

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: | John T. Therriault, Acting 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 26<sup>th</sup> day of July, 2017.

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

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| J.D. STRETT & COMPANY, INC., | ) |                      |
| Petitioner,                  | ) |                      |
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| v.                           | ) | PCB _____            |
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| ILLINOIS ENVIRONMENTAL       | ) |                      |
| PROTECTION AGENCY,           | ) |                      |
| Respondent.                  | ) |                      |

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, J.D. STRETT & COMPANY, INC., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency’s final decision, modifying a plan and budget, stating as follows:

1. Petitioner is the owner or operator of a former service station in the City of Herrin, County of Williamson, Illinois, which has been assigned LPC # 1990400008.
2. On September 17, 2013, a release was reported from the two gasoline underground storage tanks on the property, which was assigned Incident Number 2013-1026.
3. Thereafter the tanks were removed, and early action and site investigation activities were performed.
4. On December 20, 2016, the Agency approved the Site Investigation Completion Report as fully defining the extent of contamination on the site.
5. On March 24, 2017, Petitioner submitted a corrective action plan and budget that entailed removal of all soils exceeding applicable site remediation objectives, and utilization of highway authority agreements and a groundwater ordinance.
6. On or around June 2, 2017, the Illinois EPA Project Manager, Brad Dilbatis, contacted Petitioner directly to provide his advise on how he would propose to go about

corrective action. This was grossly inappropriate conduct. By reason and belief, Brad Dilbatis is not a licensed professional engineer, and if he is, he is not Petitioner's licensed professional engineer. The Agency's role is to review the plan and budget and ascertain whether it would violate any statute or regulations. This involvement resulted in numerous e-mail exchanges.

7. On June 19, 2017, the Illinois EPA issued its decision modifying the plan and budget. A true and correct copy of which is attached hereto as Exhibit A.

8. The plan was modified by requiring a vapor intrusion investigation, which would generally be conducted as part of site investigation, and by requiring a project labor agreement. By reason and belief, the Agency ceased imposing project labor agreements over a year ago.

9. The modification to the plan imposing a project labor agreement should be rejected because the Agency has not made "a statement of specific reasons" that it determined a project labor agreement is necessary (415 ILCS 5/57.7(c)(4)), and "advances the State's interests of costs, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State's policy to advance minority-owned and women-owned businesses and minority and female employment." (30 ILCS 571/10 (Project Labor Agreements Act)) Nor has the Agency complied with the requirement of a "written, publicly disclosed finding . . . setting forth the justification for use of the project labor agreement." (30 ILCS 571/30)

10. The imposition of a PLA for this project will increase costs by requiring use of unfamiliar contractors who may not have any experience with the requirements of the LUST Program, necessitating additional oversight and training costs that the proposed budget did not contemplate, while at the same time, the Agency cut more than half of the budget for consulting personnel costs.

11. The Agency modified the budget by cutting \$36,316.22 in consulting personnel costs from a budget that estimated \$63,927.70 (a reduction of approximately 57%), including all costs incurred in preparing the very budget that the Agency approved. Furthermore, the Agency cut \$1,796.75 in consulting material costs budgeted for \$4,245.15 (a reduction of approximately 42%). In addition, the Agency increased the budget for non-consultant costs for performing the vapor intrusion investigation by \$2,185.02, which are inadequate for the additional work.

12. With respect to the additional costs allowed for the vapor intrusion investigation in paragraphs 1-3 of the budget modifications, these are inadequate for failing to provide for the cost of drilling holes for the 2 monitoring wells, the daily minimum for hollow stem augering, enough drums for the solid waste generated, and the minimum charge of \$625.77 authorized by Subpart H of the Board's regulations. Furthermore, these additional costs provide no reimbursement for consultant's time and materials for installation oversight, sample collection, preparation of boring logs and monitoring well completion reports, and consultant's material costs.

13. With respect to preparing the corrective action plan, the Agency improperly cut all costs (\$6,257.50) in paragraph 4 of the budget modifications. It is not reasonable to approve a plan and budget (with or without modifications) and provide no reimbursement for its preparation.

14. With respect to oversight and direction of corrective action work in the field, the Agency improperly cut all costs (\$17,347.80) in paragraphs 5, 11 and 17 of the budget modifications. This estimate was explained to Dilbatis as including two round trips to the site, requiring a total of 16 hours for travel, meaning that the work is expected itself is expected to

take twelve eight-hour days, not the fourteen days assumed in the letter. With the imposition of a project labor agreement, the budget estimate was insufficient and should be increased since the estimate assumed the work would be performed by people who have performed the work before and whose time requirements are relatively predictable from past experience. Furthermore, a licensed professional engineer is required by Board regulations to certify that the work was performed in accordance with the approved plan (35 Ill. Adm. § 734.605(b)(1)) and therefore the Agency is wrong as a matter of law to contend that an engineer has no role in oversight of the work.

