

ILLINOIS POLLUTION CONTROL BOARD

WEBB AND SONS, INC.,

Petitioner,

vs.

PCB 07-24  
(UST Appeal)

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY,

Respondent.

Proceedings held on December 11th,  
2006, at 10 p.m. at the Illinois Pollution  
Control Board Hearing Room, 1021 North Grand  
Avenue East, North Entrance, Springfield,  
Illinois, before Carol Webb, Chief Hearing  
Officer.

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INTERROGATION INDEX

QUESTIONS BY MR. TOCK	7, 39, 62
QUESTIONS BY MR. RICHARDSON	32, 60

EXHIBITS

Exhibit 1	10
Exhibit 2	23
Exhibit 3	27
Exhibit 4	40
Exhibit 5	54
Exhibit 6	66
Exhibit 7	67
Exhibit 8	67

(All exhibits were retained by the hearing officer.)

1 HEARING OFFICER WEBB: Good morning.  
2 My name is Carol Webb, and I'm a hearing officer  
3 with the Pollution Control Board. This is PCB  
4 07-24, Webb and Sons versus IEPA. Webb and Sons  
5 not related to me incidentally. It is December  
6 11, 2006, and we are beginning at 11 a.m..

7 I'll note for record there are no  
8 members of the public present. Members of the  
9 public are allowed to provide public comment if  
10 they so choose.

11 At issue in this case is the rejection  
12 of petitioner's proposed budget regarding an  
13 underground storage tank at 1201 DeWitt Avenue in  
14 Mattoon, Coles County. The decision deadline is  
15 February 15, 2007.

16 You should know that it is the  
17 Pollution Control Board and not me that will make  
18 the final decision in this case. My purpose is  
19 to conduct the hearing in a neutral and orderly  
20 manner so that we have a clear record of the  
21 proceedings. I will also assess the credibility  
22 of any witnesses on the record at the end of the  
23 hearing.

24 This hearing was noticed pursuant to

1 the Act and the Board's rules and will be  
2 conducted pursuant to Sections 101.600 through  
3 101.632 of the Board's procedural rules.

4 At this time I'd like to ask the  
5 parties to make their appearances on the record.

6 MR. TOCK: My name is Jeff Tock. I'm  
7 here on behalf of petitioner, Webb and Sons.

8 HEARING OFFICER WEBB: Thank you.

9 MR. RICHARDSON: Greg Richardson on  
10 behalf the Illinois EPA.

11 HEARING OFFICER WEBB: Thank you very  
12 much. Are there any preliminary matters to  
13 discuss on the record?

14 MR. TOCK: That on the record I have  
15 filed the motion to incorporate documents by  
16 reference and seek approval and authorization,  
17 permission from the hearing officer to file those  
18 documents in this matter.

19 HEARING OFFICER WEBB: Well, your  
20 motion is accepted. Are you moving to admit  
21 these documents right now?

22 MR. TOCK: Well, I'm -- not to admit  
23 them into evidence at this time --

24 HEARING OFFICER WEBB: Okay.

1                   MR. TOCK:  -- but under the 35 ILL  
2                   Adm. Code 101.306(a), I believe I need to have  
3                   your authorization to use these documents.

4                   HEARING OFFICER WEBB:  Okay.  Yes,  
5                   yes.  I will accept the motion to incorporate the  
6                   documents by reference.

7                   MR. TOCK:  Thank you.

8                   HEARING OFFICER WEBB:  Anything else  
9                   to discuss before we begin?

10                  MR. TOCK:  No.

11                  HEARING OFFICER WEBB:  Okay.  Mr.  
12                  Tock, would you like to make an opening  
13                  statement?

14                  MR. TOCK:  Yes.  If it would, please  
15                  you, the hearing officer, instead of please the  
16                  court, this is an appeal from a denial of the  
17                  Corrective Action Plan budget submitted by Webb  
18                  and Sons, Inc., but it only pertains to the  
19                  personnel costs that are in that budget which  
20                  were totally rejected.

21                  The comments that we received back by  
22                  petitioner from the Environmental Protection  
23                  Agency requested that the hours of the various  
24                  personnel and the personnel costs be broken down

1 on an hourly basis to submit a much more detailed  
2 as to what is going to be performed by each of  
3 those personnel so that the Agency could perform  
4 a further review.

5 It is the position of the petitioner  
6 that it was unreasonable for the Agency to have  
7 denied those personnel costs in that the costs  
8 were provided in sufficient detail that they  
9 should have been approved. And that is the  
10 reason for this appeal is for the determination  
11 by the Pollution Control Board that it was  
12 improper to -- for the Agency to have denied  
13 those personnel costs and to seek approval of  
14 those costs.

15 HEARING OFFICER WEBB: Thank you. Mr.  
16 Richardson, would you like to make an opening  
17 statement?

18 MR. RICHARDSON: No, I have no opening  
19 remarks.

20 HEARING OFFICER WEBB: Okay. Thank  
21 you. Mr. Tock, you may present your case.

22 MR. TOCK: I would call as my first  
23 witness Mr. Kevin Saylor.

24 HEARING OFFICER WEBB: Mr. Saylor,

1 will you have a seat up here and the court  
2 reporter will swear you in.  
3 (The witness was sworn in by the court reporter.)

4 DIRECT EXAMINATION

5 BY MR. TOCK:

6 Q. Will you state your name, please?

7 A. Kevin Saylor.

8 Q. By whom are you employed?

9 A. HDC Engineering.

10 Q. What is your position with HDC?

11 A. I am the environmental division  
12 manager.

13 Q. What is your educational background  
14 and training?

15 A. I have a bachelor's in civil  
16 engineering from the University of Illinois. I  
17 graduated in December of '93. Since then, I have  
18 worked in the environmental field in a variety of  
19 different positions including both private  
20 consulting, leaking underground storage tank work  
21 in other states and in Illinois. I also worked  
22 as a reviewer for the Public Water Supply section  
23 for the state of North Carolina.

24 Q. You are an engineer by training; is

1           that correct?

2                   A.    Engineer by training, and been  
3           licensed since 2003.

4                   Q.    Is that license by the state of the  
5           Illinois?

6                   A.    Yes.

7                   Q.    Is that normally referred to as a  
8           professional engineer or PE?

9                   A.    Yes.

10                  Q.    In your employment with HDC  
11           Engineering, have you prepared for submission to  
12           the Illinois EPA proposals and budgets for  
13           various leaking underground storage tank  
14           projects?

15                  A.    Yes.

16                  Q.    How many such projects have you been  
17           involved in?

18                  A.    Several -- several projects.  I put  
19           together a list just to get an idea, and I have  
20           over 50 plans and budgets that I've been involved  
21           with.

22                  Q.    Over what period of time?

23                  A.    Since 2001.

24                  Q.    So you're talking about over 50

1 separate budgets in support of those plans?

2 A. Uh-huh.

3 Q. What sort of plans were they? Site  
4 investigation or remediation, Corrective Action,  
5 what type of plans and budgets are we talking  
6 about?

7 A. They ranged from site classification  
8 to site investigation, when the regulations were  
9 changed, Corrective Action delineation and  
10 Corrective Action Plans.

11 Q. How -- And what was the total number  
12 that you have prepared and submitted to Illinois  
13 Environmental Protection Agency?

14 A. Over 50.

15 Q. Over 50? Of those plans, how many of  
16 them were rejected in total as to personnel  
17 costs, as in this case with Webb.

18 A. Just this one and a previous budget  
19 for Webb for site investigation and a previous  
20 budget for a site called Goodin, which is in  
21 Paxton.

22 Q. Is it your testimony then that for the  
23 other 51, that those three plans were rejected by  
24 the Agency, the other 51 plans were -- there was

1 no request made by the Agency for a breakdown in  
2 personnel hours?

3 A. No, there was not, not to the extent  
4 that we have seen with Webb. In several  
5 instances we did have personnel hours cut, but  
6 they were not rejected in total except for Goodin  
7 and Webb.

