

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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

PCB: 2022-027
(LUST Permit Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer	Melanie Jarvis
Illinois Pollution Control Board	Division of Legal Counsel
1021 N. Grand Avenue East	1021 North Grand Avenue East
P.O. Box 19274	P.O. Box 19276
Springfield, IL 62794-9274	Springfield, IL 62794-9276
(carol.webb@illinois.gov)	(melanie.jarvis@illinois.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's Motion to Supplement Administrative Record Directed to Hearing Officer, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the documents described above, were today served upon the Hearing Officer and Division of Legal Counsel by electronic-mail, this 30th day of January, 2023. The number of pages of this filing, other than exhibits, is 3.

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 POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

J.D. STRETT & COMPANY, INC.,)
 Petitioner,))
v.) PCB: 2022-027
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 Respondent.)

MOTION TO SUPPLEMENT ADMINISTRATIVE RECORD
DIRECTED TO HEARING OFFICER

NOW COMES Petitioner, J.D. STRETT & COMPANY, INC., by its undersigned attorney, pursuant to Section 101.500 of the Board’s Procedural Rules (35 Ill. Adm. Code § 101.500), to supplement the Administrative Record as follows:

1. On October 11, 2022, the Illinois Environmental Protection Agency (hereinafter “the IEPA”) filed the Administrative Record herein.
2. Contained within the Administrative Record are correspondence between the IEPA and Petitioner’s consultant from September 28, 2001 to September 30, 2001, including a Sub Contract Agreement attachment. (A.R.0173 - A.R.0176)
3. In preparing a motion for summary judgment, Petitioner’s attorney discovered that roughly half of the pages of the correspondence are missing. Specifically, every second page is missing, suggesting an inadvertent failure to scan the back side of two-sided copies.
4. Attached are copies of the three missing pages, marked A.R.0173.5; A.R.0174.5; and A.R.0175.5 to identify their intended placement in the record.
5. Counsel for the IEPA has no objection to admission of these documents and has also indicated that their omission was inadvertent.

WHEREFORE, Petitioner, J.D. STRETT & COMPANY, INC., hereby requests that the Hearing Officer enter an order granting this Motion to Supplement the Administrative Record and designate the pages attached hereto as A.R. 0173.5; A.R.0174.5.; and A.R.0175.5, or for such other and further relief as she deems meet and just.

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

From: Shane Thorpe <SThorpe@csdenviro.com>

Sent: Wednesday, September 29, 2021 10:03 AM

To: Howland, Nicole <Nicole.Howland@Illinois.gov>

Subject: [External] RE: incident#20210114 - JD Streett & Co. - Early Action

Electronic Filing: Received, Clerk's Office 01/30/2023

Nicole,

I'm telling you that the owner doesn't have these invoices. I suppose we can reach out and ask but I'm not sure why they would want to provide it at this point. If they don't provide it, why should the owner be punished for that? In my opinion we've provided a complete application for payment. I'm guessing your opinion is different. Which regulation specifically requires the invoice from the subcontractor of the contractor?

Shane

From: Howland, Nicole <Nicole.Howland@Illinois.gov>

Sent: Wednesday, September 29, 2021 10:37 AM

To: Shane Thorpe <SThorpe@csdenviro.com>

Subject: RE: incident#20210114 - JD Streett & Co. - Early Action

Shane,

The agency is not asking for an invoice billed to the owner. We are asking for the original invoice billed to Neumayer or whoever from Robert Ellis & Sons for the work that was done. Will this be provided or not?

Nicole Howland

Account Technician II

IEPA – Bureau of Land

Nicole.Howland@Illinois.gov

217-524-0435

From: Shane Thorpe <SThorpe@csdenviro.com>

Sent: Wednesday, September 29, 2021 10:03 AM

To: Howland, Nicole <Nicole.Howland@Illinois.gov>

Subject: [External] RE: incident#20210114 - JD Streett & Co. - Early Action

Nicole,

I'm not aware of any regulatory provisions that require the permitted company to directly invoice the owner. Please direct me to that if it exists. There has been plenty of documentation provided to show the work was completed. There's the UST removal permit, the OSFM site assessment report, the OSFM inspector's log of removal, backfill tickets, photographs, etc. etc.

