

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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

NOTICE OF FILING AND PROOF OF SERVICE

To: Carol Webb, Hearing Officer Illinois Pollution Control Board 2520 W Iles Ave Springfield, IL 62704 Carol.Webb@illinois.gov	Elizabeth Dubats, Assistant Attorney General Environmental Bureau Illinois Attorney General's Office 69 W. Washington St., 18 th Floor Chicago, IL 60602 Elizabeth.Dubats@ilag.gov
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (H), PETITIONER'S RESPONSE TO MOTION TO DISMISS, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, was today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 23rd day of December, 2025. The number of pages of this filing, other than exhibits, is 7 pages.

Respectfully submitted,
SIX M CORPORATION, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SIX M CORPORATION, INC.,)	
Petitioner,)	
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v.)	PCB 2026-035
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
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PETITIONER'S RESPONSE TO MOTION TO DISMISS

NOW COMES Petitioner, SIX M CORPORATION, INC., pursuant to Section 101.500(d) of the Board's Procedural Rules (35 Ill. Adm. Code 101.500(d)), in response to Respondent's Motion to Dismiss, states as follows:

I. THE MOTION IS PROCEDURALLY IMPROPER FOR AN APPEAL.

The motion to dismiss, relying on Sections 2-615 and 2-619 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 & 2-619), asserts that the factual allegations of the Petition for Review are insufficient. Respondent's reliance on the Illinois Code of Civil Procedure is purportedly justified on the grounds that "the Board's procedural rules are silent," and that the Board "can and routinely does look to the Code for guidance." (Mot. at p. 3) Neither assertion is substantiated by the motion, particularly the citation to the enforcement action in People v. Professional Swine Management, LLC, PCB 10-84 (February 2, 2012).

Petitioner does not dispute that the Board routinely looks to the Code for guidance in enforcement actions, but enforcement actions are brought on the basis of factual allegations governed by the rules of pleadings (35 Ill. Adm. Code 103.204(c) & (d)), similar to civil cases brought in civil court for violations of environmental laws.

In contrast, petitions for review need only provide the Agency decision, the date of service of the Agency decision, and a “statement specifying the grounds of appeal.” (35 Ill. Adm. Code 105.408) It is the Agency’s decision that frames the issues in the appeal, not the petition. Abel Investments v. IEPA, PCB 16-108, slip op. at 3 (Dec. 15, 2016) On November 20, 2025, the Board entered an order finding that “Six M’s petition meets the content requirements of 35 Ill. Adm. Code 105.408.”

In addition, appeals and enforcement actions have at least one very important difference: The Board is required by statute to reach a final decision within 120 days of filing the petition or the petition will be deemed granted. (415 ILCS 5/40(a)(2)) In the November 20, 2025 Order, the Board underscored the importance of this factor and stated the decision deadline at that time was March 5, 2026. While Petitioner extended the decision deadline at the outset in order to avoid immediately going to hearing, the shortness of the time span makes the type of motion practice common in more open-ended proceedings inappropriate.

A further issue particular to 2-619(a) motions is that they are a vehicle to address issues outside of the pleadings. “When making a section 2-619(a) motion to dismiss, a defendant (for purposes of the motion) admits the legal sufficiency of the complaint, yet asserts the existence of an external defect or defense that defeats the cause of action.” Winters v. Wangler, 386 Ill. App. 3d 788, 792 (4th Dist. 2008) Such issues are already proper for motions for summary judgment after the record on appeal has been filed, and adding an additional layer of Illinois Civil Code motion practice is inconsistent with the deadlines imposed by statute.

Respondent filed this motion to dismiss thirty-five days from the date this appeal was filed, urging legal grounds suited for open-ended lawsuits and without recognition that the Board

had already found the petition meets the required content of its procedural rules. The Respondent's use of Illinois Civil Code authorities should be rejected.

II. RESPONDENT'S OTHER LEGAL ARGUMENTS ARE WITHOUT MERIT.

Petitions for review of the Agency's failure to make a final decision on an application for reimbursement within 120 days is properly adjudicated by the Board. See Zervos Three v. IEPA, PCB 10-54, slip op. at 30 (Jan. 20, 2011) (ordering the Agency to pay the \$97,049.28 for failing to notify applicant of its final action within 120 days) Once the deadline has passed, the final Agency decision is an approval of the application by operation of law:

If the Agency fails to approve the payment application within 120 days, such application shall be deemed approved by operation of law and the Agency shall proceed to reimburse the owner or operator the amount requested in the payment application.

