

**BEFORE THE POLLUTION CONTROL BOARD**  
**OF THE STATE OF ILLINOIS**

**RECEIVED**  
CLERK'S OFFICE

NOV 21 2003

STATE OF ILLINOIS  
*Pollution Control Board*

WEI ENTERPRISES,

Petitioner,

vs.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

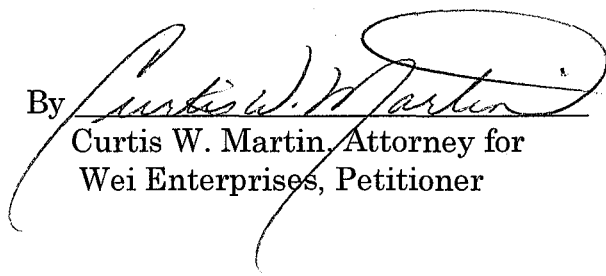
PCB No. 08-  
(UST Appeal)

**NOTICE**

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, a copy of which is herewith served upon you.

By   
Curtis W. Martin, Attorney for  
Wei Enterprises, Petitioner

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788

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**BEFORE THE POLLUTION CONTROL BOARD**  
**OF THE STATE OF ILLINOIS**

WEI ENTERPRISES, )  
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Petitioner, )  
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vs. )  
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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

04-22  
PCB No. 03-  
(UST Appeal)

**PETITION FOR REVIEW OF FINAL AGENCY**  
**LEAKING UNDERGROUND STORAGE TANK DECISION**

NOW COMES the Petitioner, Wei Enterprises, ("Wei"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, pursuant to Sections 57.7(c)(4)(D) and 40 of the Illinois Environmental Protection Act (415 ILCS 5/57.7(c)(4)(D) and 40) and 35 Ill. Adm. Code 105.400-412, hereby requests that the Illinois Pollution Control Board ("Board") review the final decision of the Illinois Environmental Protection Agency ("Agency") in the above cause, and in support thereof, Wei respectfully states as follows:

1. On July 15, 2003, the Agency issued a Final Decision to Wei, a copy of which is attached hereto as Exhibit A.
2. On July 16, 2003, Wei made a written request to the Agency for an extension of time by which to file a Petition for review to ninety days, a copy of which is attached hereto as Exhibit B.

3. On August 15, 2003, the Agency joined in Wei's request that the Board extend the thirty-five day period for filing a Petition to ninety days, a copy of which is attached hereto as Exhibit C.

4. The grounds for the Petition herein are as follows:

Wei submitted to the Agency, through its consultant, United Science Industries, Inc., ("USI") its Application for Payment from the Underground Storage Tank Fund pursuant to Section 57.8(a) of the Act and 35 Ill. Adm. Code 105.732, subpart F. The Application for Payment covered the period from February 1, 2003 to March 31, 2003 and requested \$9,161.06.

In response to the Application for Payment, the Agency declined to prepare a voucher for submission to the Comptroller's office for payment, indicating that the costs requested in the Application for Payment were unreasonable under Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh). The Agency further indicated in its letter that the costs sought to be reimbursed were not approved pursuant to an Agency letter dated May 2, 2003 and that the proposed Corrective Action Plan indicated that free product would be remediated by excavation and disposal.

The May 2, 2003 Agency letter approved Wei's first quarter Free Product Removal Report ("FPRR") submitted on March 6, 2003, but it did not approve modifications to the free product recover system. According to the Agency, it was not clear why modifications to the system were sought as it appeared to the Agency that the free product was being collected as necessary or required under the current system. The first quarter FPRR provided the Agency with information,

including diagrams, regarding the proposed modifications to the free product recovery system, the reasons for its necessity, and when the modifications were to be implemented. This report also provided an estimate for the costs of the modifications. Wei provided even further information for the Agency by its second quarter FPRR regarding the modifications implemented, again providing diagrams, as well as the projected costs, all well beyond the minimum requirements of the regulations.

