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BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JAN - 5 2004

STATE OF ILLINOIS
POLLUTION CONTROL BOARD

| | | |
|------------------------|---|---------------|
| WEI ENTERPRISES, |) | |
| |) | |
| Petitioner, |) | |
| vs. |) | PCB No. 04-22 |
| |) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Respondent. |) | |

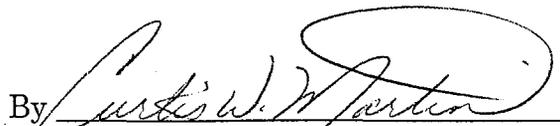
NOTICE

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

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, IL 62704

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a Motion to Reconsider, a copy of which is herewith served upon you.

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. 10th Street, Suite 302
P.O. Box 1789
Mt. Vernon, Illinois 62864
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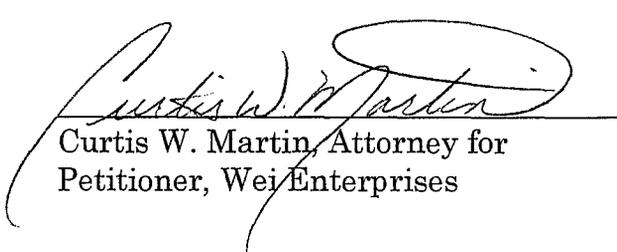
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on December 30, 2003, I served true and correct copies of a Motion to Reconsider, 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
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Curtis W. Martin, Attorney for
Petitioner, Wei Enterprises

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MOTION TO RECONSIDER

NOW COMES the Petitioner, Wei Enterprises, ("Wei"), by one of its attorneys, Curtis W. Martin of Shaw & Martin, P.C., and, for its Motion to Reconsider, pursuant to 35 Ill. Adm. Code 101.520, states as follows:

1. On July 15, 2003, the Agency issued a Final Decision to Wei.
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.
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.
4. As a result of the parties timely filing the joint request to extend the 35 day period within which Wei could appeal the Agency's July 15, 2003 Final Decision, the Illinois Pollution Control Board ("Board") entered an Order on September 4, 2003 extending the appeal period to November 17, 2003, exactly 125 days from the date of the Agency's Final Decision, but did not notify Wei of the entry of this Order.

5. On November 18, 2003, Wei sent its Petition for Review of Final Agency Leaking Underground Storage Tank Decision by the United States Mail for filing with the Board which was received by the Board on November 21, 2003.

6. On December 4, 2003, the Board entered an Order finding it lacked jurisdiction in this matter because the Petition was filed after the end of the extension period specified in the Board's September 4, 2003 Order and dismissing the case and closing the docket.

7. 35 Ill. Adm. Code 105.406 provides in part that a joint request to extend the 35 day period within which to file an appeal extends the appeal period to a period not exceeding 125 days from the *date of service* of the Agency's Final Decision.

8. 35 Ill. Adm. Code 101.300(c) provides in part that in the case of service by registered or certified mail, service is deemed complete on the date specified on the registered or certified mail receipt, but such presumption can be rebutted by proper proof.

9. 35 Ill. Adm. Code 101.300(a) provides in part that the computation of any period of time prescribed in the Rules of the Board will begin with the first calendar day following the day on which the act, event or development occurs and will run until the close of business on the last day.

10. 35 Ill. Adm. Code 101.300(b)(2) provides in part that documents will be considered filed in conformance with the filing requirements of the Rules of the Board if the document is filed by U.S. Mail and the postmark date precedes the filing deadline.

11. On July 16, 2003, Wei, through its consultant, United Science Industries, Inc. ("USI") received the Agency's Final Decision, as is more specifically set forth in the Affidavit attached as Exhibit A.

12. In the present case, pursuant to 35 Ill. Adm. Code 101.300(a), 101.300(c) and 105.406, Wei had until November 19, 2003, the 125th day from July 17, 2003, the day after the date of service of the Agency's Final Decision, within which to file its appeal.

13. Since Wei's Petition must be deemed to have been timely filed on November 18, 2003 pursuant to the applicable regulations, the Board has jurisdiction of this matter.

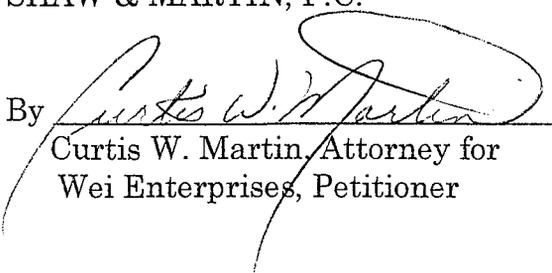
14. The Board's Order of September 4, 2003 was in contravention of the regulations and the Board should reconsider its dismissal of Wei's Petition.

WHEREFORE, Petitioner, Wei Enterprises, prays that this Court reconsider its Order entered December 4, 2003 dismissing the above case and closing the docket, take jurisdiction in this matter, and grant Petitioner such other and further relief as the Board deems just and equitable under the facts and circumstances.

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.
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AFFIDAVIT

STATE OF ILLINOIS)
) ss.
COUNTY OF JEFFERSON)

I, Duane Doty, being first duly sworn, on oath depose and state:

1. I have first hand knowledge of the facts as alleged herein, and if called to testify I could competently testify to such facts.

2. I am the General Manager for United Science Industries, Inc. ("USI"), the environmental consultant for Wei Enterprises ("Wei") with regard to Wei's Leaking Underground Storage Tank project located at Shiloh, St. Clair County, Illinois, and known as Incident No. 982804.

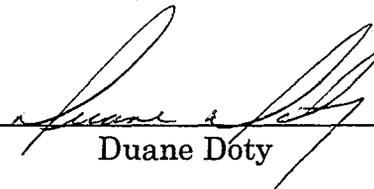
3. Among my duties as General Manager for USI, I maintain the records created during the course of the work performed by USI on behalf of Wei.

4. It is USI's ordinary course of business to maintain records created or received by Wei or USI, including Agency correspondence, during the course of the work performed on behalf of Wei.

EXHIBIT A

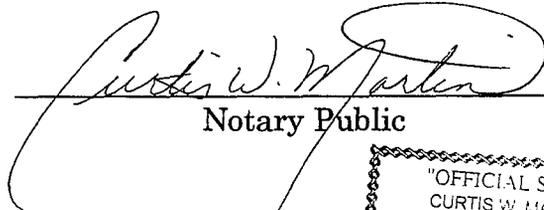
5. My review of the Wei file maintained by USI reveals that Wei and USI received the Agency letter dated July 15, 2003, which is the subject of the appeal in the above cause, on July 16, 2003.

Affiant states nothing further.

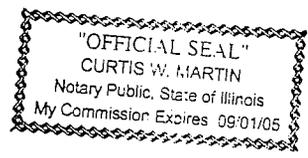


Duane Doty

Subscribed and sworn to before me this 30th day of December, 2003.



Notary Public



Curtis W. Martin
IL ARDC No. 06201592
SHAW & MARTIN, P.C.
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P. O. Box 1789
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