No. 129628
IN THE SUPREME COURT OF ILLINOIS

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased.	)
Plaintiff-Appellant.	)
v.	)
MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC, a Delaware Limited Liability Company, and MANOJ VALIATHARA,	)
Defendants-Appellees.	)

On Leave to Appeal from the Appellate Court of Illinois, First District
No.: 1-22-0155

There heard on appeal from the Circuit Court of Cook County, Illinois
No.: 2018L000783
Honorable James M. Varga, Judge Presiding

RESPONSE BRIEF OF DEFENDANTS/APPELLEES, MARATHON PETROLEUM CORPORATION, SPEEDWAY, LLC, and MANOJ VALIATHARA

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Attorney for Appellees,
Marathon Petroleum Corporation,
Speedway, LLC, and Manoj Valiathara
James R. Branit (6191555)
Natasha Singh (6324661)
Litchfield Cavo LLP
303 W. Madison, Suite 300
Chicago, Illinois 60606
312-781-6552 (Branit)
Fax: 312-781-6630
branit@litchfieldcavo.com
singh@litchfieldcavo.com

POINTS AND AUTHORITIES

NATURE OF THE ACTION

This appeal arises out of bodily injuries sustained by Margaret Rice ("Ms. Rice") as a result of an explosion in her apartment building, linked to a gasoline leakage from an underground storage tank at a nearby gas station Ms. Rice initiated a negligence lawsuit against Marathon Petroleum Corporation, its subsidiary Speedway, LLC (owners and operators of the gas station), and the station manager, Manoj Valiathara (collectively, the "Defendants"). C 179-201. Subsequently, unrelated to the injuries sustained in the explosion, Ms. Rice passed away. C 6343. In an amended complaint, Ms. Rice's daughter, Laura Rice ("Plaintiff") was substituted as plaintiff in her capacity as special representative of Ms. Rice's estate. C 6341-6345.

The amended complaint not only reiterated the negligence claims, but also introduced three statutory counts for violation of the Illinois Environmental Protection Act ("IEPA"), specifically targeting the Title XVI, Petroleum Underground Storage Tanks ("LUST") provisions (Counts I-III). C 18624, 18666, 18709. These counts sought to establish a private right of action under the IEPA, particularly within LUST, for Ms. Rice's personal injuries. *Id*. Accordingly, Defendants moved to dismiss Plaintiff's IEPA counts, which the circuit court granted. C 23488-23514, C 26995-98. In dismissing Defendants' IEPA counts, holding that LUST under the IEPA does not support any private right of action, be it express or implied. *Id*. Plaintiff's subsequent Motion to Reconsider was also denied. C 27130-2715. Plaintiff appealed both the dismissal of the IEPA counts and the denial of the reconsideration. C 30125.

The appellate court upheld the circuit court's decision, affirming the dismissal of the IEPA counts. A 0001-13[1] ("Modified Decision"). In so doing, the appellate court held that: (1) LUST, or the IEPA generally, does not provide an express right of action; (2) implying such a right was unnecessary, given that common law negligence and public enforcement mechanisms sufficiently address statutory violations; and (3) the potential for punitive damages in a common law negligence suit negates the need for a private right of action under the IEPA. *Id*. Thus, the appellate court's decision reinforced the circuit court's ruling, maintaining the dismissal of the IEPA counts.

ISSUES PRESENTED FOR REVIEW

1. The best proof of an express right is the statute itself. By its very definition, "express" means "[c]learly and unmistakably communicated; stated with directness and clarity." EXPRESS, Black's Law Dictionary 601 (11th ed. 2019). While Plaintiff takes certain words and phrases from different sections of the IEPA, and even from other statutes that are not at-issue, to support her position, Plaintiff does not cite to ***any*** statutory language that clearly or unmistakably states that private parties may bring suit under LUST or the IEPA. Moreover, Illinois courts have consistently held that there is no express private right of action under the IEPA. Did the appellate court correctly rule that LUST/IEPA does not provide an express private right of action?

2. When there is no express statutory language regarding the private right to sue, a court may determine that a private right of action is implied. However, the implication of private right of action where the legislature did not create an express right is greatly disfavored by the judicial system and thus, the standard that must be met to imply

[1] "A" is the Appendix.

a private right of action in a statute is quite high. In order for a court to recognize an implied private right of action and overcome Illinois' strong presumption against such an implication, Plaintiff must establish all four of the following factors: (1) Plaintiff is a member of the class for whose benefit the statute was enacted; (2) Plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute. Plaintiff established none. Did the appellate court correctly rule that LUST/IEPA does not provide an implied private right of action?

3. The circuit court never ruled on Plaintiff's Motion for Punitive Damages pursuant to the IEPA. Thus, the issue is not properly before this Court. Notably, while Plaintiff purports to seek punitive damages, she is actually seeking civil penalties, which under the plain language of the IEPA, are to be paid to the government, not to private individuals (like Plaintiff) seeking relief for bodily injury. Even if, punitive damages were at-issue, Plaintiff is not entitled to punitive damages for her IEPA claims because she has no private right of action under the statute. Plaintiff has offered no reason, statutory language, or applicable legal precedent demonstrating that she is entitled to punitive damages, or that the legislature intended to impose punitive damages under the IEPA. Nor has she established that Defendants' conduct rose to the level of the requisite willful and wanton behavior to justify an award of punitive damages under Illinois law. Moreover, punitive damages were available to Plaintiff for her common law negligence claim, which she never sought. Did the appellate court correctly rule that Plaintiff's Motion for "Punitive" Damages does not necessitate a private right of action?

4. It is well-established in Illinois that an injured person is entitled to full compensation for her injuries, but any double recovery for the same injury is against public policy. In this case, it is undisputed that the Illinois Attorney General and DuPage State's Attorney have already reached a Consent Order with Speedway. This Consent Order required Speedway paying civil penalties and implementing remedial measures as injunctive relief. Moreover, Plaintiff independently settled her negligence claim for compensatory damages with Speedway. Plaintiff could have brought punitive damages as a part of her negligence claim, but for reasons not clear, she elected not to do so. Plaintiff thus cannot point to any damages that have not been resolved. Did the appellate court correctly rule that the Plaintiff has been made whole and, as such, lacks the "standing to litigate matters beyond her own injury"?

STATUTES INVOLVED[2]

1. 415 ILCS 5/1, *et seq*. Illinois Environmental Protection Act ("IEPA")
2. 415 ILCS 5/57 *et. seq*. Title XVI, Petroleum Underground Storage Tanks ("LUST")
3. 430 ILCS 15, *et. seq.* Gasoline Storage Act

STATEMENT OF FACTS

On October 20, 2017, Margaret Rice ("Ms. Rice") was injured in an explosion in her condominium building. C 183-184 ("C" is the Common Law Record). Ms. Rice filed this action on January 23, 2018, alleging negligence against the Defendants for purportedly causing the explosion. C 179-203. Specifically, Ms. Rice alleged that the explosion at her building was caused by the release of an unknown amount of unleaded gasoline. *Id*. This

[2] The pertinent text of the statutes involved is set forth in Plaintiff's Appendix. *See* A 0022-43.

gasoline, she alleged, migrated into the storm sewer system of her condominium building from an underground storage tank at the Speedway Gas Station, located approximately 1.4 miles from her home. C 181, 184. The Complaint's negligence counts alleged that Defendants owed Ms. Rice and the public a duty to maintain their underground storage tanks so as not to present a danger, which the Defendants breached by storing gasoline in a defective tank, failing to respond to warnings and alarms indicating a risk of leakage, allowing water to displace gasoline in the sewer system and environment, and failing to report and warn the public about the release of gasoline and the dangers it posed. C 186-193, C 197-201. Accordingly, Ms. Rice alleged, that as a result of Defendants' negligent acts and omissions, the Defendants caused the explosion and fire in which Ms. Rice sustained injuries. *Id*.

Ms. Rice was treated for her injuries and after 45 days of treatment, she was released from the rehabilitation center. C 21884. On November 22, 2019, Ms. Rice died from cervical cancer. C 6343. Accordingly, Ms. Rice's daughter, Laura Rice ("Plaintiff"), sought to be substituted as the plaintiff, in her capacity as special representative of Ms. Rice's estate. C 6341-6345. On March 25, 2021, Plaintiff filed her Amended Complaint, adding three statutory counts for violation of the Illinois Environmental Protection Act ("IEPA"), specifically Title XVI, Petroleum Underground Storage Tanks ("LUST") (Counts I-III) for bodily injury resulting from the release of petroleum from underground storage tanks. C 18624, 18666, 18709. The IEPA counts are based on the same operative facts as Plaintiff's common law negligence claim. *Id*. For these alleged violations, which are all substantively identical, Plaintiff alleged that LUST and the IEPA provide a private right of action. Specifically, Plaintiff sought "all damages" sustained by Plaintiff as a result

of Defendants' violation of the IEPA and LUST. C 18630-31, 18673, 18715-16. Plaintiff alleged that "damages are authorized" under the "Penalties" section of the IEPA. C 18624. The Amended Complaint seeks damages under Section 42, which discusses civil penalties for violations of the act payable to the government. C 18631 (citing 415 ILCS 5/42). Plaintiff does not mention or seek punitive damages in her Amended Complaint. C 18591-18762. In alleging that she is entitled to damages for bodily injury, Plaintiff cites to the eight aggravating and mitigation factors the IEPA provides for the determination of an appropriate civil penalty. C 18716-18717 (citing 415 ILCS 5/42(h)).

Plaintiff maintained the negligence counts. C 18751-54. In addition to the explosion that occurred in Ms. Rice's building, the Amended Complaint alleged that at least ten additional explosions occurred, and many nearby residents were evacuated from their homes. C 18622. Moreover, substantial measures were undertaken to remediate contamination in the surrounding area. C 18623.

Notably, the violations alleged in the IEPA counts of the Amended Complaint were previously adjudicated by the Illinois Attorney General and DuPage State's Attorney. C 19009-19031. Plaintiff herself acknowledges this. Plaintiff's IEPA counts state that the Illinois Attorney General and DuPage County State's Attorney jointly filed a complaint on behalf of the People of the State of Illinois against Speedway in November 2017 in DuPage County, alleging violations of the IEPA based on the release of gasoline from the storage tank. C 18720. A copy of the government's complaint, which sought both injunctive relief and civil penalties, was attached to Plaintiff's Amended Complaint. C 19009-19031. The government's action was filed less than one month after the Office of the State Fire

Marshall (OSFM) investigated the gasoline release that occurred on October 20, 2017, and the Defendants' alleged violations of the IEPA. *Id*.

