

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ALLEN McAFEE,)	
Petitioner,)	
v,)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To:	John T. Therriault, Acting 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 27th day of October, 2014.

Respectfully submitted.
ALLEN McAFEE, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701-1323
Telephone: 217/528-2517

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ALLEN McAFEE,)	
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Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
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PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, ALLEN McAFEE, pursuant to Section 57.8(I) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Illinois Environmental Protection Agency’s final decision, modifying a plan and budget, and in support thereof states as follows:

1. This appeal arises from underground storage tanks formally at a location in Brighton, Macoupin County, Illinois, and assigned LPC # 1174150003.
2. On December 27, 2012, Petitioner reported a release from underground storage tanks at the site, which were subsequently removed as part of early action.
3. On May 28, 2014, Petitioner submitted a Stage 3 Site Investigation Plan and Budget for the above referenced site.
4. On September 26, 2014, the Illinois Environmental Protection Agency (hereinafter “the Agency”), issued a final decision approving the plan subject to the modification that a project labor agreement will be required. A true and correct copy of the final decision is attached hereto as Exhibit A.
5. The relevant provisions governing project labor agreements under the Illinois

Environmental Protection Act are found in Section 57(c)(3) of the Act:

In approving any plan submitted pursuant to subsection (a) or (b) of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title. The Agency shall also determine, pursuant to the Project Labor Agreements Act, whether the corrective action shall include a project labor agreement if payment from the Underground Storage Tank Fund is to be requested.

(415 ILCS 5/57.7(c)(3) (emphasis added))

6. Pursuant to the express provisions of Section 57.7(c)(3) of the Act, the Agency is not authorized to require a project labor agreement for site investigation activities.

7. Furthermore, the Board has not promulgated a procedure pursuant to Section 57.14A of the Act governing the administration of project labor agreements, nor do the existing rules provide standards for the Agency to exercise any discretionary power as required by the Administrative Procedure Act. (5 ILCS 100/5-20)

8. Furthermore, the Agency has not made “a statement of specific reasons” that it determined a project labor agreement is necessary (415 ILCS 5/57.7(c)(4)), and “advances the State’s interests of costs, efficiency, quality, safety, timeliness, skilled labor force, labor stability, or the State’s policy to advance minority-owned and women-owned businesses and minority and

female employment.” (30 ILCS 571/10 (Project Labor Agreements Act)) Nor has the Agency complied with the requirement of a “written, publicly disclosed finding . . . setting forth the justification for use of the project labor agreement.” (30 ILCS 571/30)

9. The Agency’s determination was made on September 26, 2014, which is less than 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, ALLEN McAFEE, 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 approve the plan and budget absent any requirement to use a project labor agreement, (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.

ALLEN McAFEE,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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Further, the Illinois EPA has determined that the use of a project labor agreement (PLA) is required, as set forth in Attachment A. A *Standard Project Labor Agreement for UST Fund Corrective Action Work* (model PLA) is available on the Illinois EPA's Leaking UST Program Web site. The model PLA has been reviewed and approved by the AFL-CIO Statewide PLA Committee, which is the central committee authorized by all respective crafts to negotiate and sign PLAs on behalf of the crafts (PLA Committee). You must submit a signed copy of the model PLA to the PLA Committee for the Committee's execution at the following address:

Michael T. Carrigan, President
Illinois AFL-CIO
534 South Second Street, Suite 200
Springfield, IL 62701-1764

Once the PLA is fully executed, a copy will be returned to the environmental consultant retained by the UST owner or operator so the environmental consultant will know when work conducted under the PLA may begin. Please note that, as more fully set forth in Attachment A, when submitting an application for payment from the UST Fund, the UST owner or operator will be required to certify that work for which a PLA is required was performed under a PLA. The environmental consultant should provide a copy of the fully executed PLA to the UST owner or operator so the UST owner or operator will be able to make the certification.

The actual costs for Stage 2 were not submitted to the Illinois EPA. Please be advised that budget forms reporting the actual costs must be submitted to the Illinois EPA for review and approval, rejection, or modification prior to receiving payment from the Fund for any related costs (Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)).

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

In the event that the use of a PLA will impact the project costs set forth in the approved or modified budget, a revised budget may be submitted for Illinois EPA review and decision. As set forth at 35 Ill. Adm. Code 734.800(a)(2), if the revised costs exceed the maximum payment amounts at 35 Ill. Adm. Code 734.Subpart H (Subpart H amounts), bidding is required in order for payment from the UST Fund to exceed the Subpart H amounts. Any bidding must be done in accordance with 35 Ill. Adm. Code 734.855, and the requirement for a PLA must be part of the invitation for bid.

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Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least three (3) working days prior to the scheduled field activities.

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires submittal of a Site Investigation Completion Report within 30 days after completing the site investigation to:

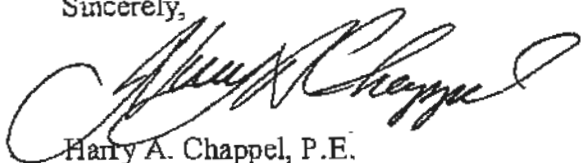
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

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 Shirlene south at 217/558-0347.

