

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

J.D. STRETT & COMPANY, INC.,)
Petitioner,)
v.) PCB: _____
) (LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
100 West Randolph Street	1021 North Grand Avenue East
State of Illinois Building, Suite 11-500	P.O. Box 19276
Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 26th day of June, 2020.

Respectfully submitted,
J.D. STRETT & COMPANY, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

J.D. STRETT & COMPANY, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, J.D. STRETT & COMPANY, INC., pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals a final decision of the Illinois Environmental Protection Agency (hereinafter “the Agency”) to only partially pay an application for payment, stating as follows:

1. Petitioner is the owner or operator of a service station in the City of Carbondale, County of Jackson, Illinois, which has been assigned LPC # 0770155035.
2. On December 17, 2019, a release was reported from the three underground storage tanks on the property, which was assigned Incident Number 2018-1185.
3. After the report was made, Petitioner’s consultants drilled six soil borings at locations where contamination is most likely to be present, from which soil samples were taken and analyzed for gasoline and diesel fuel.
4. On January 9, 2019, Petitioner and Petitioner’s consultant submitted the 20-Day Certification, acknowledging that they had performed initial abatement activities, including measuring for the presence of the release where contamination is most likely to be present.
5. Petitioner applied for a permit to remove the underground storage tanks from the Office of the State Fire Marshal (hereinafter “OSFM”), and the tanks were removed on January

11, 2019. Before backfilling the excavation, soil samples were taken from the walls and floors of the excavation to be analyzed for gasoline and diesel fuel.

6. On February 8, 2019, Petitioner applied for an eligibility and deductible determination from OSFM, attaching a Certificate of Good Standing issued by the Illinois Secretary of State. On February 14, 2019, OSFM determined that Petitioner was eligible to seek payment for cost of responding to Incident Number 2018-1185 in excess of a \$5,000 deductible.

7. On February 14, 2019, Petitioner submitted a 45-Day Report, which included the analytical results from the soil samples collected from the soil borings and from the excavation.

8. On June 25, 2019, the Agency approved the 45-Day Report, attaching the soil sample tables to the decision letter.

9. On January 17, 2020, an application for payment for early action activities was submitted to the Agency in the amount of \$38,790.78.

10. On May 19, 2020, the Agency approved the application for payment in the amount of \$31,335.00, after withholding a \$5,000 deductible. A true and correct copy of the Agency decision is attached hereto as Exhibit A.

11. The deductible is not disputed, but the remaining \$2,455.78 in deductions are not supported by law, regulations or explanation.

12. Each deduction disapproves costs pursuant to Section 57.7(c)(3) of the Act, which does not apply to early action submittals; such work is performed without a budget. Instead, early action costs must be reasonable (35 Ill. Adm. Code § 734.630(ee)), and the Agency does not claim that the early action costs were unreasonable.

13. Furthermore, each specific deduction is erroneous for the following reasons:

- a. The Agency erroneously cut the costs associated with obtaining a Certificate of Good Standing from the Illinois Secretary of State, claiming that they are indirect costs. OSFM needs a certificate of good standing from the Illinois Secretary of State in order to process an eligibility and deductible application, for which the Secretary of State charges \$26.00. Costs eligible for reimbursement from the LUST Fund expressly include those “associated with obtaining an Eligibility and Deductibility Determination from the OSFM.” (35 Ill. Adm. Code § 734.625(a)(15)) Such an expense is not an indirect cost, analogous to interest, finance or insurance costs (35 Ill. Adm. Code 734.630(t), (u)), but is a direct cost associated with seeking eligibility for reimbursement from the LUST Fund for this incident.

