board's procedural regulations governing LUST appeals. The Board's procedural regulations only provide procedures for the appeal of final decisions of the Illinois EPA and Office of the State Fire Marshal. 35 Ill. Adm. Code 105.100, 105.400, and 105.500. The Board's procedural rules for appeal of "Agency" LUST decisions is explicitly limited to Illinois EPA's final determinations:

Any owner or operator may file a petition for review under Section 40 of the Act **of an Agency final determination made under Title XVI of the Act** [415 ILCS 5/57 - 57.19] (or under the former Section 22.18b(g) of the Act). There are several Agency determinations that may be appealed under Section 40 of the Act.

35 Ill. Adm. Code 105.402 (emphasis added). The plain, unambiguous language of the regulation expressly limits review to Illinois EPA's Title XVI determinations. *People ex rel. Madigan v. Ill. Commerce Comm'n*, 231 Ill. 2d 370, 380 (2008) ("The surest and most reliable indicator of intent is the language of the regulation itself."). "Administrative rules and regulations have the force and effect of law, and must be construed under the same standards which govern the construction of statutes." *Id. Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 151-52 (1997) ("Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions."). The Board has long recognized the limits of its jurisdiction. Prior to the legislative overhaul of the LUST program in 1993 by Public Act 88-496, the Board lacked jurisdiction to review OSFM registration determinations. *Lindsay-Klein Chevrolet-Olds, Inc. v. Office of the State Fire Marshal*, PCB. No. 93-255 (Aug.11, 1994) ("The Board had no authority to hear appeals from OSFM decision-making until September 13, 1993."). Illinois Attorney General review of third-party settlement indemnification requests pre-dates the 1993 and subsequent amendments to the LUST program, yet the General Assembly has continued to omit it from the Board's review jurisdiction. *See e.g.* Section 22.18b of the Act, 415 ILCS 5/22.18b

(repealed). As the Board lacks subject matter jurisdiction to review the Attorney General's actions or omissions in this matter, the Board lacks subject matter jurisdiction to hear Six M's Petition and should dismiss it pursuant to Section 2-619(a)(1) of the Code.

IV. Conclusion

For the reasons stated herein, Six M's Petition fundamentally misconstrues the nature of its own request and ultimately names the wrong Respondent in the wrong forum. As Section 57.8(c) explicitly delegates the approval of third-party settlement indemnification to the Attorney General, there is no set of facts that Petitioner could allege that would require approval of its request by default under Section 57.8(a)(1) of the Act or confer the Board subject matter jurisdiction to even hear the claims. As such, the Board should dismiss the Petition.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

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