

ILLINOIS POLLUTION CONTROL BOARD

November 18, 2004

L. KELLER OIL PROPERTIES)	
(DOWNTOWN SHELL),)	
)	
Petitioner,)	
)	
v.)	PCB 05-22
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On August 19, 2004, the Board, at the parties' request, extended until November 3, 2004, the time period within which L. Keller Oil Properties may appeal a June 30, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. On November 3, 2004, L. Keller Oil Properties filed a petition asking the Board to review the Agency's determination. Because the postmark date of the petition is within the extended time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency rejected petitioner's sixth amendment to the high priority corrective action plan budget for L. Keller Oil Properties' leaking underground petroleum storage tank facility located at 203 South Third Street, and Fayette Avenue, in Effingham, Effingham County.

L. Keller Oil Properties appeals on the grounds that (1) the costs submitted are reasonable costs of corrective action; and (2) the Agency rejection of the budget amendment was arbitrary and capricious. L. Keller Oil Properties' petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

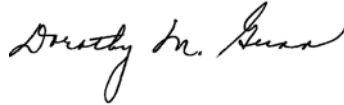
L. Keller Oil Properties has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only L. Keller Oil Properties may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, L. Keller Oil Properties may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is March 3, 2005 (the 120th day after November 3, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for March 3, 2005.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by December 3, 2004 which is 30 days after L. Keller Oil Properties filed the petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to

file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 18, 2004, by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board