8 (The reporter marked Exhibit No. 1  
9 for purposes of identification.)

10 Q. (By Mr. Tock) Mr. Saylor, I'm going  
11 to show you what has been marked as Exhibit No. 1  
12 with today's date and ask if you can identify  
13 this document if you would, please?

14 A. Yes, this is the Form G, the personnel  
15 forms, that were submitted with the Corrective  
16 Action Plan budget.

17 Q. In this Webb application; is that  
18 correct?

19 A. Yes.

20 Q. Did you prepare this budget?

21 A. I did, and my division did.

22 Q. Are you familiar with the breakdown of  
23 the personnel in this Exhibit No. 1?

24 A. Yes.

1           Q.    Is this a form that is provided by the  
2           Agency, Environmental Protection Agency?

3           A.    Yes.

4           Q.    Starting with the first line, high  
5           priority investigation and preliminary costs, the  
6           first entry is for senior project manager; is  
7           that correct?

8           A.    Yes.

9           Q.    And the hourly rate is \$98 an hour; is  
10          that correct?

11          A.    Yes.

12          Q.    Is that rate within the range of the  
13          rates approved by the Illinois Environmental  
14          Protection Agency for the time period July 1,  
15          2006, to June 30, 2007?

16          A.    Yes.

17          Q.    Is there a standard rate sheet at this  
18          time that has been adopted by the Agency for all  
19          the different types of personnel that are listed  
20          on Exhibit 1, Sheets G-1, 2 and 3?

21          A.    Yes.

22          Q.    Are the hourly rates for each one of  
23          the personnel listed in this exhibit within the  
24          range of the authorized rates approved by the

1 Agency?

2 A. Yes.

3 Q. The information that's contained on  
4 Exhibit 1, this is for the personnel involved in  
5 the preparation and implementation of the  
6 Corrective Action Plan; is that correct?

7 A. Yes.

8 Q. Are these tasks similar in all  
9 Corrective Action Plan projects that differ only  
10 by perhaps the size or the extent, the volume of  
11 one project compared to another?

12 A. Yes, they are similar. It does depend  
13 on the extent of contamination, how many  
14 agreements you may need, you know, how much soil  
15 you're digging out.

16 Q. Is this what is typically called a  
17 dig-and-haul operation?

18 A. Yes.

19 Q. And what is meant by a dig and haul?

20 A. Dig and haul means that primarily you  
21 are removing the contamination by excavation and  
22 hauling it off site to dispose of at a landfill.

23 Q. If you could just go through and look  
24 at these sort of group summaries. You have high

1 priority investigation and preliminary costs,  
2 what is included within that aspect of the  
3 personnel costs on this exhibit?

4 A. The way that we have it broken out on  
5 this exhibit is that everything under that  
6 subheading was time used to get to the point  
7 where the Corrective Action Plan is prepared and  
8 submitted.

9 Q. This is all preliminary work to the  
10 actual preparation of the Corrective Action Plan;  
11 is that correct?

12 A. It includes preparation of the  
13 Corrective Action Plan as well, and all work that  
14 went up towards that point.

15 Q. That Corrective Action Plan has now  
16 been approved by the Agency; is that correct?

17 A. Yes, it was approved with a slight  
18 modification.

19 Q. The second part on Page G-2 it says,  
20 CAP Implementation (dig and haul), what is --  
21 what are the personnel costs included within that  
22 category?

23 A. The personnel costs are broken out  
24 into this subheading to -- to take into account

1 the time that will be required to do the actual  
2 dig and haul, the consultant oversight of that,  
3 you know, supervising excavation of backfill,  
4 soil sampling, you know, the field work involved  
5 in the excavation.

6 Q. The next category is Additional Well  
7 Monitoring/Well Replacement/TACO sample  
8 collection, what type of work is performed by the  
9 personnel under that category?

10 A. This is another subdivision of the  
11 field work. This was -- some of these hours also  
12 got us to the point where we could do the Tiered  
13 Approach to Corrective Action, Corrective Action  
14 protected modeling, and also some of the wells  
15 will be -- are planned to be destroyed through  
16 excavation. So the costs in this section allow  
17 for field work to sample monitoring wells,  
18 replace monitoring wells, collect the required  
19 TACO boring.

20 Q. The last category is CACR Report, what  
21 does CACR stand for?

22 A. This is -- that is the Corrective  
23 Action Completion Report.

24 Q. And are all the personnel and the

1 hours under that subheading related to the  
2 preparation of that completion report?

3 A. Yes. The way that we presented this  
4 is that CACR Report, the Highway Authority  
5 Agreements reimbursements is that this is the  
6 follow-up time after the excavation is taken  
7 place after, you know, the replacement wells are  
8 installed and resurveyed and resampled. This is  
9 the time that we would be required to finish up  
10 any agreements, Highway Authority Agreements,  
11 environmental end use controls and to complete  
12 the CACR and the reimbursement.

13 Q. Is there anything unique or unusual  
14 about this Corrective Action Plan compared to  
15 other Corrective Action Plans that you have done?

16 A. As far as the field work goes, no.

17 Q. How many other Corrective Action Plans  
18 have you done?

19 A. Off the top of my head, around 10.  
20 Under 10.

21 Q. Based upon your experience in  
22 preparing those other 10 Corrective Action Plans,  
23 were there -- modify that -- were there also  
24 budgets that you prepared and submitted as part

1 of those Corrective Action Plans?

2 A. Yes.

3 Q. Were all of those approved?

4 A. No.

5 Q. What Corrective Action Plans were not  
6 approved?

7 A. There were a couple of instances where  
8 after we did the excavation, more work was  
9 required by the EPA. And we had submitted a  
10 technical plan and a budget to do that, however,  
11 the entire budget was rejected at that point.

12 Q. So as far as Corrective Action Plans  
13 that were actually approved, how many did you  
14 prepare?

15 A. Around five, I'm thinking.

16 Q. Were the -- the -- I'll call them unit  
17 costs, the costs of doing the dig and haul, the  
18 high priority investigation, preliminary costs,  
19 the various categories that we've just gone  
20 through on Exhibit 1, were they substantially  
21 similar for each one of those Corrective Action  
22 Plans?

23 A. The other plans were -- were very  
24 similar, yes.

1 Q. They're all dig-and-haul projects; is  
2 that correct?

3 A. Uh-huh.

4 Q. And those were the previous plans that  
5 were -- the budget was approved by EPA without  
6 modification or with slight modification?

7 A. With modification, yes, but there were  
8 personnel dollars approved.

9 Q. And have all of those plans now been  
10 implemented and the Corrective Action performed?

11 A. Not all, but some have.

12 Q. Are they in progress though and have  
13 not been completed?

14 A. They're being scheduled, yes.

15 Q. Do you have an opinion as to whether  
16 or not the -- the breakdown in the budget for  
17 personnel under different job categories and the  
18 rates and the hours were the usual and customary  
19 rates and hours for the performance of the work  
20 necessary for the Corrective Action Plans based  
21 upon the previous Corrective Action Plans that  
22 you submitted and approved by the Agency?

23 MR. RICHARDSON: I'm going to object  
24 to that question for an opinion. I don't think

1           there's adequate foundation and the relevance of  
2           other projects, other plans really has no bearing  
3           on this matter.

4                         HEARING OFFICER WEBB: Overruled. You  
5           can answer it. Do you need the question  
6           repeated?

7                         A. If I can paraphrase and make sure I  
8           understand what is being asked, is this presented  
9           similarly to other plans that we presented?

10                        Q. (By Mr. Tock) Well, not just the  
11           presentation, the form of it. But the content in  
12           terms of the scope of the work, the hours of the  
13           work and the rates being charged being within the  
14           allowed limits of EPA?

15                        A. Yes, it is similar.

16                        Q. The high priority investigation,  
17           preliminary costs for senior project manager,  
18           professional engineer and engineer III, there is  
19           a description of the work to be performed by each  
20           one of those; is that correct?

21                        A. Yes.

22                        Q. Included in the -- in the work is two  
23           LUST project appeals, can you explain what that  
24           description is about?

