

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

|                        |   |              |
|------------------------|---|--------------|
| WEBB & SONS, INC.,     | ) |              |
|                        | ) |              |
| Petitioner,            | ) |              |
|                        | ) |              |
| v.                     | ) | PCB          |
|                        | ) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL | ) |              |
| PROTECTION AGENCY,     | ) |              |
|                        | ) |              |
| Respondent.            | ) |              |

**NOTICE OF FILING**

|                                  |  |
|----------------------------------|--|
| TO: Mr. Don Brown                | Division of Legal Counsel                |
| Clerk of the Board               | Illinois Environmental Protection Agency |
| Illinois Pollution Control Board | 1021 North Grand Avenue East             |
| 100 West Randolph Street         | P.O. Box 19276                           |
| Suite 11-500                     | Springfield, Illinois 62794-9276         |
| Chicago, Illinois 60601          |  |
| <b>(VIA ELECTRONIC MAIL)</b>     | <b>(VIA U.S. MAIL)</b>                   |

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the **PETITION FOR REVIEW OF AGENCY DETERMINATION**, a copy of which is hereby served upon you.

Respectfully submitted,

HEPLERBROOM, LLC,

Dated: May 2, 2017

By: /s/ Jennifer M. Martin  
One of Its Attorneys

Jennifer M. Martin  
HEPLERBROOM, LLC  
3150 Roland Avenue  
Springfield, Illinois 62703  
Jennifer.Martin@heplerbroom.com  
(217) 528.3674

CERTIFICATE OF SERVICE

I, Jennifer M. Martin, the undersigned, certify that I have served the attached PETITION

FOR REVIEW OF AGENCY DETERMINATION upon:

Mr. Don Brown  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

via electronic mail on May 2, 2017

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, Illinois 62794-9276

Via U.S. Mail with postage fully pre-paid and by depositing in a U.S. Post Office Mailbox in Springfield, Illinois on May 2, 2017.

/s/ Jennifer M. Martin  
Jennifer M. Martin

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| Respondent.            | ) |              |

**PETITION FOR REVIEW OF  
AGENCY DETERMINATION**

NOW COMES Petitioner, WEBB & SONS, INC., by and through its attorneys, HEPLERBROOM, LLC, and, pursuant to Section 40(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40(a), and Part 105 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code Part 105, hereby petitions the Illinois Pollution Control Board (“Board”) for review of the Illinois Environmental Protection Agency’s (“IEPA” or “Agency”) March 29, 2017 decision regarding Petitioner’s Corrective Action Plan and Corrective Action Plan Budget and the requirements of the Leaking Underground Storage Tanks (“LUST”) Program. In support of its Petition, Petitioner states as follows:

1. Petitioner was the owner of 10,000 gallon and 4,000 gallon diesel underground storage tanks (“UST”); 2,000 gallon and 1,000 gallon gasoline USTs; 1,000 and 5,000 gallon kerosene USTs, and a 2,000 gallon heating oil UST formerly located at 1201 DeWitt Avenue, Mattoon, Illinois. The site has been assigned IEPA Bureau of Land Identification Number 0290255079. The USTs were removed in October 2002.

2. A notification of release from the above-listed USTs was made to the Illinois Emergency Management Agency (“IEMA”) on May 3, 1993, and October 30, 2002 (Incident Nos. 931126 and 20021577). The Office of the Illinois State Fire Marshal (“OSFM”) issued an

Eligibility and Deductibility Determination on July 10, 2002, that the incident was eligible for reimbursement from the LUST Fund with a \$15,000 deductible.

3. Petitioner submitted a Corrective Action Plan and Corrective Action Plan Budget, dated February 14, 2017, to the Agency for approval. According to the Agency, this submittal was received on February 15, 2017.

4. By letter dated March 29, 2017, the Agency issued its decision on the February 14, 2017 submittal. *See* Exhibit A, Letter from Michael T. Lowder to Mrs. Doris Webb, dated March 29, 2017. The Agency's decision rejected the February 14, 2017 Corrective Action Plan ("2017 CAP"), and the February 14, 2017 Corrective Action Plan Budget ("2017 CAP Budget").

5. This Petition for Review is filed within the appeal period pursuant to Section 40 of the Act and 35 Ill. Admin. Code § 105.406.

