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SEP 09 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

L. KELLER OIL PROPERTIES, (Charleston),	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB No. 05- <u>50</u>
	)	
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

NOTICE OF FILING

<b>TO:</b>	John Kim	Carol Sudman
	Special Assistant Attorney General	Hearing Officer
	Illinois Environmental Protection Agency	Illinois Pollution Control Board
	1021 North Grand Avenue East	1021 North Grand Avenue East
	P.O. Box 19276	P.O. Box 19274
	Springfield, Illinois 62794-9276	Springfield, Illinois 62794-9274

**PLEASE TAKE NOTICE** that on September 9, 2004, we 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 and Motion for Expedited Review of Illinois Environmental Protection Agency Decision.

Dated: September 9, 2004

Respectfully submitted,

**L. Keller Oil Properties (Charleston)**

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  
235546v1


**CERTIFICATE OF SERVICE**

I, on oath state that I have served the attached Petition for Review of Illinois Environmental Protection Agency Decision and Motion for Expedited 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

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

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 9<sup>th</sup> Day of September, 2004.

  
\_\_\_\_\_  
Carolyn S. Hesse

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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

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

PCB No. 05-50

**MOTION FOR EXPEDITED REVIEW OF ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY DECISION**

L. Keller Oil Properties (Charleston) ("Keller/Charleston"), by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act and the procedural rules of the Illinois Pollution Control Board at 35 Illinois Administrative Code Section 101.512 hereby moves for expedited review of a decision by the Environmental Protection Agency (the "Agency"). In support of this motion, Petitioner states as follows:

1. L. Keller Oil Properties (Charleston) ("Petitioner"), on the same date that this motion was filed, filed a Petition to the Illinois Pollution Control Board to appeal an Agency decision dated August 6, 2004, denying a Corrective Action Plan Budget (the "Budget") that was submitted to the Agency. The Agency had approved the work to be performed in the amended Corrective Action Plan.
2. The Agency's August 6, 2004 letter denying the Budget provided as the reason for denying the Budget that an additional 22 items of detailed information and/or documentation were required before the Budget could

be approved (*See Exhibit 1*) even though the Agency had previously reviewed those elements of the Budget and had not raised any issues regarding the 22 items. (*See Exhibit 2*).

3. The Agency is using its requirement for detailed documentation as a rule and, because the requirement for detailed documentation has not been properly promulgated as a rule pursuant to the Illinois Administrative Procedures Act (5 ILCS 100/1 *et. seq.*, (2002)), the requirement for documentation is an invalid rule.
4. The Agency exceeded its statutory authority by reviewing the information in a Budget that it had reviewed before.
5. The Agency's requirement for the additional detailed documentation is untimely because the Agency has only 45 days to determine whether a submission is complete pursuant to 35 Ill. Admin. Code 732.502 and the Agency's letter requiring the documentation was sent more than 45 days after the Budget was originally submitted.
6. The Agency's requirement for the additional documentation is unprecedented. Nowhere in the Illinois Environmental Protection Act or its implementing regulations is there a rule that requires the level of detailed information the Agency's letter of August 6, 2004 requires, and the Agency has historically not required the level of detailed documentation required in the August 6, 2004 letter.
7. Upon information and belief, the Agency has not sent letters similar to the August 6, 2004 letter to other owners/operators of underground storage

tanks. Petitioner believes that it was sent the August 6, 2004 letter for the purpose of harassing Petitioner's consultant CW<sup>3</sup>M and to increase the consultant's costs. CW<sup>3</sup>M has actively participated in the UST rulemaking proceeding R04-22 and R04-23 and sued the Agency in state court over the Agency use of Rate Sheets. *CW<sup>3</sup>M Company, Inc. v. Illinois Environmental Protection Agency*, No. 03-MR-0032, Sangamon County, Illinois, Chancery Division.

