

BEFORE THE POLLUTION CONTROL BOARD **RECEIVED**
OF THE STATE OF ILLINOIS CLERK'S OFFICE

MAR 25 2004

L. KELLER OIL PROPERTIES, INC. /)
CHARLESTON / KELLER OIL)

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

STATE OF ILLINOIS
Pollution Control Board

PCB 03-129, PCB 03-130,
PCB 03-131, PCB 03-136,
PCB 03-137, PCB 04-171
(UST Fund Appeal)
(Consolidated)

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	Carol Sudman Hearing Officer Illinois Pollution Control Board 1021 North Grand Avenue East P.O. Box 19274 Springfield, Illinois 62794-9274
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PLEASE TAKE NOTICE that on March 25, 2004, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of Petition for Review of Illinois Environmental Protection Agency Decisions and Motion to Consolidate.

Dated: March 25, 2004

Respectfully submitted,

L. Keller Oil Properties, Inc.

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
211463v1

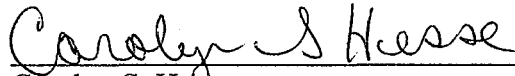
CERTIFICATE OF SERVICE

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

Carol Sudman
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 25th Day of March, 2004.



Carolyn S. Hesse

MAR 25 2004

STATE OF ILLINOIS
Pollution Control Board

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

L. KELLER OIL PROPERTIES, INC., /)	
CHARLESTON / KELLER OIL)	
)	
Petitioner,)	PCB 03-129, PCB 03-130, PCB 03-131
)	PCB 03-136, PCB 03-137,
v.)	PCB 04- <u>171</u>
)	(UST Fund Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent)	

MOTION TO CONSOLIDATE

NOW COMES L. Keller Oil Properties, Inc. by one of its attorneys, Carolyn Hesse of Barnes & Thornburg, pursuant to 35 Ill. Adm. Code 101.406 and hereby moves to consolidate the appeal of Illinois Environmental Protection Agency ("Agency") decisions that is filed on this date with the five previously filed appeals. In support of this motion, Petitioner states as follows:


1. Five underground storage tank appeals were filed on May 23, 2003. The case numbers are: PCB 03 - 129, PCB 03- 130, PCB 03-131, PCB 03 - 136, and PCB 03 - 137. On June 5, 2003, the Board consolidated these appeals for hearing.
2. All of the previously filed appeals and the appeal filed at the same time as this Motion to Consolidate involve a denial of reimbursement of costs from the Leaking Underground Storage Tank Trust Fund to perform corrective action activities at property located at 419 West Lincoln, Charleston, Coles County, Illinois. This property was previously owned by L. Keller Oil Properties, Inc.
3. All appeals are related to corrective action activities to respond to an emergency and to the installation and ongoing costs of the groundwater pump and treatment system installed to remediate contamination from the same underground storage tanks that leaked.

4. The various Agency letters denying reimbursement apply to activities at the site, but cover different periods of time and different costs and expenses related to the corrective action activities.
5. Because the factual basis of the petitions are closely related, consolidating the petitions into one proceeding will be more convenient to the Board, the Agency and Petitioner; consolidation will also result in a more expeditious and complete determination of the claims and would not cause material prejudice to any party. Further, consolidation of the claims will provide for a more efficient administration of justice and reduce duplication of efforts that would be required if the appeals were handled separately. The burden of proof for the appeals is identical and will be based on nearly identical facts and background information.

WHEREFORE, Petitioner, L. Keller Oil Properties, Inc., respectfully requests that the Board grant its motion to consolidate the petition filed on this date on behalf of L. Keller Oil Properties, Inc. with the previously filed and consolidated petitions.

Respectfully submitted,

L. Keller Oil Properties, Inc.

By: 
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
211436v1

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MAR 25 2004

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

L. KELLER OIL PROPERTIES, INC., /)
CHARLESTON / KELLER OIL)
)
Petitioner,)
)
v.) PCB 04- 171
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent)

PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY DECISIONS

L. Keller Oil Properties, Inc. by its attorneys, 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 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. The site was also assigned LPC #0290105024-Coles County.
3. On September 18, 2003, the Agency received Keller's complete request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from May 1, 2000 to June 30, 2002, in the amount of \$25,813.00.

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

4. In a letter dated March 1, 2004, the Agency denied certain costs in the Request and asked for additional explanation regarding other costs. *See* Exhibit A.
5. Keller is appealing this March 1, 2004 denial because:
 - (a) the Agency denied certain costs by claiming that the owner/operator failed to demonstrate the costs were reasonable;
 - (b) the Agency denied certain costs alleging lack of supporting technical documentation and claiming that the owner/operator failed to demonstrate that the costs are for corrective action performed in accordance with Agency approved plans; and
 - (c) the Agency denied certain handling costs as ineligible.
6. The Agency's letter also asks for an explanation of the use of a certain tank, and on behalf of Keller, Keller's consultant, CW³M responded to this request for additional information in a letter dated March 4, 2004. *See* Exhibit B.
7. 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.
8. 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 letter states that 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 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,

L. Keller Oil Properties, Inc.

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
211426v1



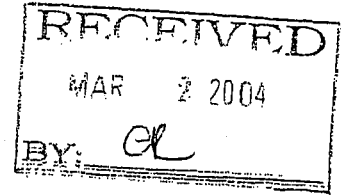
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

MAR 01 2004



L. Keller Oil Properties, Inc.
Attn: Joe Henry
Post Office Box 571
Carlinville, Illinois 62626

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 May 1, 2000 to June 30, 2002. The amount requested was \$25,813.00.

