

ILLINOIS POLLUTION CONTROL BOARD
September 16, 2004

L. KELLER OIL PROPERTIES (Charleston),)	
)	
Petitioner,)	
)	
v.)	PCB 05-50
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by J.P. Novak):

On September 9, 2004, L. Keller Oil Properties timely filed a petition asking the Board to review an August 6, 2004 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402. The Agency rejected petitioner's amended corrective action plan budget for L. Keller Oil Properties' leaking underground petroleum storage tank facility located at 419 West Lincoln Avenue, Charleston, Coles County.

L. Keller Oil Properties appeals on the grounds that (1) the budget submitted gave the same level of detail for costs that the Agency has historically approved; (2) the Agency request for documentation of certain costs was unreasonable and was an invalid rule that did not meet the requirements of the Administrative Procedure Act (5 ILCS 100 (2002)); (3) the Agency exceeded its statutory authority by re-reviewing previously approved budget items; (4) the Agency failed to notify L. Keller Oil Properties within 45 days that additional documentation was needed; and (5) the Agency's request for detailed information was for the sole purpose of harassment and was an abuse of the Agency's discretion. L. Keller Oil Properties' petition meets the content requirements of 35 Ill. Adm. Code 105.408. The Board accepts the petition for hearing.

The September 9, 2004 petition for review was accompanied by a motion for expedited consideration. In its motion, L. Keller Oil Properties alleges that (1) the Agency is continuing to apply an invalid rule to make decisions and require additional procedures without advanced notice of the requirements, which creates material prejudice; and (2) the Agency's allegedly illegal activities are damaging L. Keller Oil Properties because the Agency has refused to approve its budget as submitted and without additional information, even though the Agency has approved similar budgets in the past with similar documentation. The Board will grant expedited consideration and move this matter to a final determination as expeditiously as procedural requirements and the Board's case load will allow.

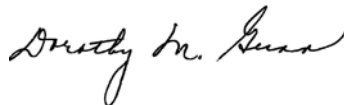
L. Keller Oil Properties has the burden of proof. 35 Ill. Adm. Code 105.112(a). Hearings will be based exclusively on the record before the Agency at the time the Agency issued its

determination. 35 Ill. Adm. Code 105.412. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/40(a)(2) (2002)), which only L. Keller Oil Properties may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, L. Keller Oil Properties may deem its request granted. *See* 415 ILCS 5/40(a)(2) (2002). Currently, the decision deadline is January 7, 2005 (the 120th day after September 9, 2004). *See* 35 Ill. Adm. Code 105.114. The Board meeting immediately before the decision deadline is scheduled for January 6, 2004.

Unless the Board or the hearing officer orders otherwise, the Agency must file the entire record of its determination by October 9, 2004 which is 30 days after L. Keller Oil Properties filed the petition. 35 Ill. Adm. Code 105.410(a). If the Agency wishes to seek additional time to file the record, it must file a request for extension before the date on which the record is due to be filed. 35 Ill. Adm. Code 105.116. The record must comply with the content requirements of 35 Ill. Adm. Code 105.410(b).

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 16, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board