1           A.    Yes.  There have been two appeals  
2           related to the Webb project.  One involves  
3           reimbursement for the initial excavation.  The  
4           second involved a budget for Stage II of site  
5           investigation.  And the Webb project started with  
6           tank removal.  It was regulated under 731, so we  
7           proceeded with tank removal and soil excavation.  
8           And when we got to the point where you realized  
9           that the soil excavation exceeded what we had  
10          urgently anticipated, we contacted the EPA at  
11          that point to discuss the situation with them.

12                       Tom Henninger talked to us at that  
13          point because there is not a project or a unit  
14          assigned to the project yet.  He suggested that,  
15          you know, we stop excavation, we opt into the  
16          current regulations so that we could operate  
17          under approved budget, and go through the site  
18          investigation and delineation.  And so we did.  
19          And then we submitted for reimbursement for those  
20          initial costs, and \$77,000 of that was not  
21          reimbursed.  So our first appeal involved  
22          recouping those costs.  And that was -- we were  
23          successful in that.  However, there was no  
24          opportunity for us to regain any of HDC's

1 consulting personnel time for that appeal.

2 Q. When you say HDC's consulting, what  
3 are you referring to? Is that engineering time?  
4 Is it staff time within HDC? Is it attorney's  
5 fees? What is that?

6 A. It is staff time within HDC. It is  
7 not attorney's fees.

8 Q. So this was all time that was spent by  
9 HDC Engineering to perform the work necessary to  
10 pursue the appeal of the denial of the \$77,000;  
11 is that correct?

12 A. Yes, it involved, you know, document  
13 preparation, phone calls, letters, meetings here  
14 with various members of the EPA, the LUST action.

15 Q. And of that \$77,000 that was in  
16 dispute, how much of that was eventually approved  
17 by the Agency?

18 A. I believe we got it all back. I  
19 believe all of it was approved.

20 Q. So all of the time that you spent  
21 resulted in you having the budget approved as you  
22 originally submitted it; is that correct?

23 A. The reimbursement, yes.

24 Q. Yes, the reimbursement, excuse me.

1           What was the second Webb appeal about?

2                   A.    The second Webb appeal involved site  
3                   investigations.  We initially went into site  
4                   investigation and submitted our first plan and  
5                   budget.  That plan and budget was rejected in its  
6                   totality.  The EPA stated that we were proposing  
7                   to do too many borings.  The amount of borings we  
8                   proposed was -- was -- were too many.  And so we  
9                   submitted the second Stage I plan and budget,  
10                  basically narrowed down the amount of borings and  
11                  investigation to what we had been told would be  
12                  accepted by the project manager.  That was  
13                  approved, with some personnel cuts.  Then we got  
14                  to Stage II.  We completed Stage I and still  
15                  required additional delineation, so we submitted  
16                  a plan which incidentally included a lot of what  
17                  we initially proposed in the first one, and the  
18                  plan was approved this time, and most of the  
19                  budget, except zero personnel dollars.

20                           And at that point we were required to  
21                           submit an exhaustive, you know, hourly by task,  
22                           by person breakout for their review.  We provided  
23                           that breakout, and the project manager went  
24                           through and cut, I want to say, roughly half of

1 the personnel costs, even after the hourly  
2 breakout was provided. So the second appeal was  
3 -- was submitted to regain those personnel hours  
4 that were cut from the Stage II site  
5 investigation budget.

6 Q. How much of those cuts, personnel  
7 costs were recovered?

8 A. Probably around 90%. I don't know the  
9 number off the top of my head. I know that there  
10 was some that was not approved. Maybe around a  
11 thousand dollars.

12 Q. So when you have included in the  
13 personnel costs on Exhibit 1, the two appeals,  
14 which you have just testified to in explanation  
15 of the work that you had to perform, that was  
16 above and beyond the work that you would have  
17 ordinarily done if you had gotten approval of  
18 your budget in the first instance; is that  
19 correct?

20 A. Yes.

21 Q. Then you were essentially approved in  
22 those amounts that you had originally requested,  
23 and you performed the work and were reimbursed;  
24 is that correct?

1 A. Uh-huh.

2 Q. Now you had testified, I believe, that  
3 the second Webb appeal was a result of you had  
4 made application for a Stage II site  
5 investigation; is that correct?

6 A. Yes.

7 Q. And the personnel costs on that was  
8 broken down similar to what you have in Exhibit  
9 1; is that correct?

10 A. Yes.

11 Q. If I may, I don't know how you want to  
12 proceed. One of the documents that has been  
13 included in the motion was that petition from the  
14 second Webb appeal. If I could have the witness  
15 review that at this time.

16 HEARING OFFICER WEBB: 05-183?

17 MR. TOCK: Yes.

18 HEARING OFFICER WEBB: Okay.

19 MR. TOCK: If we could mark that as  
20 Exhibit 2.

21 (The reporter marked Exhibit No. 2  
22 for purposes of identification.)

23 Q. (By Mr. Tock) Mr. Saylor, do you have  
24 in front of you Exhibit 2?

1 A. Yes.

2 Q. If you would look at Pages G-1 and  
3 G-2, the personnel costs for this Stage II site  
4 investigation; is that correct?

5 A. Yes.

6 Q. And are those forms that appear there  
7 the same as the forms that appear in Exhibit 1 of  
8 this case?

9 A. Yes.

10 Q. And the breakdown is similar in  
11 fashion in terms of the title of the personnel,  
12 the job description, the number of hours, the  
13 hourly rate and the total hours?

14 A. Yes.

15 Q. This is the personnel, these two  
16 costs -- excuse me, these two, Pages G-1 and G-2,  
17 these were rejected by the Agency; is that right?

18 A. Yes, rejected. And they required  
19 further breakout than what was shown.

20 Q. Attached to that petition in Exhibit 2  
21 there is a letter from Mr. Harry Chappel attached  
22 at Exhibit C, do you find that?

23 A. Yes, I've got it.

24 MR. RICHARDSON: Excuse me. What

1 document are you referring to?

2 MR. TOCK: This is the 05-183  
3 petition.

4 MR. RICHARDSON: But this letter, what  
5 was the date, please?

6 MR. TOCK: The date of the letter is  
7 February 8, 2005, attached as Exhibit C to that  
8 petition.

9 MR. RICHARDSON: Thank you.

10 Q. (By Mr. Tock) This is an Attachment A  
11 to Mr. Chappel's letter of February 8, 2005. Can  
12 you turn to that page, Section 1, paragraph 2?

13 A. Yes.

14 Q. And can you read that, please?

15 A. \$70,610 for costs that lack supporting  
16 documentation, 35 ILL Adm. Code 732.606(gg).

17 Continue?

18 Q. No. If could you drop down to the  
19 next paragraph --

20 A. Okay.

21 Q. -- it starts the Agency?

22 A. The Agency is requesting that proposed  
23 personnel costs be further broken down to provide  
24 sufficient justification for the proposed

1 personnel costs. The Agency is requesting  
2 information regarding the task performed by each  
3 person and the amount of time for each task  
4 performed. The Agency is requesting  
5 justification for the estimated amount of time to  
6 complete each task.

7 Q. Did you provide that information to  
8 the Agency?

9 A. Yes, we did.

10 Q. Was that done by your letter dated,  
11 excuse me, February 25, that's Exhibit E to the  
12 petition, directed to Mr. Malcom?

13 A. Yes.

14 Q. And attached to that letter is then  
15 the hourly breakdown and response to Mr.  
16 Chappel's letter; is that correct?

17 A. Yes.

18 Q. And then even that breakdown was then  
19 reviewed by the Agency and only a portion of it  
20 was approved, correct?

21 A. Correct.

22 Q. And then did you subsequently appeal  
23 the rejection by the Agency of the hourly  
24 breakdown?

1           A.    Yes.

2           Q.    And you were able to recover most of  
3 what had been cut; is that right?

4           A.    That is correct.  I believe the total  
5 was \$7,906 was denied, and on appeal the  
6 settlement was for \$6,936.