Similar to Plaintiff's IEPA Counts, the State of Illinois sought damages pursuant to 415 ILCS 5/42 and 415 ILCS 5/43. *Id*. An Agreed Immediate and Preliminary Injunction Order was entered into on November 13, 2017, ordering Defendants to continue to cease dispensing and delivering gasoline into the underground storage tanks at the site, as well as many other "immediate action" items specified therein. C 23462-23468. On December 4, 2018, the government and Defendants reached a settlement and a Consent Order was entered as the final judgment on the merits. C 23469-23486. In addition to paying civil penalties, a Corrective Action Plan was entered into requiring Defendants to continue investigation of on- and off-site soils, surface water and ground water impacts that may have been caused by the leaking underground storage tanks, and perform appropriate remedial actions as requested by the Illinois EPA. C 23475, C 23487.

On March 29, 2021, Plaintiff also filed a Motion for Punitive Damages as to the IEPA counts in her Amended Complaint. C 19261-19291. Notably, while Plaintiff's motion purports to seek punitive damages, it actually seeks civil penalties. *Id*. Similar to her Amended Complaint, Plaintiff relies on the "Civil Penalties" section of the IEPA and its eight aggravating and mitigation factors to allege that she is entitled to damages for her bodily injury. C 19278-19279 (citing 415 ILCS 5/42(h)).

Because Plaintiff was attempting to assert a private right of action for her personal injuries under the IEPA, Defendants moved to dismiss the IEPA counts as well as moving to dismiss the entire amended complaint based on lack of standing and statute of

limitations.[3] C 23488-23514. Plaintiff then sought leave to file a First Amended Complaint. C 26107-26279. The circuit court granted leave subject to Defendants' two Motions to Dismiss being applicable to the First Amended Complaint. C 26296. After full briefing and oral arguments, the circuit court granted Defendants' Motion to Dismiss the IEPA counts and denied the Motion to Dismiss the entire complaint. C 26995-98. In granting the Motion to Dismiss the IEPA counts, the circuit court found that LUST provides neither an express nor implied private right of action. *Id*. Because the circuit court granted Defendants' Motion to Dismiss the IEPA counts, Plaintiff's Motion for Punitive Damages was rendered moot and never ruled on. *Id*. Plaintiff subsequently filed a motion to reconsider, which the circuit court denied. C 27130-27151. Accordingly, on January 28, 2022, Plaintiff appealed the circuit court's October 15, 2021 Order granting Defendant's Motion to Dismiss the IEPA counts. C 30125.

On appeal, the appellate court initially found that it lacked jurisdiction over Plaintiff's appeal because the circuit court's order dismissing the IEPA counts was not a final, appealable order. A 0014-18. The appellate court subsequently reversed that holding and issued a modified decision on the merits. A 0001-13 ("Modified Decision"). In so doing, the appellate court affirmed the circuit court's holding that LUST does not provide an express or implied private right of action. Modified Decision ¶ 1. Contrary to Plaintiff's "Statement of Facts," the appellate court ***did not*** hold that Plaintiff was within the class of persons the statutory scheme was intended to protect, nor that her injuries were of the type the statutory scheme was designed to prevent. Appellant's Br. at 20; *see also* Modified

[3] Defendants filed a combined Section 2-615 and Section 2-619 motion. However, only the matters related to the Section 2-615 portion were granted and are relevant in this appeal. C 26998, C 30125.

Decision, *generally*. Rather, the appellate court did not address those factors at all. It simply focused its reasoning on the fourth factor outlined in *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 460, 722 N.E.2d 1115 (1999) – whether a private right of action is necessary to effectuate the purpose of the statute. Modified Decision ¶ 20. In so doing, the appellate court explained, "[w]e need not analyze all four factors if we find that a private right of action is not necessary to effectuate the purpose of the statute." *Id.*

Accordingly, the appellate court found that a private right of action is not implied under LUST because the availability of common law negligence liability and public enforcement provisions make the statute and related regulations effective. *Id.* ¶¶ 1, 21-25. Specifically, it held that a private right of action was not necessary because a common law negligence action was available, and in fact pled, based on the same acts and omissions that Plaintiff alleged violated the statute and applicable regulations. *Id.* ¶¶ 21-23. Thus, the common law negligence action provided an adequate remedy to effectuate the purpose of the statute. *Id.* It further held that a private right of action is unnecessary to provide an adequate remedy for violations of the statute due to public enforcement by the Attorney General and State's Attorney to bring actions to obtain remedies for such violations. *Id.* ¶ 25. Notably, the appellate court also rejected Plaintiff's argument that a private right of action is necessary to subject violators to a higher standard of strict liability. *Id.* ¶ 26.

The appellate court also agreed with the circuit court that LUST does not provide an express private right of action. *Id.* ¶ 19. Finally, it rejected Plaintiff's argument that she is entitled to punitive damages. *Id.* ¶ 27. In so holding, the appellate court held that the potential of punitive damages does not necessitate a private right of action because Plaintiff could have sought punitive damages in her negligence action. *Id.*

ARGUMENT

1. The Appellate Court Correctly Ruled That There Is No *Express* Private Right of Action Under The IEPA, Specifically LUST.

The appellate court correctly held, as the circuit court below held, that LUST does not provide an express private right of action. Similar to the appellate court and trial court in this case, other courts have squarely held that there is no express private right of action under the IEPA. In *Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F. Supp.2d 877, 879 (N.D. Ill. 2000), the Northern District of Illinois stated, "[i]t is clear from the statutory scheme, ***and the parties agree***, that the IEPA contains no express private right of action . . . Enforcement of the statute has been left to the Attorney General or State's Attorney." *Id.* (emphasis added). In finding that there was no private right of action under the IEPA, the *Chrysler* court explained that "there is no clear need for civil actions under the statute" because "the existing legislative scheme. . . more than adequately serves the purpose of the statute." 97 F. Supp. 2d at 881. The Plaintiff here is making arguments that are so meritless that in *Chrysler* even the Plaintiff's attorney conceded the fact that the IEPA contains no private right of action. *See also Great Oak, L.L.C. v. Begley Co.*, No. 02 C 6496, 2003 WL 880994, at *5 (N.D. Ill. Mar. 5, 2003) ("Nowhere in the [IEPA] is a private actor given the express right to sue"); *Norfolk S. Ry. Co. v. Gee Co.*, No. 98 C 1619, 2001 WL 710116, at *15 (N.D. Ill. June 25, 2001) (same).

When interpreting a statute, the most reliable indicator of legislative intent is the statutory language itself, giving it its plain and ordinary meaning. *People ex rel. Madigan v. Wildermuth*, 2017 IL 120763, 91 N.E.3d 865 (2017). The best proof of an express right, therefore, is the statute itself. *Id.* By its very definition, "express" means "[c]learly and unmistakably communicated; stated with directness and clarity." EXPRESS, Black's Law

Dictionary 601 (11th ed. 2019). Plaintiff does not cite to ***any*** statutory language that clearly or directly states that private parties may bring suit under LUST. That is because, no part of LUST contains an unmistakably communicated or directly stated private right of action. In other words, no express private right of action exists under the statute. Indeed, had the legislature intended to grant a private right of action, it could have clarified the statute by inserting ***express*** language to that effect. *Harvel v. City of Johnston City,* 146 Ill. 2d 277, 283, 586 N.E.2d 1217 (1992).

Indeed, when the legislature expressly intends to create a private cause of action for a violation of a statute, a provision establishing such a cause of action is explicitly contained in the statute. *See e.g.,* Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/1 *et seq*. (2004). In the ICFA, the legislature expressly created a private right of action, stating "[a]ny person who suffers actual damage as a result of a violation of this Act . . . may bring an action against such person." 815 ILCS 505/10a(a). The ICFA demonstrates that the legislature knows how to confer a private right of action when it so intends. Where, as here, the legislature did not create an express right, any implication of that right is greatly disfavored by the judicial system. *Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979).

To get around the legislature's clear intent and the fact that LUST does not expressly provide for a private right of action, Plaintiff takes certain words and phrases from different sections of the IEPA, and even from other statutes that are not at-issue, to support her position. As both the circuit court and appellate court held, Plaintiff's strained effort to create an express right fails. Plaintiff's patchwork approach actually undermines

her position and demonstrates that the IEPA clearly and unmistakably does ***not*** provide for an express right of action.

First, Plaintiff focuses on the statutory language in Resource Conservation and Recovery Act ("RCRA") of 1976. Appellant's Br. at 24. Plaintiff's reliance on the RCRA, a completely different statute and one that is not at issue in this case, is puzzling. The closest that Plaintiff comes to connecting the RCRA to the IEPA is to state that, "Illinois enacted LUST explicitly in accordance with the requirements of the RCRA." Appellant's Br. at 27. Plaintiff's argument then focuses solely on sections of the RCRA to somehow create an express private right of action in LUST. *Id*. at 25-27. Notably, there is no reference to any provision or any quoted language in LUST, which grants an express private right of action under the statute. Plaintiff is not seeking relief under the RCRA and thus, the statute is entirely irrelevant.

Instead, Plaintiff argument relies mainly on LUST purportedly containing the same financial responsibility requirements as those found in the RCRA. Based on selective language Plaintiff pulls from the IEPA regarding these "financial responsibility" requirements, mainly from the Gasoline Storage Act Plaintiff somehow comes to the conclusion that because the federal and Illinois statutory scheme governing underground storage tanks are purportedly so closely aligned, the availability of a federal right of action under the RCRA necessarily connotes the availability of a private right of action under the IEPA. *Id*. This argument is entirely nonsensical for two reasons. First and foremost, as the appellate court correctly acknowledged, these "financial responsibility" provisions require owners and operators of underground storage tanks to maintain insurance to satisfy liability arising out of bodily injury or property damage as a result of petroleum released from such

tanks. *See e.g.*, 430 ILCS 15/6.1(a) ("each owner or operator shall establish and maintain evidence of financial responsibility . . . for . . . compensating third parties for bodily injury"). Thus, these provisions ***do not state*** that private parties may bring an action under LUST; rather, the provisions aim to ensure that parties injured by the release of gasoline from underground storage tanks can obtain compensation pursuant to already cognizable causes of action such as negligence. *Id*.

