

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.

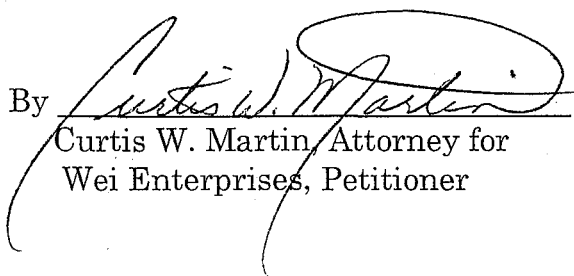
04 -23  
PCB No. ~~04~~  
(UST Appeal)

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

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

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STATE OF ILLINOIS  
Pollution Control Board

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

04-23  
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 16, 2003, the Agency issued a Final Decision to Wei, a copy of which is attached hereto as Exhibit A.
2. On July 23, 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 20, 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") a Revised High Priority Site Investigation Corrective Action Plan ("Plan") and corresponding Budget ("Budget") (also collectively referred to herein as "CAP #3"). The Plan and Budget satisfy the requirements of the Act, 415 ILCS 5/1 *et seq.*, and the regulations promulgated thereunder, in that they were prepared and fully implemented in accordance with generally accepted engineering practices and were consistent with the information obtained while implementing the Plan. The costs associated with each activity and service necessary to accomplish the goals of the Plan were reasonable and consistent and were incurred in the performance necessary to meet the minimum requirements of the Act and the regulations promulgated thereunder.

The Agency modified the Plan and Budget and also requires Wei within that modified Budget to further delineate the groundwater contamination by additional drilling and sampling. However, the Budget as modified by the Agency does not permit Wei to receive reimbursement for costs incurred to date much less to perform the additional activities to provide the further delineation the Agency requires.

A procedural history of this site is required in order to place this appeal in its proper perspective. On September 13, 2000, the Agency approved the Site Classification Completion Report submitted by Wei. On May 29, 2002, Wei submitted a High Priority Corrective Action Plan and Budget ("CAP #1") which proposed soil remediation by an alternative technology of land farming/

aeration/excavation and disposal. CAP #1 proposed groundwater monitoring with a subsequent amended CAP for groundwater after the effect of the soil remediation on the groundwater was determined. On September 23, 2002, however, CAP #1 was denied with the Agency rejecting the alternative technology and requesting an active groundwater remediation proposal.

In response to the initial Agency denial of CAP #1, Wei submitted a second High Priority Corrective Action Plan and Budget ("CAP #2") which proposed excavation and disposal as the method of soil remediation and chemical oxidizing compound application as the method of groundwater remediation. The Agency denied CAP #2 on February 18, 2003, the 120<sup>th</sup> day following its submittal, this time requiring a three dimensional delineation of the soil contamination by means of additional soil borings and sampling before the proposal of excavation and disposal would be accepted. The additional borings and samples would have required Wei to incur an estimated additional \$22,000.00 in laboratory charges. Accordingly, Wei in March 2003 informally requested of the Agency the opportunity to perform a "vertical extent only" investigation regarding the soil contaminations. This opportunity was denied by the Agency on the basis that a CAP had to accompany the investigation.

On April 28, 2003, Wei submitted the current Revised High Priority Corrective Action Plan and Budget ("CAP #3"), this time to specifically target the bases of the Agency's denial of CAP #2 as set forth in a cover letter from USI that accompanied CAP #3. Primarily, CAP #3 sought to engage in additional soil

investigation in order to perform a three dimensional delineation of contaminated soil and clean soil at the site as previously required by the Agency.

By letter dated July 16, 2003, the decision under appeal herein, the Agency modified CAP #3 to essentially provide for vertical extent investigation only (exactly what Wei had previously informally requested) and denied the proposed excavation and disposal approach and budget. Moreover, the modifications to CAP #3 included a requirement to investigate the south of the site, a topic not addressed in the rejection of CAP #1 or CAP #2, although neither CAP #1 nor CAP #2 addressed this southern investigation either. The Budget within CAP #3 was also modified to permit the investigation of soil and groundwater contamination to date, but not any additional investigation the Agency otherwise requires.

