

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MAJED ABUSAID d/b/a	)	
JAY'S ONE,	)	
Petitioner,	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
60 East Van Buren	2520 W Iles Ave 1021
Suite 630	P.O. Box 19276
Chicago, IL 60605	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 17th day of September 2025.

Respectfully submitted,
MAJED ABUSAID d/b/a JAY'S ONE,
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

MAJED ABUSAID d/b/a JAY'S ONE,	)	
Petitioner,	)	
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v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, MAJED ABUSAID d/b/a JAY'S ONE, pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), hereby appeals the Illinois Environmental Protection Agency's final decision to the extent it modified a report by imposing future conditions, stating as follows:

1. Petitioner owns a self-service station in East St. Louis, County of St. Clair, Illinois, which has been assigned LPC #1630455537.
2. On July 14, 2021, Petitioner reported releases from three underground storage tanks at the site, which were subsequently removed. Incident Number 2021-0648 was assigned to the releases.
3. Following early action and initial site investigation, Petitioner's consultants submitted a Stage 2 Site Investigation Plan and Budget to the Illinois Environmental Protection Agency ("Agency"), which *inter alia* proposed a soil boring to be drilled for the purpose of calculating site specific objectives required for the Tiered Approach To Corrective Action Objectives ("TACO") regulations. (35 Ill. Adm. Code Part 742)
4. On August 30, 2022, the Agency approved the Stage 2 Plan, but excluded TACO sampling activities as premature at that time.

5. After conducting the Stage 2 Plan, Petitioner's consultants submitted a Stage 3 Site Investigation Plan and Budget, which included a proposal for a TACO soil boring to sample at a depth of five to ten feet.

6. On August 8, 2023, the Agency approved the Stage 3 Plan and Budget in all relevant respects.

7. After conducting the approved Stage 3 Plan, Petitioner's consultant submitted a Stage 3 Site Investigation Plan and Budget Amendment, which proposed additional sampling to delineate exceedances. Site specific physical parameters were determined by the TACO sample taken at a depth of 8.5 feet.

8. On July 25, 2024, the Agency approved the Stage 3 Plan Amendment with a modification requiring that a different location be chosen for collection of a soil sample to be analyzed for TACO site specific parameters at a depth of ten to fifteen feet. While the previous location had been located adjacent to a boring which had previously been determined to have no contamination, the TACO sample contained multiple detections of compounds above the reporting limit. The budget was modified to add costs for additional drilling and analysis.

9. After conducting the approved Stage 3 Plan Amendment, Petitioner's consultants submitted a Site Investigation Completion Report ("SICR"). At this time, a new project manager had been assigned to the site.

10. On August 28, 2025, the Agency issued its decision letter approving the SICR. A true and correct copy of the decision letter is attached hereto as Exhibit A.

11. The Agency letter states in relevant part:

A site-specific geotechnical sample must be collected from the same interval where highest contaminant levels were found. Since default soil saturation limit values for various BTEX components were exceeded all along the piping trench following UST and piping removal, that would require a sample from a depth of approximately three (3) feet below ground surface (bgs). Previous geotechnical samples were collected at the subject site from 8.5 and 12.5 feet bgs. Prior to submitting a Corrective Action Plan (CAP), a geotechnical sample should be collected from approximately three (3) feet bgs from an unimpacted area for use in calculating Tier 2 remediation objectives (ROS) to be included in the CAP. Additional costs will not be approved for this task since budget approvals for this release have already included two (2) soil samples for determination of site-specific geotechnical parameters. Based on the samples collected during investigations completed to determine the extent of contamination resulting from this release, both surface and subsurface ROS will be necessary to fully evaluate the subject site.

(Exhibit A, at 1-2 (emphasis added))

12. Petitioner appeals the improper imposition of these requirements in the Agency's final determination for the grounds given hereinafter.

13. First, while the Agency may communicate with an owner or operator to address matters in the submittal before approving it, that's not what happened here. Instead, the Agency placed Petitioner on notice of requirements needed to be performed in the future. This improperly extends review of the SICR into corrective action. Knapp Oil Co. v. IEPA, PCB 16-103, slip op. at 9-10 (Sept. 22, 2016) (finding that such notice was an improper modification of the submittal)

14. Second, the decision purports to require work to be performed without an approved budget. In Dersch Energies v. IEPA, PCB 17-3, slip op. at 17-18 (Aug. 11, 2022), the Board rejected the Agency's assertion that an additional TACO sample must be collected and analyzed without a budget. In that case, the insufficiency of a TACO sample collected during site investigation was raised at the corrective action stage.