Sincerely,



Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:SLS\

Attachment: Attachment A

c: EMI
BOL File

Appeal Rights

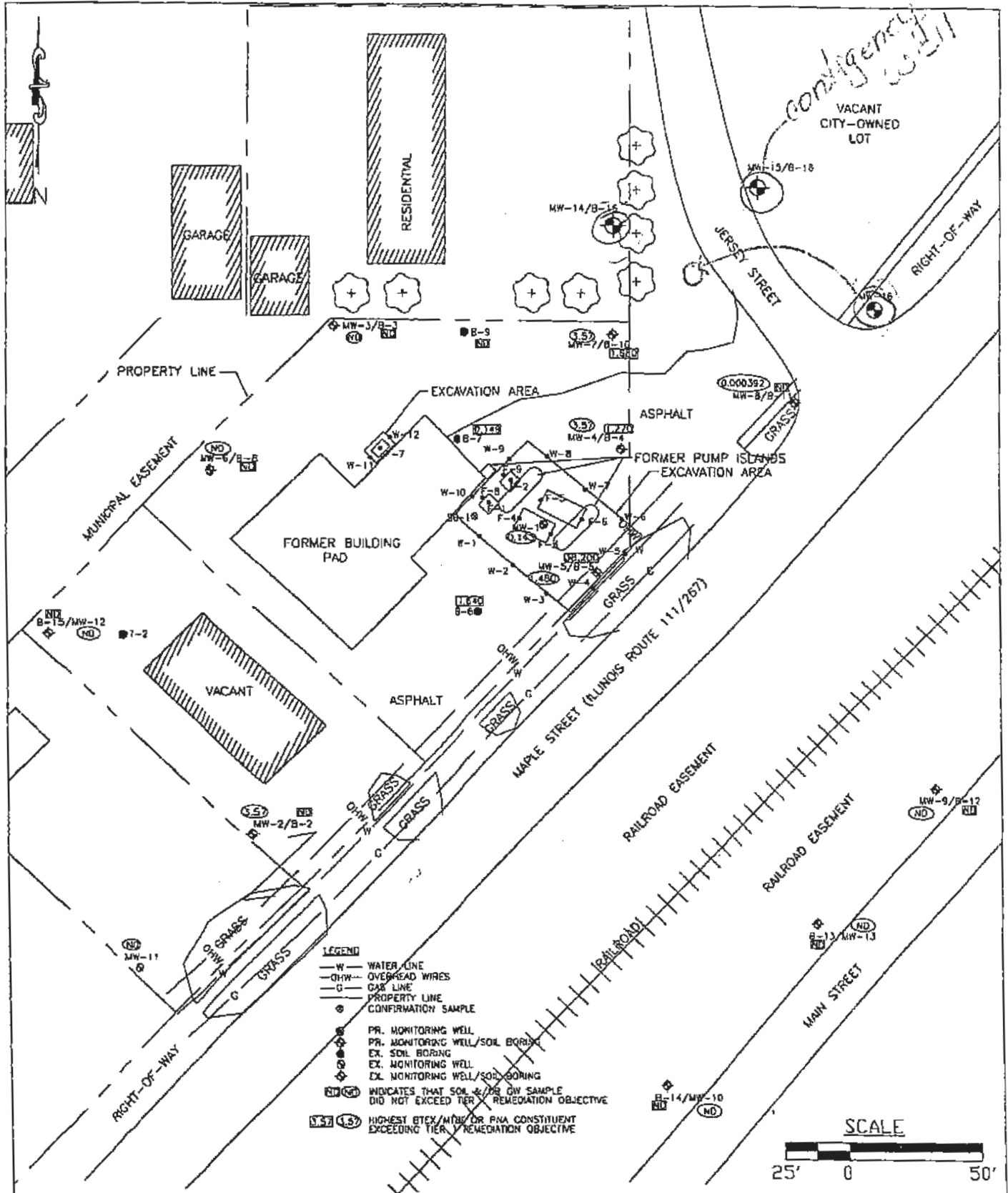
An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be 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:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois 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



contingency
 VACANT CITY-OWNED LOT

ENVIRONMENTAL MANAGEMENT, INC.
 Civil/Environmental Engineers

Corporate Office:
 1154 N. Bradford Road - Springfield, IL 62711
 217/726-9468 • 217/726-9472 (Fax)

St. Louis Office:
 12237 Rainbow Drive • St. Louis, MO 63043
 314/469-6973 • 314/469-6973 (Fax)

APPROVED BY: MRK DESIGNED BY: CAR DRAWN BY: MJD

**PROPOSED AMENDED
 STAGE 3 MAP**

PLANS PREPARED FOR
 ALLEN MCAFFEE
 BRIGHTON, ILLINOIS

REVISIONS

FIGURE 3

DATE: MAY 2014

JOB NO.: 12-153

FILE NAME: PRPP STAGE 3 PLAN.DWG

Attachment A

Re: LPC #1174150003 -- Jersey County
Brighton/ Allen McAfee
504 South Maple
Leaking UST Incident No. 20121322
Leaking UST Technical File

SECTION 1

Actual costs were not submitted. Said costs must be submitted to the Illinois EPA for review and approval, rejection, or modification prior to receiving payment from the Fund (Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)). The actual costs should be submitted on budget forms. Only the pages that apply should be completed and submitted.

STAGE 3 Proposed Budget

Costs must be incurred in accordance with the approved plan and must be determined in accordance with 35 Ill. Adm. Code 734.Subpart H, Appendix D, and Appendix E.

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

HAC:SLS\