

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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JUN 27 2007

STATE OF ILLINOIS
Pollution Control Board

L. KELLER OIL PROPERTIES, INC. / FARINA)
)
Petitioner,)
)
v.) PCB No. 07- 147
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

TO: Melanie A. Jarvis Carol Webb
Assistant Counsel Hearing Officer
Division of Legal Counsel Illinois Pollution Control Board
Illinois Environmental Protection Agency 1021 North Grand Avenue East
1021 North Grand Avenue East P.O. Box 19274
P.O. Box 19276 Springfield, Illinois 62794-9274
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on June 27, 2007, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decision.

Dated: June 27, 2007

Respectfully submitted,

L. KELLER OIL PROPERTIES / FARINA

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
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[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]


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:

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

Carol Webb
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 27th Day of June, 2007.



Carolyn S. Hesse

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

L. KELLER OIL PROPERTIES,)
(Farina),)
)
Petitioner,)
)
v.) PCB No. 07- 147
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

L. Keller Oil Properties ("Keller-Farina"), 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. L. Keller Oil Properties ("Petitioner"), was the owner of tanks located at a former gasoline service station was located at 1003 West Washington Avenue, Farina, Fayette County, Illinois (the "Station"). This gasoline service station had underground storage tanks (UST's) on the property, which stored gasoline, diesel fuel and heating oil.
2. LUST Incident Numbers 20051539, 20060136, 20060153 and 20060346 were obtained. The site has also been assigned LPC #0514155011 - Fayette.

3. On August 7, 2006, Petitioner sent to the Agency a Stage 2 Site Investigation Plan and Budget. *Exhibit 1.*
4. By letter dated October 5, 2006, the Agency provided numerous comments on the Stage 2 Site Investigation Plan and Budget and rejected them. *Exhibit 2.*
5. On January 24, 2007, the Agency received from Petitioner's consultant the "Stage II Site Investigation Plan and Budget, Additional Information and Reconsideration" ("Proposed Plan and Budget") for the Station. *Exhibit 3.* The Stage 2 Plan and Budget, Additional Information was prepared to respond to the questions raised by the Agency in its letter dated October 5, 2006.
6. On May 17, 2007, the Agency sent a letter (the "Letter") to Petitioner rejecting the Stage 2 Plan and Budget. (*Exhibit 4.*) Petitioner is appealing the Agency's denial as stated in the Letter.
7. The Letter contains lengthy quotes of several regulations and states that the Stage 2 Plan was rejected for a number of reasons. *Exhibit 4.*
8. The comments in item 1 of the Letter regarding the Stage 2 Plan relate to information obtained during the Stage 1 Site Investigation and do not relate to the proposed Stage 2 Site Investigation and are irrelevant to approval of the Proposed Plan and Budget. Further, the Stage 1 Site Investigation Plan and Budget were included in the 45-Day Report and were approved by the Agency in a letter dated May 9, 2006. *Exhibit 5.*

9. The monitoring wells to which the Agency refers in item 2 of the Letter regarding the Proposed Plan were installed during the Stage 1 Site Investigation and were installed and located in accordance with 35 IAC 734.315(a)(2)(C) and (B), respectively. While the Agency correctly quoted section 734.315(a)(2)(C) which lists the requirements for installation of monitoring wells when groundwater contamination is suspected, the Agency provides no regulatory citation for its comments on piping run samples being adequate substitutes for determining if groundwater and soil are contaminated. Since piping runs are typically located two to three feet below grade, they are usually located well above the vadose zone and the groundwater table. *See page 4 of Exhibit 3.*
10. In item 3 of the Letter regarding the Proposed Plan, the Agency cites the regulatory requirements for installation of monitoring wells. However, the requirement that the Agency provides as the basis for disapproving the Proposed Plan is not contained in the cited regulation. Further, the Agency had already been provided with information explaining the location of the monitoring well screens, i.e. that the screens were set at the groundwater table observed during drilling and that the hydraulic head in the formation caused the water levels in the wells to be higher than in the surrounding stratigraphy and that if the wells had been installed as the Agency commented, the wells would have been dry. *See page 6 of Exhibit 3.*

11. In item 4 of the Letter regarding the Proposed Plan, the Agency misinterprets the applicable regulations and the information Petitioner provided.
12. The required certifications that the Agency describes in item 5 of the Letter as bases for rejecting the Proposed Plan, are contained in page 21 of the Proposed Plan and Budget. *Exhibit 3, page 21.* Thus, because the certifications had been provided, the Agency had no reason to reject the Proposed Plan and Budget alleging that they had not been provided.
13. The Letter states that the associated plan budget was rejected for a number of reasons. *Exhibit 4.*
14. The Agency's rejection of the Proposed Budget is directly related to the Agency's rejection of the Proposed Plan, and Petitioner appeals the Agency's denial of the Proposed 2 Plan and Budget and appeals the Agency's decisions as set forth in the May 17, 2007 Letter.
15. The Stage 2 Plan and budget contain detailed information regarding well installation and locations and other technical information specified in the regulations and the associated costs. These documents give the same level of detail that the Agency has approved historically.
16. IEPA violated its statutory authority by re-reviewing information it had previously approved, and IEPA may not re-review and deny items that IEPA previously approved.

The Supreme Court has held that an administrative agency has no inherent authority to amend or change a decision

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and may undertake a reconsideration of a decision only where authorized by a statute.

* * *

[N]o such authority to modify or reconsider its decisions has been granted by statute to the Agency, and no such procedures have been provided by rule.

(See *Reichold Chem. v. PCB*, 204 Ill. App. 3d 674, 561 N.E.2d 1333, 1345, 149 Ill. Dec. 647 (3d Dist. 1990).

17. The Letter requires documentation that does not appear on any IEPA forms or in the applicable regulations.
18. IEPA ignored and/or chose not to consider information that was provided in the Stage 2 Site Investigation Plan and Budget that was submitted originally and in the Proposed Plan and Budget. Thus, the Letter rejecting the Proposed Plan and Budget was for the sole purpose of harassing Petitioner's consultant, CW³M, delaying corrective action at the Station and increasing Petitioner's administrative costs of preparing the plans and budgets and is an abuse of IEPA's discretion.
19. The Letter from which this appeal is taken was received on May 24, 2007. *Exhibit 6*. Accordingly, this appeal is timely filed.

WHEREFORE, L. Keller Oil Properties (Farina) respectfully requests that the Board enter an order requiring the Agency to approve the Stage 2 Site Investigation Plan and Budget and for L. Keller Oil Properties' (Farina) attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

L. Keller Oil Properties (Farina)

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One of Its Attorneys

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