Second, if the Illinois legislature wanted to create an ***express*** right of action under LUST, it would have specifically and directly stated that right in the statute. The fact that the legislature did not expressly state such a right demonstrates that no such right exists. *Harvel*, 146 Ill. 2d at 283. Plaintiff's attempt to discern the legislature's intent in the IEPA by referencing the RCRA – a different statute than is at issue here – and multiple provisions out of context, clearly demonstrates Plaintiff's understanding that there is no express right. If the right had been express, there would be no need to determine the legislature's intent because the right would have been communicated "clearly and unmistakably . . . with directness and clarity."

Moreover, Plaintiff's assertion that the RCRA explicitly authorizes private rights of action for bodily injuries is blatantly incorrect. Plaintiff states that the RCRA's numerous references to an underground storage tank owner and/or operator's liability to third parties for bodily injuries make clear that the RCRA "is ***intended*** to provide a private action for third-parties injured by such violations." Appellant's Br. at 26 (emphasis added). First, as discussed above, Plaintiff's strained attempt to discern Congress' ***intent*** demonstrates that there is no ***express*** private right of action. Moreover, Plaintiff conveniently and self-servingly omits any reference to the scope of the private right of

action under the RCRA and that it is for *enforcement* (*i.e.*, corrective action) of the statute and not for personal injuries. For example, in *Aurora Nat. Bank v. Tri Star Mktg., Inc.,* 990 F. Supp. 1020 (N.D. Ill. 1998), a case cited by Plaintiff, the Court aptly explained:

> However, it is also true that the citizen suit provision of the RCRA only allows claims by parties 'acting as private attorneys-general ***rather than [those] pursuing a private remedy***.' Thus, if plaintiffs here have impeded the enforcement of environmental laws for their own financial advantage, they have not acted consistent with the purpose of the statute and a finding of liability would not be warranted.

Id. at 1026 (citation omitted; emphasis added). ***None*** of the cases cited by Plaintiff support that the RCRA allows for private remedies for bodily injury as Plaintiff is seeking here. In fact, it is well-settled that the RCRA does not provide an express private cause of action to recover damages for personal injuries. *See e.g., Walls v. Waste Res. Corp,* 761 F.2d 311, 316 (6th Cir. 1985) (holding that the RCRA does not provide a private right of action for economic, compensatory or punitive damages); *Environmental Defense Fund, Inc. v. Lamphier,* 714 F.2d 331, 336–37 (4th Cir.1983) (RCRA citizen suit provisions do not allow individuals to pursue private remedies, only relief from plaintiffs acting as private attorney generals); *Polcha v. AT & T Nassau Metals Corp.,* 837 F.Supp. 94, 96–97 (M.D.Pa.1993) (holding that no private cause of action to recover damages for personal injuries is expressly or impliedly created by RCRA). As repeatedly noted, Plaintiff is not seeking relief under the RCRA.

If the Illinois legislature did want to create a private cause of action for the IEPA, there are numerous examples from other states on how to expressly enact such a statute. For example, the Florida legislature enacted the Water Quality Assurance Act, § 376.030, Fla. Stat. (2004), which specifically creates a private cause of action and imposes strict liability for the discharge of certain types of pollutants. This particular statute comprises a

comprehensive statutory scheme designed to protect Florida's surface and groundwater. The pertinent provision, Section 376.313(3) of the 1983 act states as follows:

> Except as provided in s. 376.3078(3) and (11), nothing contained in ss. 376.30–376.317 prohibits any person from bringing a cause of action in a court of competent jurisdiction for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30–376.317. Nothing in this chapter shall prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only defenses to such cause of action shall be those specified in s. 376.308.

Fla. Stat. § 376.313(3). Not only does this section create a private cause of action, it imposes strict liability, and provides for a narrow list of defenses to strict liability. Corporations that do business in Florida are certainly aware of this statute and the duties imposed upon them. Conversely, LUST, and the IEPA, do not have provisions even remotely similar. If the Illinois legislature wanted to create a private cause of action and strict liability, as the Florida statute demonstrates, they could have certainly elected to do so.

Similar to the Florida legislature, the Missouri legislature also expressly created a private right of action under the Missouri Merchandising Practices Act ("MMPA"). The MMPA specifically states that "any person who purchases or leases merchandise primarily for personal family or household purposes and thereby suffers an ascertainable loss of money or property, real or personal . . . may bring a ***private civil action*** in either the circuit court of the county in which the sellor or lessor resides or in which the transaction complained of took place, to recover actual damages." Mo. Stat. § 407.025(1) (emphasis added). The statute further provides the following:

> (2) A person seeking to recover damages shall establish:
>
> > (a) That the person acted as a reasonable consumer would in light of all circumstances;
> >
> > (b) That the method, act, or practice declared unlawful by section 407.020 would cause a reasonable person to enter into the transaction that resulted in damages; and
> >
> > (c) Individual damages with sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty.

Id. Thus, not only does the legislature expressly provide for a private right of action under the MMPA, but it also provides procedural steps for an individual to bring such an action. The statue further provides that the "court may, in its discretion . . . award punitive damages. Mo. Stat. § 407.025(2). These provisions clearly illustrate that when the legislature intends to create a private cause of action it does so by express provision of law. There is no such express provision in the IEPA. Absent an express provision creating a private cause of action, and absent any legislative intent to do so, an express private cause of action cannot be inferred.

Moreover, even assuming, as Plaintiff alleges, that a private right of action exists under the IEPA, the statute lacks any language regarding the procedural aspects of exercising such a right. This omission is notable when contrasted with statutes like those in Florida and Missouri, which explicitly outline the mechanisms for bringing a private right of action. In contrast, the IEPA fails to specify ***any*** details for bringing a private right of action such as the appropriate forum for filing such actions, the applicable standard of liability (be it strict liability or negligence), the nature and extent of damages available to a private individual, the possibility of awarding punitive damages, and the defenses that may be raised. The absence of any statutory language in the IEPA that delineates these

procedures strongly suggests that, in reality, no such private right of action is intended or provided by the statute.

In sum, Plaintiff has failed to point to any language in LUST, or in the IEPA generally, that expressly states a right to a private action. That is because, there is no express private right of action for *personal injuries* under the IEPA. Accordingly, this Court should affirm the Appellate Court's decision.

2. The Appellate Court Correctly Ruled That There Is No *Implied* Private Right of Action Under The IEPA, Specifically LUST.

Absent an express right of action, Plaintiff bears the heavy burden of establishing that a right of action should be implied under Illinois law. Plaintiff has failed to meet that burden. Accordingly, the appellate court also correctly held that there is no implied private right of action under LUST. Indeed, courts have consistently held that there is no implied private right of action under the IEPA. *See e.g.*, *Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F. Supp.2d 877, 881 (N.D. Ill. 2000); *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill. App. 3d 691, 697, 686 N.E.2d 704 (1997); *Norfolk S. Ry. Co. v. Gee Co.*, No. 98 C 1619, 2001 WL 710116, at *16 (N.D. Ill. June 25, 2001).

When there is no express statutory language regarding the private right to sue, "a court may determine that a private right of action is implied." *Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 722 N.E.2d 1115 (1999). However, the implication of private rights of action where the legislature did not create an express right is greatly disfavored by the judicial system. *See Touche Ross & Co. v. Redington*, 442 U.S. 560, 571-72 (1979). As this Court has explained, "[t]he standard that must be met for a court to imply a private right of action in a statute is quite high." *Channon v. Westward Mgmt., Inc.*, 2022 IL

128040, ¶ 33, 215 N.E.3d 926, *reh'g denied* (Jan. 23, 2023). In order for a court to recognize a private right of action, a party must provide "persuasive evidence that [the legislature] intended to create one." *Spicer v. Chicago Board of Options Exchange, Inc.*, 977 F.2d 255, 258 (7th Cir. 1992). Unless legislative intent can be inferred from the language of the statute, the statutory structure, or some other source, the "essential predicate implication of a private remedy simply does not exist." *Farm Credit Bank of St. Louis v. Dorr*, 250 Ill.App.3d 1, 620 N.E.2d 549 (5th Dist. 1993). Thus, implying a right of action that the legislature declined to provide in the statutory text is an "extraordinary step," appropriate "only when it is clearly needed to advance the statutory purpose and when the statute would 'be ineffective, as a practical matter, unless a private right of action were implied."' *Id.* (citations omitted).

Because the creation of a private cause of action is a particularly legislative function, the judiciary should undertake such authority with "due caution." *Parra v. Tarasco. Inc.*, 230 Ill. App. 3d 819, 595 N.E.2d 1186 (1st Dist. 1992). Illinois courts have been reluctant to intrude on the legislature's policy-making authority by inferring private causes of action. *Id.* (no private cause of action under Choke-Saving Method Act); *Board of Education v. A, C & S, Inc.*, 131 Ill. 2d 428, 471-72, 546 N.E. 2d 580 (1989) (no private cause of action under Asbestos Abatement Act); *Davis v. Dunne*, 189 Ill. App. 3d 739, 743, 545 N.E.2d 539 (1st Dist. 1989) (no private cause of action under Civil Service Act); *Peel v. Yellow Cab Company. Inc.*, 147 Ill. App. 3d 992, 994-95, 498 N.E.2d 788 (1st Dist. 1986) (no private cause of action under Public Passenger Vehicle Rules and Regulations); *Anzinger v. Illinois State Medical Inter-Insurance Exchange*, 144 Ill. App. 3d 719, 721-22, 494 N.E.2d 655 (1st Dist. 1986) (no private cause of action under Illinois Insurance Code);

G*alinski v. Kessler*, 134 Ill. App. 3d 602, 606, 480 N.E.2d 1176 (1st Dist. 1985) (no private cause of action under "barratry statute"); *Rhodes v. Mill Race Inn. Inc.*, 126 Ill. App. 3d 1024, 1027-28, 467 N.E.2d 915 (2nd Dist. 1984) (no private cause of action under Safety Glazing Materials Act).