7           Q.    And on your prior testimony, you had  
8 said that out of the 54 budgets that you had  
9 prepared and submitted, the Webb -- the first  
10 Webb appeal was one of only three where the  
11 personnel costs had been requested to be broken  
12 down on an hourly basis, as you did in your  
13 letter of, what was it, February -- February 15;  
14 correct?

15          A.    Yes, it was the site investigation  
16 Stage II, which is what that appeal was  
17 regarding.  This Corrective Action Plan budget  
18 and a project called Goodin, it's Incident No.  
19 930181, that is also in Harry Chappel's unit.

20          Q.    Okay.  Now in this matter that we're  
21 here on today --

22                   (The reporter marked Exhibit No. 3  
23 for purposes of identification.)

24          Q.    (By Mr. Tock)  -- I'm showing you what

1 has been marked as Exhibit 3.

2 HEARING OFFICER WEBB: Are we back to  
3 the record now, or is that in the Administrative  
4 Record, Exhibit 3?

5 MR. TOCK: Exhibit 3 on the record.

6 HEARING OFFICER WEBB: Okay. Is in  
7 the Administrative Record or in your motion to --

8 MR. TOCK: Excuse me. It -- this was  
9 part of the Administrative Record that was  
10 received from the Agency.

11 HEARING OFFICER WEBB: Okay.

12 MR. TOCK: Page 001 of the  
13 Administrative Record.

14 HEARING OFFICER WEBB: Okay. Thank  
15 you.

16 Q. (By Mr. Tock) Can you identify this  
17 Exhibit 3, please?

18 A. Yes. It is the approval letter for  
19 our Corrective Action Plan and budget for the  
20 Corrective Action Plan involving this appeal.

21 Q. And in accordance with this letter,  
22 was the Corrective Action Plan approved?

23 A. Yes, it was, with modification.

24 Q. Were those modifications acceptable to

1           you?

2                   A.    Yes.

3                   Q.    What about the budget?  The budget was  
4           not approved, was it?

5                   A.    Portions of the budget were approved.  
6           Mainly most of the investigation costs, it looks  
7           like all of the analysis costs, the equipment  
8           costs were approved, and field purchases and  
9           other costs had slight modification approximately  
10          \$600.  Zero personnel costs were approved.

11                  Q.    On page 5 of this exhibit under  
12          Section 2, paragraph 3, would you read that  
13          paragraph, please?

14                  A.    \$103,360 for personnel costs deemed  
15          unreasonable.  Such costs are ineligible for  
16          payment from the Fund pursuant to 35 ILL Adm.  
17          Code 732.606(hh).  The Agency is requesting an  
18          hourly breakdown of each task performed by each  
19          job title in order to make a more thorough review  
20          of the proposed personnel costs.

21                  Q.    Did you interpret this request for an  
22          hourly breakdown to request the same information  
23          as in the first Webb appeal?

24                  A.    I'm sorry.  Could you repeat the

1 question?

2 Q. Did you interpret this request in this  
3 paragraph 3 for an hourly breakdown to be a  
4 request to you to submit the same sort of hourly  
5 breakdown that you did in the first Webb appeal?

6 A. Yes.

7 Q. Did you have any concern that even  
8 after you had provided that hourly breakdown,  
9 that it would still be rejected as in the first  
10 Webb appeal?

11 A. Yes.

12 Q. Is that the reason why you recommended  
13 taking the appeal at this time of the rejection  
14 as shown in Exhibit 3?

15 A. Yes, that and because, you know, for  
16 projects that don't appear to be in Chappel's  
17 unit, we're not asked to do that additional  
18 breakout.

19 Q. What do you mean by Chappel unit?

20 A. Well, meaning, that the two -- the two  
21 projects that we've been requested to provide an  
22 additional personnel breakout, were both under  
23 Harry Chappel's unit.

24 Q. What is -- what do you mean by a unit?

1           A.    Well, from what I understand, it's a  
2 managerial hierarchy of the EPA LUST section,  
3 that there --

4           Q.    How many units are there in the EPA?

5           A.    Five or six, I believe.

6           Q.    And do you have any request from any  
7 unit other than Mr. Chappel's unit to provide  
8 hourly breakdowns?

9           MR. RICHARDSON:  I'm going to object.  
10 I don't know what the relevance is to this matter  
11 as the other units and the work they do.

12           HEARING OFFICER WEBB:  Overruled.

13           Q.    (By Mr. Tock)  You can go ahead an  
14 answer.

15           HEARING OFFICER WEBB:  You can answer.

16           A.    Can I have the question again, sorry?

17           Q.    (By Mr. Tock)  You said there are four  
18 or five units within the LUST section of the EPA;  
19 correct?

20           A.    Yes.

21           Q.    And do all these sections to your  
22 knowledge review leaking underground storage tank  
23 sites for purposes of site -- not site -- the  
24 extent of the contamination of the site, the site

1 delineation, the Corrective Action that needs to  
2 be done of those sites?

3 A. Yes. It's my understanding that, you  
4 know, the units -- all of the units review  
5 leaking underground storage tank technical plans  
6 and budgets.

7 Q. Of the 54 plans and budgets that you  
8 have submitted, how many of those have been to  
9 units other than Mr. Chappel's?

10 A. All but 14.

11 Q. And so 14 from 50, that's roughly  
12 around 40?

13 A. Uh-huh.

14 Q. And of those 40, did any of those  
15 units request a breakdown of your personnel cost  
16 on an hourly basis?

17 A. No.

18 MR. TOCK: I don't have any further  
19 questions. Thank you.

20 HEARING OFFICER WEBB: Okay. Mr.  
21 Richardson?

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q. Mr. Saylor, in looking, I think it's

1           Petitioner's Exhibit No. 1, it's also pages 54  
2           through 56 of the Agency record, let's look at  
3           senior project manager. When I look at the task  
4           to be performed for the above hours, am I correct  
5           that there is no hourly breakdown of how many  
6           hours are allocated to each task being performed?

7           A.     There is an hourly breakdown for each  
8           -- each personnel title.

9           Q.     Yes. But if I want to know how many  
10          hours the senior project manager spent on  
11          Corrective Action Planning, I could not divine  
12          that answer from page 54, could I?

13          A.     No.

14          Q.     Now we talked about a couple of  
15          previous appeals. The first Webb and Sons appeal  
16          which, I think, you mentioned was for  
17          approximately \$77,000, was that -- was a petition  
18          filed with the Pollution Control Board in that  
19          appeal?

20          A.     Yes.

21          Q.     Was that matter settled before a Board  
22          decision was made?

23          A.     I believe so.

24          Q.     So it was a settlement with the Agency

1           versus going to a hearing and obtaining a Board  
2           order in the matter?

3           A.    I believe so.

4           Q.    And now I think you have Petitioner's  
5           Exhibit No. 2 in front of you still, is that what  
6           we've been calling the second Webb and Sons  
7           appeal?

8           A.    Yes.

9           Q.    And did that go to a Board hearing and  
10          Board decision, or is that settled prior to a  
11          hearing and a Board order?

12          A.    That was settled prior to hearing.

13          Q.    Okay.  Now in the other matters you  
14          have dealt with, the various submissions you've  
15          made to the Agency, have you ever included an  
16          item, such as you do for the senior project  
17          manager here, to LUST project appeals?

18          A.    No, we have not had to.

19          Q.    But I'm asking you, have you ever done  
20          that?

21          A.    No.

22          Q.    And your answer would be no?

23          A.    No.

24          Q.    Now in talking about the \$77,000

1 appeal, I think that's the first Webb and Sons  
2 appeal, you said there was no opportunity to  
3 recou those costs -- or recoup those costs?

4 A. There was not an opportunity to recoup  
5 our personnel costs that went in.

6 Q. Now, were you involved in the  
7 settlement negotiations concerning that matter?

8 A. That was handled by our attorney at  
9 the time.

10 Q. Okay. Did you ever bring that to  
11 anyone's attention that you -- your consulting  
12 firm would like to be recouped for the costs that  
13 went into that first appeal?

