

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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

PCB: \_\_\_\_\_  
(LUST Permit Appeal)

**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 10<sup>th</sup> day of December, 2021.

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  
pdshaw1law@gmail.com

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 the Illinois Environmental Protection Agency's refusal to pay certain early action costs, 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 was assigned LPC # 1990400008.
2. On February 1, 2021, a release was reported from the two gasoline underground storage tanks on the property, which was assigned Incident Number 2021-0114.
3. J.D. Strett hired a general contractor to perform a variety of work related to closing the service station. The general contractor hired a subcontractor to remove the underground storage tank system and backfill the excavation.
4. The subcontractor applied for a permit to remove the underground storage tanks from the Office of the State Fire Marshal (hereinafter "the OSFM"), which was approved.
5. On March 4, 2021, the subcontractor removed the underground storage tank system in the presence of a representative of the OSFM.

6. Between March 8, 2021 and March 15, 2021, 186.74 tons of backfill were transported to the site and placed in the excavation.

7. On March 29, 2021, Petitioner submitted its 45 Day Report to the Illinois Environmental Protection Agency (hereinafter "IEPA") detailing these activities, including support for issuance of a No Further Remediation letter, which was approved by the IEPA on April 20, 2021.

8. On August 23, 2021, Petitioner submitted its Early Action Reimbursement Request in the amount of \$21,884.08, which included a deductible determination from the OSFM in the amount of \$5,000.00.

9. On November 5, 2021, the IEPA issued its determination letter in the amount of \$5,092.80. A true and correct copy of the letter is attached hereto as Exhibit A.

10. The IEPA improperly deducted all costs (\$8,450.94) associated with the excavation, removal and disposal of underground storage tank systems, and all costs (\$3,340.34) associated with the purchase, transportation, and placement of clean material used to backfill the excavation. The IEPA correctly applied the \$5,000 deductible, which is not at issue here.

11. The IEPA denial letter justifies these deductions as violations of Section 57.7(c)(3) of the Illinois Environmental Protection Act, which by its own terms only applies to plans and budgets. (415 ILCS 5/57.7(c)(3)) This justification is erroneous as a matter of law. Early action activities are performed without plans and budgets.

12. The IEPA denial letter also justifies these deductions as violations of Section 734.630(dd) of the Board's Procedural rules, which by its own terms applies only to costs proposed as part of a budget. (35 Ill. Adm. Code § 734.630(dd)) This justification is erroneous

as a matter of law. Early action activities are performed without budgets.

13. The IEPA denial letter also justifies these deductions as violations of Section 734.630(cc) of the Board's Procedural rules, which relates to costs that lack supporting documentation. (35 Ill. Adm. Code § 734.630(dd)) The letter further claims a lack of invoices for this work, which is erroneous for the following reasons:

A. In fact, the application for payment included invoices and proof of payment from the general contractor for the work at issue, as well as backfill tickets showing the amount, dates and cost of the backfill acquired to fill the excavation.

B. Costs are controlled by Subpart H of the Board's regulations which contain reimbursement formulas based entirely upon the volume of the tanks and the amount of backfill material. (35 Ill. Adm. Code § 734.810 & § 734.825(b)) The volume of the tanks is a matter of public record with the OSFM and the amount of backfill is identified on the tickets.

C. Performance of the work is evidenced by the OSFM site assessment report, the OSFM inspector's log of removal, backfill tickets, and the 45 Day Report which describes early action activities certified by the owner, consultant and licensed professional engineer, including photographs of the work.

14. The IEPA decision letter is dated November 5, 2021, which is thirty-five days from today and therefore this appeal is timely filed.

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 reimburse the costs as submitted (subject to the deductible), (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  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
[pdshaw1law@gmail.com](mailto:pdshaw1law@gmail.com)



**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 #

7011 1150 0001 0856 5308

NOV 05 2021

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

Re: 1990405102 -- Williamson County  
Herrin / J.D. Street & Company Inc. (Herrin #234)  
3225 South Park Avenue  
Incident-Claim No.: 20210114 -- 72272  
Queue Date: August 23, 2021  
Leaking UST Fiscal File

Dear Mr. Schuering:

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 August 17, 2021 and was received by the Illinois EPA on August 23, 2021. The application for payment covers the period from February 1, 2021 to August 17, 2021. The amount requested is \$21,884.08.

On August 23, 2021, 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 \$5,092.80 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.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800  
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120  
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000  
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 34-7200  
412 SW Washington Street, Suite D, Peoria, IL 61602  
4302 N. Main Street, Rockford, IL 61103 (815) 987-7700

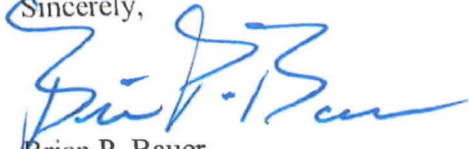


Page 2

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 Nicole Howland of my staff at (217) 524-0435.

Sincerely,



Brian P. Bauer  
Leaking UST Claims  
Leaking Underground Storage Tank Section  
Bureau of Land

Attachment: A

c: CSD Environmental Services, Inc.  
Leaking UST Claims Unit

### 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



Attachment A  
Accounting Deductions

Re: 1990405102 -- Williamson County  
Herrin / J.D. Street & Company Inc. (Herrin #234)  
3225 South Park Avenue  
Incident-Claim No.: 20210114 -- 72272  
Queue Date: August 23, 2021  
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. \$3,340.34, deduction for costs for backfill, 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, deduction for site investigation or corrective action costs for backfill that are 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).

Documentation/invoices provided do not match the amount requested for reimbursement. Invoices for the purchase of the backfill material as well as from the contractors/subcontractors that actually performed (transported and placed the backfill material) the work needs to be provided.

2. \$8,450.94, deduction for costs for UST removal, 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, deduction for site investigation or corrective action costs for UST removal that are 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).

An invoice from the company that removed the USTs and was listed on the OSFM permit was not submitted to the Illinois EPA.