

ILLINOIS POLLUTION CONTROL BOARD

July 6, 2006

L. KELLER OIL PROPERTIES, INC.	)	
(FARINA),	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 06-189
	)	(Incident No. 20060153)
ILLINOIS ENVIRONMENTAL	)	PCB 06-190
PROTECTION AGENCY,	)	(Incident No. 20051539)
	)	(UST Appeal)
Respondent.	)	(Consolidated)

ORDER OF THE BOARD (by A.S. Moore):

On June 23, 2006, L. Keller Oil Properties, Inc. (Keller Oil) timely filed two petitions asking the Board to review two separate May 22, 2006 determinations of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2004); 35 Ill. Adm. Code 101.300(b), 105.402. With each petition, Keller Oil included a motion to consolidate the two appeals, which the Board has docketed as PCB 06-189 and PCB 06-190.

Both appeals involve leaking petroleum underground storage tanks (USTs) of a former gasoline service station located at 1003 West Washington Avenue in Farina, Fayette County. Keller Oil owns the site. The Agency determination being appealed in PCB 06-189 concerns leaking UST Incident No. 20060153. The Agency determination being appealed in PCB 06-190 addresses leaking UST Incident No. 20051539. For the reasons below, the Board accepts Keller Oil's petitions for hearing and grants Keller Oil's motions to consolidate.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), the Agency determines whether to approve proposed cleanup plans for leaking UST sites, as well as requests for cleanup cost reimbursement from the State's UST Fund, which consists of UST fees and motor fuel taxes. If the Agency disapproves or modifies a submittal, the UST owner or operator may appeal the decision to the Board. *See* 415 ILCS 5/40(a)(1), 57-57.17 (2004); 35 Ill. Adm. Code 105.Subpart D. Keller Oil's petition filed in PCB 06-189 states that Keller Oil submitted a 45-day report to the Agency in March 2006 concerning Incident No. 20060153. The petition filed in PCB 06-190 provides that Keller Oil submitted a different 45-day report to the Agency in December 2005, that time concerning Incident No. 20051539. According to the petitions, each of the Agency's response letters states that the respective incident is not subject to Title XVI of the Act (415 ILCS 5/57-57.17 (2004)) or 35 Ill. Adm. Code 731. Keller Oil contends that both Agency determinations are in error and contrary to the information in the Agency's files. The Board finds that Keller Oil's petitions meet the content requirements of 35 Ill. Adm. Code 105.408 and accepts the petitions for hearing.

Keller Oil has also moved to consolidate the two appeals. Keller Oil states that both appeals concern corrective action at the same site, have closely related facts, and have the same burden of proof. According to Keller Oil, consolidation will aid convenience, reduce duplication of efforts, and result in a more expeditious and complete determination of the issues. Further, Keller Oil maintains that no material prejudice will result from consolidation. The Board grants Keller Oil's motions to consolidate. The appeals are consolidated for hearing, but not necessarily for Board decision. *See* 35 Ill. Adm. Code 101.406. Future filings must reflect the caption of this order.

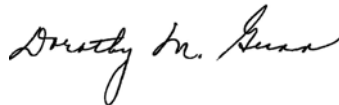
Keller Oil has the burden of proof. *See* 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its determination. *See* 35 Ill. Adm. Code 105.412. Accordingly, though the Board hearing affords petitioner the opportunity to challenge the Agency's reasons for its determination, information developed after the Agency's determination typically is not admitted at hearing or considered by the Board. *See* Alton Packaging Corp. v. PCB, 162 Ill. App. 3d 731, 738, 516 N.E.2d 275, 280 (5th Dist. 1987); Community Landfill Co. & City of Morris v. IEPA, PCB 01-170 (Dec. 6, 2001), *aff'd sub nom.* 331 Ill. App. 3d 1056, 772 N.E.2d 231 (3d Dist. 2002).

Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2004)), which only Keller Oil may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, Keller Oil may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2004). On June 30, 2006, Keller Oil filed waivers of the two appeals' decision deadlines to January 19, 2007. *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the deadline is scheduled for January 18, 2007.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of each of its determinations by July 24, 2007, which is the first business day following 30 days after the Board received Keller Oil's petitions. *See* 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file a record, it must file a request for extension before the date on which the record is due to be filed. *See* 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 July 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board