

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

NOV 03 2004

STATE OF ILLINOIS
Pollution Control Board

L. KELLER OIL PROPERTIES, INC. /)
EFFINGHAM / DOWNTOWN SUPER K)
)
Petitioner,)
)
v.) PCB 05-22
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

NOTICE OF FILING

TO: John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

PLEASE TAKE NOTICE that on November 3, 2004, 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: November 3, 2004

Respectfully submitted,

L. Keller Oil Properties, Inc.

By: Carolyn S Hesse
One of Its Attorneys

Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313

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:

John Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 3rd Day of November, 2004.



Carolyn S. Hesse

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

L. KELLER OIL PROPERTIES, INC./)
EFFINGHAM/DOWNTOWN SUPER K)
)
Petitioner,)
)
v.) PCB No. 05-22
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

L. Keller Oil Properties, Inc., 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, Inc., is the owner of underground storage tanks USTs at a former gasoline service station located at 203 South 3rd Street, Effingham, Effingham County, Illinois (the "Station"). This gasoline service station was also known as "Downtown Shell" and is referred to in IEPA's records as "Effingham/Downtown Super K". The USTs stored gasoline.
2. LUST Incident Number 970848 was obtained following a site investigation. The site has also been assigned LPC #0490255121-Effingham County.

3. On May 17, 2004, the Agency received an Amendment to the High Priority Corrective Action Plan Budget ("Budget") for corrective action performed for the Station. The Budget is dated May 14, 2004. *See* Exhibit 1.
4. By letter dated June 30, 2004, the Agency rejected the Budget. *See* Exhibit 2. The Agency's letter alleged that the costs are not corrective action costs and that the costs of the alternative technology exceed the costs of conventional technology.
5. The Agency's letter of June 30, 2004 provides no additional information regarding why IEPA rejected the Budget.
6. Petitioner believes the costs at issue are reasonable corrective action costs and that the Agency should approve the Budget.
7. IEPA's actions are arbitrary and capricious and without authority under the Illinois Environmental Protection Act and Petitioner appeals the decision in the Agency's June 30, 2004 letter.
8. The parties timely filed a Request for Ninety Day Extension of Appeal Period. *See* Exhibit 3. By Order dated August 19, 2004, the Illinois Pollution Control Board extended the appeal period to November 3, 2004. *See* Exhibit 4.

WHEREFORE, Petitioner, L. Keller Oil Properties, Inc. respectfully requests that the Board enter an order requiring the Agency to approve for payment the costs that were denied in the June 30, 2004 letter and for Petitioner's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

L. Keller Oil Properties, Inc.

By: Carolyn S. Hesse
One of Its Attorneys

Carolyn S. Hesse, Esq.
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313

CW³M Company

701 West South Grand
Springfield, IL 62704

Environmental Consulting Services

Phone: (217) 522-8001
Fax: (217) 522-8009

May 14, 2004

Mr. Eric Kuhlman, Project Manager
LUST Section, Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

RE: LPC#0490255121—Effingham County
Effingham/L. Keller Oil Properties, Inc./ Downtown Shell
203 South 3rd Street
Incident Number 97-0848
LUST Technical Reports—Corrective Action Plan Budget Amendment 6

Dear Mr. Kuhlman:

On behalf of L. Keller Oil Properties, Inc., we are submitting this Corrective Action Plan (CAP) Budget Amendment. This amendment includes costs for site restoration, building demolition, the construction of access roads into the farm fields, lysimeter sampling trips and personnel time, landfarm operations, and the removal of debris from the farm fields following spreading and disking operations.

The construction of access roads into the fields was not included in any of the prior submittals, but was necessary in order to get loaded trucks into the stockpile locations. The estimated costs include 264 tons of aggregate, the trucking costs (22 loads at 1 hour per load), and the cost for a laborer and backhoe to dump the trucks and grade the rock (16 hours each).

The issued land application permit requires that concrete or asphalt pieces larger than 2" in diameter not be spread or left in the application area. Removing the materials required two laborers and a backhoe 15 eight-hour days to patrol the application areas and remove the debris. The debris was taken for recycling, and two hours of trucking were needed.