15. Third, the decision purports to require work without payment. All costs associated with corrective action are to be paid from the UST Fund so long as they are determined “by a procedure promulgated by the Board” to be reasonable and will be incurred in the performance of site investigation or corrective action activities (415 ILCS 5/57.7(c)(3)). In Dersch Energies, the project manager testified that costs of redoing a TACO boring are required by the Board’s regulations and are “always approved . . . so you know it’ll be paid.” PCB 17-3, slip op. at 11.

16. Fourth, the decision purports to impose all of the aforementioned obligations without identifying any legal authorities relied upon or explaining why those authorities might be violated. (415 ILCS 5/57.7(c)(4); cited in Knapp Oil Co. v. IEPA, PCB 16-103, slip op. at 10 (Sept. 22, 2016)) There are no known authorities limiting the number of TACO samples that may be taken and analyzed, particularly where as here the TACO sampling work was approved, and in part directed, by the Agency.

17. Petitioner only appeals the improper modification of the SICR, not the SICR approval. Petitioner is not disputing the legal requirement of compliance with the Board’s TACO regulations for corrective action activities (415 ILCS 5/57.7(c)(c)(3)(A)), nor disputing the Agency’s contention that another TACO sampling event is needed. However, these issues can be addressed through the Board procedures for corrective action as it was set forth in Dersch Energies, PCB 17-3, slip op. at 7 (Aug. 11, 2022). As such, Petitioner asks that improper obligations imposed by the Agency decision letter be stricken, specifically these phrases: “[p]rior to submitting a Corrective Action Plan (CAP),” and “[a]dditional costs will not be approved for this task since budget approvals for this release have already included two (s) soil samples for

determination of site-specific geotechnical parameters."

18. The subject Illinois EPA letter was received by certified mail on September 5, 2025, which is less than 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, MAJED ABUSAID d/b/a JAY'S ONE, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find that the Agency erred in its decision to the extent it imposed improper modifications in its approval decision and reverse those, (d) the Board award payment of attorney's fees; and (e) the Board grant Petitioner such other and further relief as it deems meet and just.

MAJED ABUSAID d/b/a JAY'S ONE,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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Illinois Environmental Protection Agency

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JB Pritzker, Governor

James Jennings, Acting Director

(217) 524-3300

AUG 28 2025

CERTIFIED MAIL

9589 0710 5270 0476 6678 72

Majed Abusaid
Jay's One Stop
3878 Dr. Martin Luther King Drive
St. Louis, MO 63113

Re: 1630455537 -- St. Clair County
East St. Louis / Jay's One Stop
346 Collinsville Avenue
Leaking UST Incident 20210648
Leaking UST Technical File

Dear Mr. Abusaid:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated April 22, 2025, was received by the Illinois EPA on April 30, 2025. 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 has determined that the requirements of Title XVI of the Act have been satisfied (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the report is approved.

The Illinois EPA has the following additional comments at this time:

1. A site-specific geotechnical sample must be collected from the same interval where highest contaminant levels were found. Since default soil saturation limit values for various BTEX components were exceeded all along the piping trench following UST and piping removal, that would require a sample from a depth of approximately three (3) feet below ground surface (bgs). Previous geotechnical samples were collected at the subject site from 8.5 and 12.5 feet bgs. Prior to submitting a Corrective Action Plan (CAP), a geotechnical sample should be collected from approximately three (3) feet bgs from an unimpacted area for use in calculating Tier 2 remediation objectives (ROs) to be included in the CAP. Additional costs will not be approved for this task since budget approvals for this release have already included two (2) soil samples for determination of site-specific geotechnical parameters. Based on the samples collected during

EXHIBIT

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investigations completed to determine the extent of contamination resulting from this release, both surface and subsurface ROs will be necessary to fully evaluate the subject site.

2. The owner or operator must clarify the boundaries of the subject site. If multiple parcels are owned by the same entity, it would be acceptable to indicate the entire property together rather than showing each individual parcel. (35 Ill. Adm. Code 734.440)
3. Evaluation of the indoor inhalation exposure route in accordance with 35 Ill. Adm. Code 742 is required.

Pursuant to Sections 57.7(b)(2) and (3) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100, 734.125, and 734.335(a), the Illinois EPA requires submittal of a Corrective Action Plan and budget within 90 days from the date of this letter to:

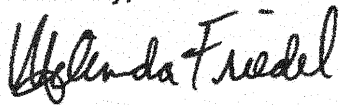
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
2520 West Iles Avenue
PO Box 19276
Springfield, IL 62794-9276

Please note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek payment from the Underground Storage Tank Fund.

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

If you have any questions or need further assistance, please contact the undersigned at (217) 785-5736 or at melinda.friedel@illinois.gov.

Sincerely,



Melinda Friedel, P.E.
Project Manager
Leaking Underground Storage Tank Section
Bureau of Land


SP:

c: Carol Rowe / CW³M Company, Inc. (electronic copy), cwm@cwmcompany.com
BOL File