To overcome Illinois' strong presumption against implied rights of action, Plaintiff must satisfy a four-part test. Plaintiff must establish that: "(1) the plaintiff is a member of the class for whose benefit the statute was enacted; (2) the plaintiff's injury is one the statute was designed to prevent; (3) a private right of action is consistent with the underlying purpose of the statute; and (4) implying a private right of action is necessary to provide an adequate remedy for violations of the statute." *Fisher,* 188 Ill. 2d at 460. "All four factors must be met before a court will recognize an implied remedy." *Horist v. Sudler & Co.*, 941 F.3d 274, 278–79 (7th Cir. 2019). Here, Plaintiff has established none.

A. A private right of action is not necessary to provide an adequate remedy for violations of the statute.

The appellate court's decision primarily revolved around the fourth element: whether a private right of action is necessary to provide an adequate remedy for violations of the statute. This Court has implied a right of action under a statute "only in cases where the statute would be ineffective, as a practical matter, unless a private right of action were implied." *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 395, 718 N.E.2d 181 (1999); *accord Channon*, 2022 IL 128040 ¶ 31 (refusing to imply a right of action absent a "clear need") (quoting *Abbasi*). Plaintiff claims that, here, a private right of action is necessary because common law negligence claims and/or government enforcement actions are insufficient to provide an adequate remedy for violations of the statute. The appellate court did not find this argument persuasive, and this Court should similarly reject it.

i. A private right of action is not necessary because the Attorney General and State's Attorney may bring actions to obtain remedies.

First, as the appellate court correctly held, a private right of action is unnecessary to provide an adequate remedy for violations under the IEPA because the statute already provides a framework for enforcement via the Attorney General and/or State's attorney, who may bring actions to obtain remedies, including civil penalties and injunctive relief, for violations of the statute. This public enforcement diminishes the necessity of a private right of action to effectuate the statute's purpose.

In determining whether a private right of action is necessary to provide an adequate remedy, this Court has looked to the enforcement mechanisms and remedies provided by the statute itself. Thus, for instance, in *Fisher*, this Court found that there was no private right of action under the Nursing Home Care Act in part due to its finding that such a private right was not necessary to achieve the statute's purpose. *Fisher v. Lexington Health Care, Inc.,* 188 Ill. 2d 455, 464, 722 N.E.2d 1115 (1999). The court pointed to "[a] multitude of sanctions and remedies" that existed to accomplish the statute's goal of protecting nursing home residents, as well as "numerous mechanisms" to encourage the reporting of violations and punish retaliation. *Id.* These sanctions and remedies included heavy fines and license suspension or revocation. *Fisher,* 188 Ill. 2d at 466. Relying on this Court's decision in *Fisher,* the Northern District of Illinois also concluded that the IEPA's legislative scheme "more than adequately serves the purpose of the statute, and that the statute is not ineffective absent an implied right of action." *Chrysler Realty Corp. v. Thomas Indus., Inc.*, 97 F. Supp. 2d 877, 881 (N.D. Ill. 2000). Accordingly, the Court in *Chrysler* found that no private right of action, whether direct or implied, exists under the IEPA. *Id.* at 879-80.

Here, enforcement of the statute has clearly been left to the Attorney General and/or State's Attorney. *Chrysler Realty Corp.*, 97 F. Supp. 2d at 879 (citing 415 ILCS 5/31). The Attorney General and/or State's Attorney may bring actions to obtain remedies, including civil penalties and injunctive relief, for violations of the statute. *See* 415 ILCS 5/42; 415 ILCS 5/43. Not only is there already an established means of enforcing the statute, but as Plaintiff does not dispute, the State of Illinois ***did*** enforce the statute. C 19009-19031.

Specifically, as Plaintiff herself acknowledges, the State has already sued Defendants under the IEPA, including the same statutory provisions asserted in Plaintiff's IEPA counts, and obtained an agreed preliminary injunction that provides for relief that the IEPA has determined to be appropriate, including payment of a monetary penalty, taking corrective action, environmental remediation, and further monitoring of the soil and groundwater. C 23462-23468; C 19009-19031. Plaintiff's interests asserted in her IEPA counts are sufficiently similar, if not ***identical***, to those sought by the Attorney General and State's Attorney in the DuPage Chancery action, including the relief sought. *Compare* Plaintiff's First Amended Complaint, IEPA Counts (C 26142-26266) *with* People of the State of Illinois' Complaint (C 19009-19031).

The purpose of the IEPA is to "establish a unified, state-wide program . . . to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who caused them." 415 ILCS 5/2(b). The government's action and resulting penalties and injunctive relief effectuated the purpose of the IEPA. The Agreed Immediate and Preliminary Injunction Order, coupled with the continuous reporting obligations as stipulated by the Consent Order, have safeguarded, and protected the quality of the affected environment. Furthermore, the

alleged environmental harm attributed to the Defendants' underground storage tanks has been thoroughly assessed. Remediation strategies were formulated and diligently executed, ensuring ongoing compliance with the specified remedial actions. Additionally, suitable financial penalties were imposed on and subsequently paid by the Defendants, further emphasizing the effectiveness of these measures. Thus, the purpose of the IEPA has already been met, confirming what every relevant case has held: an implied private right of action is unnecessary and inappropriate.

Moreover, as the appellate court noted, violators of the IEPA are also subject to criminal liability in some circumstances. 415 ILCS 5/44. Thus, IEPA/LUST violators face serious and very meaningful consequences that are expressly written in the legislation, without the need for courts to create an unintended personal injury private action to make compliance with the legislation effective.

Plaintiff argues that the IEPA "explicitly rejects the adequacy of governmental enforcement to remedy violations of the Act" based on a reference to "private remedies" in the statute. Appellant's Br. at 43-44. But Plaintiff omits to note that the "private remedies" that the IEPA is referencing or discussing are ***citizen suits*** before the administrative body created by the act - the Illinois Pollution Control Board. 415 ILCS 5/5 *et seq; see also Neumann v. Carlson Env't, Inc.*, 429 F. Supp. 2d 946, 956 (N.D. Ill. 2006) (holding that there is no private right of action under the IEPA . . . given that the existing legislative scheme allowing for both judicial enforcement by the state, and ***citizens' suits before the Board*** adequately vindicates the statutory purposes") (emphasis added). That administrative remedy allows private individuals to enforce the IEPA, thus

giving effect to the IEPA without any need for a tort-based private right of action. *Chrysler,* 97 F. Supp. 2d at 881.

Indeed, assuming *arguendo* that Plaintiff is not barred from asserting a private right of action under the IEPA (she is), Plaintiff's remedies would be limited to injunctive relief against the alleged violations (415 ILCS 5/45(b)), and such remedies would now be moot as Defendants have already remedied the condition(s). *See Scherr v. Marriot Int'l, Inc.,* No. 10 C 7384, 2011 WL 6097854, at *6 (N.D. Ill. Dec. 1, 2011), *aff'd sub nom.Scherr v. Marriott Int'l, Inc.*, 703 F.3d 1069 (7th Cir. 2013) (noting that injunctive relief becomes moot when alleged violation has been remedied after the initial filing of a suit seeking injunctive relief) (citation omitted).

Because the remedies brought by the Attorney General and/or State's Attorney are more than adequate to accomplish the statute's regulatory objectives, no private right of action is needed. *See Metzger v. DaRosa*, 209 Ill. 2d 30, 43, 805 N.E.2d 1165 (2004) ("[W]hen a statute grants a state official broad authority to enforce the statute . . . it indicates the legislature's intent not to imply a private right of action for others to enforce the statute."); *see also 1541 N. Bosworth Condo. Ass'n v. Hanna Architects, Inc.*, 2021 IL App (1st) 200594, ¶¶ 61-63, 196 N.E.3d 1108 (city ordinance regulating self-certification for building permits did not contain private right of action because section authorizing the city to issue "injunctions, abatement orders, or other remedial orders" for violations of the ordinance provided adequate deterrence); *Marshall v. Cnty. of Cook*, 2016 IL App (1st) 142864, ¶ 13, 51 N.E.3d 27 (no implied private right of action because State's Attorney can bring action for alleged violation of statute).

Notably, as Plaintiff herself acknowledged, the gasoline release had consequences beyond her personal injury. Many people and properties were affected, and several public agencies addressed the situation. Appellant's Br. at 6, 13-18. Thus, as the appellate court correctly ruled, "[t]he Attorney General and State's Attorneys are better suited to represent such broad interests." Modified Decision ¶ 25. Thus, public enforcement of the statute is sufficient to effectuate its purpose and an implied right of action is not necessary.

ii. A private right of action is not necessary because a common law negligence action is available based on violations of the statute.

Moreover, a private right of action is also not necessary because Plaintiff can maintain a common law negligence claim against Defendants based on the same acts and omissions that she alleges violated the IEPA. This Court's precedent establishes that where the common law already provides for a remedy that is consistent with the purpose of the subject statute, then there is no need to find an implied private right of action. *See Bd. of Educ. of City of Chicago v. A, C & S, Inc.*, 131 Ill. 2d 428, 471, 546 N.E.2d 580 (1989) (holding that Asbestos Abatement Act did not create an implied private cause of action for school districts when common law negligence claims remained available).

Here, Ms. Rice originally filed an action for common law negligence to redress any proven injury. Thus, a plaintiff obviously had an incentive to file an action and does not need a private right of action under the statute to be made whole. When Plaintiff filed her Amended Complaint, adding the IEPA counts, she maintained the common law negligence claim. In fact, as the appellate court also acknowledged, Defendants answered Plaintiff's negligence claim and the parties subsequently reached a settlement on that count, presumably making Plaintiff whole. Modified Decision ¶¶ 3, 12, 15. The record, therefore, belies the rationale for creating an implied cause of action under the statute. The common

law already has provided Plaintiff with a mechanism to obtain recovery for personal injury damages and Plaintiff has seized the opportunity to seek relief. Plaintiff availed herself to common law claims of negligence. Plaintiff does not state or explain ***why*** she could not have been fully compensated for her injuries under common law.