Although lysimeter sampling was included in prior submittals, the travel to the site, and the personnel time required was not included. Therefore, 10 trips for a technician to the farm are included, assuming each trip requires 6 hours.

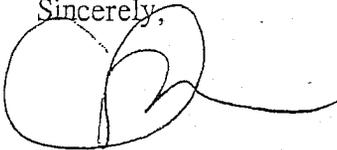
In the original approved budget, a backhoe was included at the landfarm for 14 days, while spreading was estimated to take 26 days. Obviously, a backhoe is required to load the spreader, so 12 additional backhoe days were needed. Additionally, 10 days of stockpiling were done without spreading. Similarly, the personnel at the landfarm were

CW³M Company, Inc.
Keller/Downtown Shell
Letter to Eric Kuhlman
Page 2

estimated to for 15 days, while 36 were needed between stockpiling and spreading. The budget reflects the additional personnel costs and mileage for them.

In addition the handling charges for the site restoration costs have been included, as have the costs for preparing the budget amendment. Each of these items is necessary to accomplish the work required in the approved CAP in compliance with the applicable regulations. Should you have any questions or require additional information, please contact Mr. Vince Smith or me at (217) 522-8001. Thank you for consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to be 'Carol L. Rowe', written over a circular stamp or mark.

Carol L. Rowe, P.G.
Senior Environmental Geologist

xc: Mr. Charles Keller, *L. Keller Oil Properties, Inc.*
Mr. William T. Sinnott, *CW³M Company, Inc.*
D:\CW3M Projects\K97-0848\CAP\CAP 5-04\CAP budget add .doc

Illinois Environmental Protection Agency

Owner/Operator and Professional Engineer Budget Certification Form for Leaking Underground Storage Tanks Sites

In accordance with 415 ILCS 5/57, if an owner or operator intends to seek payment from the UST Fund, an owner or operator must submit to the Agency, for the Agency's approval or modification, a budget which includes an accounting of all costs associated with the implementation of the investigative, monitoring and/or corrective action plans.

I hereby certify that I intend to seek payment from the UST Fund for performing Corrective Action activities at Downtown Shell LUST site. I further certify that the costs set forth in this budget are necessary activities and are reasonable and accurate to the best of my knowledge and belief. I also certify that the costs included in this budget are not for corrective action in excess of the minimum requirements of 415 ILCS 5/57 and no costs are included in this budget which are not described in the corrective action plan. I further certify that costs ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code Section 732.606 are not included in the budget proposal or amendment. Such ineligible costs include but are not limited to:

- Costs associated with ineligible tanks.
- Costs associated with site restoration (e.g., pump islands, canopies).
- Costs associated with utility replacement (e.g., sewers, electrical, telephone, etc.).
- Costs incurred prior to IEMA notification.
- Costs associated with planned tank pulls.
- Legal defense costs.
- Costs incurred prior to July 28, 1989.
- Costs associated with installation of new USTs or the repair of existing USTs.

Owner/Operator: L. Keller Oil Properties, Inc. Title: Charles F. Keller, President

Signature: [Signature] Date: 1/21/04

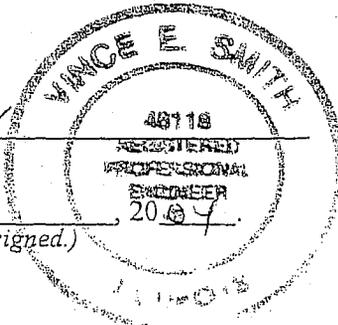
Subscribed and sworn to before me the 21st day of January, 2004
(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature]
(Notary Public) OFFICIAL SEAL CAROL L. ROWE NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 2-26-2005

P.E.: Vince E. Smith

P.E. Signature: [Signature] Date: 5/14/04

Subscribed and sworn to before me the 14th day of May, 2004
(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)

[Signature] Seal: 
(Notary Public)

The Agency is authorized to require this information under 415 ILCS 5/1. Disclosure of this information is required. Failure to do so may result in the delay or denial of any budget or payment requested hereunder. This form has been approved by the Forms Management Center.