6. The Agency's March 29, 2017 decision sets forth the following for the Agency's denial of the CAP:

The Illinois EPA has approved Corrective Action Plans on September 12, 2006, November 5, 2007, and May 31, 2007. The plan received on February 14, 2017 proposed work that has already been approved in these three previous plans.

#### Exhibit A

7. Attachment A to the Agency's March 29, 2017 decision sets forth the basis for the Agency's denial of the 2017 CAP Budget

8. Paragraphs 1 and 3 of Attachment A to the Agency's March 29, 2017 decision sets forth the basis for the Agency's denial of the personnel costs in the 2017 CAP Budget:

1. It appears that the personnel cost in the proposed budget are for corrective action tasks that were approved in previous plans and budgets, specifically in Illinois EPA letters dated September 12, 2006, November 5, 2007, and May 31, 2007. It should also be noted that the May 31, 2007 Illinois EPA letter included the amount awarded to Web & Sons, Inc. by the Illinois Pollution Control Board in the appeal for personnel cost for corrective action activities in this project. Since this date, no additional corrective action plan has been approved by the

Illinois EPA. The groundwater sampling outlined in the plan received February 15, 2017 was not previously approved in a corrective action plan. Additional costs associated with work previously approved should not be included in any future budgets.

If additional work was needed to complete the corrective action as approved by the Illinois EPA beyond the scope of work in the corrective action plans, then additional documentation will need to be submitted to the Illinois EPA to support the additional costs. The documentation must include the specific reason and/or additional tasks that needed to be performed, technical justification, and amount of time associate with said reason or task for the additional cost requested. For work that has already been completed the documentation must include dates, times, personnel names and titles and the specific task descriptions. . . .

3. The budget includes costs that 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.

The personnel costs submitted for review lacked sufficient documentation in regards to personnel hours and job descriptions provided for those personnel hours. The Illinois EPA will require a more detailed job description associated with the proposed personnel hours. The personnel cost proposed in the budget 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). The personnel cost proposed in the budget are deemed 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).

Exhibit A, Attachment A, ¶1.

9. Between 2008 and 2011, the landfill and excavator that Petitioner's environmental consultant had retained went out of business. The 2017 CAP and 2017 CAP Budget included costs for finding and hiring new contractors, and meeting the waste profile requirements for the new landfill.

10. The 2017 CAP proposes steps to address contamination remaining at the subject property, including additional Tier 2 evaluations and institutional controls which must be negotiated with the City of Mattoon.

11. The 2017 CAP and 2017 CAP Budget also included, without limitation, costs associated with review of new Part 734 regulations and potential applicability to corrective action at the subject property, communications with Illinois EPA and the property owner, groundwater sampling in 2016, preparation of a status report requested by Illinois EPA, and compliance with the required bidding process for paving at the subject property.

12. On February 21, 2017, the Illinois EPA Project Manager for this matter provided a draft decision for the 2017 CAP and 2017 CAP Budget to MSA Professional Services, Inc. (“MSA”), Petitioner’s environmental consultant. The draft decision approved the 2017 CAP and also approved the 2017 CAP Budget with modifications. *See* Exhibit B.

13. Following the issuance of the Illinois EPA’s March 29, 2017 rejection of the 2017 CAP and 2017 CAP Budget, MSA was advised that Illinois EPA “upper management” had made the decision to reject the 2017 CAP and 2017 CAP Budget.

14. The corrective action proposed in the 2017 CAP satisfies the requirements of the Act and regulations, and the 2017 CAP was prepared in accordance with generally accepted engineering practices or principles of professional geology.

15. The 2017 CAP Budget includes sufficient justification for drilling, analytical, consulting personnel and consulting materials costs that were included in prior budget submittals and denied by the Agency.

16. The justification included in the 2017 CAP Budget demonstrates that the drilling, analytical, consulting personnel and consulting materials costs identified in the 2017 CAP

Budget were reasonable and essential to completion of the minimum corrective requirements of the Act and 35 Ill. Admin. Code Part 734.