8. Petitioner is requesting an expedited hearing in this matter because the Agency is continuing to use invalid rules to make decisions and requiring that additional procedures be followed without providing any advanced notice of such requirements and in violation of its statutory and regulatory authority, all of which result in material prejudice to petitioner.
9. The Agency's illegal actions are damaging Petitioner because the Agency has refused to approve the Petitioner's Budget as submitted and continues to request additional information, even though the Agency has approved similar budgets with similar documentation, historically.

WHEREFORE, L. Keller Oil Properties (Charleston) respectfully requests that the Board provide for an expedited review of L. Keller Oil Properties' (Charleston) Petition appealing the Agency's decision and to order the Agency to cease using invalid rules and to cease exceeding its statutory and regulatory authority and to reimburse L. Keller Oil Properties (Charleston) for its attorneys' fees in this matter.

Respectfully submitted,

**L. Keller Oil Properties (Charleston)**

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  
235579v1

# 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 1251 3439

AUG 06 2004

L. Keller Oil Properties  
Attention: Joe Henry  
P.O. Box 70  
Effingham, IL 62401

RECEIVED  
AUG 7 2004  
BY: *OK*

Re: LPC #0290105024 - Coles County  
Charleston / Keller Oil  
419 West Lincoln Avenue  
LUST Incident No. 881670, 890932 and 20000804  
LUST Technical File

Dear Mr. Henry:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Corrective Action Plan Budget (budget) submitted for the above-referenced incident. This budget, dated June 2, 2004, was received by the Illinois EPA on June 2, 2004. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The associated budget is rejected for the reason(s) listed below (Sections 57.7(b) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b)).

The plan budget is rejected for the following reason(s):

The budget includes costs that lack supporting documentation (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan (Section 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

In order to conduct a full financial review of proposed costs for corrective action, the Agency requests the following information be submitted:

- ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760
- ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131
- BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462
- SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892
- DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
- PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
- CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
- COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120
- MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

EXHIBIT

Page 2

1. Provide documentation in the form of a price list from the laboratory contracted for analytical services relating to this project. If discounts are offered, please state the discount.
2. Provide the rental agreement regarding costs for the rental rates of the PID meter and water level indicator.
3. Provide a specific explanation with supporting documentation for how personnel rates are derived. Provide the Agency with formulas used for calculating the personnel hourly rates for each personnel title proposed in corrective action.
4. Provide specific documentation for each personnel duty. For example, please provide the Agency with information regarding each task involved for "excavation activities" (hours sampling the excavation, hours associated with traffic safety, hours associated with coordination of equipment at the site, etc.). This must be submitted for each task (excavation activities, backfill activities, GWTU operating/sampling/quarterly GW monitoring, GWTU closure and demobilization, corrective action plan and budget prep., IEPA quarterly rep./data management/closure rep., annual environmental reporting/GWTU, and reimbursement claim preparation). Explain how estimated hours were calculated and provide the Agency with any formulas that may have been used to determine hours associated with each specific task. In addition, document why specific job titles are proposed for each activity. Please submit this information in a chart form for more clarity.
5. Provide a copy of the subcontractor cost estimates for excavation, transportation, disposal and backfilling activities. Explain what factors were used in determining the subcontractor's cost estimate. This explanation must be provided in a time and materials format. In addition, the Illinois EPA requests the following justifications:
  - a. Explain the necessity of each piece of equipment proposed for these activities.
  - b. Explain how the number of operators needed to complete corrective action was derived.
  - c. Explain why 10 cubic yard trucks are proposed instead of 15 cubic yard trucks.
  - d. Explain why traffic control is budgeted under firm personnel and subcontractors costs.
  - e. Explain how excavation and backfill costs were determined.
6. Provide the address of the landfill to be contracted for soil disposal along with a cost estimate from the landfill for disposal of 5,800 cubic yards of soil.



