

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

CHATHAM BP, LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-01
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE**

John T. Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

William D. Ingersoll  
Brown, Hay & Stephens, LLP  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

PLEASE TAKE NOTICE that I have today caused to be filed ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT with the Illinois Pollution Control Board, a copy of which is served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: August 27, 2013

Respondent,

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

BY:   
\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

CHATHAM BP, LLC,	)	
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Petitioner,	)	
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	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
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	)	
Respondent.	)	

**ILLINOIS EPA’S CROSS MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, Special Assistant Attorney General Scott B. Sievers, and for Illinois EPA’s Cross Motion for Summary Judgment states the following:

1. Because Illinois EPA relied upon the Petitioner’s own data in reaching its conclusion, no genuine issue of material fact exists that the extent of on-site contamination had been defined during the course of the Petitioner’s Stage 1 activities. Consequently, the Petitioner’s Stage II Site Investigation Plan to conduct further on-site investigation proposed activities in excess of the minimum requirements and thus in violation of the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and this Board’s regulations. *See* 35 Ill. Adm. 734.100 *et seq.*

A. Once the extent of on-site contamination has been defined, on-site investigation must cease, as further investigation would offend the requirements of the Act and Board regulations not to undertake activities or costs in excess of the minimum requirements. *See, e.g.*, 415 ILCS 57.7(c)(3); 35 Ill. Adm. Code 734.310; and 35 Ill. Adm. Code 734.320.

B. The Petitioner’s contention that additional Stage 2 site investigation is warranted to further define the plume was rejected by the Board in the case of *L. Keller Oil Properties*,

*Inc./Farina v. Illinois EPA* as in excess of the minimum necessary under the Act and regulations.

*See* PCB 07-147 (Dec. 6, 2007)

2. No genuine issue of material fact exists that Illinois EPA rejected the Petitioner's Stage II Site Investigation Plan; because no plan existed to allow Illinois EPA to properly review the Stage II Budget as required by 35 Ill. Adm. Code 734.510(b), Illinois EPA properly rejected the budget pursuant to its authority under 35 Ill. Adm. Code 734.505(b) and is entitled to summary judgment as a matter of law.

3. Because mathematic calculations on Petitioner's own data show that no genuine issue of material fact exists that Petitioner sought disposal of drums in excess of the minimum requirements and in violation of the Act and Board regulations, Illinois EPA correctly exercised its authority under 35 Ill. Adm. Code 734.505(b) to modify the drum disposal costs and is entitled to summary judgment as a matter of law. *See, e.g.*, 415 ILCS 5/57.7(c)(3); 35 Ill. Adm. Code 734.510(b); 35 Ill. Adm. Code 734.630(o).

4. A memorandum of law accompanies this motion and is incorporated herein.

WHEREFORE, the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, prays that this honorable Board find that no genuine issue of material fact exists and the Illinois EPA is entitled to summary judgment in its favor as a matter of law.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent,

Dated: August 27, 2013

Scott B. Sievers  
Attorney Registration No. 6275924  
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(217) 782-5544

BY:   
\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General

Chatham BP, LLC v. Illinois Environmental Protection Agency  
Pollution Control Board No. 14-01

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **ILLINOIS EPA'S CROSS MOTION FOR SUMMARY JUDGMENT** upon:

John T. Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

William D. Ingersoll  
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Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on August 27, 2013.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: August 27, 2013

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
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Respondent,

BY:



\_\_\_\_\_  
Scott B. Sievers  
Special Assistant Attorney General