14 A. In this budget we did.

15 Q. This budget, being the appeal we're  
16 here about today?

17 A. Uh-huh.

18 Q. But you're saying when you were  
19 discussing the settlement of the first Webb and  
20 Sons appeal, you did not raise that issue with  
21 anyone?

22 A. No.

23 Q. Now, in the second Webb and Sons  
24 appeal, did you seek the cost of the -- the cost

1 of the time allotted to the first project appeal  
2 in the second appeal?

3 A. No.

4 Q. Why didn't you seek that then instead  
5 of waiting until today, which, I guess, we can  
6 call the third project appeal?

7 A. Because the appeal for site  
8 investigation was just for site investigation.  
9 The site investigation costs that were denied,  
10 that was the purpose of that appeal.

11 Q. And that was which appeal, the second  
12 appeal?

13 A. Yes.

14 Q. But there is personnel time in that  
15 appeal, is there not?

16 A. Yes.

17 Q. And we're talking about personnel time  
18 here?

19 A. Yes.

20 Q. So what -- what prevented you from  
21 including the first appeal cost in the second  
22 one?

23 A. Based on our experience with site  
24 investigation budgets and delineation budgets, if

1           you put in personnel costs for anything that is  
2           not related to doing, for example, five borings  
3           and four wells in a status report, it's rejected.

4           Q.    But you don't -- we don't know what  
5           would have happened here because you never  
6           submitted a second appeal?

7           A.    Well, I imagine it would --

8           Q.    Well, I mean, do you know -- you don't  
9           know what would have happened --

10          A.    No.

11          Q.    -- you didn't include it? But you're  
12          aware of the cost from the first appeal when you  
13          made the second submission for the second appeal?

14          A.    Uh-huh.

15          Q.    And have you ever included project  
16          appeal costs in any of your other submission that  
17          you've ever dealt with?

18          A.    No.

19          Q.    This is your first one?

20          A.    (Nods head.)

21                MR. RICHARDSON: I have no further  
22                questions.

23                HEARING OFFICER WEBB: Okay. Any  
24                redirect?

1 MR. TOCK: Yes, if I can just find the  
2 document I'm looking for. If I can take a few  
3 minutes to see what I'm looking for.

4 HEARING OFFICER WEBB: Sure.

5 MR. TOCK: I'm having a little  
6 difficulty locating the exhibit I'm looking for.  
7 If we could take a break so I can find it.

8 HEARING OFFICER WEBB: Yeah, we can  
9 take five.

10 (A short break was taken.)

11 MR. TOCK: No further questions.

12 HEARING OFFICER WEBB: No further  
13 questions. Okay. So nobody has any further  
14 questions for this witness?

15 MR. RICHARDSON: No.

16 HEARING OFFICER WEBB: Okay. Thank  
17 you very much, Mr. Saylor.

18 THE WITNESS: Thank you.

19 HEARING OFFICER WEBB: Mr. Tock, you  
20 may call your next witness.

21 MR. TOCK: I call Mr. Malcom, please.

22 HEARING OFFICER WEBB: Would the court  
23 reporter please swear the witness.

24 (The witness was sworn in by the court reporter.)

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DIRECT EXAMINATION

BY MR. TOCK:

Q. Could you state your name, please?

A. James Malcom.

Q. You are employed by the Illinois EPA;  
is that correct?

A. Yes, it is.

Q. How long have you been employed by the  
Agency?

A. Four eight years.

Q. What is your current position with the  
EPA?

A. I'm a project manager in the LUST  
section.

Q. Are you a senior project manager or  
any particular designation of the project  
manager?

A. I'm a Stage III.

Q. Who is the unit manager?

A. It's Harry Chappel.

Q. How long have you been a project  
manager?

A. For eight --

Q. Eight years?

1 A. -- years, yes.

2 Q. Have all eight years been in Mr.  
3 Chappel's unit?

4 A. No, huh-uh.

5 Q. How long have you been with Mr.  
6 Chappel's unit?

7 A. For four years.

8 Q. What do you do as a project manager in  
9 a LUST unit?

10 A. You -- you review technical plans and  
11 budgets.

12 Q. You reviewed the plans and budgets for  
13 the Corrective Action Plan for Webb that we're  
14 here for today?

15 A. Sure.

16 Q. Didn't you?

17 A. Uh-huh.

18 MR. TOCK: Exhibit 4, please.

19 (The reporter marked Exhibit No. 4  
20 for purposes of identification.)

21 Q. (By Mr. Tock) Mr. Malcom, you have in  
22 front of you Exhibit No. 4, and I ask if you can  
23 identify this as your LUST technical review notes  
24 for this Webb submittal?

1 A. Correct, yes.

2 Q. So this was a review by you of the  
3 Corrective Action Plan and budget submitted by  
4 the petitioner, Webb and Sons; right?

5 A. Correct.

6 Q. The bottom of the first page you have  
7 some technical review; is that correct?

8 A. Yes, uh-huh.

9 Q. Then on the second page it says  
10 approve with modifications, plan and budget;  
11 correct?

12 A. Sure, uh-huh.

13 Q. When you did your review, you reviewed  
14 not only the technical plans but also the budget;  
15 is that correct?

16 A. Yes.

17 Q. And based upon your review of the  
18 budget, you felt that the budget, as submitted,  
19 should be approved; is that correct?

20 A. No, it's not.

21 Q. Where am I wrong in that statement?

22 A. That the overall hours were  
23 excessively high and it was a red flag to stop  
24 and get some more input on it from Mr. Chappel.

1 Q. Why does your LUST technical review  
2 notes, Exhibit 4, not say that?

3 A. It's a simple oversight.

4 Q. Then why does it say that you  
5 recommended approving with modifications, plan  
6 and budget?

7 A. It should have said plan only, but I  
8 failed to show that the budget was, in fact,  
9 denied.

10 Q. Some place in front of you there, Mr.  
11 Malcom, should be the Exhibit 3, the December 12,  
12 2006, letter from the Agency to Doris Webb, did  
13 you find that?

14 A. Yes.

15 Q. Page 5 of that document contains a  
16 Section 2?

17 A. Uh-huh.

18 Q. Did you prepare that Section 2?

19 A. Yes.

20 Q. When did you prepare that Section 2?

21 A. The same day as the entire letter  
22 itself.

23 Q. You prepared the letter dated  
24 September 12 for Mr. Chappel's signature; is that

1 right?

2 A. Uh-huh.

3 Q. What changed between your LUST  
4 technical review notes on August 30, which is  
5 Exhibit 4, and the preparation of the letter  
6 dated September 12th to cause you to provide all  
7 of this information under both Section 1 and  
8 Section 2 that does not appear in your LUST  
9 technical review notes, Exhibit 4?

10 A. Harry Chappel took the budget itself  
11 and reviewed it with the other supervisors and  
12 they came up with the final decision, and that  
13 must have taken 12 days here.

14 Q. You said he reviewed it with other  
15 supervisors?

16 A. Right. Which is Tom Henninger, Doug  
17 Clay, Cliff Wheeler.

18 Q. Is there any record of that meeting?

19 A. Harry might have something, but as far  
20 as me, no.

21 Q. Please look at Exhibit 1 in front of  
22 you, the personnel costs.

23 A. Okay.

24 Q. I would like to go through each one of

1           these personnel and start with under high  
2           priority investigation, senior project manager.  
3           Do you have an opinion as to what number of hours  
4           should have been allowed for this Corrective  
5           Action Plan for that position?

6           A.    Not offhand.  But compared to other  
7           sites it -- it was excessive.

8           Q.    You said compared to other sites, how  
9           do you do your review of a budget to determine  
10          whether or not it's an appropriate budgeted  
11          amount and not too much?

12          A.    The -- the rates are set and the  
13          hours, you get a feel for what's normal or what  
14          you see on, you know, I've done lots and you can  
15          get a feel for what's the norm.

