

**RECEIVED**  
CLERK'S OFFICE

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

MAR 12 2004

KELLER OIL / CENTRALIA )  
)  
Petitioner, )  
)  
v. )  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

PCB 04-156  
UST Fund 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

**PLEASE TAKE NOTICE** that on March 12, 2004, 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 Decision.

Dated: March 12, 2004

Respectfully submitted,

**L. Keller Oil Company**

By: Carolyn S. Hesse  
One of Its Attorneys

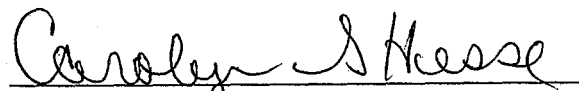
Carolyn S. Hesse  
**Barnes & Thornburg LLP**  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313  
209306v1

**CERTIFICATE OF SERVICE**

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decisions 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

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 12<sup>th</sup> Day of March, 2004.

  
\_\_\_\_\_  
Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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) UST Fund Appeal  
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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

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

L. Keller Oil Company by its attorney, Carolyn S. Hesse 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. L. Keller Oil Company ("Keller") owned underground storage tanks (USTs) at property operated as Smith Shell located at 900 South Locust, Centralia, Marion County, Illinois. The site was a gasoline service station known as Smith Shell that had underground storage tanks (USTs) on the property, which stored gasoline and diesel fuel.
2. LUST Incident Number 880933 was obtained following a site investigation.
3. On February 5, 2003, the Agency received Keller's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from November 1, 2001 to August 31, 2002 in the amount of \$121,028.79.

4. The Agency denied certain costs in the Request in a letter dated February 13, 2004, a copy of which is attached hereto as Exhibit A.
5. Keller is appealing this February 13, 2004 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that certain costs were reasonable.
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.

WHEREFORE, L. Keller Oil Company 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,

**L. Keller Oil Company**

By: Carolyn S. Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
Barnes & Thornburg LLP  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313  
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# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

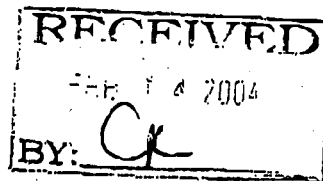
1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276

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

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762



FEB 13 2004

L. Keller Oil Company  
Attn: Joe Henry  
PO Box 571  
Carlinville, Illinois 62626

Re: LPC #1214225027 -- Marion County  
Centralia/Keller Oil  
900 South Locust  
LUST Incident #880933  
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 November 1, 2001 to August 31, 2002. The amount requested was \$121,028.79.

The deductible amount for this claim is \$50,000.00. The costs from the claims received by the Agency on August 9, 1999 for \$21,314.28 and August 20, 1999 for \$23,017.47 were applied to the deductible. The balance of the deductible; \$5,668.25 was deducted from the claim received by the Agency on November 8, 1999 for \$77,609.50. Listed in Attachment A are costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On February 5, 2003, 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 \$107,704.29 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61105 - 815-987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-8000  
ELGIN - 595 South State, Elgin, IL 60120 - 847-698-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-7463  
BUREAU OF ENVIRONMENTAL PROTECTION - 7620 N. University St., Peoria, IL 61614 - 309-693-7462 • CHAMPAIGN - 2123 South First Street, Champaign, IL 61820  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62709 - 217-786-6892 • CARLINVILLE - 2009 Main Street, Carlinville, IL 62234 - 618-361-1611  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - 618-993-7200

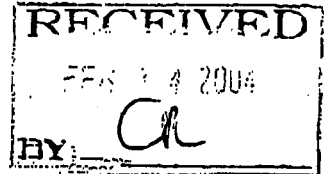
**EXHIBIT**  
**A**

Page 2

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, Illinois 60601  
312/814-3620

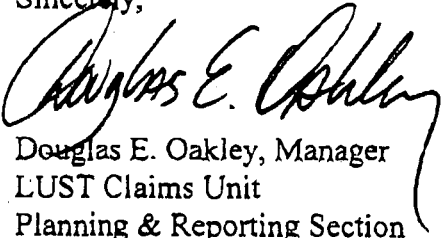


For information regarding the filing of an extension, please contact:

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 Catherine S. Elston of my staff at 217/782-6762.

Sincerely,

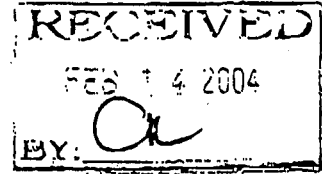
  
Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:CSE:bjh\043254.doc

Attachment

cc: CW3M

Attachment A  
Technical Deductions



Re: LPC #1214225027 -- Marion County  
Centralia/Keller Oil  
900 South Locust  
LUST Incident No. 880933  
LUST FISCAL FILE

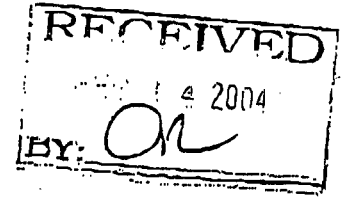
Item #      Description of Deductions

1.      \$10,862.50 deduction for an adjustment in Bio-Slurry costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).  
The owner/operator also failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

KEK



Attachment A  
Accounting Deductions



Re: LPC #1214225027 -- Marion County  
Centralia/Keller Oil  
900 South Locust  
LUST Incident No. 880933  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$2,462.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

CW3M invoice for 11/01-30/01

Rate for Field Coordinator is not reasonable - \$49.50

Rate for Per diem is not reasonable - \$50.00

Rate for mobilization/demobilization is not reasonable - \$300.00

Rate for Operator & Trackhoe is not reasonable - \$120.00

Rate for Flatbed Trailer is not reasonable- \$15.00

CW3M invoice for 12/01-31/01

Rate for Field Coordinator is not reasonable - \$401.50

Rate for Per diem is not reasonable - \$90.00

Rate for mobilization/demobilization is not reasonable - \$700.00

Rate for Operator & Trackhoe is not reasonable - \$336.00

CW3M invoice for 01/01-31/02

Rate for mobilization/demobilization is not reasonable - \$400.00

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