This result is consistent with this Court's decision in *Abbasi v. Paraskevoulakos*, 187 Ill. 2d. 386 (1999). There, plaintiffs argued that the Lead Poisoning Prevention Act provided a private right of action for a child sickened by lead paint. *Id*. But because plaintiffs had a common law negligence claim based on the same conduct, this Court concluded that implying a private right of action was "not necessary to provide an adequate remedy for violation of the Act." *Id*. at 393. Accordingly, this Court found that the availability of a common law negligence claim "effectively implements the public policy behind the Act." *Id*. at 395. Since a plaintiff can bring a negligence action based on such a violation, "the threat of liability is an efficient method of enforcing the statute." *Id.* Thus, this Court found that no "clear need" existed to imply a private right of action. *Id.* at 393 (citation omitted). Put simply, a private right of action was not necessary to uphold and implement the public policy behind the statute. *Id.* The same is true here.

iii. The IEPA does not impose a strict liability standard on claims by private parties.

Plaintiff's only argument is that a private right of action is necessary to subject violators to the higher standard of strict liability, which is not applicable under common law negligence. Plaintiff's argument lacks any merit. Thus, just as the appellate court did, this Court too should reject Plaintiff's blatant attempt to fabricate a private right of action under the IEPA where none is legislatively intended.

It is well-established that a violation of a statute does not give rise to strict liability in tort *unless* the legislature clearly intended to impose strict liability. *See e.g., Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 395, 718 N.E.2d 181 (1999); *Bybee v. O'Hagen*, 243 Ill. App. 3d 49, 54 612 N.E.2d 99 (4th Dist. 1993); *Vanderlei v. Heideman*, 83 Ill.App.3d 158, 162, 403 N.E.2d 756 (2d Dist. 1980). The General Assembly knows how to draft legislation to reflect its intent to impose strict liability in tort. *See e.g.*, Consignment of Art Act, 815 ILCS 320/2 ("[t]he art dealer shall be *strictly liable* for the loss of or damage to the work of fine art while in the art dealer's possession") (emphasis added). In contrast, the legislature declined to draft the IEPA to impose strict liability in tort. The statute here lacks any evidence of legislative intent to create strict liability. As the appellate court correctly pointed out, Plaintiff "fails to cite to any authority to support [her] argument." Modified Decision ¶ 26.

Instead, Plaintiff continues with her strategy of taking words and phrases from multiple provision out of context to support her position. The only language in LUST that Plaintiff points to in support of her argument that strict liability applies for her alleged violations is the standard of liability set forth in Section 5.57/12(g) of LUST. *See* 415 ILCS 5.57/12(g). Section 5.57/12(g) states that the standard of liability under this section of LUST is the standard of liability under Section 22.2(f) of the IEPA, which Plaintiff alleges is strict liability. However, Section 22.2(f) of the IEPA does not contain any express language supporting Plaintiff's contention that a strict liability standard applies. *See* 415 ILCS 22.2(f).

Notably, Section 5/57.12 relates solely to "costs of investigation, preventive action, corrective action and enforcement action incurred by the State of Illinois resulting from an

underground storage tank," while Section 22.2(f) relates solely to the "costs of removal or remedial action incurred by the State of Illinois or any unit of local government as a result of a release or substantial threat of a release of a hazardous substance or pesticide." 415 ILCS 5.57/12(g); 415 ILCS 22.2(f). Thus, the sections are clearly inapplicable and do not apply to the violations alleged by Plaintiff. Indeed, section 5.57/12 of LUST expressly states that it does not affect or modify liability for damages under common law for injury or loss resulting from a release of gasoline. *See* 415 ILCS 5/57.12(a)(1) ("Nothing in this Section shall affect or modify in any way . . . The obligations or liability of any person under any other provision of this Act or State or federal law, including common law, for damages, injury or loss resulting from a release or substantial threat of a release as described above"). Put simply, the strict liability purportedly contemplated in the IEPA has no application to claims by private parties.

Moreover, no Illinois court has imposed strict liability on an alleged "polluter" such as Defendants. *See Phillips Petroleum Co. v. Illinois Environmental Protection Agency*, 72 Ill.App.3d 217, 220 (1979) ("We have found no case which imposes strict liability on an alleged polluter"). Under Illinois law, violation of a statute designed to protect life or property is *prima facie* evidence of negligence. *Test Drilling Service Co. v. The Hanor Company, et al.*, 322 F.Supp.2d 957, 962-64 (2003), *Dini v. Naiditch*, 20 Ill.2d 406, 417, 170 N.E.2d 406 (1960). However, contrary to Plaintiff's assertion, the violation of the statute does not constitute negligence *per se*, since evidence of negligence may be rebutted with proof that the party acted reasonably under the circumstances, despite the violation. *Id*. As discussed, there can be no strict liability for violation of the statute *unless* the legislature clearly intended to impose strict liability. *Abbasi v. Paraskevoulakos*, 187 Ill.

2d 386, 395, 718 N.E.2d 181 (1999). The IEPA does not contain any language indicating that the legislature intended to impose strict liability or for violating its statutory provisions.

For this reason, Plaintiff's attempt to distinguish *Abbasi* fails. Plaintiff argues that the reasoning of *Abbasi* cannot apply, "[w]here, as here, a statute imposes strict liability on violations." Appellant's Br. at 41. Plaintiff argument is entirely without merit. First, as discussed, the IEPA/LUST statutory framework ***does not*** impose strict liability on claims brought by private parties, such as Plaintiff here. As this Court held in *Abbasi,* if the legislature "declined" to draft the statute to impose strict liability in tort, such legislative intent will not be inferred. *Abbasi*, 187 Ill.2d at 395. Moreover, the reasoning in *Abbasi* indicates that the standard applicable in negligence is sufficient to provide an adequate remedy and make the statute effective. *Id*. Thus, a strict liability standard is wholly unnecessary. If the court were to create a private right of action under the IEPA, it would be a negligence action and not a strict liability action. *Abbasi*, 187 Ill.2d at 395. Here, just like the plaintiff in *Abbasi*, Plaintiff filed a negligence action based on a violation of the IEPA in the circuit court, "***which operates exactly as would a private cause of action.***" *Id*. (emphasis added).

Put simply, Plaintiff's attempt to impose a strict liability standard fails. As the appellate court correctly ruled, common law negligence gives effect to the IEPA and its public policy. Since Defendants may be liable to Plaintiff for damages based on their alleged regulatory violations pursuant to common law negligence, a private right of action is unnecessary to provide an adequate remedy for such violations.

B. Plaintiff is a member of the class for whose benefit the statute was enacted.

As the appellate court acknowledged, the remaining *Fisher* factors do not need to be analyzed because a private right of action is not necessary to effectuate the purpose of LUST. While the analysis could end there, it is important to note that Plaintiff has failed to establish the remaining *Fisher* factors. *See Fisher v. Lexington Health Care, Inc.*, 188 Ill. 2d 455, 722 N.E.2d 1115 (1999). First, Plaintiff is not a member of the class sought to be protected by the statute. It is important to note that a plaintiff satisfies this prong only when the "legislature intended" for Plaintiff to receive the "primary benefit of the statutory protection," not when the benefits Plaintiff receives are "merely incidental." *Channon v. Westward Mgmt., Inc.*, 2022 IL 128040, ¶¶ 22-23, 27, 215 N.E.3d 926 (Jan. 23, 2023).

The appellate court's decision in *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill. App. 3d 691 (1997) is instructive here. In *NBD Bank*, the appellate court addressed an action by buyers of contaminated land to recover from the seller the costs incurred in investigating, cleaning, removing, and restoring petroleum contaminated soil. 292 Ill. App. 3d at 692. The trial court had dismissed the buyers' complaint on the grounds that "the tort-based recovery sought by the plaintiffs was barred by the 'economic loss doctrine"'; and the plaintiffs had appealed, asserting that the economic loss doctrine was inapplicable, and that public policy weighed in favor of imposing liability. *Id*. at 692-93. The Appellate Court performed a traditional private right of action inquiry, noting that such a right can be implied when all four factors necessary to imply a private right of action are established. *Id.* at 697 (listing the factors). The court found that the plaintiffs' claim "fail[ed] to satisfy several of these criteria." *Id.* Notably, it found that plaintiffs were not members of the class that the IEPA was designed to protect. In so holding, the Appellate Court explained:

> The [IEPA] and companion regulations were not designed to protect the purchasers of real estate who discover after the conveyance that remedial action is necessary to remove contaminants from the property, nor was the Act designed to protect against economic losses resulting from the obligation to remove contaminants. In addition, there is no clear need for civil actions under the statute; the existing legislative scheme which provides for prosecution by the State of Illinois and allows contribution claims against third-party violators more than adequately serves the purpose of the statute, which is to protect the environment and minimize environmental damage.

Id. Accordingly, the Appellate Court concluded that there is no private right of action under the IEPA. *Id.* at 698. The same is true here. Just like the plaintiffs in *NBD Bank,* Plaintiff is not a member of the class that the IEPA, specifically LUST was designed to protect.

To support her argument that she is a member of the class sought to be protected, Plaintiff again relies on the "financial responsibility" provision of the Gasoline Storage Act, which states that each owner and operator must prove they have financial means for "compensating third parties for bodily injury and property damage." Appellant's Br. at 32. Based on this isolated sentence taken from the Gasoline Storage Act, Plaintiff somehow concludes that LUST is explicitly concerned that those injured by underground storage releases are compensated for their bodily injury. *Id*. Plaintiff's reliance on the Gasoline Storage Act is puzzling. She does not argue or otherwise claim that the Gasoline Storage Act is part of LUST, or that she is bringing a claim under said Act. Moreover, Plaintiff provides no support for how this provision establishes that she is a member of the class that the Gasoline Storage Act (or IEPA) was designed to protect. As discussed above, the provision is not concerned with a private right of action, but instead, is concerned with making sure that owners and operators of underground storage tanks maintain insurance to

satisfy liability, such as common law negligence, arising out of bodily injury or property damage as a result of petroleum released from such tanks.

