

ILLINOIS POLLUTION CONTROL BOARD

December 15, 2016

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

ORDER OF THE BOARD (by G.M. Keenan):

On November 3, 2004, L. Keller Oil Properties (Keller) filed a petition for review of a determination by the Illinois Environmental Protection Agency (IEPA) rejecting Keller's sixth amendment to a corrective action plan budget. The proposed budget concerns underground storage tanks (USTs) owned by Keller at the former site of a gasoline service station known as Downtown Shell at 203 South 3rd Street in Effingham, Effingham County. As shown by the hearing officer's regular reports of status conferences, the parties have discussed settlement and sought to resolve this case without a hearing. After the most recent status conference, however, the hearing officer reported that IEPA intended to file the record of its determination within 10 days and that "[p]etitioner plans to file a motion for summary judgment by the end of the year." L. Keller Oil Properties v. IEPA, PCB 05-22 (Nov. 1, 2016).

On November 14, 2016, IEPA electronically submitted an 838-page record of its decision. *See* 35 Ill. Adm. Code 105.116(a). IEPA's submission did not include a certification. *See* 35 Ill. Adm. Code 105.116(b). In response to a December 6, 2016 hearing officer order, the Board received IEPA's motion for relief from Board record rules (Mot.). While the Certificate of Service attached to the motion indicates that IEPA served it through electronic mail on the Board's Clerk on November 14, 2016, the Board did not receive it until December 6, 2016. The motion states that, "[w]hile the Illinois EPA made every attempt to comply with the Board's new rules on record filing, by scanning the record and making it searchable, it could not get the person who compiled the record to certify the record due to the person being deceased."<sup>1</sup> Mot. at 1.

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<sup>1</sup> The Board amended its rules in 2016 to clarify arrangement, pagination, and electronic filing of the record. Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 through 125, R16-17 (May 19, 2016)); *see* 40 Ill. Reg. 7984 (June 3, 2016). However, the Board had previously adopted indexing and certification rules. Procedural Rule Requirements to Implement Electronic Filing and Allow for Public Remarks at Board Meetings: Proposed Amendments to 35 Ill. Adm. Code 101-130, R14-21, slip op. at 74 (Jan. 22, 2015); *see* 39 Ill. Reg. 2373 (Feb. 13, 2015).

The Board's procedural rules provide a party 14 days to respond to a motion. If the full response time would result in undue delay, the Board may decide the motion before the end of the 14-day period. 35 Ill. Adm. Code 101.500(d). The 14-day response period ends on December 20, 2016, and the next regularly-scheduled Board meeting will be on January 19, 2017. Petitioner intends to file a motion for summary judgment by December 31, 2016. Because that motion would rely on a certified record of IEPA's determination, the Board finds that undue delay would result from allowing the full response period to run and then deciding the motion on January 19, 2017. The Board proceeds to decide IEPA's motion for relief.


The Board's procedural rules provide that, in appeals of agency decisions such as this case, "[t]he record must be arranged in chronological sequence, or by category of material and chronologically within each category" and sequentially paginated. 35 Ill. Adm. Code 105.116(b). IEPA must also certify the record. *Id.* The certification "must contain an index that lists the documents comprising the record and shows the page numbers upon which each document starts and ends." *Id.*

The person who originally compiled the IEPA record is now deceased. Mot. at 1. However, Section 105.116(b) does not require the original compiler or any other specific person to arrange, paginate, index, or certify the record. *See* 35 Ill. Adm. Code 105.116(b). The procedural rules do not include any exception to the certification requirement, and IEPA's motion does not cite authority for its requested relief. *See id.*; Mot. at 1. The required indexing and pagination make it more efficient to review the record. *See* Procedural Rule Amendments: Proposed Amendments to 35 Ill. Adm. Code 101 Through 125, R16-17, slip op. at 3 (Dec. 17, 2015).

The Board denies IEPA's motion for relief from the record filing rules. The Board directs IEPA to file the required certification of its record within 14 days of the date of this order, on or before December 29, 2016.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on December 15, 2016, by a vote of 4-0, Member Santos voted Present.




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John T. Therriault, Clerk  
Illinois Pollution Control Board