15. With respect to completing and submitting forms required by the Illinois Department of Public Health, the Agency improperly cut all costs (\$500.60) in paragraph 6 of the budget modifications. These costs involve preparing documentation required by law following well removal and are not subject to the maximum rates set for performing well abandonment.

16. With respect to preparing an interim report documenting the successful excavation of contaminated soils exceeding site remediation objectives, the Agency improperly cut all costs (\$4,813.12) in paragraphs 7, 8, 12, 13 and 18 of the budget modifications. Documenting the corrective action work performed through the end of excavation is required by Board regulations in order for said work to be reimbursed. It is not included in the corrective action completion report because this information will be submitted for reimbursement upon completion and without waiting for the highway authority agreement issues to be resolved with the Illinois Department of Transportation, which can take years. Pursuant to Board regulations, partial payment applications can be submitted every 90 days (35 Ill. Adm. Code § 734.605(e)), and the Agency is not authorized to circumvent this permission. Alternatively, the amounts budgeted for

the corrective action completion report assume this interim work would have previously been performed and those budget items should be increased accordingly.

17. With respect to preparing notification of the use of a groundwater ordinance to forty offsite property owners, the Agency improperly cut all costs (\$5,006.00) in paragraphs 9 and 10 of the budget modifications. The necessity of these costs were detailed in e-mails to Brad Delbatis as necessary and require research of property ownership that is more than an administrative task.

18. With respect to preparing the reimbursement application, the Agency improperly reduced the job title from Senior Project Manager to Senior Account Technician (a \$3,379.20 reduction) in paragraph 14 of the budget modifications. A reimbursement application is a technical document and the Board regulations do not require use of a Senior Account Technician. See Abel Investments v. IEPA, PCB 16-108, at p. 9 (Dec. 15, 2016) (rejecting Agency's conversion of budget preparation tasks to Senior Account Technician where budgets, like applications for payment, must be certified and supervised by licensed professionals).

19. With respect to filing, submitting and recording the No Further Remediation letter, the Agency improperly cut all costs (\$500.60) in paragraphs 15 and 16 of the budget modifications. This work is properly performed by the Senior Project Manager assigned to the project and is necessary to comply with the Board regulations.

20. With respect to nitrile gloves for collecting soil samples from excavation, the Agency improperly cut all costs (\$22.75) in paragraph 19 of the budget modifications. The consultant submitted a printout of what Lowe's charges for gloves to demonstrate that these costs are reasonable. The reason given for rejecting this item shows a deep and profound lack of

comprehension of the purpose of a budget. It is complained that the submittal did not include evidence that the consultant had actually purchased the gloves from Lowe's or that it had an established practice of purchasing those gloves from Lowe's. This complaint has no relevance for budget purposes and proof of purchase certainly is not required for budget approval.

21. For all items, the application was complete, containing all of the information required pursuant to Section 57.7(a)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.7(a)(2)), pursuant to Section 734.135 of the Board's regulations (35 Ill. Adm. Code § 734.135), and in accordance with Illinois EPA forms.

22. The purpose of a budget is to account for all costs that may be required to implement the site investigation plan, and unless the Illinois EPA believes such costs cannot be incurred or would necessarily be unreasonable, their removal is not authorized by any statute or regulation.

23. The subject Illinois EPA letter was received by certified mail on June 21 2017, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, J.D. STRETT & 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 approve the plan and budget as submitted, (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  
LAW OFFICE OF 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

BRUCE RAUNER, GOVERNOR

ALEC MESSINA, DIRECTOR

217/524-3300

**CERTIFIED MAIL**

7014 2120 0002 3287 2788

**JUN 19 2017**

J.D. Strett & Company, Inc.  
James A. Schuering, CFO  
144 Weldon Parkway  
Maryland Heights, MO 63043

Re: LPC #1990400008—Williamson County  
Herrin/ J.D. Strett & Company  
701 South Park  
Leaking UST Incident No. 20131026  
Leaking UST Technical File

Dear Mr. Schuering:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated March 24, 2017, was received by the Illinois EPA on March 24, 2017. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

