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STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 28, 2005

PCB06-54

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Webb Ag, Inc.***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Kristen Laughridge
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

KL/pp
Enclosures

RECEIVED
CLERK'S OFFICE

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

NOV 02 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
WEBB AG, INC., an Illinois corporation,)
)
Respondent.)

PCB No. 06-54
(Enforcement)

NOTICE OF FILING

To: Webb Ag, Inc.
c/o Virgil T. Harbach, R.A.
618 W. Van Buren
BOS 457
Clinton, IL 61727-2183

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 28, 2005

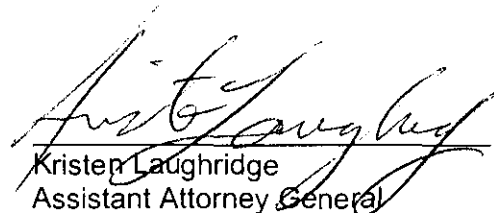
CERTIFICATE OF SERVICE

I hereby certify that I did on October 28, 2005, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Webb Ag, Inc.
c/o Virgil T. Harbach, R.A.
618 W. Van Buren
BOS 457
Clinton, IL 61727-2183

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Kristin Laughridge
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE

NOV 02 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 WEBB AG, INC., an Illinois corporation,)
)
 Respondent.)

PCB No. 06-54
(Enforcement)

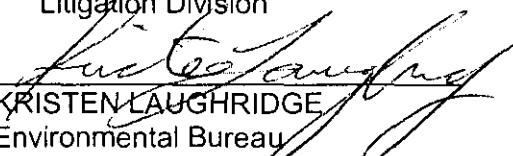
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
KRISTEN LAUGHRIDGE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: October 28, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
WEBB AG, INC., an Illinois corporation,)
)
Respondent.)

PCB No. 06-54
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, WEBB AG, INC., an Illinois corporation, as follows:

COUNT I

WATER POLLUTION HAZARD

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

2. The Illinois EPA is an agency of the State of Illinois created by Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2004), and charged, *inter alia*, with the duty of enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Webb Ag, Inc., ("Webb"), is an Illinois corporation in good standing and owns an agrichemical sales and distribution facility in Fairview, Fulton County, Illinois. Webb wholly owns Fairview Ag.

5. On June 5, 2003, a flat bed truck owned by Respondent rolled on its side at the intersection of Ray Road and a private lane located just east of county Road 11, Duncan Mills, Fulton County, Illinois ("spill site"). The truck was carrying a tank containing approximately 2,100 gallons of fertilizer solution. The solution consisted of 260 gallons of 28% urea ammonium nitrate ("UAN") solution, 25 gallons of crop oil, and 1,815 gallons of water.

6. Approximately, 1,600 gallons of the fertilizer solution spilled into the ditch at the northeast corner of the intersection.

7. The spill site is in the Spoon River flood plan, approximately one quarter mile southwest of an unnamed tributary of the Spoon River. Both the Spoon River and unnamed tributary are a water of the State as defined by Section 3.550 of the Act, 415 ILCS 3.550 (2004).

8. On June 20, 2003, due to an anonymous report, the Illinois Department of Agriculture ("IDOA") contacted Fairview Ag and spoke with Mr. Jeremy Stutsman regarding the spill. IDOA advised Mr. Stutsman to report the spill to Illinois Emergency Management Agency ("IEMA").

9. On June 23, 2003, Respondent excavated approximately 21 tons of soil at the spill site.

10. On June 26, 2003, Respondent reported the spill to IEMA.

11. On June 30, 2003, Illinois EPA inspected the spill site. A strong ammonia odor was present at the site. Illinois EPA observed impacted areas on the north and south side of Ray Road and an excavated area in the ditch on the north side of the Ray Road that extended

approximately 190 feet east of the intersection of Ray Road and the private lane. Illinois EPA also observed liquid impounded in a small puddle on the south side of Ray Road.

12. Illinois EPA collected samples of the impounded liquid and soil samples from the spill location and a background location southwest of the spill site. The liquid sample contained 101 mg/l of ammonia and 490 mg/l of nitrate and nitrite. The soil sample results are below:

Parameter (mg/kg)	Sample X001	Sample X002	Sample X003
Ammonia ext. (w/wt)	6270	2410	85.3
Ammonia ext. (d/wt)	18,055	7814	16

13. On August 14, 2003, Illinois EPA issued a violation notice to the Respondent.

14. On July 2, 2003, Respondent performed excavations at the spill location and took soil samples before, during and after excavation.

15. On September 18, 2003, Respondent submitted a Compliance Commitment Agreement Proposal that was rejected by Illinois EPA on October 24, 2003.

16. On April 13, 2004, Illinois EPA issued a Notice of Intent to Pursue Legal Action (NIPLA) letter.

17. On May 12, 2004, Illinois EPA and the Respondent met and determined the appropriate cleanup objectives for the contaminants at the spill site. It was agreed that the cleanup objective for nitrate to be 45.5 mg/kg and the objective for ammonia to be 158.5 mg/kg.

18. On May 18 and 19, 2004, Respondent excavated soil and took samples from the trench.

19. Since the samples from the May 18 and 19 excavation were over the agreed objectives for nitrate and ammonia, Respondent conducted another excavation event occurred on June 7, 2004.

