

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 23 2003

STATE OF ILLINOIS
Pollution Control Board

KELLER OIL PROPERTIES, INC.,)

Petitioner)

v.)

ILLINOIS ENVIRONMENTAL,
PROTECTION AGENCY)

Respondent)

PCB 03 - 136
(UST Appeal)

NOTICE OF FILING

To: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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

PLEASE TAKE NOTICE that on Friday, May 23, 2003, I filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decisions and Appearances for Carolyn S. Hesse and Beth A. Harvey.

Dated: May 23, 2003

Respectfully submitted,

By: Carolyn S. Hesse
Carolyn S. Hesse

Carolyn S. Hesse, Esq.
Beth A. Harvey
Barnes & Thornburg
2600 Chase Plaza, 10 South LaSalle Street
Chicago, Illinois 60603
312-214-8301

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 23 2003

STATE OF ILLINOIS
Pollution Control Board

KELLER OIL PROPERTIES, INC.,	)	
	)	
Petitioner	)	
	)	
v.	)	PCB 03 - 136
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent	)	

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISIONS**

Keller Oil Properties, Inc. by its attorneys, Carolyn S. Hesse and Beth A. Harvey of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Keller Oil Properties, Inc. ("Keller") is the owner of property located at 419 West Lincoln, Charleston, Coles County, Illinois. The site is a gasoline service station known as University BP or University Shell that has underground storage tanks (USTs) on the property, which store gasoline, heating oil, and diesel fuel.
2. LUST Incident Number 881670 was obtained following a site investigation.
3. On March 26, 2001, the Agency received Keller's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from October 1, 1999 to July 1, 2000, in the amount of \$140,210.68.

4. The Agency denied certain costs in the Request in a letter dated January 21, 2003, a copy of which is attached hereto as Exhibit A.
5. Keller is appealing this January 21, 2003 denial because:
 - (a) the Agency denied certain costs due to the deduction for an adjustment to Handling Charges greater than allowed by the sliding scale based on eligible subcontractor charges;
 - (b) the Agency denied certain costs by claiming that the costs that the owner/operator failed to demonstrate were reasonable;
 - (c) the Agency denied certain costs due to lack of supporting technical documentation as the owner/operator failed to demonstrate that the costs are for corrective action performed in accordance with agency approved plans; and
 - (d) the Agency denied certain costs for concrete replacement and copying.
6. Keller disagrees with the Agency's decision and believes that the costs submitted for reimbursement are corrective action costs, are reasonable and are the types of costs that are eligible for reimbursement under the Act and implementing regulations.
7. The Agency's letter denying reimbursement, Exhibit A, provides no further explanation of the Agency's reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner's right to reimbursement under the UST Fund.
8. On February 26, 2003, the parties timely filed a joint notice to extend the appeal deadline. On March 6, 2003, the Board filed an order extending the appeal deadline until May 27, 2003, a copy of which is attached hereto as Exhibit B.

Pursuant to the Board's March 6, 2003 order, this appeal is timely filed.

WHEREFORE, Keller Oil Properties, Inc. respectfully requests that the Board enter an order that will provide that it be reimbursed from the UST Fund for its submitted costs and for its attorneys fees and costs in bringing this appeal.

Respectfully submitted,

KELLER OIL PROPERTIES, INC.

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Beth A. Harvey
Barnes & Thornburg
2600 Chase Plaza
10 South LaSalle Street
Chicago, Illinois 60603
312-214-8301



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

RENEE CIPRIANO, DIRECTOR

217/782-6762

JAN 21 2003

JAN 22 2003

L. Keller Oil Properties, Inc.
Attn: Joe Henry
Post Office Box 70
Effingham, Illinois 62401

Re: LPC #0290105024 -- Coles County
Charleston/Keller Oil
419 West Lincoln
LUST Incident #881670
LUST FISCAL FILE

Dear Mr. Henry:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from October 1, 1999 to July 1, 2000. The amount requested was \$140,210.68.

The deductible amount to be assessed on this claim is \$3,563.13, which is being deducted from this payment. In addition to the deductible, there are costs from this request that are not being reimbursed. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On March 26, 2001, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$103,682.48 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) 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

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) 693-5463 • CHAMPAIGN - 1001 N. University St., Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62761 - (217) 782-6762 • MOUNTAIN VIEW - 1001 N. University St., Champaign, IL 61820 - (217) 278-5800
MOUNTAIN VIEW - 1001 N. University St., Champaign, IL 61820 - (217) 278-5800

A

Page 2

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:

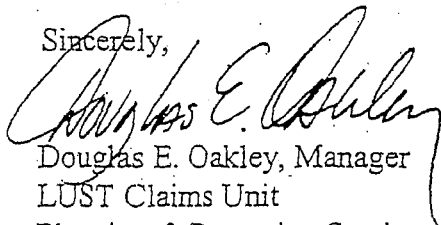
Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

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, please contact Diana Gobelman of my staff, or Carol Hawbaker of the LUST Section technical staff, at 217/782-6762.

Sincerely,



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

DEO:DLG:ct\033492.doc

Attachment

cc: CW3M

Attachment A
Accounting Deductions

Re: LPC #0290105024 -- Coles County
Charleston/Keller Oil
419 West Lincoln
LUST Incident No. 881670
LUST FISCAL FILE

JAN 22 2003
CR

Item # Description of Deductions

1. \$2,473.88, deduction for an adjustment in Handling Charges of greater than the allowed Sliding Scale (Section 22.18b(i)(2) of the Environmental Protection Act).

