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CLERK'S OFFICE

AUG 09 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

L. KELLER OIL PROPERTIES )  
(DOWNTOWN SHELL), )  
Petitioner, )  
v. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

PCB No. 05- 22  
(LUST - Ninety Day Extension)

NOTICE

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Carolyn S. Hesse  
Barnes & Thornburg  
Suite 4400  
One North Wacker Drive  
Chicago, IL 60606-2809

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent



John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: August 5, 2004

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

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AUG 09 2004

L. KELLER OIL PROPERTIES )  
(DOWNTOWN SHELL), )  
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STATE OF ILLINOIS  
Pollution Control Board

PCB No. 05-22  
(LUST - Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION  
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, John J. Kim, Assistant Counsel and Special Assistant Attorney General, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board ("Board") grant an extension of the thirty-five (35) day period for petitioning for a hearing to November 3, 2004, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA's final decision. In support thereof, the Illinois EPA respectfully states as follows:


1. On June 30, 2004, the Illinois EPA issued a final decision to the Petitioner.  
(Exhibit A)
2. On July 15, 2004, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. The Petitioner has not represented when the final decision was received, though it would not have been received earlier than July 1, 2004. (Exhibit B)

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
Respondent

  
\_\_\_\_\_  
John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
217/782-9143 (TDD)  
Dated: August 5, 2004

## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276, 217-782-3397  
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601, 312-814-6026

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762

**CERTIFIED MAIL**

7002 3150 0000 1257 9985

JUN 30 2004

Keller Oil Properties, Inc.  
Attention: Charles Keller  
#4 Avenue of MidAmerica  
Effingham, Illinois 61920

JUL 2 2004

Re: LPC #0490255121 -- Effingham County  
Effingham / L. Keller Oil Properties -- Downtown Shell  
203 South 3rd Street & Fayette Avenue  
LUST Incident No. #970848  
LUST Technical File

Dear Mr. Keller:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 6<sup>th</sup> Amendment to the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated May 14, 2004, was received by the Illinois EPA on May 17, 2004. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The budget is rejected for the reason(s) listed in Attachment A (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

All future correspondence must be submitted to:

Illinois Environmental Protection Agency  
Bureau of Land - #24  
Leaking Underground Storage Tank Section  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 398-6000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-6000  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5463  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 278-5800  
MARION - 2309 W. Main Street, Marion, IL 62959 - (618) 993-7200

**EXHIBIT**

A

W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
University St., Peoria, IL 61614 - (309) 693-5463  
25 South First Street, Champaign, IL 61820 - (217) 278-5800  
209 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
618) 993-7200

Page 2

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Eric Kuhlman. at 217/785-5715.

Sincerely,

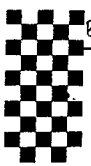
A handwritten signature in black ink, appearing to read "Harry A. Chappel". The signature is fluid and cursive, with the first name "Harry" and last name "Chappel" clearly distinguishable.

Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

HAC:EK:EK\

Attachment: Attachment A  
Appeal Rights

c: CW3M Company  
Division File



## Attachment A

Re: LPC #0490255121 -- Effingham County  
Effingham / L. Keller Oil Properties -- Downtown Shell  
203 South 3rd Street & Fayette Avenue  
LUST Incident No. #970848  
LUST Technical File

JUL 14 2004

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

1. Costs related to activities, materials, or services not necessary to stop, minimize, eliminate, or clean up a release of petroleum or its effects in accordance with the minimum requirements of the Act and regulations are ineligible for payment from the Fund (35 Ill. Adm. Code 732.606(y)). These costs are not a corrective action costs. "Corrective action" means an activity associated with compliance with the provisions of Sections 57.6 and 57.7 of the Act (Section 57.2 of the Act and 35 Ill. Adm. Code 732.103). One of the eligibility requirements for accessing the Fund is that costs are associated with "corrective action" (Section 57.9(a)(7) of the Act and 35 Ill. Adm. Code 732.505(c)). The budget includes such costs.
2. Costs of alternative technology that exceed the costs of conventional technology are ineligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(bb)). These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act; 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

EK:EK\

### Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4)(D) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Post Office Box 19276  
Springfield, IL 62794-9276  
217/782-5544

# BARNES & THORNBURG

Carolyn S. Hesse  
(312) 214-8301  
Email: chesse@btlaw.com

Suite 4400  
One North Wacker Drive  
Chicago, Illinois 60606-2809 U.S.A.  
(312) 357-1313  
Fax (312) 759-5646  
www.btlaw.com

July 15, 2004

**VIA FACSIMILE & FEDERAL EXPRESS**

Mr. John Kim  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, Illinois 62702

**RECEIVED**  
Division of Legal Counsel

JUL 16 2004

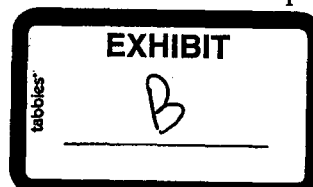
Environmental Protection  
Agency

Re: LPC #0490255121 - Effingham County  
Effingham / L. Keller Oil Properties - Downtown Shell  
203 South 3<sup>rd</sup> Street & Fayette Avenue  
LUST Incident No. 970848  
LUST Technical File

Dear John:

On June 30, 2004, the Illinois Environmental Protection Agency issued a letter with respect to the above-referenced LUST Incident regarding the new High Priority Corrective Action Plan and Budget Amendment dated May 14, 2004, which was received by the Agency on May 17, 2004. L. Keller Oil / Effingham is located in Effingham, Illinois. A copy of the letter is attached. L. Keller Oil / Effingham submitted these documents pursuant to 35 IAC Section 732.405(e) which states as follows:

If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject or require modifications of the amended plan in accordance with the procedures contained in Subpart E of this Part.



Chicago

Elkhart

Fort Wayne

olis

South Bend

Washington, D.C.



Mr. John Kim  
July 15, 2004  
Page 2

It appears that the Agency did not review these documents in accordance with the procedures contained in Subpart E.

L. Keller Oil / Effingham believes that, based upon discussions with Illinois Environmental Protection Agency and for other reasons, that we will be able to resolve the issues raised in the Agency's letter. However, we believe that we will not be able to resolve these issues by the deadline for filing an appeal of these issues to the Illinois Pollution Control Board. Thus, this is a request for a 90-day extension pursuant to the Illinois Environmental Protection Act Section 40(a)(1) and 35 IAC 105.406 to allow us to continue these discussions and to try to resolve this issue.

If, for any reason, the Agency will not seek the 90-day extension, please notify me immediately so that I may file an appeal to the Board. If you have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

**BARNES & THORNBURG LLP**



Carolyn S. Hesse

CSH/jmr  
Enclosure  
cc: William Sinnott  
Carol L. Rowe  
227838v1


## CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on August 5, 2004, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

Carolyn S. Hesse  
Barnes & Thornburg  
Suite 4400  
One North Wacker Drive  
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,  
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