16          Q.    What do you feel the norm should have  
17          been on this project?

18          A.    For the senior project manager and  
19          those job tasks for project review and oversight  
20          and supervision and development and  
21          subcontractors' quotes and planning for a dig and  
22          haul, probably 60.

23          Q.    60 hours?

24          A.    Right.  And that's the average.  And

1 I've never seen 453. I mean, that just seemed  
2 really excessive.

3 Q. Have you ever had an application where  
4 the petitioner was trying to recover for appeal  
5 costs on prior appeals in that same LUST case?

6 A. Actually said as a task, no.

7 Q. Next entry is for professional  
8 engineer, 84 hours at \$87 an hour, do you feel  
9 the 84 hours is an excessive amount?

10 A. Based on experience, sure.

11 Q. What do you feel would be an average  
12 number for that category?

13 A. For a CAP and budget and meetings, 20.

14 Q. Next category engineer III, 68 hours,  
15 do you feel that was excessive?

16 A. Sure, for that with the planning and  
17 the TACO equations, site assessment, probably 35.

18 Q. Those three personnel were the only  
19 ones in this Exhibit 1?

20 A. Uh-huh.

21 Q. That requested any sort of a payment  
22 for LUST appeal --

23 A. Sure.

24 Q. -- is that correct?

1 A. Uh-huh.

2 Q. So the next personnel category, senior  
3 scientist?

4 A. Sure.

5 Q. In that description of the work to be  
6 performed, there is no reference to an appeal is  
7 there?

8 A. Right.

9 Q. The number of hours requested is 150,  
10 is that what's in the normal range?

11 A. It's a little excessive, but not  
12 unusual.

13 Q. Did you find this to be an acceptable  
14 number of hours at the time that you did your  
15 review in August?

16 A. It's not acceptable, but it may have  
17 been okay as far as -- as far as me, but Harry  
18 usually looks through them if, you know,  
19 something catches his eye.

20 Q. The rest of the personnel described  
21 and the hours, the rates and the total dollar  
22 amounts that are in this Exhibit 1 --

23 A. Uh-huh.

24 Q. -- is there any one of them that you

1 found to be acceptable or rejectable to you?

2 A. On a G-3, the scientist III, for the  
3 16 hours would seem excessive for filing of the  
4 NFR and closing up seven wells.

5 Q. What, in your opinion, would be an  
6 average number for that task?

7 A. The -- the wells we -- we reimburse  
8 \$10 a foot. It's not a personnel thing. And  
9 filing of the NFR surely isn't 16 hours.

10 Q. Do you have a number that you would  
11 have approved on that scientist III for the  
12 number of hours?

13 A. For filing of the NFR, I'd seen as low  
14 as an hour and as high as two hours.

15 Q. Would you have approved two hours?

16 A. Sure. And other than those, the hours  
17 were acceptable so it was excessive but not  
18 totally out of the realm of stuff I've seen and  
19 approved.

20 Q. Who are unit managers you worked for  
21 before working for Mr. Chappel?

22 A. Kendra Brokamp. And Brian Bauer.

23 Q. Are both of those people still with  
24 the Agency?

1           A.    Kendra is not.  Brian is.

2           Q.    In your experience with Kendra Brokamp  
3           and Brian Bauer, do you have any knowledge of any  
4           petition that was rejected for personnel costs  
5           and the request made for a submission by the  
6           petitioner for the hourly breakdown of each  
7           person under the personnel cost category?

8                   MR. RICHARDSON:  I'm going to object  
9           to that.  I do not see the relevance in past  
10          supervisors here at the Agency.

11                   HEARING OFFICER WEBB:  Are you asking  
12          about personnel costs?

13                   MR. TOCK:  Yes.

14                   HEARING OFFICER WEBB:  I'm going to  
15          overrule it.  You can answer.

16           A.    Kendra, sure, absolutely.  Brian,  
17          sure.  It was not unheard of.

18           Q.    (By Mr. Tock)  You've just gone  
19          through Exhibit No. 1 and you've identified the  
20          first three personnel categories on page 1, the  
21          senior project manager, the professional engineer  
22          and engineer III where you felt that the times  
23          were excessive.  If an hourly breakdown of the  
24          various tasks were provided to you for those

1 three personnel, would that assist you in being  
2 able to determine what's an appropriate or  
3 acceptable number of hours would be for each one  
4 of those personnel?

5 A. Sure. And it would show, you know,  
6 for future job descriptions, we know the time it  
7 takes for, you know, to prepare a CAP or, you  
8 know, a budget because I don't know for sure  
9 except on what's submitted and I've seen and  
10 what's normally submitted. And I've done  
11 hundreds.

12 Q. Your review of a particular budget,  
13 such as the Webb budget, is based upon your  
14 experience and training; is that correct?

15 A. Absolutely.

16 Q. And you have said that for a senior  
17 project manager for a Corrective Action Plan you  
18 felt that 60 hours was an average number for that  
19 position; correct?

20 A. For all of the jobs that are written,  
21 sure.

22 Q. If Webb were to respond -- excuse  
23 me -- to the request of the Agency as stated in  
24 Exhibit 3 to provide an hourly breakdown --

1 A. Uh-huh.

2 Q. -- and they did so and showed 80 hours  
3 for the work that's described --

4 A. Uh-huh.

5 Q. -- that would not have been acceptable  
6 to you, would it?

7 A. If the hours, you know, for each task  
8 shown were to say 80, I mean, I'm not sure if  
9 you're saying hourly breakdown or as it's shown.

10 Q. Well, you have said that for  
11 Corrective Action Plan --

12 A. Uh-huh.

13 Q. -- you feel that 60 is an average  
14 number of hours --

15 A. Sure.

16 Q. -- that you'd approve?

17 A. Uh-huh, yes.

18 Q. What would --

19 A. If it came as 80, I would have  
20 accepted it because it's in that average as far  
21 as, you know, what is usually seen.

22 Q. You previously said that the average  
23 was 60. Is there a range that you approve rather  
24 than just looking at a single point of 60 hours?

1           A.    A range, sure.  I mean, if it's not  
2           really excessive and I haven't seen it in a  
3           budget and it's not a flag, then sure.  And it's  
4           usually approved minus Harry's scan.

5           Q.    What is the range that you approve for  
6           this type of a Corrective Action Plan?

7           A.    For project review and oversight and  
8           supervision and what's stated, if it came in from  
9           60 to 100, I would have accepted it, but --

10          Q.    What's the acceptable -- Excuse me.  I  
11          didn't want to interrupt you.

12          A.    That's fine.  Go ahead.

13          Q.    What's the acceptable range for a  
14          professional engineer where you said the average  
15          was 20, what's the acceptable range to you?

16          A.    For that -- those tasks, if it would  
17          have come in from 20 to 40 hours or so, I  
18          probably wouldn't have had a problem.

19          Q.    What about the engineer III, what's an  
20          acceptable range?

21          A.    If it would have exceeded -- or if it  
22          would have been under 50, I'm sure I would have  
23          accepted it.

24          Q.    When you do a --

1           A.    In a -- these three, the appeals were,  
2           you know, also a reason for the -- the hourly,  
3           you know, breakdown as well.

4           Q.    Can you tell me why all personnel  
5           costs as proposed in this budget were stricken  
6           when your testimony today is that you found only  
7           four of the personnel categories to be  
8           unacceptable?

9           A.    Harry Chappel took it to the other  
10          supervisors, and they decided to ask for a  
11          thorough breakdown of all costs.

12          Q.    Of the Corrective Action Plans and  
13          budgets that you reviewed --

14          A.    Uh-huh.

15          Q.    -- and budgets specifically --

16          A.    Uh-huh.

17          Q.    -- can you give me a percentage of how  
18          many of those budgets you or your unit --

19          A.    Uh-huh.

20          Q.    -- makes a request or a breakdown on  
21          an hourly basis?

22          A.    As far as myself, probably 10%.  It's  
23          usually budget that have lots of hours and are  
24          excessive, which this is.

