BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ILLICO INDEPENDENT OIL CO.	)	
Petitioner,	)	
	)	
v.	)	PCB 2017-084
	)	(UST Appeal - Land)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

_____

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Dated: April 19, 2018

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ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

ILLINOIS EPA'S RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and hereby submits its **ILLINOIS EPA'S RESPONSE TO PETITIONER'S MOTION OF 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 ("Record" or "AR"). The Illinois EPA asserts that the Record 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. The facts in a motion for summary judgment are viewed in a light most favorable to the party opposing the motion. In ruling on a motion for summary judgment, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

III. ISSUE

The issue presented is whether, the Petitioner can remove the underground storage tanks (USTs). piping, and pump islands when the owner/operator has not demonstrated that the USTs,

piping, and pump islands must be removed to access backfill/soil that contains contaminants at concentrations greater than the Tier 2 remediation objectives.

The issues in this case are important for the Board to decide on because the Petitioner is trying to utilize the early action provisions of the Act and regulations over 23 years after the timeframe for early action expired. The Petitioner pulled the tanks at its site without approval from the Agency in a corrective action plan and is now trying to convolute the facts and law so that it can get reimbursed for its actions.

IV. DISPUTED FACTS

There exists an issue of material fact, therefore Summary Judgment cannot be granted to the Petitioner. Petitioner lists several "undisputed" facts, which are however, very disputed. In a Motion for Summary Judgment, the facts are to be interpreted in a light most favorable to the responding party. *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The Illinois EPA will use select facts set forth in the Petitioner's pleading in order to highlight the facts remaining in dispute. (Pet. MSJ pp.1-6) The Agency's comments are in bold.

> "Also on December 14, 2016, Illico submitted a corrective action plan (R.174 - R.237), which proposed in relevant part to remove the tanks and contaminated soil identified during site investigation:" (Pet. MSJ 2)
>
> **Agency notes that the date is actually December 14, 2015.**

> "On December 18, 2016, Illico's consultant e-mailed the Agency project manager to explain that due to issues with the property, remediation would need to be performed by the end of February, and requested that, if at all possible, review of

the pending plans and budgets be completed by February 2, 2016, in order to meet this deadline. (R.422)"

Agency notes that the date is actually December 18, 2015.

"Meanwhile, during the last days of February of 2016, the underground storage tanks were removed in the presence of an OSFM representative. (R.561)" (Pet. MSJ 3)

The actual dates are January 28, 2016 and January 29, 2016, not the last days of February 2016.

"During the removal of the tanks, the OSFM representative observed petroleum contamination around the USTs and associated piping, and directed the consultant to report Incident # 2016-0095, which was deemed a rereporting of the previous incident. (R.561)" (Pet. MSJ 3)

The Illinois EPA has not determined if Incident #2016-0095 is a re-reporting of the previous incident because the owner/operator has not submitted the results of the soil confirmation samples.

After the submittal, Illico's consultant clarified in an e-mail to the project reviewer that removal of the USTs was not only due to the reported releases, but also necessary in order to access and remove highly contaminated soils around the tanks. (R.629). The Agency project reviewer's notes indicate that tank removal is the motivating concern:" (Pet. MSJ 4)

The Agency disputes this characterization of what the project reviewer's notes indicate. The fact is that the owner/operator has not demonstrated that removal of the tanks was necessary to access soil/backfill that contains contaminants at concentrations in excess of the Tier 2 remediation objectives. Furthermore, the Agency contends that a property sale was the owner/operator's motivating concern. The owner/operator submitted a Corrective Action Plan on December 14, 2015. The owner/operator's consultant emailed the Illinois EPA project manager on 12/18/2015 to request that the Corrective Action Plan be reviewed by February 2, 2016 due to OSFM issues and ownership issues. The owner/operator's consultant applied for a permit for installation of new tanks on 01/06/2016. The owner/operator's consultant applied for a permit for removal of tanks on 01/12/2016. The tanks were removed on January 28, 2016 and January 29, 2016. New tanks were installed in the same location on 02/10/2016. HD Properties of Peoria, Inc. purchased the property on 08/12/2016.

