

ILLINOIS POLLUTION CONTROL BOARD  
September 21, 2006

|                                  |   |                |
|----------------------------------|---|----------------|
| L. KELLER OIL PROPERTIES/FARINA, | ) |                |
|                                  | ) |                |
| Petitioner,                      | ) |                |
|                                  | ) |                |
| v.                               | ) | PCB 06-189     |
|                                  | ) | PCB 06-190     |
| ILLINOIS ENVIRONMENTAL           | ) | (Consolidated) |
| PROTECTION AGENCY,               | ) | (UST Appeal)   |
|                                  | ) |                |
| Respondent.                      | ) |                |

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

On June 23, 2006, L. Keller Oil Properties, Inc. (Keller) 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. Both appeals involve leaking petroleum underground storage tanks (USTs) at the site of a former gasoline service station owned by Keller and located at 1003 West Washington Avenue in Farina, Fayette County. In an order dated July 6, 2006, the Board accepted Keller's petitions for hearing and granted Keller's motions to consolidate.

On September 11, 2006, the Agency filed a motion for authorization of settlement (Mot.). The Agency states that, in the course of negotiations to settle these consolidated appeals, Keller requested reimbursement of attorney fees. Mot. at 1. "As part of settlement and not as an admission by the Illinois EPA that payment of attorney fees would be applicable *if a hearing were held in this matter*, the Illinois EPA and the Petitioner agreed to a compromise amount of \$2,500." *Id.* (emphasis added).

The Agency further states that section 732.606(g) of the Board's UST rules requires the Board to authorize payment of these fees and that, without such authorization, the parties cannot settle the case. Mot. at 1., citing 35 Ill. Adm. Code 732.606(g). To effectuate payment of the agreed settlement amount from the UST fund, the Agency, "with the agreement of the Petitioner, request[s] that the Board authorize and order payment of \$2,500.00 in attorney fees in this case." Mot. at 2.

Section 57.9(b) of the Act provides that, with specified exceptions, "an owner or operator may access the Underground Storage Tank Fund for costs associated with an Agency approved plan and the Agency shall approve the payment of costs associated with corrective action . . . ." 415 ILCS 5/57.9(b) (2004). However, section 57.8 (l) of the Act provides that "[c]orrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title *unless* the owner or operator prevails before the Board in which case the

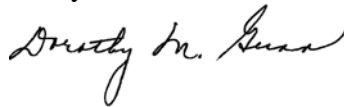
Board may authorize payment of fees.” 415 ILCS 57.8(l) (2004) (emphasis added); 35 Ill. Adm. Code 732.606(g).

Even assuming that Keller has borne “legal costs for seeking payment under this Title,” Keller has not appeared before the Board for hearing and can in no way be said to have prevailed before the Board.

Consequently, the Board reserves ruling on the motion for authorization. The Board directs the parties, either individually or jointly at their discretion, to submit a filing describing the specific legal authority on which the Board might rely in authorizing payment of legal fees in this case in which the petitioner has not yet prevailed at a hearing before the Board. These filings shall be filed on or before Monday, October 23, 2006, which is the first business day after the 30th day from the date of this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 21, 2006 by a vote of 4-0.

A handwritten signature in cursive script, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board