More specifically:

(1) The Agency's adjustment of \$7,573.18 in handling charges associated with subcontractor charges for corrective actions was without technical justification and the modifications to the budget by the Agency were arbitrary and capricious. Further, the Agency has failed to notify Wei of which actions and associated costs are considered corrective actions to which the handling charges apply.

(2) The Agency's adjustment of \$782,330.45 in Investigation Costs, Analysis Costs, Personnel Costs, Equipment Costs, Field Purchases and other costs was arbitrary and capricious and not supported by any technical justification. Further, the Agency has not identified for Wei what costs it considers directed toward corrective action. Wei's Plan and Budget within CAP #3 adequately address

the need for soil and groundwater contamination identification and remediation and the Agency's modification to each prevent Wei from addressing either.

(3) The Agency's adjustment of \$3,583.00 in Investigation Costs, Analysis Costs, Personnel Costs and Equipment Costs was on a cost incurred basis with no technical justification and is therefore arbitrary and capricious. Wei maintains that the costs of each item (a through n) at the time they were incurred were reasonable and are subject to reimbursement.

(4) The Agency's adjustment of \$20,575.00 for Personnel Costs as being inconsistent with the associated technical plan lacks technical justification and fails to identify the specific costs the Agency considers corrective action costs. The Agency's adjustment is therefore arbitrary and capricious.

The Plan and Budget submitted by Wei contain a technical scope of work and associated budget sufficient to complete the investigation and remediation at the site. Each time Wei has presented a new proposal to address a previous Agency basis for denial/modification, the Agency then raises a new and different basis for denial/modifications. The Agency's repeated arbitrary and capricious denials/modification of Wei's proposed Plans and Budgets obfuscates the Agency's primary statutory mandate and frustrates the entire purpose and goal of the Act and its regulations, i.e., to protect human health and the environment. Free product continues to linger at the Wei site and Wei's efforts to remediate it are hindered and are at the mercy of the Agency's arbitrary and capricious conduct.

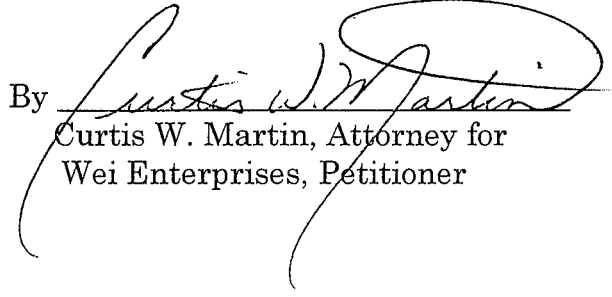
WHEREFORE, Petitioner, Wei Enterprises, for the reasons stated above, requests that the Board reverse the decision of the Agency and rule in favor of the

Petitioner's request for approval of its Plan and Budget as being reasonable, justifiable, necessary, consistent with generally accepted engineering practices, and eligible for reimbursement from the UST 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

Robert E. Shaw  
IL ARDC No. 03123632  
Curtis W. Martin  
IL ARDC No. 06201592  
SHAW & MARTIN, P.C.  
Attorneys at Law  
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P.O. Box 1789  
Mt. Vernon, Illinois 62864  
Telephone (618) 244-1788



1198180 . BP

BP

# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 0281

JUL 16 2003

Wei Enterprises  
Attention: Susan Wei  
529 Maple Street  
Shiloh, Illinois 62269

Re: LPC #1631255004 - St. Clair County  
Shiloh/Wei Enterprises  
529 Maple Street  
LUST Incident No. 982904  
LUST Technical File

Dear Ms. Wei:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Site Investigation Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated April 28, 2003, was received by the Illinois EPA on April 30, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The modifications listed below are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732. Please note that the activities proposed in the plan are for investigative purposes only. Final approval for corrective action activities is contingent upon the submittal of a High Priority Corrective Action Plan that documents the results of the proposed investigation and satisfies the requirements set forth in Section 57.7(c)(1) of the Act and 35 Ill. Adm. Code 732.404. The required modification(s) is/are as follows:

1. The investigation plan includes high priority corrective action activities and budget. However, since the soil and groundwater contamination have not been delineated to the south of the site, high priority corrective action/budget proposals for this site cannot be evaluated. Therefore, all high priority corrective action activities and budget proposed in this plan have not been reviewed/approved. The modifications to this plan include only high priority corrective action investigation activities and budget in order to develop,

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 998-7800



propose and submit to the Agency an adequate High Priority Corrective Action Plan and Budget.