The deductible amount for this claim is \$50,000.00, which was previously deducted from the Invoice Voucher dated February 3, 2003. 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 September 18, 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 \$17,029.49 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.

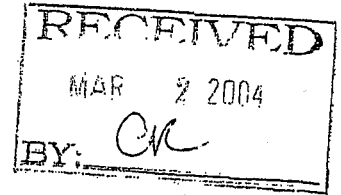
This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the

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) 993-7200

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,

A handwritten signature in cursive script that reads "Douglas E. Oakley".

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

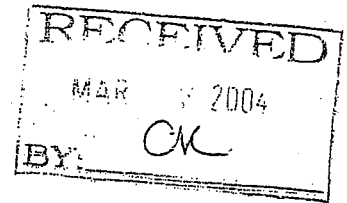
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Attachment

cc: CW3M Company

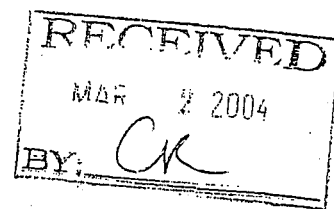
Attachment A
Technical Deductions

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



- | <u>Item #</u> | <u>Description of Deductions</u> |
|---------------|--|
| 1. | <p>\$ 1,996.23, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C)of the Environmental Protection Act).</p> <p>Costs for excavation, transportation, disposal, and backfill activities have been previously reimbursed in the July 23, 2003 letter covering the billing Package submitted for dates of October 1, 199 thru March 31, 2002.</p> |
| 2. | <p>\$ 5,796.00, 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).</p> <p>Please explain the use of the baker tank in conjunction with the groundwater treatment system and emergency operations for the dates of April 12, 2001 thru August 9, 2001.</p> |
| 3. | <p>\$ 972.60, deduction for handling on ineligible costs.</p> |

Attachment A
Accounting Deductions



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

Item # Description of Deductions

1. \$18.68, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

Rate for mileage on CW3M invoice for March 1-31, 2002 is unreasonable - \$1.94
Rate for latex gloves on CW3M invoice for April 1-30, 2002 is unreasonable - \$4.00
Rate for mileage on CW3M invoice for April 1-30, 2002 is unreasonable - \$1.98
Rate for mileage on CW3M invoice for May 1-31, 2002 is unreasonable - \$6.62
Rate for mileage on CW3M invoice for June 1-30, 2002 is unreasonable - \$4.14

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CW³M Company

Environmental Consulting Services

701 W. South Grand Avenue
Springfield, IL 62704

Phone: (217) 522-8001
Fax: (217) 522-8009

March 4, 2004

Ms. Carol Hawbaker, Project Manager
LUST Section, Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

Post-it [®] Fax Note	7671	Date	# of pages ▶ 2
To	Cardyn Hesse	From	Carol Rowe
Co./Dept.		Co.	CW3M
Phone #		Phone #	(217) 522-8001
Fax #	312-759-5646	Fax #	522-8001

**RE: LPC#0290105024—Coles County
Charleston / L. Keller Oil Properties, Inc.,
419 West Lincoln
Incident Number: 88-1670 & 89-0932
LUST Fiscal File—Requested Additional Information**

Dear Ms. Hawbaker:

This is in response to a letter from Doug Oakley dated March 1, 2004, regarding a reimbursement request for the above referenced site. The reimbursement request covered the time period of May 1, 2000 to June 30, 2002 in the amount of \$25,813.00. The Attachment A—Technical Deductions requests additional information regarding the use of a Baker Tank in conjunction with the Groundwater Treatment Unit (GWTU) during the time period of April 12, 2001 through August 9, 2001.

When the GWTU went on line, there were approximately 28,000 gallons of wastewater stored in the Baker Tank. Rather than incur disposal costs of up to \$2.00 per gallon to dispose of this water, the Baker Tank was connected to the GWTU and the water was treated and released into the sanitary sewer. Once the GWTU began treating the groundwater, the contents (water separated from product) were systematically routed through the GWTU for discharge. During start-up and initial operation of the GWTU, higher levels of free product were continually recovered. Liquids separating in the GWTU were transferred to the Baker Tank for disposal, as the heavily contaminated groundwater/product could not be cycled through the GWTU. Once product levels declined and the balance of the groundwater in the Baker Tank was treated, arrangements were made to have the tank cleaned and removed. When the Baker Tank was cleaned and the removed contents were containerized, the material was disposed of by Bodine Environmental Services, Inc. in September 2001.

The term "emergency operations" was used to describe use of the Baker Tank because the Tank was originally ordered and delivered to the site to recover wastewater from the sump in the basement of the Varsity Inn. Until the GWTU began to recover and treat the groundwater, wastewater continued to collect in Varsity Inn's sump, and was

pumped into and stored in the Baker Tank. This activity was an extension of the work initiated during emergency operations. If the Baker Tank had not been available to collect this wastewater, management at the Varsity Inn would probably have triggered an additional emergency response situation. As stated above, the recovered liquids from the Varsity Inn were cycled through the GWTU as an alternative to disposal. Therefore, continued use of the Baker Tank served dual purposes at the site.

We hope this satisfies your request for additional information. Therefore, we respectfully request payment of \$5,796.00 for use of the Baker Tank, and \$695.52 for associated handling charges.

Should you have any questions or require additional information, please feel free to contact our office. We can be reached at (217) 522-8001. On behalf of L. Keller Oil Properties, Inc., thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to be "Carol L. Rowe", written over a circular stamp or mark.

Carol L. Rowe, P.G.
Senior Environmental Geologist

xc: Mr. Charles F. Keller, *L. Keller Oil Properties, Inc.*
Mr. William T. Sinnott, *CW²M Company, Inc.*