35 Ill. Adm. Code 742.300(a) states if an evaluation under this Subpart (Subpart C: Exposure Route Evaluations) demonstrates the applicable requirements for excluding an exposure route are met, then the exposure route is excluded from consideration and no remediation objective(s) need be developed for that exposure route. 35 Ill. Adm. Code 742.300(b) states that no exposure route may be excluded from consideration until characterization of the extent and concentrations of contaminants of concern at a site has been performed. The actual steps and methods taken to characterize a site shall be determined by the specific program requirements under which the site remediation is being addressed. 35 Ill. Adm. Code 742.312(b)(1)(A) states that the indoor inhalation exposure route may be excluded from consideration if there is also no soil or groundwater contamination exceeding Tier I remediation objectives for residential property (Appendix B, Table A) or Class I groundwater (Appendix B, Table E) located 5 feet or less, horizontally, from any existing or potential building or man-made pathway. The release currently meets the criteria for a petroleum vapor intrusion (PVI) investigation. Groundwater monitoring wells MW-3, MW-9 and



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MW-10 currently meet the criteria for an indoor inhalation exposure route evaluation in accordance with 35 Ill. Adm. Code 734.Subpart E: Tier 1 Evaluation. However, it is recognized that the proposed soil excavation will affect the hydrogeologic conditions at the site. To properly evaluate the necessity to perform an indoor inhalation evaluation following the proposed excavation activities, MW-3, MW-9 and MW-10 must be evaluated for the indoor inhalation exposure route. MW-3 and MW-9 are located within the proposed excavation and must be reinstalled after the excavation is complete. MW-3 shall be reinstalled/relocated in native soil near the northwest corner of the on-site building, approximately 15 feet south and 5 feet west of its current location. MW-9 shall be reinstalled/relocated approximately 12 to 15 feet south of its current location in native soil. Soil samples must be collected from each five-foot interval of the soil borings as described in 35 Ill. Adm. Code 734.210(h)(2)(D).

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. This model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). Please submit a signed copy of a PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President  
Illinois AFL-CIO  
534 South Second Street, Suite 200  
Springfield, IL 62701-1764

Once the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

In addition, the budget is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A have been approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount

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of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

If the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c) of the Act).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

**Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least two weeks prior to the scheduled field activities.**

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

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

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If you have any questions or need further assistance, please contact Brad Dilbaitis at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,



Stephen A. Colantino  
Acting Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

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Attachment: Attachment A  
Appeal Rights

c: Shane Thorpe, CSD Environmental Services, Inc. (electronic copy), sthorpe@csdenviro.com  
BOL File

Attachment A

Re: LPC #1990400008—Williamson County  
Herrin/ J.D. Streett & Company  
701 South Park  
Leaking UST Incident No. 20131026  
Leaking UST Technical File

**SECTION 1**

As a result of Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

|              |  |
|--------------|--|
| \$2,121.64   | Drilling and Monitoring Well Costs             |
| \$4,216.38   | Analytical Costs                               |
| \$126,162.15 | Remediation and Disposal Costs                 |
| \$0.00       | UST Removal and Abandonment Costs              |
| \$0.00       | Paving, Demolition, and Well Abandonment Costs |
| \$27,611.48  | Consulting Personnel Costs                     |
| \$2,448.40   | Consultant's Materials Costs                   |

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

**SECTION 2**

1. An additional \$619.80 was added to the Monitoring Well Costs for the modification made to the Corrective Action Plan. The extra cost is for two hollow-stem auger wells (re-installation of MW-3 and MW-9) to a maximum depth of 15 feet below the ground surface for a total of 30 feet at the Subpart H maximum amount of \$20.66 per foot.
2. An additional \$1,067.55 was added to the Analytical Costs for the modification made to the Corrective Action Plan. The extra cost is for 3 groundwater samples (MW-3, MW-9, MW-10) at a rate of \$101.37 per sample, a possible 6 BETX/MTBE soil samples (re-installation of MW-3 and MW-9) at a rate of \$106.38 per sample and 2 sample shipping events at a rate of \$52.58 per event.
3. An additional \$495.67 was added to the Remediation and Disposal Costs for the modification made to the Corrective Action Plan. The extra cost is for one 55-gallon drum for solid waste at a cost of \$309.79 and one 55-gallon drum of liquid waste at a cost of \$185.88.