1 Q. Well, in -- in this budget, if it were  
2 up to you, I understand you got a unit manager,  
3 but if you are reviewing this budget --

4 A. Uh-huh.

5 Q. -- you've identified four categories  
6 of personnel that were excessive --

7 A. Uh-huh.

8 Q. -- why not approve all of the other  
9 categories and either reduce the hours for these  
10 four individuals who are asked for an hourly  
11 breakdown on just the four?

12 A. Because I wasn't sure the hours  
13 associated with the appeals.

14 Q. Let me reask my question. I  
15 understand that you're uncertain about how many  
16 hours go with the appeals.

17 A. Uh-huh.

18 Q. So those -- there were three personnel  
19 involved with appeals?

20 A. Uh-huh, yes.

21 Q. There were about 16 other line item  
22 personnel costs that you found to be acceptable?

23 A. Sure, uh-huh.

24 Q. Why not approve those 16 and ask for

1 additional breakdown in terms of hours for the  
2 four personnel that you found objectionable?

3 A. It was Harry Chappel's and the other  
4 supervisors' decision.

5 Q. If it had been your decision, which  
6 way would you have done it?

7 A. I would have denied the -- the four  
8 and approved the -- the others. And that would  
9 have went to Harry for signature and he would  
10 have saw that.

11 Q. And after that, he's your head of the  
12 unit and it's his decision; right?

13 A. You got it.

14 Q. My next exhibit is from the documents  
15 that were submitted pursuant to the motion to  
16 incorporate. This is the Administrative Record  
17 and PCB 05-183. It's certain excerpts from the  
18 record.

19 (The reporter marked Exhibit No. 5  
20 for purposes of identification.)

21 MR. TOCK: I guess I got my copy of  
22 that. I've been getting them from the hearing  
23 officer. I just gave you my copy. If I can get  
24 a copy from one of your records.

1 HEARING OFFICER WEBB: Oh.

2 MR. TOCK: They're all supposed to be  
3 the same.

4 Q. (By Mr. Tock) Mr. Malcom, before you  
5 is Exhibit 5, which is an excerpt from the  
6 Administrative Record in Pollution Control Board  
7 Case 05-183. If you turn to the second page of  
8 the exhibit, the number at the bottom says 23?

9 A. Uh-huh.

10 Q. LUST technical review notes reviewed  
11 by James R. Malcom, III, that's you correct?

12 A. Uh-huh.

13 Q. Do you recall reviewing this Webb  
14 proposal in 2005?

15 A. Vaguely.

16 Q. Down at the bottom of the page 23 just  
17 above the date it says PM recommendation/comment,  
18 what does PM stand for?

19 A. Project manager.

20 Q. And that's you?

21 A. Correct, yes.

22 Q. Approved plan, modified budget?

23 A. Uh-huh.

24 Q. Then there was the letter from Mr.

1 Chappel that appears in, I think, that's Exhibit  
2 2, the Webb petition, that requested the  
3 breakdown for number of hours for each personnel  
4 and then you reviewed the response that's  
5 attached. I don't need you to look at that  
6 letter. But you reviewed the response that's the  
7 letter from HDC Engineering dated February 15,  
8 2005, that starts at page 3 of this Exhibit 5?

9 A. Sure.

10 Q. So that's where HDC provided the  
11 breakdown for the number of hours that appear in  
12 Attachment A and Attachment B?

13 A. Correct.

14 Q. Is that correct?

15 A. Uh-huh.

16 Q. On Attachment B of this exhibit, which  
17 is number 15 at the bottom --

18 A. Okay.

19 Q. -- there are a number of handwritten  
20 notes?

21 A. Sure.

22 Q. Are those your notes?

23 A. No, these are Harry's notes in the  
24 unit manager's meeting.

1 Q. So although the letter of HDC is  
2 addressed to you, you did not do the review of  
3 the hourly breakdown that was submitted; is that  
4 correct?

5 A. No, huh-uh. That goes to the  
6 supervisor and Harry took it to the supervisor's  
7 meeting and they look through it and make a  
8 decision to stay consistent.

9 Q. Okay. On the bottom page number 8,  
10 which is part of this group exhibit, the top of  
11 that says LUST technical review notes?

12 A. Page 8?

13 Q. Number 8 at the bottom of this Exhibit  
14 5.

15 HEARING OFFICER WEBB: I think they're  
16 out of order.

17 Q. (By Mr. Tock) The pages are out of  
18 order. But if you look for the bottom numbers --

19 A. Okay.

20 Q. -- LUST technical review notes  
21 reviewed by James R. Malcom.

22 A. Uh-huh.

23 Q. You actually didn't make that review,  
24 did you?

1 A. Of January 25th?

2 Q. That's correct.

3 A. As far as what was this --

4 Q. This is a review of the HDC letter?

5 A. I did not, no, but it was reviewed and  
6 the decision came and I put forth a letter and  
7 Harry signed it.

8 Q. So when you say the decision was made,  
9 that means Mr. Chappel made the decision, you  
10 wrote the letter?

11 A. He and the other supervisors.

12 Q. Are all projects reviewed by all  
13 supervisors?

14 A. Just budgets that are excessive. And  
15 in order to stay consistent throughout the  
16 section, all supervisors will look through it,  
17 and, yeah.

18 MR. TOCK: May I have a moment,  
19 please?

20 HEARING OFFICER WEBB: (Nods head.)

21 Q. (By Mr. Tock) Mr. Malcom, do you know  
22 if any records are kept as to what percentage of  
23 budgets that are submitted to the Agency are  
24 deemed to be excessive and call for the review by

1 the unit managers?

2 A. I do not know that.

3 Q. Do you have an opinion as to the  
4 number of projects that you reviewed that are  
5 deemed to be excessive that go to unit managers?

6 A. In eight years I've only submitted  
7 four, so unless it's really excessive, they don't  
8 look through it.

9 Q. And then -- is this the first Webb  
10 appeal, one of those four or five?

11 A. The -- I think the second appeal as  
12 well.

13 Q. So there's Webb --

14 A. Two.

15 Q. -- Webb one and Webb two?

16 A. Yep.

17 Q. In both of those?

18 A. Afraid so.

19 Q. So in this case, that's about half of  
20 the cases that you know of that's gone to the  
21 unit managers?

22 A. Uh-huh.

23 Q. And you're aware that the Agency  
24 settled the first Webb appeal and paid out all

1 that had been requested?

2 A. Sure, uh-huh.

3 MR. TOCK: I have no further  
4 questions.

5 HEARING OFFICER WEBB: Mr. Richardson?

6 CROSS-EXAMINATION

7 BY RICHARDSON:

8 Q. Mr. Malcom, no two LUST sites are  
9 exactly alike, are they?

10 A. They're similar but exactly alike, no.

11 Q. And in this particular case, would the  
12 information you provided concerning personnel  
13 cost, a breakdown could have helped you determine  
14 if some of the extra hours that maybe you thought  
15 were excessive in the submittal, it might have  
16 helped you to determine if maybe some extra hours  
17 more than normal would have been appropriate  
18 depending upon what the breakdown indicated; is  
19 that right?

20 A. Sure, uh-huh.

21 Q. And am I correct that when you looked  
22 at, especially the top three positions on page 54  
23 of the record, and when you saw that some of the  
24 information or some of the requests concerned two

1 LUST project appeals, you weren't inclined to  
2 reimburse prior LUST project appeal work; is that  
3 correct?

4 A. Correct.

5 Q. Had you ever reimbursed that directly  
6 as presented?

7 A. No.

8 Q. And am I correct that whether you red  
9 flag something, as the excessive hours that you  
10 have testified to here, as your work goes to Mr.  
11 Chappel or if it's a routine matter, all your  
12 work, all your decisions end up going through Mr.  
13 Chappel; is that correct?