Handling charges billed for ineligible subcontractor charges - \$2,348.61.

Handling charges billed for ineligible-field charges - \$125.27

2. \$2,442.25, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

CW3M October 1999 -- Project manager, administrative assistant, and environmental engineer rates - \$80.00

CW3M February 2000 -- Environmental engineer rate - \$115.00

CW3M March 2000 -- Environmental engineer rate - \$15.00

CW3M April 2000 -- Field supervisor, project manager, administrative assistant, environmental engineer, per diem and mobilization rates; hotel on April 7-8 - \$559.00

CW3M May 2000 -- Field supervisor, administrative assistant, environmental engineer, per diem rates, demobilization, and trackhoe rates; duplicate billing of LEL for week April 30-May 6, 2000 - \$1,644.25

CW3M June 2000 - Administrative assistant and environmental engineer rates - \$29.00

Attachment A
Technical Deductions

Re: LPC #0290105024 -- Coles County
Charleston / Keller Oil Company
419 West Lincoln
LUST Incident No. 881670
LUST FISCAL FILE

Item # Description of Deductions

1. \$26,251.04, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

These costs are associated with the excavation, transportation, disposal and backfill of the recovery trench (\$23,651.04) and LEL and Air Operated Recovery Pump rates (\$2,600.00).

2. \$441.80, deduction for costs that lack supporting technical documentation as the owner or operator failed to demonstrate that the costs are for corrective action performed in accordance with the plans approved by the Agency (Section 22.18b(d)(4)(F) of the Environmental Protection Act).

These costs are associated with Copies for SA/CAP/ERU (\$49.80), Poly-Tank Product Storage 04/05/00 (\$191.24), Emergency Corrective Action Work Plan (\$185.00), Disposable camera (\$7.19), and Photos (\$8.57).

3. \$1,353.70 , deduction for costs associated with replacement of concrete and/or asphalt (Section 22.18(e)(1)(C) of the Environmental Protection Act).

This cost is associated with concrete replacement for the recovery trench.

4. \$2.40, deduction for costs associated with seeking reimbursement from the Underground Storage Tank Fund (Section 22.18(e)(1)(C) and 22.18b(a)(3) of the Environmental Protection Act).

This cost is associated with copies for reimbursement.

ILLINOIS POLLUTION CONTROL BOARD

March 6, 2003

KELLER OIL (October 1, 1999 – July 1,
2000),

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 03-136

(UST Fund)

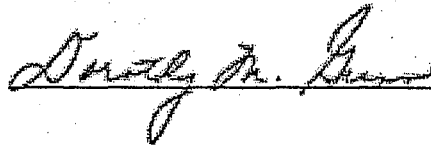
(90-Day Extension)

ORDER OF THE BOARD (by T.E. Johnson):

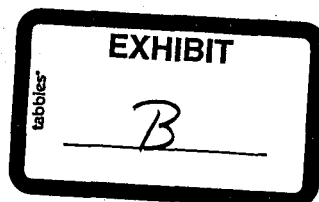
On February 26, 2003, the parties placed in the U.S. mail a joint request to extend the 35-day period within which Keller Oil may appeal a January 21, 2003 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(c), 105.208(a), (c). Keller Oil was served the Agency determination on January 22, 2003. The Board received the joint request on March 3, 2003. Because the postmark date of the joint request is within the 35-day filing period after service of the Agency determination, the request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency determined that Keller Oil was entitled to a reimbursement of \$103,682.48 from the Underground Storage Tank Fund. Keller Oil requested a \$140,210.68 refund. This matter regards Keller Oil's leaking underground storage tank site at 419 West Lincoln in Charleston, Coles County. The Board extends the appeal period until May 27, 2003. *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.208(a). If Keller Oil fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board



BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
MAY 23 2003

STATE OF ILLINOIS
Pollution Control Board

KELLER OIL PROPERTIES, INC.,	)	
	)	
Petitioner	)	
	)	
v.	)	PCB 03 - 136
	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
	)	
Respondent	)	

APPEARANCE

NOW COMES the undersigned, Carolyn S. Hesse, and enters an appearance for the
Petitioner, KELLER OIL PROPERTIES, INC., in the above captioned matter.

Dated: May 23, 2003

Keller Oil Properties, Inc.

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg
10 S. LaSalle Street
Suite 2600
Chicago, Illinois 60603
(312) 214-8301

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

MAY 23 2003

STATE OF ILLINOIS
Pollution Control Board

KELLER OIL PROPERTIES, INC.,	)	
	)	
Petitioner	)	
	)	
v.	)	PCB 03 - 136
	)	
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
	)	
Respondent	)	

APPEARANCE

NOW COMES the undersigned, Beth A. Harvey, and enters an appearance for the
Petitioner, KELLER OIL PROPERTIES, INC., in the above captioned matter.

Dated: May 23, 2003

Keller Oil Properties, Inc.

By: Beth A. Harvey
One of Its Attorneys

Beth A. Harvey
Barnes & Thornburg
10 S. LaSalle Street
Suite 2600
Chicago, Illinois 60603
(312) 357-1313

CERTIFICATE OF SERVICE

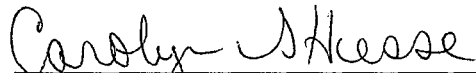
I, on oath state that I have served the attached PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DECISIONS and APPEARANCES for Beth A. Harvey and Carolyn S. Hesse by placing a copy in an envelope addressed to:

John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

via U.S. mail this 23 day of May, 2003.

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

via Hand Delivery this 23 day of May, 2003.



Carolyn S. Hesse