OFFICIAL SEAL
CAROL L. ROWE
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 2-26-2005

**BUDGET AND BILLING FORM FOR
LEAKING UNDERGROUND STORAGE
TANK SITES**

A. SITE INFORMATION

Site Name: Keller/Downtown Shell

Site Address: 203 South Third Street City: Effingham

Zip: 61920

County: Effingham IEPA Generator No.: 0490255121

IEMA Incident No.: 97-0848 IEMA Notification Date: 5/15/97

Date this Form was Prepared: May 12, 2004

This form is being submitted as a:

Budget Proposal

Budget Amendment (Budget Amendments must include only the costs over the previous budget.)

Amendment Number: 6

Billing Package for costs incurred pursuant to 35 Illinois Administrative Code (IAC), Part 732 ("New program").

This form is being submitted for the Site Activities indicated below (check one):

Early Action Site Classification

Low Priority Corrective Action High Priority Corrective Action

Other (indicate activities) _____

DO NOT SUBMIT "NEW PROGRAM" COSTS AND "OLD PROGRAM"
COSTS AT THE SAME TIME, ON THE SAME FORMS.

IEMA No. 97-0848

If eligible for reimbursement where should reimbursement checks be sent? Please note that only owners or operators of USTs may be eligible for reimbursement. Therefore, payment can only be made to an owner or operator.

Pay to the order of: L. Keller Oil Properties, Inc.

Send in care of: CW3M Company, Inc.

Address: P.O. Box 571

City: Carlinville State: Illinois Zip: 62626

Number of Petroleum USTs in Illinois presently owned or operated by the owner or operator; any subsidiary, parent or joint stock company of the owner or operator, and any company owned by any parent, subsidiary or joint stock company of the owner or operator:

Fewer than 101: _____ 101 or more: X

Number of USTs at the site: 3 (Number of USTs includes USTs presently at the site and USTs that have been removed.)

Number of incidents reported to IEMA: 1

Incident Numbers assigned to the site due to releases from USTs: 97-0848

Please list all tanks which have ever been located at the site and are presently located at the site.

Product Stored	Size (gallons)	Did UST have a release?		Incident No.	Type of Release
<u>Gasoline</u>	<u>10,000</u>	<u>Yes</u>	<u>No</u>	<u>97-0848</u>	<u>UST/Piping</u>
<u>Gasoline</u>	<u>6,000</u>	<u>Yes</u>	<u>No</u>	<u>97-0848</u>	<u>UST/Piping</u>
<u>Gasoline</u>	<u>12,000</u>	<u>Yes</u>	<u>No</u>	<u>97-0848</u>	<u>Overfills/Piping</u>
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____
_____		<u>Yes</u>	<u>No</u>	_____	_____

B. PROPOSED BUDGET SUMMARY AND BUDGET TOTAL

1. Investigation Costs:	\$	<u>-</u>
2. Analysis Costs:	\$	<u>-</u>
3. Personnel Costs:	\$	<u>30,092.00</u>
4. Equipment Costs:	\$	<u>-</u>
5. Field Purchases and Other Costs:	\$	<u>50,831.40</u>
6. Handling Charges:	\$	<u>9,163.04</u>

TOTAL PROPOSED BUDGET = \$ 90,086.44

G. PERSONNEL**CAP DEVELOPMENT**

All personnel costs that are not included elsewhere in the budget/billing form must be listed here. Costs must be listed per task, not personnel type. The following are some examples of tasks: Drafting, data collection, plan, report, or budget preparation for CAPBA (i.e., site classification work plan, 45 day report, or high priority corrective action budget), sampling, field oversight for CAP Dev.& (i.e., drilling/well installation, corrective action, or early action) of maintenance of Downtown. The above list is not inclusive of all possible tasks.

