BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:
PETITION OF MAXIMUM INVESTMENTS, LLC) AS-09-02
FOR AN ADJUSTED STANDARD FROM)
35 ILL INOIS ADMINISTRATIVE CODE)
740.210(A)3 FOR THE STONEY CREEK)
LANDFILL IN PALOS HILLS, IL)

Certificate of Service

I, the undersigned, certify that I have served the attached Brief re Adjusted Standard, by depositing in the US Postal Service first class postage prepaid on August 14, 2009, upon the following persons:

Pollution Control Board, Clerk
100 W Randolph
Thompson Center, Suite 11-500
Chicago, IL 60601-3218

Mr. William Ingersoll
Illinois EPA
1021 N Grand Ave East
PO Box 19276
Springfield, IL 61794-9276

Mr. Brad Halloran
Pollution Control Board
100 W Randolph
Thompson Center, Suite 11-500
Chicago, IL 60601-3218

Richard Rosenbaum

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:
PETITION OF MAXIMUM INVESTMENTS, LLC) AS-09-02
FOR AN ADJUSTED STANDARD FROM)
35 ILL INOIS ADMINISTRATIVE CODE)
740.210(A)3 FOR THE STONEY CREEK)
LANDFILL IN PALOS HILLS, IL)

PETITIONER'S REPLY TO THE IEPA'S RESPONSE

The IEPA is correct when it states that one of the purposes of a motion for reconsideration is to bring to the court's attention errors in its application of existing law, but it is incorrect when it claims Petitioner's Motion to Reconsider fails to meet this standard. In a disingenuous sleight of hand, the IEPA at first claims that Petitioner gives no reason why the decision of the Illinois Pollution Control Board ("the Board") should be reconsidered. Then in a single sentence buried in its last paragraph, the IEPA glosses over Petitioner's argument and rushes to conclude, without any analysis or citation to authority, that Petitioner's argument was meritless which "in other words" the IEPA equates with being non-existent. However, contrary to the IEPA's assertion, the Motion to Reconsider very specifically points out the Board's misapplication of the law, namely its failure to address the inconsistency between the statutory language of the Illinois Environmental Protection Act ("the Act") and the Illinois Administrative Code ("the Code").

Although the IEPA does not directly address the substance of Petitioner' position, it appears to argue that the "very real meaning" of "Remediation Application" ("RA") would preclude a tax lienholder from becoming a RA. Without any citation, the IEPA claims that by definition a RA is "someone with legal authority to take actions at the site." Nowhere do those words appear in the statutory definition of RA.

Section 58.2 states that:

> "Remediation Applicant" (RA) means **any person seeking to perform** or performing investigative or **remedial activities under this Title, including** the owner or operator of the site or **persons authorized by law** or consent **to act** on behalf of or **in lieu of the owner or operator of the site**.

(Emphasis added)

Contrary to the IEPA's assertion and as the emphasized language makes clear, the definition of a RA is broad and inclusive generally, it is not exclusive: "any person . . . including . . . **but not limited to**..." To read into this provision a narrow definition that excludes a person in Petitioner's situation seeking to perform remedial activities would circumvent the public policy and purpose of site remediation under the Act.

Furthermore, by ignoring the inclusive definition of a RA in Section 58.2, and by unnecessarily limiting review and evaluation services under Section 58.7(b) of the Act in favor of the restrictions of the Code, the Board is perpetuating a situation whereby a derelict property with no living owner of record or clear chain of title would never be able to be remediated by interested parties who have legal interest, namely, tax lienholders seeking to perfect their claim to the property. It is an untenable Catch-22 that is inconsistent with the guidelines and definitions of the Act, and it is a misapplication by the Board of the provisions of the Act.

An Attorney for Petitioner

WEIL & ASSOCIATES, P.C.
60 Revere Drive
Suite 888
Northbrook IL 60062
847-509-0015 (Telephone)
847-509-0021 (Facsimile)
Atty. No. 16362