Thanks,

Shane

A.R.0173.5

Electronic Filing: Received, Clerk's Office 01/30/2023

From: Howland, Nicole <Nicole.Howland@Illinois.gov>
Sent: Tuesday, September 28, 2021 11:57 AM
To: Shane Thorpe <SThorpe@csdenviro.com>
Subject: RE: incident#20210114 - JD Streett & Co. - Early Action

Shane,

I am reviewing the above referenced claim. There are a few things that I need to complete this review.

1. I need invoices for the backfill from each vendor, not just the ticket manifests.
2. The permit for tank removal has Robert Ellis & Sons listed as the company to perform the removal. I do not have any invoices from this company. The invoices submitted are from Neumayer.

Please return documents to me no later than October 12, 2021.

Thanks In Advance,

Nicole Howland

Account Technician II

IEPA – Bureau of Land

Nicole.Howland@Illinois.gov

217-524-0435

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materials rates and prices in accordance with the attached bid of Subcontractor, which has been approved and initialed by Contractor, and which is attached.

PAYMENT. Contractor will make progress payments to Subcontractor within 30 days of receipt of Subcontractor's invoices, provided the purchase order number shown at the top of page one of this Agreement. Progress payments to Subcontractor shall not be due from Contractor until Contractor has been paid by Owner. After Subcontractor's work is 100% completed and performed in strict accordance with the requirements of this agreement, and Owner has paid Contractor for all of its work, Contractor will issue final payment for Subcontractor's work. Contractor may withhold progress payments or final payment from Subcontractor if Subcontractor: 1. Fails to perform its work in a workmanlike manner; 2. Fails to correct defective work or materials; 3. Fails to pay its sub-subcontractors, suppliers or material men in a timely fashion; 4. Fails to supply an adequate work force to perform its work; or 5. Contractor has the reasonable belief that Subcontractor will be unable to complete its work under this Agreement. Subcontractor is required by this Agreement to promptly submit all invoices for its work and Subcontractor is required to submit a final invoice for all amounts due from Contractor within 60 days of completion of Subcontractor's work on the project. Subcontractor waives any claim to payment from Contractor or Owner on any amounts for which Subcontractor has not submitted an invoice within 60 days of completion of Subcontractor's work on the Project.

3. INDEMNITY. To the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless Contractor, Contractor's other subcontractors, the architect/engineer, Owner and their agents, employees, officers, directors, consultants and assigns, from and against all claims for bodily injury, sickness, disease, death or for property damage, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of Subcontractor's Work under this Agreement, and caused in whole or in part by any negligent act or omission of Subcontractor, anyone directly employed by Subcontractor or anyone for whose acts Subcontractor may be liable.

4. INSURANCE REQUIREMENTS. Subcontractor shall obtain and maintain Comprehensive Commercial General Liability Insurance with an A rated carrier per A. M. Best on an occurrence form for the hazards of (i) construction operation, (ii) subcontractors and independent contractors, (iii) products and completed operations (with completed operations to remain in force for two years following completion of the project), (iv) explosion and collapse, (v) contractual liability, (vi) pollution and environmental coverage and (vii) the insurance will not contain exclusions or endorsements which limit insurance protection for work performed under this Agreement, such as pollution, explosion, collapse, underground property damage or work performed by subcontractors. Minimum limits of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate and \$2,000,000.00 products/completed operations aggregate will be maintained including a per project aggregate endorsement. Subcontractor shall maintain comprehensive automobile liability insurance with an A rated carrier per A.M. Best covering all automobiles, trucks and trailers used in conjunction with Subcontractor's Work under this Agreement and shall have minimum bodily injury and property damage combined single limit of \$1,000,000.00 per occurrence. Subcontractor shall maintain Workmen's Compensation Insurance with an A rated carrier per A.M. Best to cover the statutory limits of the Workmen's Compensation Laws of any state in which any work is to be performed with limits not less than \$1,000,000.00 for each accident, \$1,000,000.00 for

JOB