- b. The Agency erroneously cut all of the consultant’s costs for drilling (\$2,083.08), though it did reimburse the laboratory’s cost of analyzing samples collected therefrom. As a part of initial abatement measures, Board regulations require the owner or operator to “measure for the presence of a release where contamination is most likely to be present at the UST site.” (35 Ill. Adm. Code 734.210(b)(5)) Performance of this work must be acknowledged in the Agency’s 20-Day Certification form (35 Ill. Adm. Code 734.210(c), and the results reported to the Agency in the 45-Day Report (35 Ill. Adm. Code 734.210(d)(3)). The drilling activity therefore does not exceed the minimum requirements of the Act, it was required by the Board’s regulations, and the resulting data was even incorporated into the Agency’s decision to approve the 45-Day Report.

- c. The Agency erroneously cut the costs for OSFM site assessment reporting (\$386.70) as exceeding the minimum requirements of the Act. OSFM regulations governing tank removals require that “the owner or operator shall perform a site assessment” at the time any tanks are removed. (41 Ill. Adm. Code § 176.360(a)) In turn, Board regulations permit the owner or operator to remove the tank system “in accordance with the regulations promulgated by the Office of the State Fire Marshal.” (35 Ill. Adm. Code § 734.210(f)) OSFM’s requirement for site assessment reporting is restated for emphasis in OSFM’s permit to remove tanks. Again, this work did not exceed the requirements of the Act, they are legal requirements of OSFM which are incorporated within the Board’s regulations.

14. The subject Illinois EPA letter was received by certified mail on May 22, 2020, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, J.D. STREETT & COMPANY, INC., prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to reinstate the cuts made from payment application, (e) the Board award payment of attorney’s fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

J.D. STRETT & COMPANY, INC.,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

7018 1830 0000 5282 7059

MAY 19 2020

J.D. Streett & Company
Attn: James A. Scheuring, CFO
144 Weldon Parkway
Maryland Heights, MO 64043

Re: 0770155035 -- Jackson County
Carbondale/J.D. Streett & Company
912 West Main Street
Incident-Claim No.: 20181185 -- 70899
Queue Date: January 22, 2020
Leaking UST Fiscal File

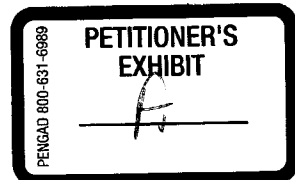
The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois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

This information is dated January 17, 2020 and was received by the Illinois EPA on January 22, 2020. The application for payment covers the period from December 17, 2018 to January 31, 2020. The amount requested is \$38,790.78.

On January 22, 2020, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$31,335.00 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$5,000.00 was withheld from your payment. Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

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



4302 N. Main Street, Rockford, IL 61103 (815) 987-7760
595 S. State Street, Elgin, IL 60123 (847) 608-3131
2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120

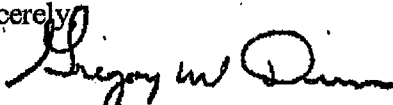
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph Street, Suite 4-500, Chicago, IL 60601

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

If you have any questions or require further assistance, please contact Jennifer Rossi of my staff at (217) 782-9285.

Sincerely,



Gregory W. Dunn, Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Shane Thorpe, CSD Environmental
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 0770155035 -- Jackson County
Carbondale/J.D. Streett & Company
912 West Main Street
Incident-Claim No.: 20181185 -- 70899
Queue Date: January 22, 2020
Leaking UST Fiscal File

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

- | Item # | Description of Deductions |
|--------|--|
| 1. | \$26.00, deduction for costs associated with the Certificate of Good Standing which is an indirect corrective action costs for personnel, materials, service, or equipment charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable |
| 2. | \$1,114.08, deduction for costs for drilling, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). |
| 3. | \$838.05, deduction for costs for senior project manager personnel hours for drilling activities, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). |
| 4. | \$386.70, deduction for costs for senior project manager personnel hours for OSFM site assessment reporting, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o). |
| 5. | \$90.95, deduction for costs for mileage for drilling activities, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not |

eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

6. \$40.00, deduction for costs for PID for drilling activities, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

VARIABLE

Appeal Rights

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

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

Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
(312) 814-3620

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

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544