Page 3

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OK

7. Provide the addresses for the proposed backfill material purchases along with a cost estimate from these locations for sand and gravel.
8. Provide a copy of subcontractor cost estimates associated with concrete replacement in a time and materials format.
9. Provide supporting documentation for use of a conversion factor of 1.67 tons per cubic yards.
10. Provide a copy of subcontractor cost estimates associated with UST removal in a time and materials format.
11. Provide a copy of subcontractor cost estimates associated with canopy demolition and disposal in a time and materials format. In addition, explain why an asbestos inspection is necessary for corrective action.
12. Provide documentation supporting the proposed mileage costs in conjunction with per diem and motel stays. Provide documentation and any formulas used in determining the cost and number of motel stays proposed.
13. Provide documentation supporting the number of manifests proposed for soil disposal.
14. Provide documentation supporting the use and quantity of truck liners for excavation and backfilling activities.
15. Provide documentation and discuss what factors are considered when estimating mobilization and demobilization of equipment.
16. Provide documentation for proposed telephone and electricity costs.
17. Provide documentation for determining the frequency of carbon filter replacement and disposal.
18. Provide documentation for calculating 120,000 gallons of sewer disposal.
19. Provide documentation in a time and materials format for activities associated with groundwater treatment unit maintenance costs.
20. Provide documentation in a time and materials format for groundwater treatment unit demobilization and for site restoration. Include a discussion of the

### 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

APR 7 2004  
OK

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

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SEP 09 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

L. KELLER OIL PROPERTIES, )  
(Charleston), )  
 )  
Petitioner, )  
 )  
v. ) PCB No. 05-50  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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

L. Keller Oil Properties ("Keller-Charleston"), 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 ("Petitioner"), was the owner of a gasoline service station located at 419 West Lincoln Avenue, Charleston, Coles County, Illinois (the "Station"). This gasoline service station had underground storage tanks (UST's) on the property, which stored gasoline and diesel fuel.
2. LUST Incident Numbers 881670 and 890932 were obtained during Keller's ownership of the Station and tanks following site investigations. Incident No. 20000804 was obtained during James Dunn's subsequent

ownership of the Station. The site has also been assigned LPC #0290105024-Coles County.

3. On March 12, 2004, the Petitioner sent to the Agency an election to proceed under Public Act 92-0554 and an amended Corrective Action Plan ("CAP") and Budget to perform corrective action at the Station. (See Exhibit 1.)
4. On May 21, 2004, the Agency sent Petitioner a letter advising Petitioner that the CAP was approved but the Budget was rejected. The only reason listed for rejecting the Budget was the following:

One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). The budget includes costs that are not reasonable as submitted (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.606(hh)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

The Illinois EPA requests justification of the number of personnel and the number of personnel hours required to complete corrective action.

(See Exhibit 2, Attachment A.) IEPA did not request any other documentation or justification or modifications; thus, IEPA approved all other elements of the Budget.

5. On June 2, 2004, within 35 days of receipt of IEPA's May 21, 2003 letter, Petitioner sent to the Agency a modified Budget to perform corrective action at the Station. (See Exhibit 3.) The modified Budget contained information responsive to the questions IEPA raised in its letter dated

May 21, 2004 and the Budget was modified to include the information requested by IEPA. The Agency received this document on June 2, 2004. Both the March 12, 2004 and the June 2, 2004 submissions included signed certifications by a licensed Professional Engineer that the submitted Budget complied with the Illinois Environmental Protection Act. (See Exhibit 1, Appendix C and Exhibit 3, 4<sup>th</sup> page.)

6. On August 6, 2004, the Agency sent a letter (the "Letter") to Petitioner approving the amended Corrective Action Plan and rejecting the Corrective Action Plan Budget (the "Budget"). (See Exhibit 4.) The Letter states that:

The Budget includes costs that lack supporting documentation. (35 Ill. Adm. Code 732.606(gg)). A corrective action plan budget must include, but not be limited to, an accounting of all costs associated with the implementation and completion of the corrective action plan (Section 57.7(b)(3) of the Act). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those required to meet the minimum requirements of Title XVI of the Act (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 732.505(c) and 732.606(o)).

In order to conduct a full financial review of proposed costs for corrective action, the Agency requests the following information be submitted:

1. Provide documentation in the form of a price list from the laboratory contracted for analytical services relating to this project. If discounts are offered, please state the discount.
2. Provide the rental agreement regarding costs for the rental rates of the PID meter and water level indicator.