4. \$6,257.50 for Consulting Personnel Costs associated with the preparation of the Corrective Action Plan by a Senior Project Manager, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request exceeds 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). Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 50 hours for the preparation of the Corrective Action Plan by a Senior Project Manager at a rate of \$125.15 per hour for a total of \$6,257.50. The total number of hours requested for the preparation of the Corrective Action Plan is not supported by the information included in the Corrective Action Plan. Several attempts were made by the Illinois EPA for clarification of the request. The information that was received does not support the request for 50 hours for the preparation of the Corrective Action Plan. Please note that 734.505(a) states that the Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site. 35 Ill. Adm. Code 734.510(b) states that a financial review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part. 35 Ill. Adm. Code 734.850(b) states that owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

5. \$14,016.80 for Consulting Personnel Costs associated with the oversight of the corrective action excavation and backfilling by a Senior Project Manager, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those

necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request exceeds 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). Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 112 hours for a Senior Project Manager for oversight of the corrective action excavation and backfilling at a rate of \$125.15 per hour for a total of \$14,016.80. The request appears to be for 14 8-hour days to complete the excavation. Several requests were made by the Illinois EPA to ensure that the number of hours requested to complete the 1,304-cubic yard excavation were reasonable and did not exceed the minimum amount of time required to completed an excavation of this size. The information that was received does not support the time requested to complete the excavation. Please note that 734.505(a) states that the Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site. 35 Ill. Adm. Code 734.510(b) states that a financial review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part. 35 Ill. Adm. Code 734.850(b) states that owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

6. The Consulting Personnel Costs associated with the completion and submission of IDPH well abandonment forms are not approved as part of this budget. These charges are included in the monitoring well abandonment rate, for which a maximum rate of \$12.52 per foot applies. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. 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.

Based upon the above deduction, a total of \$ 500.60 was deducted from Consulting Personnel Costs.

7. \$3,754.50 for Consulting Personnel Costs associated with the preparation of the interim report documenting the excavation, 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). In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 30 hours for a Senior Project Manager to prepare a report documenting the corrective action excavation and proposing the final R-26 extent and Highway Authority Agreement limits. This preparation of an extra report is not necessary to document this information. The information must be included in the Corrective Action Completion Report.

8. \$600.64 for Consulting Personnel Costs associated with the preparation of autoCAD figures for a report documenting the excavation, 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). In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 8 hours for a Senior Draftsperson/CAD to prepare autoCAD figures for a report documenting the corrective action excavation and proposing the final R-26 extent and Highway Authority Agreement limits. This extra report is not necessary to document this information. The information must be included in the Corrective Action Completion Report.

9. \$2,775.60, deduction for a reduction in the personnel title listed in Section 734.APPENDIX E Personnel Titles and Rates. Pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. The Senior Project Manager rate for the preparation of the ordinance notification letters has been reduced to a Senior Administrative Assistant rate of \$55.76 per hour.

The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. 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 and 35 Ill. Adm. Code 734.630(dd).

10. \$2,230.40 for Consulting Personnel Costs associated with the preparation of the ordinance notification letters by a Senior Administrative Assistant, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request exceeds 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). Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 40 hours for the preparation of 40 letters to off-site property owners regarding the use of the local groundwater ordinance as an institutional control. Several requests were made by the Illinois EPA to ensure that the number of hours requested to complete the task were reasonable and did not exceed the minimum amount of time required to prepare the notification letters. The information that was received does not support the time requested to complete this task. Please note that 734.505(a) states that the Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site. 35 Ill. Adm. Code 734.510(b) states that a financial review must consist of a detailed review of the costs associated with each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part. 35 Ill. Adm. Code 734.850(b) states that owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

11. \$1,627.00 for Consulting Personnel Costs associated with oversight/direction of corrective action by a Senior Professional Engineer, 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). In addition, the request is reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd). Furthermore, the request lacks supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

The Consulting Personnel Costs requests 10 hours for a Senior Professional Engineer to oversee and direct corrective action at a rate of \$162.70 per hour for a total of \$1,627.00. It is unclear what purpose the oversight of the Senior Professional Engineer has over the oversight of the Senior Project Manager, which was also included in the Corrective Action Budget to provide oversight. Please note that the Senior Professional Engineer should have limited involvement in projects and is generally limited to performing final review, senior design, and complex data analysis. Please refer to the Agency's Personnel Title Descriptions and Duties Summary form located at the IEPA's website at <http://www.epa.illinois.gov/topics/cleanup-programs/lust/budget-and-billing-forms/personnel-titles/index> for clarification of personnel titles and descriptions.

