

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUL 31 2006

STATE OF ILLINOIS
Pollution Control Board

J.D. Streett & Company, Inc.)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 07-006
(UST Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Division of Legal Counsel
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on July 26, 2006, we sent to the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via U.S. Mail, of Petition for Review of Underground Storage Tank Fund Reimbursement Determination, for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the Respondent by enclosing same in envelopes addressed to said Respondent by U.S. Mail by depositing said envelopes in a United States Post Office Mail Box at Springfield, Illinois, with postage fully prepaid, on the 26th of July, 2006.


Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

THIS FILING SUBMITTED ON RECYCLED PAPER

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STATE OF ILLINOIS
Pollution Control Board

J.D. Streett & Company, Inc.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
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Respondent.)

PCB 07-106
(UST Appeal)

PETITION FOR REVIEW OF
UNDERGROUND STORAGE TANK FUND REIMBURSEMENT DETERMINATION

NOW COMES Petitioner, J.D. Streett & Company, Inc., by its undersigned attorneys, and pursuant to 415 ILCS 5/40 and 57.7, hereby petitions the Pollution Control Board for review of the final determination of Respondent, Illinois Environmental Protection Agency ("Agency"), with respect to the Agency's June 21, 2006, rejection of the Petitioner's Corrective Action Plan & Budget under the Illinois Underground Storage Tank Fund ("UST Fund"). In support, Petitioner states:

1. Petitioner is the owner of a gasoline service station located at 510 East Linn Street, Canton, Fulton County, Illinois. This facility has been designated LPC #0570255125 by the Agency.

2. Petitioner notified the Illinois Emergency Management Agency ("IEMA") of a release of petroleum from an underground storage tank ("UST") at the facility, to which IEMA assigned Incident No. 930883.

3. On or about March 20, 2006, Petitioner filed a corrective action plan and budget.

4. On or about June 21, 2006, the Agency rendered its final determination on Petitioner's plan. A true and correct copy of

the subject Agency decision is attached hereto and made part hereof as Exhibit A.

6. Petitioner prays that the Board reverse the Agency's final determination and authorize the proposed injection of solid metal peroxides containing calcium peroxide into the surface and associated costs.

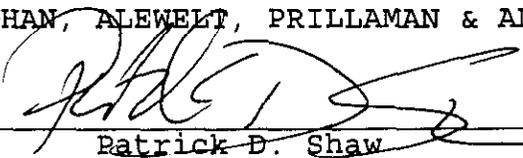
8. Petitioner reserves the right to present additional grounds for reversal of the Agency's final determination, as they may appear during the course of this appeal.

WHEREFORE, Petitioner respectfully requests that this Board grant a hearing in this matter and reverse the Agency's June 21, 2006 decision and remand this matter to the Agency with instructions to approve the request as submitted, and grant such other relief as the Board deems appropriate, including legal costs for seeking payment under Title XVI of the Illinois Environmental Protection Act, pursuant to 415 ILCS 5/57.8(1).

Respectfully submitted,

J.D. Streett & Company, Inc.,
Petitioner,

By MOHAN, ALEWELT, PRILLAMAN & ADAMI



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
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217-782-6762

CERTIFIED MAIL

JUN 21 2006

7004 2510 0001 8655 4497

JD Streett & Company
144 Weldon Parkway
Maryland Heights, Missouri 63043-3102

Handwritten signature and date JUN 22 2006

RE: LPC 0570255125 - Fulton County
Canton - Canton Citgo; JD Streett & Company
510 East Linn Street
LUST Incident 930883
LUST TECHNICAL FILE

Gentlemen:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan & Budget (plan) submitted for the above referenced incident. This plan, dated March 20, 2006, was received by the Illinois EPA on March 24, 2006, and was prepared by CSD Environmental Services. The report proposes the information which is summarized in Attachment 1. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code.

The plan and the associated budget are rejected for the reasons which are explained in Attachments 2 & 3 respectively (Sections 57.7(b) and 57.7(c) of the Act and 35 Illinois Administrative Code 734.505(b), 734.510(a) and 734.510(b)).

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are explained in Attachment 4.



ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mail Street, Collinsville, IL 62234 - (618) 346-5120
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

Any questions regarding this letter should be directed to Michael Piggush via phone (217-782-3101), fax (217-524-4193), or e-mail (epa4200@epa.state.il.us).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lowder", with a long horizontal line extending to the right.

Michael T. Lowder
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

Attachments (4):

1. Summary of Report Proposal.
2. Corrective Action Plan Disapproval Reasons.
3. Corrective Action Budget Disapproval Reasons.
4. Appeal Rights.

cc: CSD Environmental Services
Division File

ATTACHMENT 1

SUMMARY OF REPORT PROPOSAL

RE: LPC 0570255125 - Fulton County
Canton - Canton Citgo; JD Streett & Company
510 East Linn Street
LUST Incident 930883
LUST TECHNICAL FILE

The report proposes the following information:

1. The report proposes that releases have occurred from the following underground storage tank systems:
 - a. 1-12,000 gallon gasoline underground storage tank system. (The report proposes that the release was from the piping only.)
2. The report proposes that the indicator contaminants would be the following: BETX.
3. The report assumes a Class 1 groundwater designation, in accordance with 35 Illinois Administrative Code 620.210.
4. The report proposes that a remediation system was in operation, consisting of soil vapor extraction, air sparging & groundwater extraction.
5. The report proposes that additional site assessment activities were performed in October & November 2003.
6. The report requests approval of a Corrective Action Plan, in accordance with 35 Illinois Administrative Code 734.335(a), as follows:
 - a. The report proposes that up to 35,568 pounds of a slurry of solid metal peroxides containing calcium peroxide (manufactured by Solvay America) would be injected into the subsurface.
7. The report requests approval of a Corrective Action Budget, in accordance with 35 Illinois Administrative Code 734.335(b), for an amount of \$302,387.61.