The Agency has allotted for the investigation work/plume identification that has occurred to date (this plan/review does not include activities/budgets associated with free product).

In addition, the Agency has modified the investigation plan to only include the "SB" delineation and the sample analysis associated with those borings. Once the results have been completed and the extent of contamination has been delineated, then a high priority corrective action plan can be properly developed for submittal to the Agency.

In addition, since the site has free product, the calculations presented in the investigation plan cannot be reviewed/approved pursuant to 35 IAC Part 742. Once the remediation activities/free product removal has been completed use of the Tier II calculations in 35 IAC Part 742 may be completed for review.

2. The Agency has determined that the following areas should be included in the estimations for the soil/groundwater excavation activities: BH-15, BH-16/MW-6, BH-6/MW-2, and BH-22/MW-10.
3. The Agency has determined from information currently in its possession that PNA contamination exists in the groundwater. Once remediation activities have been completed, further PNA evaluation in the groundwater may be necessary.

In addition, the budget for the High Priority Site Investigation Corrective Action Plan is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if reimbursement 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.

NOTE: 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 reimbursable.

Pursuant to 35 Ill. Adm. Code 732.401, the site investigation results and a High Priority Corrective Action Plan demonstrating compliance with the requirements set forth in Section

Page 3

57.7(c)(1) of the Act and 35 Ill. Adm. Code 732.404 must be submitted within 90 days of the date of this letter to:

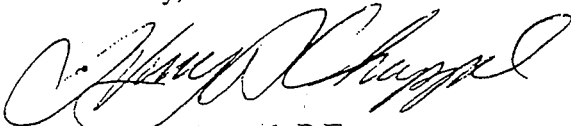
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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 Mindy Weller at 217/782-6762.

Sincerely,



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

HAC:MW:mw\982804-5.DOC

Attachment: Attachment A

cc: Bob Pulfrey, USI  
Division 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)(D) 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

## Attachment A

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

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

### SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

|             |                                 |
|-------------|---------------------------------|
| \$20,430.84 | Investigation Costs             |
| \$31,021.00 | Analysis Costs                  |
| \$17,050.00 | Personnel Costs                 |
| \$2,048.00  | Equipment Costs                 |
| \$53.15     | Field Purchases and Other Costs |
| \$35.18     | Handling Charges                |

*\$ 70,638.7*

### SECTION 2

1. \$7,553.18 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

| Subcontract or Field<br>Purchase Cost: | Eligible Handling Charges as a<br>Percentage of Cost: |
|--|---|
| \$0 - \$5,000                          | 12%   |
| \$5,001 - \$15,000                     | \$600 plus 10% of amount over \$5,000                 |
| \$15,001 - \$50,000                    | \$1,600 plus 8% of amount over \$15,000               |
| \$50,001 - \$100,000                   | \$4,400 plus 5% of amount over \$50,000               |
| \$100,001 - \$1,000,000                | \$6,900 plus 2% of amount over \$100,000              |

The plan includes subcontractor charges for actions that are considered corrective actions that are not a part of the Agency modified investigation plan associated with this budget. Therefore, the Agency has modified the budget to reflect the modifications to the plan.

2. \$782,330.45 for an adjustment in Investigation Costs, Analysis Costs, Personnel Costs, Equipment Costs, Field Purchases and Other Costs. These costs are inconsistent with the

associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The budget includes costs that are considered corrective action costs that are not a part of the Agency modified investigation plan associated with this budget. Therefore, the Agency has modified the budget to reflect the modifications to the plan.

The Agency has allotted for the investigation work/plume identification that has occurred to date (this plan/review does not include activities/budgets associated with free product). In addition, the Agency has modified the investigation plan to only include the "SB" delineation and the sample analysis associated with those borings. Once the results have been completed and the extent of contamination has been delineated, then a high priority corrective action plan can be properly developed for submittal to the Agency.