PLEASE NOTE **that footnotes 1 and 2 also include disputed and inaccurate information:**

"1 Specifically, the Agency stated that the only reported sampling locations showing exceedances of applicable site remediation objectives are at SB-4/MW-4, SB-17 and SB-31. (R.577) These are locations immediately to the West of the tank pit, within what will later be referred to as the blue zone. (R.489; R.598)." (Pet. MSJ 4)

The Agency disputes these facts. Soil boring SB-4/MW-4 is 20' west of the tanks at the property boundary line. The concentrations of contaminants in SB-4/MW-4 do not exceed the Tier 2 remediation objectives. Please note that ERS of Illinois, Inc., The Premcor Refining Group Inc., and the Illinois EPA agreed that the analytical results of the soil samples collected by Parsons Engineering Science, Inc., including SB-4/MW-4, would not be used to define the extent of the soil contamination. Soil boring SB-17 is 17' west of the tanks. Soil boring SB-31 is 26' west of the tanks at the property boundary line. Except for naphthalene, the concentrations of contaminants in SB-17 are less than in SB-31.

"2 The site location for SB-15 is to the North of the tank pit, along the product lines and in the area subsequently identified as the green zone. (R.598)" (Pet. MSJ 4)

Soil boring SB-15 is 41' north of the tanks. The concentrations of contaminants in SB-18 and SB-19, which are closer to the tanks, do not exceed the Tier 2 remediation objectives.

As a result of this decision, the Agency determined that the owner/operator could only excavate, transport and dispose of contaminated soil that was not too close to the tanks, i.e. removal was approved in the green and blue zones, but not in the orange zone. (R.637 (Modification #13)) Furthermore, the Agency reduced the amount of backfill to be purchased, transported and placed (Modification #16) and

concrete to be replaced (Modification #17) as a part of disallowing corrective action in the orange zone. (R.637) Because the "approved corrective action plan does not include removal of the underground storage tanks (USTs), piping, pump islands, or backfill/soil in the orange zone" (R.640 - R.647), thirteen items were cut from the budget, which are listed in Appendix A hereto. Each of these cuts is justified as being inconsistent with the plan as modified by the Agency. However, these budget cuts also include work to be performed in the green and blues zones, which the Agency approved. In most of the budget cuts, the Agency recognized that the work included corrective action work that it was approving, but since it was unable to determine how much of the work was performed in the orange zone, all of the costs were deducted. (R.640 -R.647 (Modifications #1, #9, #17, #24, #26, #29, #30, #31 & #32)" (Pet. MSJ 5-6)

The work performed in modification #17 was performed in the orange zone. According to the Corrective Action Plan, the contractor was able to excavate to 8' below ground surface (BGS) without making significant contact with the saturated zone. Therefore, all the budgeted groundwater removal and disposal costs are associated with removal of the USTs, piping, pump islands, and backfill/soil in the orange zone. The approved corrective action plan does not include removal of the USTs, piping, pump islands, or backfill/soil in the orange zone. Therefore, the Illinois EPA deducted all the budgeted groundwater removal and disposal costs. Pursuant to Subsection 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b), costs that are inconsistent with the associated technical plan are ineligible for payment from the Fund.

"Consequently, the $208,048.76 deducted from the budget, includes corrective action performed in all zones." (Pet. MSJ 6)

The Illinois EPA deducted $57,927.60 from the budget because of modifications #1, #9, #17, #24, #26, #29, #30, #31 & #32. However, modification #17 relates to corrective action performed in the orange zone only. Therefore, the Illinois EPA deducted $35,499.60 for corrective action performed in all zones.

As the Board can clearly see from the above discussion, there are material disputes as to the facts in question. Petitioner cherry picks the fact that it wants to rely on, but in so doing only paints half a picture. When given the entire picture regarding the soil borings and the result of the Petitioner's own analysis and lack of an approval to perform the work they have already completed, it is clear that the Petitioner and the Agency disagree on the material facts of the case. The deciding factors used by the Illinois EPA in making its decision are either misstated or left out of Petitioner's dissertation of the facts. When the facts are viewed in a light most favorable to the Agency, it is clear that it made the correct determination. The material facts of this case are disputed and summary judgment cannot be granted as a matter of law.

ARGUMENT

This case is technical in manner. By its nature, it does not lend itself to a Motion for Summary Judgment. The facts are in dispute and how to interpret them is also contested. A hearing by which the parties can better explain the technical aspects of the case is necessary here. The Illinois EPA will discuss some of the misstatements that the Petitioner makes in its motion. The Agency's argument can be summed up simply. Petitioner did not submit adequate

proof that the tanks needed to be removed as part of corrective action. Petitioner missed the early action window for removing the tanks by over 23 years. The tanks were found to be tight and remained in use after the release was reported. That release was reported as an overfill and not a release from the tanks. The soils samples taken around the tanks did not exceed Tier 2 objectives as required. The tank pull was never approved in a corrective action plan. The Petitioner never demonstrated that the tank pull was necessary to complete corrective action. The Petitioner's removal of the tanks did not meet the requirements of the Act and regulations and the Agency was correct in its decision.