Further, although 35 Ill. Adm. Code 732.203 (b) provides that for the purposes of reimbursement, owners or operators are not required to obtain Agency approval pursuant to section 732.202 (g) for free product removal activities conducted more than 45 days after initial notification to the Agency of the release, by letters dated June 2, 4 and 26, 2003, USI provided additional information and explanation, including photographs, pertaining to the modifications to the free product recovery system. This additional information and explanation outlined the purposes of increasing the effective recovery area and more aggressively recovering free product as free product was migrating between two inch monitoring wells and beyond the current skimmer system.

The modifications, to implement a trench and collection system, are an acceptable engineering practice as USI as a consultant has included such a system at another site with the approval of the Agency. Since the costs associated with modifying the current skimmer system to create the trench and collection sump were to enhance the effective recovery of the free product, such costs are subject to reimbursement.

35 Ill. Adm. Code 732.605(a)(1) provides that eligible corrective action costs include early action activities conducted pursuant to subpart B. Subpart B includes free product removal as part of the early action activities. Section 732.202(b)(6) requires the owner or operator to begin free product removal as soon as practicable and in accordance with Section 732.203. Section 732.203(a) requires the owner or operator to remove the free product "to the maximum extent practicable," and under Section 732.203(a)(1) that removal is to be conducted in a manner that minimizes the spread of contamination by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. Moreover, "abatement" of free product migration is the "minimum objective" for the design of the free product removal system required under Section 732.203(a)(2).

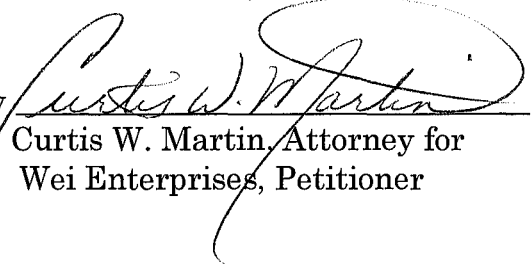
USI, within the time prescribed by Section 732.203(a)(4), provided the Agency with several FPRRs which included the minimum information required therein. In fact, at the time of the modifications to the free product recovery system, the Agency had been provided with the FPRR's but had denied the Corrective Action Plan. Therefore, any reference to excavation and disposal in the denied Corrective Action Plan was irrelevant to the free product removal process itself. The modification of the system as described above was therefore in compliance with 732.203(a)(2) and as such the costs for the modification are reimbursable. The Agency's refusal to prepare a voucher for the \$9,161.06 within the Application for Payment covering February 1, 2003 to March 31, 2003 was arbitrary and capricious and should be reversed by the Board.

WHEREFORE, Petitioner, Wei Enterprises, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of the Petitioner's request for preparation of a voucher for submission to the Comptroller's office for payment of its Application for Payment from the Underground Storage Tank Fund and that Petitioner recover its attorney's fees and costs incurred herein pursuant to 415 ILCS 5/57.8(l) and 35 Ill. Adm. Code 732.606(l).

Respectfully submitted,

SHAW & MARTIN, P.C.

By

  
Curtis W. Martin, Attorney for  
Wei Enterprises, Petitioner

Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
123 S. 10<sup>th</sup> Street, Suite 302  
P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

JUL 15 2003

Wei Enterprises  
Attention: Susan Wei  
Post Office Box 834  
O'Fallon, IL 62269

Re: LPC #1631255004 -- St. Clair County  
Shiloh/Wei Enterprise  
529 Maple Street  
LUST Incident No. 982804  
LUST FISCAL FILE

Dear Ms. Wei:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732. Subpart F. This information is dated April 30, 2003 and was received by the Agency on May 2, 2003. The application for payment covers the period from February 1, 2003 to March 31, 2003. The amount requested is \$9,161.06.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated February 16, 2000. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On May 2, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 applicant wishes to receive a 90-day extension, a written request that includes a statement of the

Page 2

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:

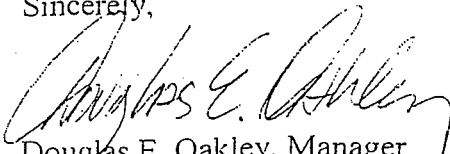
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions or require further assistance, please contact Lieura Hackman of my staff at 217/782-6762.**

Sincerely,



Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:LH:jk\031739.doc

Attachment

cc: United Science Industries, Inc.