Environmental Engineer 4 hours x \$ 100.00 per hour = \$ 400.00
(Title)

Task to be performed for the above hours: CAP Budget Amendment

Senior Env. Geologist 2 hours x \$ 81.00 per hour = \$ 162.00
(Title)

Task to be performed for the above hours: CAP Budget Amendment

Technical Editor 2 hours x \$ 55.00 per hour = \$ 110.00
(Title)

Task to be performed for the above hours: CAP Budget Amendment

Office Manager 2 hours x \$ 40.00 per hour = \$ 80.00
(Title)

Task to be performed for the above hours: CAP Budget Amendment

Laborer 312 hours x \$ 35.00 per hour = \$ 10,920.00
(Title)

Task to be performed for the above hours: Landfarm Operation

Engineering Technician 228 hours x \$ 55.00 per hour = \$ 12,540.00
(Title)

Task to be performed for the above hours: Landfarm Operation, Lysimeter Sampling Trips

Field Supervisor / Coordinator 168 hours x \$ 35.00 per hour = \$ 5,880.00
(Title)

Task to be performed for the above hours: Landfarm Operation

_____ hours x _____ per hour = \$ -
(Title)

Task to be performed for the above hours: CAP Budget Amendment

G-1 CAPBA

This form must be submitted in duplicate.

_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			
_____	hours x _____	per hour =	\$ _____	-
(Title)				
Task to be performed for the above hours:	<u>CAP Budget Amendment</u>			

TOTAL PERSONNEL COSTS: \$ 30,092.00

G-2 CAPBA

This form must be submitted in duplicate.

CORRECTIVE ACTION

Other Costs - A listing and description of all other costs which will be/were incurred and are not specifically listed on this form should be attached. The listing should include a cost breakdown in a time and materials format.

Other Costs	No.	Rate	Cost
Copies	200	\$ 0.05	\$ 10.00
Mileage for CW3M trips	8560.00	\$ 0.35	\$ 2,996.00 *
Per Diem			
Postage			\$ 5.00
Total Other			\$ 3,011.00

* 10 trips at 214 miles per trip
for lysimeter sampling
30 trips at 214 miles per trip
for landfarm operations

TOTAL OTHER COSTS = \$ 3,011.00

Total (Pages I-1 and I-2)	\$ 50,831.40
---------------------------	--------------

I-2 CORRECTIVE ACTION

This form must be submitted in duplicate



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

JUN 30 2004
Ca

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:

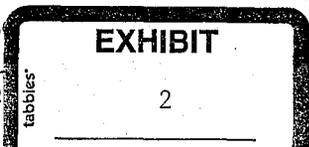
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 6th Amendment to the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated May 14, 2004, was received by the Illinois EPA on May 17, 2004. Citations in this letter 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.



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,

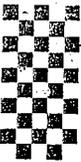


Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

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

07/14/2004

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

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 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.

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
Chicago, IL 60606-2809

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)

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

L. KELLER OIL PROPERTIES)	
(DOWNTOWN SHELL),)	
Petitioner,)	
v.)	PCB No. 05-
ILLINOIS ENVIRONMENTAL)	(LUST – Ninety Day Extension)
PROTECTION AGENCY,)	
Respondent.)	

**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 RENE E 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

JUN 30 2004
Ca

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:

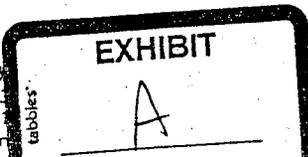
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 6th Amendment to the High Priority Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated May 14, 2004, was received by the Illinois EPA on May 17, 2004. Citations in this letter 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.



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,

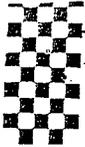


Harry A. Chappel, P.E.
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

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

07/14/2004
Ch

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.brlaw.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 3rd 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.

EXHIBIT

B

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
Chicago, IL 60606-2809

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)

ILLINOIS POLLUTION CONTROL BOARD

August 19, 2004

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

PCB 05-22
(UST Appeal)
(90-Day Extension)

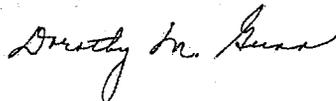
ORDER OF THE BOARD (by J.P. Novak):

On August 9, 2004, the parties timely filed a joint notice to extend the 35-day period within which L. Keller Oil Properties may appeal a June 30, 2004 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency rejected petitioner's sixth amendment to the high priority corrective action plan budget for L. Keller Oil Properties's leaking underground petroleum storage tank facility located at 203 South Third Street, and Fayette Avenue, in Effingham, Effingham County.

The Board extends the appeal period until November 3, 2004, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If L. Keller Oil Properties fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 19, 2004, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

EXHIBIT

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