3. \$3,583.00 for an adjustment in Investigation Costs, Analysis Costs, Personnel Costs and Equipment Costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The budget includes the following costs that do not appear reasonable to the Agency as charged:

- a. Cost per disposable camera;
- b. Cost per unit of gloves;
- c. Cost per unit of bailers (both teflon and poly);
- d. Cost per unit of 2"expandable plug;
- e. Cost per unit of 2"x10' riser;
- f. Number/cost per unit of bentonite enviro plug;
- g. Cost per moisture content soil sample;
- h. Cost per saturation/porosity soil sample;
- i. Cost per PNA soil and groundwater sample;
- j. Hours for Drilling Forman, Rig Hand and Laborer for the tasks listed to be performed. The costs for those tasks should be included in the boring per foot charge;
- k. Hours for Project Coordinator for the tasks listed to be performed;
- l. Costs for VOA sample preservation kit since it was already allotted for in the investigation costs;
- m. Costs for data logger and transducer; and
- n. Cost per unit rate for PID.

4. \$20,575.00 for an adjustment in Personnel Costs. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The budget includes costs that are considered corrective action costs that are not a part of the Agency modified investigation plan associated with this budget. Those costs include the following:

- a. Hours for Professional Engineer for the tasks listed to be performed;
- b. Hours for Project Manager for the tasks listed to be performed; and
- c. Hours for Draftsman for the tasks listed to be performed.

In addition, the above costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.



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

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

July 23, 2003

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  
Corrective Action Plan

**RECEIVED**  
Division of Legal Counsel  
JUL 25 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 of July 16, 2003, included herein.

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. Pulirey  
Project Manager

Enclosures

RJP:crt

**EXHIBIT** B

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

|                        |   |                                      |
|------------------------|---|--------------------------------------|
| WEI ENTERPRISES,       | ) |                                      |
|                        | ) |                                      |
| 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 18, 2003, or any other date not more than a total of one hundred twenty-five (125) days from July 16, 2003, the date of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:

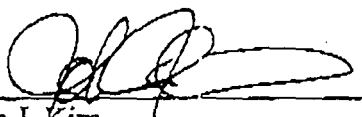
1. On July 16, 2003, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)
2. On July 23, 2003, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend 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 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)  
Dated: August 20, 2003

This filing submitted on recycled paper.



# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 0281

JUL 16 2003

Wei Enterprises  
Attention: Susan Wei  
529 Maple Street  
Shiloh, Illinois 62269

Re: LPC #1631255004 - St. Clair County  
Shiloh/Wei Enterprises  
529 Maple Street  
LUST Incident No. 982904  
LUST Technical File

Dear Ms. Wei:

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1. The investigation plan includes high priority corrective action activities and budget. However, since the soil and groundwater contamination have not been delineated to the south of the site, high priority corrective action/budget proposals for this site cannot be evaluated. Therefore, all high priority corrective action activities and budget proposed in this plan have not been reviewed/approved. The modifications to this plan include only high priority corrective action investigation activities and budget in order to develop,

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-7760  
ELGIN - 595 South State, Elgin, IL 60120 - (815) 398-7760  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62761 - (217) 278-5800  
JOLIET - 8511 W. Harrison St., Joliet, IL 60431 - (815) 724-4000  
CHAMPAIGN - 1001 E. Champaign, IL 61820 - (217) 278-5800  
MOUNTAIN VIEW - 1001 E. Champaign, IL 61820 - (217) 278-5800  
MAI

propose and submit to the Agency an adequate High Priority Corrective Action Plan and Budget.

The Agency has allotted for the investigation work/plume identification that has occurred to date (this plan/review does not include activities/budgets associated with free product). In addition, the Agency has modified the investigation plan to only include the "SB" delineation and the sample analysis associated with those borings. Once the results have been completed and the extent of contamination has been delineated, then a high priority corrective action plan can be properly developed for submittal to the Agency.

In addition, since the site has free product, the calculations presented in the investigation plan cannot be reviewed/approved pursuant to 35 IAC Part 742. Once the remediation activities/free product removal has been completed use of the Tier II calculations in 35 IAC Part 742 may be completed for review.