Attachment A  
Technical Deductions

Re: LPC #163255004 – St. Clair County  
Shiloh/Wei Enterprises  
529 Maple Street  
LUST Incident No. 982804  
LUST Fiscal File

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

Item #	Description of Deductions
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- |    |   |
|----|---|
| 1. | \$9,161.06, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)) |
|----|---|

The billing package relates to costs that were not approved in the Agency letter dated May 2, 2003. In addition, the current proposed Corrective Action Plan indicates the free product will be remediated by excavation and disposal.

HAC:MW:mw\982804FiscalAttachment A.DOC



P.O. Box 360  
6295 East Illinois Highway 15  
Woodlawn, Illinois 62898-0360

July 16, 2003

Phone: (618) 735-2411  
Fax: (618) 735-2907  
E-Mail: [unitedscience@unitedscience.com](mailto:unitedscience@unitedscience.com)

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, IL 62794-9276

Attn: John Kim

Re: LPC# 1631255004 – St. Clair County  
Shiloh/Wei Enterprises  
529 Maple St.  
LUST Incident No. 982804  
LUST TECHNICAL FILE

**RECEIVED**  
Division of Legal Counsel  
JUL 21 2003  
Environmental Protection  
Agency

Dear Mr. Kim:

United Science Industries, Inc. (USI), on behalf of our client, Wei Enterprises, is requesting a 90-day extension of the 35-day appeal period in regards to the IEPA correspondence included.

I appreciate your time and consideration in this matter. If you have any questions or comments regarding this matter please contact me at 618-735-2411 ext. 145.

Sincerely yours,

UNITED SCIENCE INDUSTRIES, INC.

Robert J. Pulfrey  
Project Manager

Enclosures

RJP:jl

  
B  
EXHIBIT \_\_\_\_\_

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

WEI ENTERPRISES,	)	
	)	
Petitioner,	)	
v.	)	PCB No. 04-
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Ninety Day Extension)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**REQUEST FOR NINETY DAY EXTENSION  
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board ("Board") grant an extension of the thirty-five (35) day period for petitioning for a hearing to November 17, 2003, or any other date not more than a total of one hundred twenty-five (125) days from July 15, 2003, the date of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On July 15, 2003, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)
2. On July 16, 2003, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner did not represent when the final decision was received. (Exhibit B)
3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



John V. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: August 15, 2003

This filing submitted on recycled paper.

## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 15, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

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

Robert J. Pulfrey, Project Manager  
United Science Industries  
P.O. Box 360  
6295 East Illinois Highway 15  
Woodlawn, IL 62898-0360

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



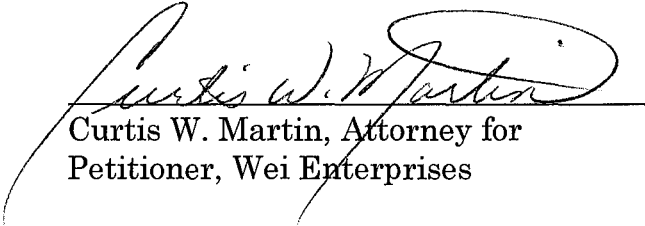
John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on November 18, 2003, I served true and correct copies of a Petition for Review of Final Agency Leaking Underground Storage Tank Decision, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Mt. Vernon, Illinois, with sufficient Certified Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

  
Curtis W. Martin, Attorney for  
Petitioner, Wei Enterprises