14 A. Correct, yes.

15 Q. And he can add --

16 A. Absolutely.

17 Q. -- whatever he wants --

18 A. Uh-huh.

19 Q. -- or sign it as you present it to  
20 him?

21 A. Correct, yes.

22 MR. RICHARDSON: I have no further  
23 questions.

24 HEARING OFFICER WEBB: Thank you.

1 Anything further, Mr. Tock?

2 MR. TOCK: Yes, if we may.

3 REDIRECT-EXAMINATION

4 BY MR. TOCK:

5 Q. Exhibit 1, the personnel time hours  
6 breakdown, this is a form that is prepared by  
7 EPA; is that correct?

8 A. Correct, yes.

9 Q. Is there a form that is required by  
10 EPA that requires a more minute breakdown than  
11 this form? Does, for an example, some form that  
12 would say if any task takes more than five hours,  
13 you have to provide an hourly breakdown?

14 A. Not as far as I know, no.

15 Q. So as far as you know, the form on  
16 which this budget request was submitted, was in a  
17 form approved by EPA?

18 A. Sure, uh-huh.

19 Q. And the EPA does not have any other  
20 form that requires any greater breakdown than  
21 this?

22 A. Not as far as I know.

23 MR. TOCK: I have no further  
24 questions. Thank you.

1 MR. RICHARDSON: Nothing further.

2 HEARING OFFICER WEBB: Okay. Thank  
3 you very much, Mr. Malcom. Are you, Mr. Tock,  
4 going to call anymore witnesses?

5 MR. TOCK: No, I'm not. But I would  
6 like to make certain that the other documents  
7 that I have provided as part of the motion to  
8 incorporate documents be included as evidence.

9 HEARING OFFICER WEBB: You're moving  
10 those now as evidence?

11 MR. TOCK: I would move all -- all  
12 documents that have been marked into evidence and  
13 then, if need be, to mark these with exhibit  
14 numbers.

15 HEARING OFFICER WEBB: Okay. Let's go  
16 through them. Okay. Exhibit 1, which is page 54  
17 of the record, is already part of the record so I  
18 assume there's no objection to that?

19 MR. RICHARDSON: Correct.

20 HEARING OFFICER WEBB: That is  
21 admitted. Also, Exhibits 3 and 4 are also part  
22 of the administrative record, page 1 and page 8,  
23 there's no objection there I assume?

24 MR. RICHARDSON: Correct.

1 HEARING OFFICER WEBB: Okay. All  
2 right. Exhibit 2 is the petition for 05-183 and  
3 Exhibit 5 is the administrative for 05-183, an  
4 earlier Webb and Sons appeal. Is there an  
5 objection to this?

6 MR. RICHARDSON: I won't object to  
7 their admission, but I would object to their  
8 relevance to this proceeding.

9 HEARING OFFICER WEBB: Okay. In the  
10 future, Mr. Tock, probably instead of a motion to  
11 incorporate by reference, if you have a case that  
12 has an Administrative Record, you want to do a  
13 motion to supplement the administrative record.  
14 I know this is your first hearing, so it's --  
15 it's not a big deal. But in the future, we are  
16 only supposed to consider documents that were  
17 part of the Administrative Record when the Agency  
18 made their determination.

19 Now, in this particular situation is  
20 it's a little unusual in that we have several  
21 appeals on the same site with the same people in  
22 a very short period of time. I do feel that the  
23 Agency should have been aware of this information  
24 when they made their determination, so I am going

1 to admit it as relevant. I think it's background  
2 information. Like I said, it pertains to the  
3 same site within a short period of time, and I  
4 think it gives a comprehensive picture on what's  
5 going on with this site, so I am going to admit  
6 it for that reason. Now, are we going to mark  
7 the rest of the documents that were in your  
8 motion?

9 MR. TOCK: If you -- if you would,  
10 please.

11 HEARING OFFICER WEBB: What's left?

12 MR. TOCK: Testimony of Douglas W.  
13 Clay and that's the 2006 date stamp marked 1 of  
14 2006. That was his testimony regarding the  
15 Illinois Pollution Control Board's proposed 35  
16 ILL Adm. Code 732.845 and 734.835.

17 HEARING OFFICER WEBB: Mr. Richardson,  
18 do you have anything to say about this?

19 MR. RICHARDSON: Again, I have no  
20 objection to the admissibility, but I'll object  
21 to the relevance of it.

22 HEARING OFFICER WEBB: I'm not sure  
23 what is in here since we didn't use it. I  
24 suppose the Board can take notice of this since

1 this is a public record that is -- that's in the  
2 Board's regulatory proceeding, so I will admit it  
3 as a public record. This would be Exhibit 6.

4 (The reporter marked Exhibit No. 6  
5 for purposes of identification.)

6 HEARING OFFICER WEBB: Should this be  
7 attached in the binder clip, this one, as part of  
8 this? Should this all be together as Exhibit 6?

9 MR. TOCK: These are different. This  
10 Exhibit 6 is submitted March 1 of 2006. These  
11 were submitted in March of 2004. There are  
12 different statements, different testimony.

13 HEARING OFFICER WEBB: Okay.

14 MR. TOCK: So I'd like those marked as  
15 six and seven.

16 HEARING OFFICER WEBB: But are these  
17 two together?

18 MR. TOCK: Whatever numbers we are up  
19 to. Seven and eight, yes.

20 HEARING OFFICER WEBB: And you're not  
21 objecting to the admissibility of these three; is  
22 that correct?

23 MR. RICHARDSON: Correct, correct.

24 Again, a relevance objection but not

1           admissibility.

2                           HEARING OFFICER WEBB:  You want to  
3           label that as seven and eight.

4                           (The reporter marked Exhibit Nos. 7  
5                           and 8 for purposes of  
6                           identification.)

7                           HEARING OFFICER WEBB:  Was there  
8           anything else in that motion, any other  
9           documents?  Was that it?

10                          MR. TOCK:  I think that was it.

11                          HEARING OFFICER WEBB:  Okay.  Let me  
12           -- I have some copies here that I can get in  
13           order.  Okay.  Mr. Tock, do you have anything  
14           further to present?

15                          MR. TOCK:  Nothing further.

16                          HEARING OFFICER WEBB:  Mr. Richardson,  
17           you may present your case.

18                          MR. RICHARDSON:  I have --

19                          HEARING OFFICER WEBB:  You're not  
20           calling anybody?

21                          MR. RICHARDSON:  I am not calling any  
22           additional people.  I have nothing --

23                          HEARING OFFICER WEBB:  Nothing more to  
24           say.  Okay.  Very good.  Before we hear any

1 closing arguments, let's go off the record just  
2 to discuss the briefing schedule.

3 (A discussion was held off the  
4 record.)

5 HEARING OFFICER WEBB: We've just had  
6 an off-the-record discussion regarding  
7 post-hearing briefs, and the parties have agreed  
8 to a briefing schedule as follows: The  
9 transcript of these proceedings will be available  
10 from the court reporter by December 14th and will  
11 be posted on the Board's Website. The public  
12 comment deadline is December 29th. Public  
13 comment must be filed in accordance with Section  
14 101.628 of the Board's procedural rule.  
15 Petitioner's brief is due by December 29th.  
16 Respondent's brief is due by January 12th, and  
17 the mailbox rule will not apply. Mr. Tock, would  
18 you like to make any closing arguments?

19 MR. TOCK: No.

20 HEARING OFFICER WEBB: Okay. Mr.  
21 Richardson?

22 MR. RICHARDSON: No.

23 HEARING OFFICER WEBB: All right. No  
24 members of public here to make any statements on

1 the record so I will proceed to make a statement  
2 as to the credibility of witnesses testifying  
3 during this hearing. Based on my legal judgment  
4 and experience, I find both of the witnesses  
5 testifying to be credible. At this time I will  
6 conclude the proceedings. We stand adjourned.  
7 And I thank you all for your participation.

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 69 pages comprise a true, complete and correct transcript of the proceedings held on December 11th, 2006, at the Illinois Pollution Control Board Hearing Room, 1021 North Grand Avenue East, North Entrance, Springfield, Illinois, in proceedings held before Hearing Officer Carol Webb, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 13th day of December, 2006.

---

Beverly S. Hopkins, CSR, RPR  
CSR License No. 084-004316