Illinois Courts have similar held that a requirement for insurance to cover potential claims does not equate creating a private cause of action. In *Carmichael v. Pro. Transportation, Inc.*, 2021 IL App (1st) 201386, ¶ 30, the plaintiff cited to the Illinois Vehicle Code that requires persons who operate motor vehicles for transportation of passengers for hire to file "proof of financial responsibility" with the Secretary of State, which may include an insurance policy or other proof of insurance. 625 ILCS 5/8-101(a), 8-102(2). The plaintiff argued that the financial responsibility provision created a private cause of action. Nothing in the *Carmichael* opinion suggests that proof of insurance has anything to do with the creation of a private cause of action. Instead, the Court found that there was no express or implied private cause of action.

Plaintiff's support under LUST is tenuous at best. Again, Plaintiff references sections from LUST that are entirely out of context to conjure up support for her argument. The only language that Plaintiff points to in LUST is an "indemnification" section, which indemnifies owners and operators for payment of costs incurred as a result of release of petroleum from an underground storage tank. Appellant's Br. at 32 (citing 415 ILCS 5/57.8). Based on this "indemnification" language, Plaintiff concludes that LUST clearly "articulates an intent to ensure that those injured by the release of petroleum are compensated for" their bodily injury. Plaintiff's interpretation is entirely disingenuous. The "indemnification" sections Plaintiff relies on do not reference "bodily injury" whatsoever, nor do they articulate an intent that a citizen is compensated for any injury resulting from the release from petroleum. *See* 415 ILCS 5/57.8 (c), (e), (g), (h). Indeed, the sections

simply describe a procedure for seeking indemnification, or reimbursement, by the owner or operator of an underground storage tank for costs incurred due to a petroleum release. *Id*. In other words, this provision of LUST merely ensures that those responsible for underground storage tanks are held accountable, while also providing a means of financial relief when they face claims or judgments due to environmental damage caused by their tanks. It ***does not*** provide any support for Plaintiff's contention that the goal of this section, or LUST in general, is to ensure that those that suffered bodily injuries as a result of a release of petroleum are financially compensated.

The case Plaintiff cites to actually demonstrates that the legislature did not intend for private civil actions for damages to be brought under LUST. *See Sawyer Realty Grp., Inc. v. Jarvis Corp., 89* Ill. 2d 379, 432 N.E.2d 849 (1982). In its analysis of whether a private right of action is implied under the Illinois Real Estate Brokers and Salesmen License Act, the Court explained that the legislature anticipated and intended for individuals to seek private civil actions based on express language allowing for a private remedy for indemnification of limited compensatory damages (up to $10,000 per aggrieved party for actual cash losses). *Id*. at 391. In other words, the Act explicitly provided a specific way for individuals to seek compensation (up to $10,000) for harm they suffered. *Id*. In stark contrast to LUST, the fact that the statute in *Sawyer* included this specific remedy suggested that the legislature anticipated that individuals would file private lawsuits to claim damages for violations of the act. LUST contains no such language, demonstrating that the legislature ***did not*** intend for a private right of action under the statute. Moreover, in *Sawyer,* the "intent" section of the statute specifically stated that the "intent of the legislature in enacting this statute is to evaluate the competency of persons

engaged in the real estate business ***for the protection of the public***." *Id*. at 389. Accordingly, the Court concluded that plaintiffs were members of the class for whose benefit the statute was enacted. *Id*. at 391.

In contrast, the legislature specifically provides no mention of any private remedy nor any intent to protect or benefit private citizens in LUST. The purpose of LUST is set forth explicitly in Section 57. LUST's "Intent and Purpose" provision states:

> . . . The purpose of this Title is . . . in accordance with the State's interest in the protection of Illinois' land and water resources: (1) to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances regulated under this Title from certain underground storage tanks or related tank systems; (2) to establish and provide procedures for a Leaking Underground Storage Tank Program which will oversee and review any remediation required for leaking underground storage tanks, and administer the Underground Storage Tank Fund; (3) to establish an Underground Storage Tank Fund intended to be a State fund by which persons who qualify for access to the Underground Storage Tank Fund may satisfy the financial responsibility requirements under applicable State law and regulations; (4) to establish requirements for eligible owners and operators of underground storage tanks to seek payment for any costs associated with physical soil classification, groundwater investigation, site classification and corrective action from the Underground Storage Tank Fund; and (5) to audit and approve corrective action efforts performed by Licensed Professional Engineers.

415 ILCS 5/57. Thus, in contrast to the statute in *Sawyer,* the clear intent and purpose of LUST is ***not*** to compensate individuals for their personal injuries as Plaintiff alleges. Rather, the intent and purpose of LUST is to adopt procedures for the remediation of underground storage tank sites due to the release of petroleum and other substances, establish and provide procedures to oversee and review remediation, establish a State fund, establish requirements for owners and operators to seek payment, and audit and approve correction action. This Court has clarified that the explicit wording of the statute

unequivocally shows that LUST is not intended to cover the type of personal injury alleged by Plaintiff and thus, she is not within the class designed to be protected by the statute.

C. Plaintiff's injury is not one the statute was designed to prevent.

For the same reasons, Plaintiff's injury is not one the statute was designed to prevent. Courts have recognized that the "benefit" and "injury" factors overlap because a plaintiff outside the class of intended beneficiaries generally cannot establish an injury the legislature intended to prevent. *Horist v. Sudler & Co.*, 941 F.3d 274, 279 (7th Cir. 2019) (holding condominium sellers had not "suffered an injury that the statute was designed to prevent" because the legislature enacted the statute "to protect the interests of condominium *purchasers"*). As discussed previously, Plaintiff is not a member of the class sought to be protected by LUST, or the IEPA generally, and thus, her injury is not one the statutes were designed to prevent.

Plaintiff provides little support for her argument that she suffered an injury that the statute was designed to prevent. Plaintiff quotes a portion of LUST's subsection 57.2 "Definitions" to baldly and unabashedly claim that "bodily injury . . . suffered as a result of a release of petroleum from an underground storage tank" are among the injuries the statutory scheme is explicitly designed to prevent. App. Br. at 33. Plaintiff's contention is disingenuous at best. Plaintiff fails to disclose that she is partially quoting from a statutory definition of "Indemnification." Plaintiff does not even include the entire definition, which is material and instructive. The relevant section states:

> "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, . . . 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 (emphasis added). The term "bodily injury" is used in LUST exactly three times. Two of the uses are for the definition of "bodily injury" and once in the definition of "indemnification", as set forth above. It is wholly misleading and disingenuous for Plaintiff to claim that LUST was designed to prevent Ms. Rice's injury based on this selective and incomplete definition of "Indemnification." As is clear from the language, LUST was intended to indemnify ***Speedway*** (and other owners or operators) if there was a judgment or settlement which, in relevant part, involved bodily injury. There can be no other conclusion that LUST was not designed to prevent plaintiff's injury.

In a puzzling move, Plaintiff also cites to the appellate court's decision as support for her contention that her injury is one that the statute was designed to prevent. Specifically, Plaintiff states that the appellate court acknowledged that the "statutory scheme is 'designed to not only protect the environment, but also to protect people and property from fire or explosion that could result from gasoline stored in or released from an underground storage tank." Appellant's Br. at 33-34. But Plaintiff takes the appellate court's words entirely out of context. Indeed, the appellate court actually acknowledged that "LUST, by itself, may be primarily aimed at remediation of sites affected by petroleum released from underground storage tanks." Modified Decision ¶ 23. However, it found that the applicable OSFM regulations are designed to protect people and properly from fire or explosion and that Plaintiff could use the Defendant's alleged regulatory violations of the OSFM as evidence to prove a common law negligence claim. *Id*. At no point did the appellate court state or even suggest that Plaintiff's injury is the type of injury LUST was designed to prevent.

The purpose of LUST in the context of the whole statute, including its "Intent and Purpose" provision, clearly leads to the conclusion that the statute was not designed to protect against Plaintiff's alleged personal injury.

D. A private right of action is not consistent with the underlying purpose of the statute.

Moreover, a private right of action is not consistent with the underlying purpose of the statute. As discussed, the purpose of the IEPA/LUST statutory framework is to protect the environment first and foremost; the protection of citizens is incidental to that purpose. Importantly, the purpose of the statute is ***not***, as Plaintiff alleges, to compensate individuals for their bodily injury.

Plaintiff alleges that the purpose of the IEPA is to protect the health of the citizens of the State of Illinois. Plaintiff is incorrect. Indeed, the case Plaintiff cites to does not support her contention. *See People ex rel. Madigan v. Excavating & Lowboy Servs., Inc.*, 388 Ill. App. 3d 554, 902 N.E.2d 1218 (2009). Citing to 415 ILCS 5/2, the appellate court in *People ex. rel. Madigan* explained that the purpose of the IEPA is to "to restore, protect and enhance the quality of the environment, and to assure that adverse effects upon the environment are fully considered and borne by those who cause them." *Id. at* 560. Accordingly, the purpose of the statute is to "protect the environment and minimize environmental change." *Norfolk S. Ry. Co. v. Gee Co.*, No. 98 C 1619, 2001 WL 710116, at *16 (N.D. Ill. June 25, 2001) (citing *NBD Bank*, 292 Ill. App. 3d at 697). Indeed, it is well-settled and explicitly stated in the Act itself that the "legislature enacted the IEPA . . . for the stated purpose of establishing a unified, statewide program to restore, protect and enhance the quality of the environment." *Lily Lake Rd. Defs. v. Cnty. of McHenry*, 156 Ill.

2d 1, 10, 619 N.E.2d 137 (1993). Put simply, the purpose of the IEPA is not to compensate individuals for their bodily injury.

Likewise, the purpose of LUST, is to remediate leaking underground storage tank, to establish a Fund to satisfy the financial responsibility requirements and to indemnify owners and operators of leaking underground storage tank for the investigation and remediation of those tanks. *See Off. of State Fire Marshal v. Illinois Pollution Control Bd.,* 2022 IL App (1st) 210507, ¶ 4 ("the Illinois General Assembly enacted [LUST] as part of a joint federal-state program to regulate underground storage tanks and protect the State's land and water resources . . ."); *see also* 415 ILCS 5/57 ("Intent and purpose"). Thus, contrary to Plaintiff's rhetoric, the purpose of LUST is not to compensate individuals for their bodily injury.