ATTACHMENT 2

CORRECTIVE ACTION PLAN DISAPPROVAL REASONS

RE: LPC 0570255125 - Fulton County
Canton - Canton Citgo; JD Streett & Company
510 East Linn Street
LUST Incident 930883
LUST TECHNICAL FILE

The Illinois EPA does not approve of the Corrective Action Plan, for the following reasons:

1. The report does not contain the technical specifications of the slurry of solid metal peroxides containing calcium peroxide (manufactured by Solvay America).
2. Injection of the slurry of solid metal peroxides containing calcium peroxide (manufactured by Solvay America) may result in exceedences of the groundwater remediation objectives for the chemicals contained within the material. The report does not address this issue.
3. The plan diagrams do not illustrate the area of influence of the horizontal injection points.
4. The Illinois EPA does not agree with the method which was used to calculate the total distance of horizontal injection (2,124 feet) (Table (10) of the report). This information should be based upon the actual distance of horizontal injection, rather than an equivalent number of vertical injection points.

ATTACHMENT 3

CORRECTIVE ACTION BUDGET DISAPPROVAL REASONS

RE: LPC 0570255125 - Fulton County
Canton - Canton Citgo; JD Streett & Company
510 East Linn Street
LUST Incident 930883
LUST TECHNICAL FILE

The Illinois EPA does not approve of the Corrective Action Budget, for the following reasons:

1. The Illinois EPA cannot approve of a budget without a corresponding Illinois EPA approved technical plan. The Illinois EPA has not approved of the Corrective Action Plan, for the reasons which were previously explained in Attachment 2.
2. The costs associated with mobilization (\$250.00), concrete coring (\$138.00) & fuel surcharges (\$100.00) (Section (E)(1) of the proposed budget) are not approved as part of this budget. These charges are included in the drilling rate, for which a maximum rate of \$18.00 per foot applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and / or Appendix E of 35 Illinois Administrative Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
3. The costs associated with soil BETX sample disposal fees (\$18.00) & laboratory energy surcharges (\$6.00) (Section (F)(2) of the proposed budget) are not approved as part of this budget. These charges are included in the BETX soil sample analysis rate, for which a maximum rate of \$85.00 per sample applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and / or Appendix E of 35 Illinois Administrative Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
4. The costs associated with groundwater BETX sample disposal fees (\$24.00) & laboratory energy surcharges (\$24.00) (Section (F)(3) of the proposed budget) are not approved as part of this budget. These charges are included in the BETX groundwater sample analysis rate, for which a maximum rate of \$81.00 per sample applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and / or Appendix E of 35 Illinois Administrative Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

5. In accordance with 35 Illinois Administrative Code 734.630(v), indirect costs may not be charged as direct costs. The proposed costs for mobilization (\$1,000.00), lodging (\$2,560.00) & per diem (\$992.00) for the remediation subcontractors (Section (I) of the proposed budget) are indirect costs charged as direct costs.
6. In accordance with 35 Illinois Administrative Code 734.630(dd), all costs must be reasonable.
 - a. The Illinois EPA is concerned with the proposal for 18 soil borings for closure soil samples. If the soil contamination is below the water table, then only groundwater monitoring may be necessary for purposes of closure. For purposes of reimbursement, the Illinois EPA does not feel that the proposal is reasonable. 35 Illinois Administrative Code 734.630(dd).
 - b. It appears that the oxygen requirements for Zone 2 were calculated using a factor of safety of 10.1. For purposes of reimbursement, the Illinois EPA does not feel that the proposal is reasonable. 35 Illinois Administrative Code 734.630(dd).
 - c. The proposed cost for pH analyses (\$15.00 per sample) (Section (F)(3) of the budget) is not reasonable. In accordance with 35 Illinois Administrative Code 734 Appendix D, the Illinois EPA does not reimburse for these costs in excess of \$14.00 per sample.
7. Not all of the costs in Section (F)(3) of the proposed budget are mathematically correct.
8. With regard to Section (J)(A) of the proposed budget, it is not clear how the proposed subcontract amounts for the Environmental Drilling Contractor (\$222,588.36) were derived from the other sections of the budget.
9. Budget Certification Forms must be signed & notarized on the same date.

The report does not demonstrate compliance with these requirements, for the following reasons:

- a. The Budget Certification Form was signed by the owner / operator of the underground storage tank systems on March 20, 2006, but was notarized on March 14, 2006.

10. The Illinois EPA is concerned that some costs have increased significantly in the current budget (as compared with the previous budget). Please refer to the following table:

Item	Previous Budget (Dated October 7, 2005)	Current Budget (Dated March 20, 2006)	Section of the Budget	% Increase
BETX soil samples	\$70.00 per sample	\$85.00 per sample	Section (F)(2) of the Budget	21.4 % Increase
BETX groundwater samples	\$60.00 per sample	\$81.00 per sample	Section (F)(3) of the Budget	35.0 % Increase
PID meter	\$78.00 per day	\$98.00 per day	Section (H) of the Budget	25.6 % Increase

The report does not contain adequate supporting documentation with regard to why these costs have increased significantly.
35 Illinois Administrative Code 734.630(cc).

ATTACHMENT 4

APPEAL RIGHTS

An underground storage tank system 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 of time 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:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph
Suite 11-500
Chicago, Illinois 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
Post Office Box 19276
Springfield, Illinois 62794-9276
217-782-5544