


CERTIFICATE OF SERVICE

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decision 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 13th Day of April, 2004.


Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

APR 13 2004

STATE OF ILLINOIS
Pollution Control Board

KELLER OIL COMPANY /)
EDGEWOOD,)
)
Petitioner,)
)
v.) PCB 04- 181
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

Keller Oil Company ("Keller Oil / Edgewood"), 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. Keller Oil Company / Edgewood ("Petitioner"), is the owner of a gasoline service station located at Route 57, Edgewood, Effingham County, Illinois (the "Station"). This gasoline service station had underground storage tanks (UST's) on the property, which stored gasoline.
2. LUST Incident Number 991768 was obtained following a site investigation. The site has also been assigned LPC #0490205003-Effingham County.
3. On February 23, 2004, CW³M, the contractor hired by Petitioner to assist Petitioner with corrective action at the Station, sent to the Agency a High Priority Corrective Action Plan ("HPCAP") and Budget to perform

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

corrective action at the Station. The Agency received the HPCAP on February 26, 2004.

4. On March 11, 2004, the Agency sent a letter to Petitioner modifying the February 23, 2004 High Priority Corrective Action Plan and Budget. (See Exhibit A.) The letter included a list of modifications made by the Agency. The Agency's letter stated that modifications were made because the "costs were not reasonable as submitted."
5. The Agency's letter of March 11, 2004, provides no additional information regarding why IEPA modified the HPCAP or believes that costs are not reasonable.
6. Some of the Agency's modifications also contained the following sentence: "Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable."
7. However, the Agency's March 11, 2004 letter also states that the Agency's decision is a final decision, appealable to the Illinois Pollution Control Board. Thus, in order to preserve Petitioner's rights and to appeal the Agency's decisions, Petitioner is appealing the Agency decisions set forth in the Agency's letter dated March 11, 2004.

WHEREFORE, Keller Oil Company / Edgewood respectfully requests that the Board enter an order requiring the Agency to approve the High Priority Corrective Action Plan and Budget to allow the cleanup to proceed at this facility and for Keller Oil Company / Edgewood's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Keller Oil Company / Edgewood

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
214190v1



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

CERTIFIED MAIL

MAR 11 2004

7002 3150 0000 1255 4531

Keller Oil Company
Attention: Joe Henry
P.O. Box 70
Effingham, IL 62401

RECEIVED
MAR 12 2004
BY: *CR*

Re: LPC #0490205003 – Effingham County
Edgewood / Keller Oil
Route 57
LUST Incident No. 991768
LUST Technical File

Dear Mr. Henry:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated February 23, 2004, was received by the Illinois EPA on February 26, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is modified. The following modifications are necessary, in addition to those provisions already outlined in the plan, to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732:

1. The Illinois EPA requires 2 groundwater monitoring events after excavation activities to assist in determining the institutional controls that may be required at the site. The first sampling event should be conducted 3 months after excavation is complete. The second sampling event should be conducted 6 months after excavation is complete.
2. The Illinois EPA is modifying the proposed monitoring well network as follows: MW1, MW5, MW6, MW8, MW9, MW10, MW11, MW13, OMW1, OMW3 and OMW4 are approved for 2 rounds of groundwater sampling. Sampling all monitoring wells exceeds the minimum requirements to comply with Title XVI of the Act. Please note that for budgetary purposes, costs for 2 rounds of groundwater sampling at 11 samples each have been included in the modified budget listed in Attachment A.

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

EXHIBIT
A

3. Installing replacement monitoring wells in the areas of MW2 and MW7 is denied, as it exceeds the minimum requirements to comply Title XVI of the Act.

Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

In addition, the budget for the High Priority Corrective Action Plan is modified pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g) and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.405(e), if reimbursement will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

All future correspondence must be submitted to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

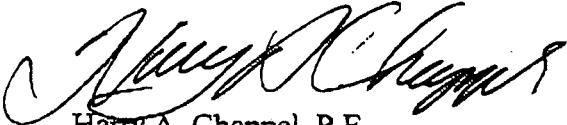
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

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If you have any questions or need further assistance, please contact Carol Hawbaker at 217/782-5713.

Sincerely,

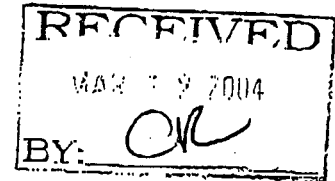


Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAC:CLH

Attachment: A

c: CW3M Company
Clay Faurot – Property Owner
Division File



Attachment A

Re: LPC # 0490205003 – Effingham County
Edgewood / Keller Oil
Route 57
LUST Incident No. 991768
LUST Technical File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

SECTION 1

The budget was previously approved for:

\$9,475.00	Investigation Costs
\$5,275.00	Analysis Costs
\$19,085.50	Personnel Costs
\$565.00	Equipment Costs
\$1,703.48	Field Purchases and Other Costs
\$1,671.58	Handling Charges

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment A, the following amounts are approved:

\$5,095.00	Investigation Costs
\$12,727.00	Analysis Costs
\$33,440.00	Personnel Costs
\$1,505.00	Equipment Costs
\$418,690.40	Field Purchases and Other Costs
\$13,531.66	Handling Charges

Therefore, the total cumulative budget is approved for:

\$14,570.00	Investigation Costs
\$17,547.00	Analysis Costs
\$52,525.00	Personnel Costs
\$2,070.00	Equipment Costs
\$420,393.88	Field Purchases and Other Costs
\$15,203.24	Handling Charges

SECTION 2

1. \$898.00 for an adjustment in monitoring well replacement costs. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act) and 35 Ill. Adm. Code 732 (Section 732.505(c)).

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BY: *Ol*

Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)).

2. \$1,570.00 for an adjustment in Investigation costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The following costs have been modified: monitoring well abandonment and groundwater disposal.

3. \$575.00 for an adjustment in Soil PNA analysis costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
4. \$580.00 for costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget for a site classified as high priority must include, but not be limited to, an accounting of all costs associated with the development, implementation, and completion of the applicable activities (Section 57.7(c)(1)(B) of the Act and 35 Ill. Adm. Code 732.405(b)). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. (Section 57.5(a) of the Act and 35 Ill. Adm. Code 732.606(o))

The following analysis costs have been deducted: element analysis and Toc analysis for soil and groundwater.

5. \$66,489.00 for an adjustment in consulting fees. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
6. \$352.00 for an adjustment in Equipment costs. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The following items have been modified: PID rental and survey equipment/measuring wheel.

7. \$4.00 for an adjustment in disposable gloves. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
8. \$49,184.66 for an adjustment in excavation, transportation, disposal and backfill field purchases. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
9. \$227.80 for an adjustment in mileage. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.
10. \$15,940.00 for an adjustment in per diem and hotels. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act) and 35 Ill. Adm. Code 732 (Section 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)).

Based on proposed budgeted trip mileage, it appears as though workers will be commuting to the site daily. Therefore, per diem and hotel costs do not apply.

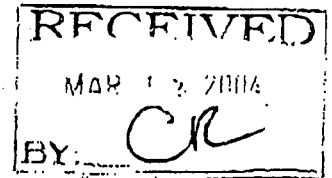
11. \$1,046.27 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 plus 8% of amount over \$15,000

\$50,001 - \$100,000
\$100,001 - \$1,000,000

\$4,400 plus 5% of amount over \$50,000
\$6,900 plus 2% of amount over \$100,000

Handling charges have been modified based on modifications made elsewhere in the budget. In addition, the following items are stock items and not eligible for handling charges: bailers, disposable gloves and bailing twine.



Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4)(D) 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 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, IL 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
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544