As Plaintiff herself acknowledges, that the purpose of the statute is to ensure that the adverse effects of a gas release are "fully considered and borne by those who cause them." Appellant's Br. at 34. This purpose is effectuated without a private right of action. As discussed above, "there is no clear need for civil actions under the statute; the existing legislative scheme which provides for prosecution by the State of Illinois and allows contribution claims against third-party violators more than adequately serves the purpose of the statute, which is to protect the environment and minimize environmental change." *NBD Bank v. Krueger Ringier, Inc.*, 292 Ill. App. 3d 691, 697, 686 N.E.2d 704 (1997). Since the intent and purpose of the IEPA, and specifically LUST, is not to compensate individuals who may be injured from a release, allowing Plaintiff a private right of action is inconsistent with the underlying purpose of the statute.

In sum, Plaintiff has failed to establish that she can satisfy ***any*** prong of the four-prong test set forth in *Fisher.* Accordingly, there can be no implied private right of action under LUST, or the IEPA generally. *See e.g., NBD Bank v. Krueger Ringier, Inc.,* 292 Ill. App. 3d 691, 697-98 (1997) (finding no implied private right of action under the IEPA because four factors were not met); *Chrysler Realty Corp. v. Thomas Indus., Inc.,* 97 F. Supp.2d 877, 881 (N.D. Ill. 2000) (same); *Norfolk S. Ry. Co. v. Gee Co.,* No. 98 C 1619, 2001 WL 710116, at *16 (N.D. Ill. June 25, 2001) (same); *Neumann v. Carlson Env't, Inc.,* 429 F. Supp. 2d 946, 956 (N.D. Ill. 2006) (same); *Great Oak, L.L.C. v. Begley Co.,* No. 02 C 6496, 2003 WL 880994, at *5 (N.D. Ill. Mar. 5, 2003) (same); *see also Fisher v. Lexington Health Care, Inc.,* 188 Ill. 2d 455, 468 (1999). (finding no implied private right of action under Nursing Home Act where four factors were not met).

3. Punitive Damages Are Not A Part Of This Appeal.

Plaintiff's final argument is meritless and is improperly being brought in the first instance before this Court. Plaintiff's Motion for Punitive Damages was never ruled on by the circuit court, and so there is no final, appealable order. Indeed, Plaintiff herself admits that "the trial court did not reach this issue." Appellant's Br. at 49. Thus, absent a proper order by the circuit court, this Court has no jurisdiction to entertain Plaintiff's argument. *Hanson v. Illinois Cent. Gulf R. Co.,* 174 Ill. App. 3d 723, 725, 529 N.E.2d 81 (1988); *see also Urb. P'ship Bank v. Thimot,* 2014 IL App (1st) 1131605-U, ¶ 24 ("The jurisdiction of the appellate court is limited to reviewing final orders only").

A. Plaintiff is Not Entitled to Civil Penalties.

Even if, assuming for the sake of argument, Plaintiff had standing to raise this argument, Plaintiff is seeking ***civil penalties,*** not punitive damages, as evidenced by her

Amended Complaint and Motion for "Punitive" Damages. In support of her argument that she is entitled to damages, Plaintiff cites to 415 ILCS 5/42, which discusses civil penalties. C 18716-18717, C 19278-19279. However, the plain language of the IEPA and precedent clearly establish that Plaintiff is not entitled to civil penalties.

First and foremost, the IEPA makes clear that the civil penalties are to be paid to the ***government***, not to private individuals (like Plaintiff) seeking relief for bodily injury. *See* 415 ILCS 5/42(a) ("any person that violates any provision of this Act . . . shall be liable for a civil penalty . . . made payable to the Environmental Protection Trust Fund"). Moreover, the IEPA explains that "[t]he State's Attorney of the county in which the violation occurred, or the Attorney General, shall bring such actions in the name of the people of the State of Illinois," which as discussed, is exactly what occurred here. 415 ILCS 5/42(f). The Illinois Attorney General and the DuPage State's Attorney finalized a settlement with Speedway, involving the payment of civil penalties. C 23469-23486. There is no language in the IEPA that supports Plaintiff's contention that she is also entitled to civil penalties for her personal injury. That is because the legislative framework of the IEPA does not permit a scenario where the government can pursue civil penalties under the IEPA, and simultaneously, private citizens are also authorized to independently seek and secure additional civil penalties based on the same violation.

Furthermore, even if the IEPA provided for a private right of action, there are no procedures laid out in the statute regarding how a private individual (such as Plaintiff) may seek civil penalties. For example, the Illinois False Claims Act ("IFCA"), 740 ILCS 175/1 *et seq.*, expressly provides that a private person may bring a civil action for violations of the IFCA and seek civil penalties. In discussing this, the IFCA clearly lays out the

procedure for binging such an action, which is referred to as a *qui tam* action. For example, the IFCA states that once a private person files a *qui tam* action, the state may intervene, proceed with the action and take over conduct of the action; or it may decline to intervene, thus giving the private person the right to conduct the action and seek civil penalties. 740 ILCS 175/4(b)(4). A private person is considered "a party to the action" and, if a suit is successful, is awarded a percentage of the proceeds or settlement. 740 ILCS 175/4(c)(1)-(2), In stark contrast, the IEPA does not contain any similar language setting out any procedures for a private person to bring an action for civil penalties. The reason for that is simple: there is no such right.

B. Plaintiff is Not Entitled to Punitive Damages.

Moreover, even if Plaintiff was seeking punitive damages, she is not entitled to such damages for her IEPA claims. Notably, Plaintiff has not cited to a single case where the Court granted punitive damages under the IEPA; let alone a single case discussing punitive damages in the context of the IEPA. That is because no such case exists. Instead, Plaintiff cites to the eight aggravating and mitigation factors the IEPA provides for the determination of an appropriate civil penalty. 415 ILCS 5/42(h). Plaintiff does not explain how these factors are relevant to an inquiry regarding punitive damages. As discussed, these factors apply to ***civil penalties***; not punitive damages.

In truth, Plaintiff's argument makes no sense. She cites to several cases in support of her argument that punishment and deterrence are legitimate factors when determining damages resulting from violations of the IEPA. Appellant's Br. at 49. Based on these cases, she somehow comes to the conclusion that punitive damages are available in environmental actions and thus, available under the IEPA. However, ***none*** of the cases cited by Plaintiff

support her contention that the imposition of punitive damages are "expressly authorized" by the IEPA. Indeed, all of the cases cited by Plaintiff involve citizen suits seeking civil penalties or injunctive relief and not, such as is the case here, a private action seeking a private remedy, such as punitive damages.

Plaintiff seems to conflate the two, but civil penalties are different from punitive damages. Specifically, a civil penalty is a "fine assessed for a violation of a statute or regulation." PENALTY, Black's Law Dictionary (11th ed. 2019); *see also Watts, Inc. v. Illinois Pollution Control Bd.*, 282 Ill. App. 3d 43, 52, 668 N.E.2d 1015 (1996) ("Illinois courts often state that the primary purpose of civil penalties is to aid in enforcement of the Act"). While punitive damages are "damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit." DAMAGES, Black's Law Dictionary (11th ed. 2019); *see also Tull v. United States*, 481 U.S. 412, 423 (1987) ("the remedy of civil penalties is similar to the remedy of punitive damages, another legal remedy that is not a fixed fine").

The cases cited by Plaintiff do not support that Plaintiff is entitled to punitive damages, or that punitive damages are even available under the IEPA or similar environmental protection statutes. Instead, the cases involve the issue of whether ***civil penalties*** may be awarded in citizen suits in environmental protection actions. *See e.g., City of Evanston v. Texaco, Inc.*, 19 F. Supp. 3d 817, 823–24 (N.D. Ill. 2014) (holding that civil penalties may be awarded in citizen suits under the RCRA and Clean Water Act); *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 173-74 (2000) (same). Notably, as the cases cited by Plaintiff demonstrate, civil penalties are paid to the government, and not to a private citizen. *Laidlaw*, 528 U.S. at 173 ("the court may impose

civil penalties payable to the United States Treasury"); *see also Pub. Int. Rsch. Grp. of New Jersey, Inc. v. Powell Duffryn Terminals Inc.,* 913 F.2d 64, 82 (3d Cir. 1990) ("Courts have consistently stated that penalties in citizen suits under the Act must be paid to the Treasury").

In stark contrast to the private plaintiffs in those cases, Plaintiff is seeking punitive damages for her own bodily injury – i.e., a ***private*** remedy. In other words, she is not bringing a citizen suit acting as a "private attorney general" in seeking the assessment of civil penalties and/or an injunction. *See Env't Def. Fund, Inc. v. Lamphier*, 714 F.2d 331, 337 (4th Cir. 1983) (explaining that private plaintiffs in citizen suit cannot seek a private remedy but rather act as "private attorneys general" in seeking the assessment of civil penalties and an injunction"). Accordingly, all of the cases cited by Plaintiff are entirely irrelevant and do not support that she is entitled to punitive damages under the IEPA.

As discussed above, Plaintiff has no private right of action under the IEPA and thus, she is not entitled to punitive damages. Plaintiff has offered no reason, statutory language, or applicable legal precedent demonstrating that she is entitled to punitive damages. Had the Illinois legislature intended to impose liability specifically for punitive damages in a private right of action, it could have done so by using language expressly referring to punitive damages. *See Winter v. Schneider Tank Lines, Inc.,* 107 Ill. App. 3d 767, 770, 438 N.E.2d 462 (1982) ("Had the legislature intended the Act to provide for punitive damages, a clear expression of such intent would be necessary").

For example, in the Toxic Substances Disclosure to Employees Act (820 ILCS 255/1 *et seq.*), the Illinois legislature chose to expressly authorize punitive damages. Specifically, it stated that, "[t]he Director of the Department is authorized to assess punitive

damages against any employer, manufacturer, importer, supplier or other person, who knowingly and wilfully violates any of the provisions of this Act." 820 ILCS 255/17(e). This specific authorization highlights the Illinois legislature's intent to impose liability for punitive damages. In direct contrast, the IEPA does not contain comparable language. It neither allows for punitive damages in a private right of action nor outlines procedures for pursuing such damages, including whether an individual must prove a knowing and wilful violation of the act to recover such damages. This absence of explicit language demonstrates that the legislature did not intend for a private remedy of punitive damages under the IEPA. *Vincent v. Alden-Park Strathmoor, Inc.*, 241 Ill. 2d 495, 505, 948 N.E.2d 610 (2011) ("punitive damages must be expressly authorized by the statute on which a plaintiff's cause of action is founded"); *Churchill v. Norfolk & W. Ry. Co.*, 73 Ill. 2d 127, 155, 383 N.E.2d 929 (1978) (Ryan, J., dissenting) ("[punitive] damages cannot be awarded unless. . . the statute expressly or by clear implication confers the right to such damages").