The Petitioner, in its argument, stated as follows:

> "The proposed remedy was a conventional one of removing contaminated soils exceeding that objective, as well as the tanks from which there had been a release, both because they were the source of the contamination, but also in order to access and remove the aforementioned contaminated soils." (Pet. MSJ 6-7)

The IEMA Field Report does not list a cause of release. The 45-Day Report states that IEMA was notified of a release of petroleum after IDOT conducted tests during road improvements at the intersection of University St. and War Memorial Dr. The 45-Day Report also states that the tank system tested tight and lists the cause of the release as spills and overfills. Normally an owner/operator wouldn't remove a tank system in response to a spill or overfill. Especially when that tank system tested tight with no leaks. And in fact, the Petitioner

did not remove the tank system based upon this release and the 45-Day Report. It kept the tank system in operation for over another 23 years.

SB-15, which was drilled 41' north of the tanks, and SB-31, which was drilled 26' east of the tanks, are the only soil samples that needed to be taken under the Corrective Action Plan dated December 14, 2015. The owner/operator has not demonstrated that removal of five tanks, associated piping, 1309 yd^3 of soil/backfill, and 313 yd^3 of overburden is necessary to remediate two soil samples or three soil samples if SB-17 needed to be removed under the proposed Corrective Action Plan dated 01/16/2017. Please note that, except for naphthalene, the concentrations of contaminants in SB-31 are greater than the concentrations of contaminants in SB-17, which was drilled 17' west of the tanks. Also note that the concentrations of contaminants in SB-18 and SB-19, which are closer to the tanks than SB-15, do not exceed the Tier 2 objectives.

Petitioner further stated in its Motion for Summary Judgment:

> "The Agency's agenda here is transparent. It believes that this is a planned tank pull, a concept not found in statute or regulation, and solely of internal significance to the Agency." (Pet. MSJ 7)

The Illinois EPA does not have an agenda other than ensuring compliance with the Act and Board regulations. The Petitioner's conspiracy theories do not help move this discussion forward. The Agency is a creature of statute and as such operates within its statutory authority. Technically, all tank pulls are planned tank pulls. However, for purposes of payment from the Fund, a planned tank pull is the removal or abandonment of a tank if the tank was removed or

abandoned, or permitted for removal or abandonment, before the owner or operator provided notice to IEMA of a release of petroleum. See 35 Ill. Adm. Code 734.630(k). The Illinois EPA is not arguing that removal of the tanks meets the definition of a planned tank pull. The Illinois EPA is arguing that removal of the tanks under Incident #923441:

- Exceeds the minimum requirements necessary to comply with the Act and regulations.
- Is not corrective action.
- Violates provisions of the Act or Board, OSFM, or Agency regulations.
- Lacks supporting documentation.
- Is not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations.
- Is associated with treatment or disposal of soil that does not exceed the applicable remediation objectives and therefore does not need to be treated or disposed.
- Is associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives required in the regulations.
- Is not reasonable.

Please note that removal of the tanks under Incident #20160095 meets the definition of a planned tank pull since they were removed prior to the reporting of a release to IEMA.

The Petitioner further stated in its argument as follows:

"Because it does not desire to reimburse any tank removal, only contaminated soils in zones without tanks can be removed. This means the soils where the contamination originated cannot be remediated, despite the evidence during the

tank removal confirming the presence of contaminated soil and groundwater surrounding the tanks." (Pet. MSJ 7)

Once again, the Illinois EPA does not "desire" to deny payment for a tank removal. Petitioner continues to attach emotions to an administrative agency. The Agency would like to remind Petitioner again that it is a creature of statute and no matter how much the Petitioner would like it to, it must comply with the Act and regulations. The Agency cannot make decisions based on anything but the law. Pursuant to Section 57.6 (b) of the Act and 35 Ill. Adm. Code 734.210(f) and 734.210(g), an owner/operator may remove tanks prior to submission of a plan to the Illinois EPA and receive payment from the Fund if the tanks are removed within 45 days after initial notification to IEMA of a release plus 14 days. The tanks were removed over 23 years after initial notification to IEMA of a release. Therefore, the owner/operator must submit a plan to the Illinois EPA and demonstrate that removal of the tanks:

- Does not exceed the minimum requirements necessary to comply with the Act and regulations.
- Is corrective action.
- Does not violate provisions of the Act or Board, OSFM, or Agency regulations.
- Is necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations.
- Is not associated with treatment or disposal of soil that does not exceed the applicable remediation objectives.
- Is not associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives.
- Is reasonable.