(415 ILCS 5/57.8(a)(1))

The Respondent's claim that there was no final decision is incorrect; a final decision was made by operation of law once the deadline passed. It appears that the Agency disputes that the application has been deemed approved, but as in Zervos Three, the Board is the proper body to adjudicate the Agency decision based upon the record and the briefing of the parties. Also, the obligation to make the decision was the Agency's and only the Agency has the authority to authorize payment from the UST Fund by sending a voucher to the Comptroller. (415 ILCS 5/57.8(a)(2)) The Attorney General's only involvement is in determining whether "a settlement with a third party due to a release of petroleum from an underground storage tank is reasonable." (415 ILCS 5/57.8(d)) Despite the Agency's contention, Section 57.8(a) of the Act necessarily must be adhered to in reviewing an application for payment of both corrective action and for

indemnification because Section 57.8(a) contains all of the general provisions for review and the means by which payment can be obtained from the UST Fund. (415 ILCS 5/57.8(a)) This is illustrated by a recent decision filed with the Pollution Control Board, in which the Agency denied an application for payment of indemnification costs pursuant to Section 57.8(a) of the Act. See Guraya v. IEPA, PCB 2026-032 (Oct. 27, 2025) (Request for 90 Day Extension) The Board may take official notice of its own records. ESG Watts v. PCB, 282 Ill. App. 3d 43, 54-55 (4th Dist. 1996). A true and correct copy of the Agency decision in Guraya is attached hereto as Exhibit A, which states that the Illinois EPA had reviewed the application for payment “pursuant to Section 57.8(a).” (Ex. A, p. 1)

As acknowledged by Respondent’s Appearance filed in this appeal, the party to this action is the Agency, not the Attorney General. The Agency denies or approves applications for payment. Payment from the UST Fund can only be obtained by submitting an application for payment pursuant to Section 57.8(a) of the Act (415 ILCS 5/57.8(a)) and applications for payment of indemnification costs must adhere to Section 57.8(a) as well. (415 ILCS 5/57.8(c)) This is underscored by the Board’s UST rules which set forth the requirements for a complete application for payment of indemnification costs (35 Ill. Adm. Code § 734.650), which were modeled after the requirements for applications for payment of corrective action costs (35 Ill. Adm. Code § 734.605(b)), including applications for payment of corrective action costs incurred without an approved plan or budget. (35 Ill. Adm. Code § 734.220)

The Agency’s construction of key provisions of the LUST Program fail to appreciate the interconnections between various provisions and the centrality of Section 57.8(a) to any payment from the UST Fund for indemnification required by state law and likely by federal law as well.

More importantly, it has been 1,322 days since the Agency received the application for payment of indemnification costs and there is no recognition that the Agency has any obligation to ever respond to it. Indeed, the Motion to Dismiss would construe the Act as giving the Agency an entirely open-ended deadline to review such payment applications. It is plain that the Agency's position to establish such an open-ended deadline would lead to absurd and unjust results, which the Board should reject. Metropolitan Pier & Exposition Authority v. IEPA, PCB 10-73, slip op. at 24 (July 7, 2011) (rejecting Agency's avoidance tactic for the 120 decision deadline)

CONCLUSION

Petitioner requests that the Board reject the motion to dismiss outright. Given the likelihood that legal issues are predominate in this appeal, Petitioner proposes instead that contingent on the Agency's filing of the administrative record, a motion for summary judgment schedule be entered at the January 12, 2026 status conference, for which Petitioner will extend the Board's decision deadline to facilitate.

SIX M CORPORATION ,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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Illinois Environmental Protection Agency

2520 Westiles Avenue • P.O. Box 19276 • Springfield, Illinois • 62794-9276 • 217-782-3397

JB Pritzker, Governor

James Jennings, Acting Director

(217) 524-3300

CERTIFIED MAIL #

9589 0710 5270 0390 7816 92

SEP 18 2025

Guraya, Inc.
c/o Jonathon C. Fox, Esq.
1515 5th Avenue, Suite 428
Moline, IL 61265

Re: 0730705013 -- Henry County
Orion/Orion Mart
1009 Division Street
Incident-Claim No.: 20141266 -- 75698
Queue Date: May 27, 2025
Leaking UST Fiscal File

Dear Harry Singh:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

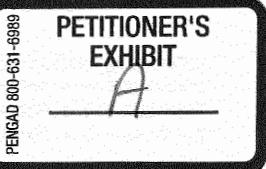
This information is dated May 20, 2025 and was received by the Illinois EPA on May 27, 2025. The payment period that the application for payment covers was not indicated. The amount requested is \$740,000.00.