WHEREFORE, for the above reasons, Petitioner, WEBB & SONS, INC., respectfully requests that the Illinois Pollution Control Board grant the following:

- a. Find that the Agency's March 29, 2017 final decision is arbitrary, capricious and not supported by statutory or regulatory authority;
- b. Reverse the Agency's denial of the 2017 CAP and approve the corrective action proposed in the 2017 CAP;
- c. Reverse the Agency's rejection of all costs sought in the 2017 CAP Budget and approve the 2017 CAP Budget;
- d. Award Petitioner reasonable attorney's fees and expenses incurred in bringing this action; and
- e. Award such other relief as the Board deems appropriate.

Respectfully submitted,

WEBB & SONS, INC.,  
Petitioner,

DATE: May 2, 2017

By: /s/Jennifer M. Martin  
One of Its Attorneys

Jennifer M. Martin  
HeplerBroom, LLC  
4340 Acer Grove Drive  
Springfield, Illinois 62711  
(217) 528-3674  
Jennifer.martin@heplerbroom.com



**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 3292 4395

**MAR 29 2017**

Ms. Doris Webb  
8687 East 150 North  
Lerna, Illinois 62240

Re: LPC #0290255079 -- Coles County  
Mattoon/ Webb & Sons, Inc.  
1201 DeWitt Avenue  
Leaking UST Incident No. 20021577 & 931126  
Leaking UST Technical File

Dear Ms. Webb:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated February 14, 2017 was received by the Illinois EPA on February 15, 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 plan is rejected for the reason(s) listed below (Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)):

1. The Illinois EPA has approved Corrective Actions Plans on September 12, 2006, November 5, 2007 and May 31, 2007. The plan received February 15, 2017 proposed work that has already been approved in these three previous plans.

**Please note, a vapor intrusion investigation will not be required at this site.**

In addition, the budget is rejected for the reason(s) listed in Attachment A (Sections 57.7(b)(3) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)).

ATTACHMENT A

Page 1

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 be submitted within 90 days 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.

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 need further assistance, please contact James R. Malcom at 217-524-9140.

Sincerely,



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

MTL:jrm

Attachment: Budget Denial Attachment

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cc: MSA Professional Services (electronic copy), Toni Laros (tlaros@msa-ps.com)  
BOL File

Attachment A

Re: LPC #0290255079 -- Coles County  
Mattoon/ Webb & Sons, Inc.  
1201 DeWitt Avenue  
Leaking UST Incident No. 20021577 & 931126  
Leaking UST Technical File

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

1. It appears that the personnel cost in the proposed budget are for corrective action tasks that were approved in previous plans and budgets, specifically in Illinois EPA letters dated September 12, 2006, November 5, 2007 and May 31, 2007. It should also be noted that the May 31, 2007 Illinois EPA letter included the amount awarded to Web & Sons, Inc. by the Illinois Pollution Control Board in the appeal for personnel cost for corrective action activities in this project. Since this date, no additional corrective action plan has been approved by the Illinois EPA. The groundwater sampling outlined in the plan received February 15, 2017 was not previously approved in a corrective action plan. Additional costs associated with work previously approved should not be included in any future budgets.

If additional work was needed to complete the corrective action as approved by the Illinois EPA beyond the scope of work in the corrective action plans, then additional documentation will need to be submitted to the Illinois EPA to support the additional costs. This documentation must include the specific reason and/or additional tasks that needed to be performed, technical justification, and amount of time associated with said reason or task for the additional cost requested. For work that has already been completed the documentation must include dates, times, personnel names and titles and the specific task descriptions.

2. The budget includes costs for pavement that were obtained via bidding. Pursuant to 35 Ill. Adm. Code 734.855(a), bids must be obtained only from persons qualified and able to perform the work being bid. In order to determine compliance with this provision, information must be provided demonstrating that the bidders are persons qualified and able to perform the work being bid. (Sections 57.1(a) and 57.7(c)(3) of the Act)

The 3 bids submitted for review were not obtained in accordance with the bidding requirements outlined under 734.855.

**The cost associated with pavement was approved in 2006, pursuant to 734.870(d)(1) rates cannot be raised when the work is performed years after the budget was approved.**

3. The budget includes costs that 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.

The personnel costs submitted for review lacked sufficient documentation in regards to personnel hours and job descriptions provided for those personnel hours. The Illinois EPA will require a more detailed job description associated with the proposed personnel hours. The personnel cost proposed in the budget 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). The personnel cost proposed in the budget are deemed 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).

jrm

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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