The Illinois EPA is not disputing the presence of contaminated soil and groundwater surrounding the tanks. The Illinois EPA is disputing the necessity of the removal of the tanks under Incident #923441. The presence of contaminated soil and groundwater surrounding the tank does not justify the removal of the tanks because it is below Tier 2 cleanup objectives. The owner/operator must demonstrate that removal of the tanks was necessary to access soil/backfill that contains contaminants at concentrations ***in excess of*** the Tier 2 remediation objectives.

The Petitioner, although there is ample evidence to the contrary within the Administrative Record, stated:

> "Nothing in the Act or Board's regulations preclude removal of tanks according to the conditions described in the Agency's decision letter. Pursuant to Board regulations, eligible corrective action costs include:
>
> > The removal and disposal of any UST if a release of petroleum from the UST was identified and IEMA was notified prior to its removal, with the exception of any UST deemed eligible by the OSFM; 35 Ill. Adm. Code 734.625(a)(12)" (Pet. MSJ 8)

Once again, the Petitioner misstates the law. Contrary to the Petitioner's assertion, 35 Ill. Adm. Code 734.625(a)(12) states that types of cost that ***may be*** eligible for payment from the Fund include those for corrective action activities and materials or services provided or performed in conjunction with corrective action activities. Such activities and services ***may include***, but are not limited to, reasonable costs for the removal and disposal of any UST if a

release of petroleum from the UST was identified and IEMA was notified ***prior*** to its removal, with the exception of any UST deemed ineligible by the OSFM.

Corrective action means activities associated with compliance of the provisions of Sections 57.6 and 57.7 of the Act. Therefore, corrective action includes early action and site investigation and corrective action. Pursuant to Section 57.6 (b) of the Act and 35 Ill. Adm. Code 734.210(f) and 734.210(g), an owner/operator may remove the tank system, or abandon the tank in place, remove visibly contaminated fill material within 4 feet from the outside dimensions of the tank, and remove any groundwater in the excavations that exhibits a sheen without submitting a plan to the Illinois EPA. However, for purposes of payment from the Fund, these activities must be performed within 45 days after initial notification to IEMA of a release plus 14 days. The tanks were removed over 23 years after initial notification to IEMA of a release. Clearly this does not comply with the Act or Board regulations for a removal of the tanks during early action.

35 Ill. Adm. Code 734.625(a)(12) and 734.630(k) reinforce the concept that the owner/operator must notify IEMA of a release of petroleum ***before*** permitting the tank system for removal and removing the tank system. 35 Ill. Adm. Code 734.625(a)(12) does not automatically authorize removal of the tank system beyond 45 days plus 14 days. Such a removal after the early action timeframe must be included in a Corrective Action Plan and approved by the Agency. That was not done here. Petitioner did not comply with the Act and regulations and is now trying to shoe horn its actions into the law while casting aspersions at the Illinois EPA.

Petitioner makes the following statements which again, is a short statement that appears to be true, but actually leaves a lot of the law out of the equation.

"Nor is there any time limitation for USTs to be removed once notice is given to IEMA."

"Nor has there ever been a requirement that any UST be removed only as part of early action…"(Pet. MSJ 9)

Let's look at these statements. First the assertion that there is no time limit for the USTs to be removed. That is not exactly correct. It has a kernel of truth there, but it isn't the whole picture. Pursuant to 35 Ill. Adm. Code 734.210(g), for purposes of payment from the Fund, the activities set forth in 35 Ill. Adm. Code 734.210(f) must be performed within 45 days after initial notification to IEMA of a release plus 14 days, unless special circumstances, approved by the Agency in writing, warrant continuing such activities beyond 45 days plus 14 days. The owner or operator must notify the Agency in writing of such circumstances within 45 days after initial notification to IEMA of a release plus 14 days. Costs incurred beyond 45 days plus 14 days must be eligible if the Agency determines that they are consistent with early action.

The second statement, like the first, is only a half truth. While there isn't a requirement that tanks be removed only as part of early action, tanks removed after early action must be approved in a corrective action plan. Outside of early action, costs associated with removal or abandonment of tanks are conditioned by the following regulations, which the Petitioner violated:

- Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(o)).

- Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(y)).
- Costs that lack supporting documentation are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(cc)).
- Costs proposed as part of a budget that are not reasonable are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(dd)).
- Costs associated with the treatment or disposal of soil that does not exceed the applicable remediation objectives for the release, unless approved by the Agency in writing prior to the treatment or disposal, are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(tt)).
- Costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742 are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(aaa)).
- Costs associated with corrective action to achieve remediation objectives other than industrial/commercial property remediation objectives, unless the owner or operator demonstrates that the property being remediated is residential property or is being developed into residential property, are ineligible for payment from the Fund (35 Ill. Adm. Code 734.630(ddd)).

Unbelievably, in Footnote 8, Petitioner states:

> "In any event, the subject releases predate Section 57.6 of the Act, which was just a small part of a large overhaul of the Leaking Underground Storage Tank Program in 1993, which inter alia introduced planning requirements. See Kelley-Williamson Co. v. IEPA, PCB 95-116, slip op. at 5 (November 16, 1995)." (Pet. MSJ 9)

This is an inaccurate and irrelevant statement. All Leaking Underground Storage Tank Incidents are subject to Title XVI of the Act and 35 Ill. Adm. Code Part 734 if a No Further Remediation ("NFR") letter was not issued by the effective date of the amendments to the Act. 415 ILCS 5/57.13. The Petitioner did not receive an NFR letter by June 8, 2010 as required under the Statute and regulations. 35 Ill. Adm. Code 734.100(b). The tanks were removed in 2016. This release and resulting tank pull is clearly subject to the current Act and regulations.

The USTs did not need to be removed to access contaminated soils. There was no evidence presented to the Agency that the soils were contaminated above Tier 2 remediation objectives. As stated before, SB-15, which was drilled 41' north of the tanks, and SB-31, which was drilled 26' east of the tanks, are the only soil samples that needed to be excavated under the Corrective Action Plan dated 12/14/2015. The owner/operator has not demonstrated that removal of five tanks, associated piping, 1309 yd^3 of soil/backfill, and 313 yd^3 of overburden is necessary to remediate two soil samples or three soil samples if SB-17 needed to be removed under the proposed Corrective Action Plan dated 01/16/2017. Please note that, except for naphthalene, the concentrations of contaminants in SB-31 are greater than the concentrations of contaminants in SB-17, which was drilled 17' west of the tanks. Also note that the

concentrations of contaminants in SB-18 and SB-19, which are closer to the tanks than SB-15, do not exceed the Tier 2 objectives.

Finally and most egregiously, the Petitioner makes the following statement that is totally false and is actually the subject of the appeal.

> "There is no disagreement that contaminated soil in excess of the applicable site remediation objectives was present in areas adjoining the tank pit." (Pet. MSJ 10)

There is definitely a disagreement as to whether the soil was contaminated in excess of the regulations. The Petitioner is asserting that it was above remediation objectives. However, all evidence submitted to the Illinois EPA shows that the soil was not found to be in contaminated above the Tier 2 objectives.

CONCLUSION

In summary, there exists an issue of material fact. The Petitioner did not demonstrate to the Illinois EPA that the tanks in question needed to be pulled as part of a remediation plan. The tanks were pulled over 23 years after the release was reported. The tanks tested tight and were found to not be leaking at that time. They remained in service during the interim period. When tanks are pulled outside of the statutory early action timeframe, additional statutory and regulatory steps must be taken before they are removed. The tank removal in this instance was never approved by the Illinois EPA as part of a plan. There has been no evidence presented by the Petitioner that the soil was contaminated above Tier 2 objectives. The information in front of the Illinois EPA at this time indicates that the tank pull violated the Act and regulations there under. At hearing, the Illinois EPA will present more evidence supporting the above assertions

that it has made. There exist a material issue of fact and summary judgment is not appropriate in this case and cannot be granted.

WHEREFORE: for the above noted reasons, the Illinois EPA respectfully requests the Board **DENY** Petitioner's Motion for Summary Judgment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent

_____

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217/782-5544, 217/782-9143 (TDD)
Dated: April 19, 2018

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on **April 19, 2018**, I served true and correct copies of **ILLINOIS EPA'S RESPONSE TO PETITIONER'S MOTION OF SUMMARY JUDGMENT** via the Board's COOL system and email, upon the following named persons:

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
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