On May 27, 2025, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$10,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

2125 S. First Street, Champaign, IL 61820 • 217-278-5800
1101 Eastport Plaza Dr, Suite 100, Collinsville, IL 62234 • 618-346-5120
595 S. State Street, Elgin, IL 60123 • 847-608-3131
412 SW Washington Street, Suite D, Peoria, IL 61602 • 309-671-3022

115 S. LaSalle Street, Suite 100
9511 Harrison Street, Des Plaines, IL 60018
2309 W. Main Street, Suite 116, Marion, IL 62959
4302 N. Main Street, Rockford, IL 61101



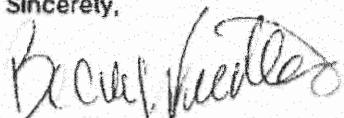
Please print on recycled paper.

There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact the undersigned at (217) 785-7115 or at Becky.Fiedler@illinois.gov.

Sincerely,



Becky Fiedler
Unit Manager
Special Projects and Financial Unit
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Guraya, Inc.
Ames Law Office
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 0730705013 -- Henry County
Orion/Orion Mart
1009 Division Street
Incident-Claim No.: 20141266 -- 75698
Queue Date: May 27, 2025
Leaking UST Fiscal File

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. Pursuant to 35 Ill. Adm. Code 734.650(a)(1) and Section 57.8(a)(6) of the Act, an owner or operator seeking indemnification from the Fund must submit a complete application for payment, which must include:
 - A) A certification from a Licensed Professional Engineer or Licensed Professional Geologist and acknowledged by the owner or operator;
 - B) A certified statement by the owner or operator of the amount sought for payment;
 - C) Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought. The proof must include, but not be limited to, the following:
 - i) A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy; and
 - ii) Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;
 - D) A copy of the OSFM or Agency eligibility and deductibility determination;
 - E) Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and Section 734.620 of this Part;
 - F) A federal taxpayer identification number and legal status disclosure certification;
 - G) A private insurance coverage form; and
 - H) Designation of the address to which payment and notice of final action on the request for indemnification are to be sent to the owner or operator.

The above referenced submittal failed to include the following:

- i. Proof of the legally enforceable judgment, final order, or determination against the owner or operator, or the legally enforceable settlement entered into by the owner or operator, for which indemnification is sought.
- ii. A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy.
- iii. Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator.
- iv. A copy of the judgment certified by the court clerk as a true and correct copy, a copy of the final order or determination certified by the issuing agency of State government or subdivision thereof as a true and correct copy, or a copy of the settlement certified by the owner or operator as a true and correct copy.
- v. Documentation demonstrating that the judgment, final order, determination, or settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator;
- vi. A copy of the OSFM or Agency eligibility and deductibility determination.
- vii. A certification from a Licensed Professional Engineer or Licensed Professional Geologist.
- viii. Proof that approval of the indemnification requested will not exceed the limitations set forth in the Act and 35 Ill. Adm. Code 734.620.
- ix. A federal taxpayer identification number and legal status disclosure certification.

Based on the above, the request fails to constitute a complete application for payment. Additionally, the submitted request fails to demonstrate that the requested costs are associated with bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported.

Additionally, in accordance with 35 Ill. Adm. Code 734.650(b), the Illinois EPA has determined that the application for payment does not contain all of the required documentation and information. The application fails to provide sufficient documentation of a legally enforceable judgment entered against the owner or operator in a court of law, final order or determination made against the owner or operator by an agency of State government or any subdivision thereof, or settlement entered into by the owner or operator.

Furthermore, the application does not demonstrate the judgment, final 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. In addition, the application fails to demonstrate that the amounts sought for indemnification are eligible for payment.

Furthermore, the application fails to show that the amounts sought are not ineligible costs, as outlined by 35 Ill. Adm. Code 734.650(d).

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Clerk of the Board
Illinois Pollution Control Board
60 East Van Buren Street, Ste. 630
Chicago, IL 60605
(312) 814-3461

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
2520 West Iles Avenue
Post Office Box 19276
Springfield, IL 62794-9276
(217) 782-5544