Furthermore, even if Plaintiff had a right to seek punitive damages under the IEPA, she cannot meet her burden to establish that she is entitled to such damages. Although Defendants' alleged behavior conceivably rises to the level of negligence, it does not approach the type of deliberate act or intentional disregard of Plaintiff's rights that would justify the imposition of punitive damages under Illinois law. Illinois law disfavors punitive damages. *Smith v. Prime Cable of Chicago,* 276 Ill.App.3d 843, 858, 658 N.E.2d 1325 (1995). They are recoverable only "where the alleged misconduct is outrageous either because the acts are done with malice or an evil motive or because they are performed with a reckless indifference toward the rights of others." *Id.* Punitive damages are not available for acts of ordinary negligence or without evidence of some exceptional circumstance

clearly indicating malice or willfulness. *Loitz v. Remington Arms Co.*, 138 Ill. 2d 404, 415, 563 N.E.2d 397 (1990); *see also Stojkovich v. Monadnock Bldg.*, 281 Ill. App. 3d 733, 666, N.E.2d 704 (Ill. App. Ct. 1986) (holding that elevator manufacturer's negligence in maintaining and repairing an elevator in which Plaintiff was injured did not rise to the level of wrongdoing necessary to justify an award of punitive damages).

Plaintiff's Complaint is devoid of any allegations that rise above and beyond the elements of the underlying negligence and strict liability claims. Indeed, Plaintiff does not allege that Defendants' conduct rose to the level of the requisite malicious, willful and wanton, or egregious behavior for an award of punitive damages. *See e.g., McCann v. Presswood*, 308 Ill. App. 3d 1068, 1072, 721 N.E.2d 811 (1999) (holding that plaintiffs were precluded from seeking punitive damages on a negligence theory and without showing any evidence of willful and wanton misconduct, malice, or reckless indifference).

Finally, as the appellate court correctly held, the potential of punitive damages does not necessitate a private right of action under the IEPA. A plaintiff can seek punitive damages in a negligence action when a defendant "acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of others." *Kelsay v. Motorola, Inc.*, 74 Ill. 2d 172, 186 (1978). Accordingly, Plaintiff could have sought punitive damages for her negligence claim. *See Crittenden v. Cook Cnty. Comm'n on Hum. Rts*., 2012 IL App (1st) 112437, ¶ 93, 973 N.E.2d 408 ("when a statute does not expressly discuss punitive damages, common law punitive damages may be available if warranted by the facts of the case"). Yet, despite the availability of punitive damages for her negligence claim, Plaintiff chose not to pursue this route. Plaintiff's omission to articulate the necessity for punitive damages specifically under LUST, or to pursue them for her negligence claim, further

underscores that a private right of action under the IEPA is not essential for imposing such damages. Therefore, the argument for a private right of action to seek punitive damages within this context is not compelling, reaffirming the appellate court's ruling.

4. With the Parties Having Settled the Negligence Claim, the Consent Order Having Resolved the Civil Penalties and Injunctive Relief, Plaintiff's Alleged IEPA Claims are Moot.

On the face of the appeal, Plaintiff is seeking a reversal of the Court's granting of the Motion to Dismiss of the IEPA counts. Aside from that fact, it is however unclear exactly what relief the Plaintiff is seeking or the practical implications of this appeal.

As noted by the appellate court, with the parties having settled the negligence claims, it has resulted in "presumably making Rice whole." Modified Decision ¶ 2. All that could potentially remain is the alleged strict liability IEPA counts, which the appellate court acknowledged are duplicate of the negligence counts because they are predicated on the same operative facts and allegations. In the Modified Decision, the Court stated: "[I]t is difficult to conceive how Rice could establish the Speedway defendants' liability for negligence without pointing to the same acts and omissions that she alleges violated OSFM regulations." Modified Decision ¶ 23. Although the Court acknowledged that the IEPA and negligence counts are "based on the same operative facts," it noted one difference—the Plaintiff was apparently seeking punitive damages on the IEPA counts.

The Courts however have recognized the basic principle that "[a]n injured person is entitled to one full compensation for his injuries, and a double recovery for the same injury is against public policy." *Eberle v. Brenner*, 153 Ill.App.3d 700, 702, 505 N.E.2d 691 (4th Dist. 1987). This Court has stated that "[t]he purpose of compensatory tort damages is to compensate the plaintiff for his injuries, not to punish defendants or bestow

a windfall upon plaintiffs." *Wilson v. Hoffman Group, Inc.*, 131 Ill.2d 308, 321, 546 N.E.2d 524 (1989).

Thus, in the event this case is remanded for trial, the case would presumably proceed on the strict liability IEPA claims, but because the Plaintiff has been compensated for her damages, it is unclear what exactly would be litigated. Proceeding on only punitive damages, as noted above, presents several legal problems.

First, Plaintiff could have brought a punitive damage claim as part of her negligence claims, but elected not to so. The common law already has thus provided Plaintiff with a mechanism to obtain recovery for personal injury damages and punitive damages. The record, therefore, belies the rationale for creating an implied cause of action under the statute.

Second, as noted above, Plaintiff has not cited to a single case where the Court granted punitive damages under the IEPA or even discussed punitive damages in the context of the IEPA. Plaintiff cites to the eight aggravating and mitigation factors the IEPA provides for the determination of an appropriate civil penalty. 415 ILCS 5/42(h).

Third, the IEPA provides for civil penalties and injunctive relief, both of which have been resolved via settlement with governmental agencies. The Illinois Attorney General and DuPage State's Attorney reached a settlement with Speedway on the payment of civil penalties under a Consent Order. C 23469-23486. These civil penalties are paid to the government, and not to a private citizen. The IEPA legislative scheme does not provide for both the Illinois Attorney General or DuPage States Attorney to seek and recover civil penalties under the IEPA, and also allow private citizens to also prosecute and recover additional civil penalties. Plaintiff's remedies would thus be limited to injunctive relief

against the alleged violations (415 ILCS 5/45(b)), and such remedies are also moot as Defendants have already remedied the condition(s).

In summation, Plaintiff cannot point to any remaining issues to be litigated. Plaintiff has settled her own compensatory damages claim with Speedway; Plaintiff could have included and resolved punitive damages with the negligence claims; the Illinois Attorney General and DuPage State's attorney resolved with Speedway the civil penalties under a Consent Order; and finally, Speedway and Illinois Attorney General and the DuPage State's attorney resolved implementing remedial measures under the same Consent Order. The IEPA does not proscribe that a private citizen may bring their own cause of action to seek the remedies that have already been resolved with governmental agencies. The Court should affirm the appellate court's decision.

CONCLUSION

For all the foregoing reasons, the Court should affirm the appellate court's decision and the circuit court's dismissal of Plaintiff's IEPA claims.

Respectfully submitted,

MARATHON PETROLEUM CORPORATION, SPEEDWAY LLC, and MANOJ VALIATHARA

By: */s/ James R. Branit*
One of Their Attorneys

James R. Branit (6191555)
Natasha Singh (6324661)
LITCHFIELD CAVO LLP
303 W. Madison, Suite 300
Chicago, Illinois 60606
Phone: (312) 781-6552 (direct-Branit)
Fax: (312) 781-6630
Email: branit@litchfieldcavo.com
singh@litchfieldcavo.com

CERTIFICATE OF COMPLIANCE

I, James R. Branit, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,521 words.

By: /s/ *James R. Branit*

No. 129628
IN THE SUPREME COURT OF ILLINOIS

LAURA E. RICE, as Special Representative of the Estate of MARGARET L. RICE, deceased, Plaintiff-Appellant. v. MARATHON PETROLEUM CORPORATION, a Delaware Corporation, SPEEDWAY, LLC, a Delaware Limited Liability Company, and MANOJ VALIATHARA, Defendants-Appellees.	On Leave to Appeal from the Appellate Court of Illinois, First District, No.: 1-22-0155 There heard on appeal from the Circuit Court of Cook County, Illinois No.: 2018 L 000783 Honorable James M. Varga, Judge Presiding

NOTICE OF FILING

TO: All Counsel of Record (See Attached Service List)

PLEASE TAKE NOTICE that on **January 19, 2024**, we filed with the Supreme Court of Illinois, via File & Serve Illinois, the attached RESPONSE BRIEF OF DEFENDANTS/APPELLEES, MARATHON PETROLEUM CORPORATION, SPEEDWAY, LLC, and MANOJ VALIATHARA, in the above-referenced action, a copy of which is hereby served upon you.

MARATHON PETROLEUM CORPORATION, SPEEDWAY LLC, and MANOJ VALIATHARA

By: */s/ James R. Branit*
One of their Attorneys

James R. Branit (No.: 6191555)
Natasha Singh (No.: 6324661)
LITCHFIELD CAVO, LLP
303 West Madison, Suite 300
Chicago, IL 60606
(312) 781-6552 (direct-Branit)
(312) 781-6630 (Facsimile)
branit@litchfieldcavo.com
singh@litchfieldcavo.com

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned, a non-attorney, further certifies that on January 19, 2024, she caused a copy of the above Notice and the documents referred to therein to be served upon each party to whom it is addressed by e-serving through File & Serve Illinois, and by emailing copies of the same to all parties of record.

/s/ Kelly Guzlas
Kelly Guzlas

SERVICE LIST

Michael T. Reagan
LAW OFFICES OF MICHAEL T. REAGAN
633 LaSalle Street, Suite 409
Ottawa, IL 61350
(815) 434-1400
mreagan@reagan-law.com

John J. Budin
BUDIN LAW OFFICES
1 N. LaSalle Street, Suite 2165
Chicago, IL 60602
(312) 377-0700
budinlaw@aol.com

Matthew M. Vasconcellos
VASCONCELLOS LAW GROUP, LLC
332 S. Michigan Avenue, Suite 900
Chicago, IL 60606
(773) 857-5656
matt@vlgchicago.com