2. The Agency has determined that the following areas should be included in the estimations for the soil/groundwater excavation activities: BH-15, BH-16/MW-6, BH-6/MW-2, and BH-22/MW-10.
3. The Agency has determined from information currently in its possession that PNA contamination exists in the groundwater. Once remediation activities have been completed, further PNA evaluation in the groundwater may be necessary.

In addition, the budget for the High Priority Site Investigation Corrective Action Plan is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if reimbursement 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.

NOTE: 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 reimbursable.

Pursuant to 35 Ill. Adm. Code 732.401, the site investigation results and a High Priority Corrective Action Plan demonstrating compliance with the requirements set forth in Section

57.7(c)(1) of the Act and 35 Ill. Adm. Code 732.404 must be submitted within 90 days of the date of this letter to:

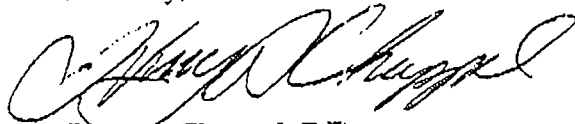
Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

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 Mindy Weller at 217/782-6762.

Sincerely,



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

HAC:MW:mw\982804-5.DOC

Attachment: Attachment A

cc: Bob Pulfrey, USI  
Division 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)(D) 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

associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The budget includes costs that are considered corrective action costs that are not a part of the Agency modified investigation plan associated with this budget. Therefore, the Agency has modified the budget to reflect the modifications to the plan.

The Agency has allotted for the investigation work/plume identification that has occurred to date (this plan/review does not include activities/budgets associated with free product). In addition, the Agency has modified the investigation plan to only include the "SB" delineation and the sample analysis associated with those borings. Once the results have been completed and the extent of contamination has been delineated, then a high priority corrective action plan can be properly developed for submittal to the Agency.

3. \$3,583.00 for an adjustment in Investigation Costs, Analysis Costs, Personnel Costs and Equipment Costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The budget includes the following costs that do not appear reasonable to the Agency as charged:

- a. Cost per disposable camera;
- b. Cost per unit of gloves;
- c. Cost per unit of bailers (both teflon and poly);
- d. Cost per unit of 2"expandable plug;
- e. Cost per unit of 2"x10' riser;
- f. Number/cost per unit of bentonite enviro plug;
- g. Cost per moisture content soil sample;
- h. Cost per saturation/porosity soil sample;
- i. Cost per PNA soil and groundwater sample;
- j. Hours for Drilling Forman, Rig Hand and Laborer for the tasks listed to be performed. The costs for those tasks should be included in the boring per foot charge;
- k. Hours for Project Coordinator for the tasks listed to be performed;
- l. Costs for VOA sample preservation kit since it was already allotted for in the investigation costs;
- m. Costs for data logger and transducer; and
- n. Cost per unit rate for PID.

4. \$20,575.00 for an adjustment in Personnel Costs. These costs are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services shall be consistent with the associated technical plan (35 Ill. Adm. Code 732.505(c)).

The budget includes costs that are considered corrective action costs that are not a part of the Agency modified investigation plan associated with this budget. Those costs include the following:

- a. Hours for Professional Engineer for the tasks listed to be performed;
- b. Hours for Project Manager for the tasks listed to be performed; and
- c. Hours for Draftsman for the tasks listed to be performed.

In addition, the above costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

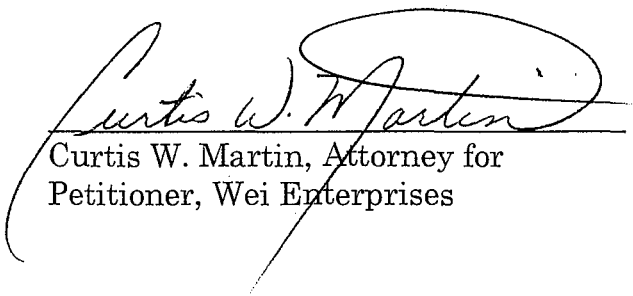
HAC:MW:mw\982804-5Attachment A.DOC

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on November 19<sup>th</sup>, 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