20. Respondent removed approximately 500 tons of soil from the spill site.

21. Section 12 of the Act, 415 ILCS 5/12 (2004), provides in pertinent part that:

No person shall:

* * *

- d. Deposit any contaminants upon the land in such place and manner as to create a water pollution hazard;

* * *

22. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004) provides:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

23. Section 3.395 of the Act, 415 ILCS 5/3.395 (2004) provides in pertinent part:

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. . . .

24. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004) provides:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

25. Section 3.550 of the Act, 415 ILCS 3.550 (2004) provides:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

26. By releasing 28% urea ammonium nitrate (“UAN”) solution within 1/4 mile of a water of the State, Respondent created a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, Webb Ag, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II

VIOLATIONS OF THE ILLINOIS HAZARDOUS MATERIAL EMERGENCY ACT

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count II.

21. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois Emergency Management Agency ("IEMA"), pursuant to the terms and provisions of Section 16(a) of the Illinois Emergency Planning and Community Right to Know Act ("ACT"), 430 ILCS 100/16(a) (2004), and is an action for civil penalties.

22. IEMA is the State Emergency Response Commission, established in the executive branch of state government by Section 4 of the Act, 430 ILCS 100/4 (2004), for the purpose of implementing the provisions of Title III of the Superfund Amendments and Reauthorization Act of 1985, 42 U.S.C. 9602(a), and charged, *inter alia*, with the duty of enforcing the Act.

23. The Hazardous Materials Emergency Act, 430 ILCS 50/1 *et seq.* (2004),

provides in pertinent part, as follows:

(a) Section 7

The Illinois Emergency Management Agency may, by rule or regulation, require telephone and written notification of incidents or accidents that involve hazardous materials. The notification may include, but shall not be limited to: information about the name, classification, quantity, chemical and physical properties, and health hazards of the hazardous materials; a description of the incident or accident; precautionary measures to be taken; and the name, address, and telephone number of the reporter.

(b) Section 7.01

It is the responsibility of any person who owns, leases, operates, or controls any facilities or equipment for the use, storage, transportation, or manufacture of hazardous materials or his agent or employee to report to the nearest emergency agency and to the Illinois Emergency Management Agency the information required by any rule or regulation promulgated under Section 7.

24. Section 430 of the Emergency Services, Disasters, and Civil Defense

Regulations, 29 Ill. Adm. Code Part 430 provides, in pertinent part, as follows:

* * *

Section 430.20

Definitions:

* * *

"Hazardous Substance" means any substance listed in Table 302.4 of 40 CFR 302, dated July 1, 1987. This incorporation does not include any later amendments or editions.

* * *

Section 430.30

Emergency Notification of an incident or Accident Involving a Reportable Hazardous Substance or Material

* * *

- (a) If a release of an extremely hazardous substance or a hazardous substance occurs in a reportable quantity from a facility then the responsible party at that facility shall immediately provide notice as described in subsection (c).
- (b) If an incident or accident involving a hazardous material occurs which results in any of the occurrences listed in subsections (1)-(6) below, the responsible party at the facility shall immediately provide notice as described in subsection (c)(1).

* * *

(5) a motor vehicle has overturned on a public highway.

* * *

(c) Notice Procedures

1) Notice required under subsections (a) and (b) shall be given immediately by the responsible party to the IESDA (which is the SERC) by calling 1-800-782-7860 or 1-217-782-7860);

* * *

25. Table 302.4 of 40 CFR 302, dated July 1, 1987, lists ammonia as a hazardous substance and indicates the reportable quantity of ammonia to be 100 pounds.

26. By not reporting the release of ammonia at the spill site as described herein constitutes a violation of the immediate notification requirement of 29 Ill. Adm. Code Section 430.30 and Section 7.01 of the Illinois Hazardous Materials Emergency Act 430 ILCS 50/7.01 (2004).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, People of the State of Illinois, respectfully requests that this Court enter judgment in favor of Plaintiff and against Respondent, and enter an order:

A. Finding that Respondent, Webb Ag, Inc., violated Section 7.01 of the Illinois Hazardous Materials Emergency Act, 430 ILCS 7.01 (2004), and 20 Ill. Adm. Code 430.30 (2004), for each of the days on which Respondent failed to provide immediate notice of its release or discharge to IEMA;

B. Assessing a civil penalty of \$10,000.00 against the Respondent for each day of violation of the Act and its pertinent regulations;

C. Ordering the Respondent to cease and desist from any further violations of the Acts and its regulations;

D. Awarding to Plaintiff its costs and reasonable attorney's fees; and

- E. Granting such other relief as the Court deems appropriate.

COUNT III

ABANDONMENT OF WASTE

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count III.

21. Section 21(e) of the Act, 415 ILCS 5/21(e) (2004), provides, in pertinent part, as follows:

No person shall:

- e. Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards there under.

22. By not reporting the ammonia spill and not performing any immediate remediation, Respondent, Webb Ag, Inc., abandoned the waste ammonia in violation of Section 21(e) of the Act, 415 ILCS 5/21(e) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, Webb Ag, Inc.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General
of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

Of Counsel
KRISTEN LAUGHRIDGE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 10/28/05