12. \$448.10 for Consulting Personnel Costs associated with the review and certification of the proposed interim report documenting the excavation, 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). In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 3 hours for a Senior Professional Engineer to review and certify the proposed interim report documenting the excavation and proposing the final R-26 extent and Highway Authority Agreements at a rate of \$162.70 for a total of \$448.10. This extra report is not necessary to document this information. The information in the proposed interim report must be included in the Corrective Action Completion Report.

13. \$225.28 for Consulting Personnel Costs for a Senior Administrative Assistant associated with the proposed interim report documenting the excavation, 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). In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 4 hours for a Senior Administrative Assistant to copy, bind, scan and distribute the proposed interim corrective action report at a rate of \$56.32 per hour for a total of \$225.28. This extra report is not necessary to document this information. The information in the proposed interim report must be included in the Corrective Action Completion Report.

14. \$3,379.20, deduction for a reduction in the personnel title listed in Section 734.APPENDIX E Personnel Titles and Rates. Pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. The Senior Project Manager rate for the preparation of reimbursement applications has been reduced to a Senior Account Technician rate of \$68.83 per hour.

The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. 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 and 35 Ill. Adm. Code 734.630(dd).

15. \$275.32, deduction for a reduction in the personnel title listed in Section 734.APPENDIX E Personnel Titles and Rates. Pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. The Senior Project Manager rate for NFR filing and submission to the IEPA has been reduced to a Senior Administrative Assistant rate of \$56.32 per hour.

The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. 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 and 35 Ill. Adm. Code 734.630(dd).

16. \$225.28 for Consulting Personnel Costs associated with the NFR filing and submission to the IEPA, 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). In addition, the request lacks supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those

necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 4 hours to file the NFR and submit the recorded NFR to the IEPA. It is not necessary for the consultant to drive to the County Clerk's office to record the NFR. Please note that the No Further Remediation Letter can be recorded through the mail or may possibly be filed electronically. Please visit the Williamson County Clerk's website <http://www.williamsoncountyl.gov/records/land-and-misc-records/> for additional information on recording the No Further Remediation Letter. The 4-hour request for this task exceeds the minimum requirements. Lacks supporting documentation and is not reasonable.

17. \$1,704.00 for Consultant's Materials Costs for hotel and per diem associated with the oversight of the corrective action excavation and backfilling by a Senior Project Manager, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. In addition, the request exceeds 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). Furthermore, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consultant's Materials Costs requests 12 days for a hotel at a rate of \$91.00 per day for a total of \$1,092.00 and per diem at a rate of \$51.00 per day for a total of \$612.00. These costs are associated with the 112 hours (14 days) requested for the oversight of the excavation. Several requests were made by the Illinois EPA to ensure that the number of hours requested to complete the 1,304-cubic yard excavation were reasonable and did not exceed the minimum amount of time required to completed an excavation of this size. The information that was received does not support the time requested to complete the excavation. Please note that 734.505(a) states that the Agency may review any or all technical or financial information, or both, relied upon by the owner or operator or the Licensed Professional Engineer or Licensed Professional Geologist in developing any plan, budget, or report selected for review. The Agency may also review any other plans, budgets, or reports submitted in conjunction with the site. 35 Ill. Adm. Code 734.510(b) states that a financial review must consist of a detailed review of the costs associated with

each element necessary to accomplish the goals of the plan as required pursuant to the Act and regulations. Items to be reviewed must include, but are not limited to, costs associated with any materials, activities, or services that are included in the budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in Subpart H of this Part. 35 Ill. Adm. Code 734.850(b) states that owners and operators seeking payment must demonstrate to the Agency that the amounts sought are reasonable.

18. \$70.00 for copies associated with the proposed interim report documenting the excavation, 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). In addition, the request is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consulting Personnel Costs requests 1,000 photocopies at a rate of \$0.07 per copy for a total cost of \$70.00 for the proposed interim corrective action report. This extra report is not necessary to document this information. The information in the proposed interim report must be included in the Corrective Action Completion Report.

19. \$22.75 for Consultant's Materials Costs associated with nitrile gloves, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site-specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the rate requested for the nitrile gloves pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site-specific reasonableness determination.

In addition, without supporting documentation the rate requested for the nitrile gloves is not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

The Consultant's Materials Costs requests \$22.75 for one box of nitrile gloves. The documentation that was included with the budget indicates that Lowe's Home Improvement Store sells Blue Hawk 100-count nitrile cleaning gloves for \$14.98 and will ship the individual box for \$5.99, including sales tax the total is \$22.75. The documentation does not indicate that the nitrile gloves were purchased or that this is the way that the nitrile gloves are usually purchased.

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### 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 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:

John Therriault, Assistant Clerk  
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  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