3. Provide a specific explanation with supporting documentation for how personnel rates are derived. Provide the Agency with formulas used for calculating the personnel hourly rates for each personnel title proposed in corrective action.
4. Provide specific documentation for each personnel duty. For example, please provide the Agency with information regarding each task involved for "excavation activities" (hours sampling the excavation, hours associated with traffic safety, hours associated with coordination of equipment at the site, etc.). This must be submitted for each task (excavation activities, backfill activities GWTU operating/sampling/quarterly GW monitoring, GWTU closure and demobilization, corrective action plan and budget prep., IEPA quarterly rep. / data / management /closure rep., annual environmental reporting/GWTU, and reimbursement claim preparation). Explain how estimated hours were calculated and provide the Agency with any formulas that may have been used to determine hours associated with each specific task. In addition, document why specific job titles are proposed for each activity. Please submit this information in a chart form for more clarity.
5. Provide a copy of the subcontractor cost estimates for excavation, transportation, disposal and backfilling activities. Explain what factors were used in determining the subcontractor's cost estimate. This explanation must be provided in a time and materials format. In addition, the Illinois EPA requests the following justifications:
  - a. Explain the necessity of each piece of equipment proposed for these activities.
  - b. Explain how the number of operators needed to complete corrective action was derived.
  - c. Explain why 10 cubic yard trucks are proposed instead of 15 cubic yard trucks.

- d. Explain why traffic control is budgeted under firm personnel and subcontractors costs.
  - e. Explain how excavation and backfill costs were determined.
6. Provide the address of the landfill to be contracted for soil disposal along with a cost estimate from the landfill for disposal of 5,800 cubic yards of soil.
  7. Provide the addresses for the proposed backfill material purchases along with a cost estimate from these locations for sand and gravel.
  8. Provide a copy of subcontractor cost estimates associated with concrete replacement in a time and materials format.
  9. Provide supporting documentation for use of a conversion factor of 1.67 tons per cubic yards.
  10. Provide a copy of subcontractor cost estimates associated with UST removal in a time and materials format.
  11. Provide a copy of subcontractor cost estimates associated with canopy demolition and disposal in a time and materials format. In addition, explain why an asbestos inspection is necessary for corrective action.
  12. Provide documentation supporting the proposed mileage costs in conjunction with per diem and motel stays. Provide documentation and any formulas used in determining the cost and number of motel stays proposed.
  13. Provide documentation supporting the number of manifests proposed for soil disposal.
  14. Provide documentation supporting the use and quantity of truck liners for excavation and backfilling activities.

15. Provide documentation and discuss what factors are considered when estimating mobilization and demobilization of equipment.
  16. Provide documentation for proposed telephone and electricity costs.
  17. Provide documentation for determining the frequency of carbon filter replacement and disposal.
  18. Provide documentation for calculating 120,000 gallons of sewer disposal.
  19. Provide documentation in a time and materials format for activities associated with groundwater treatment unit maintenance costs.
  20. Provide documentation in a time and materials format for groundwater treatment unit demobilization and for site restoration. Include a discussion of the groundwater treatment unit salvage activities.
  21. Justify the postage charges and copy charges.
  22. Provide documentation stating why each proposed cost to be applied to handling charges is eligible for handling charges.
7. Petitioner appeals the Agency's denial of the Budget as set forth in the Agency's August 6, 2004 Letter.
  8. The Budget contains information regarding various costs and gives the same level of detail for these costs that the Agency has approved historically. Further, personal rates and other rates listed in the Budget are the same rates that Petitioner's consultant has used for years.
  9. Historically, the Agency has approved budgets with similar information regarding costs and has not required the level of detailed documentation



and information IEPA requires in the Letter, and IEPA's forms do not require the detailed information listed in the Letter.

10. The Letter asks for documentation for cost estimates that IEPA did not request in IEPA's letter of May 21, 2004.
11. IEPA's August 6, 2004, request for documentation is unreasonable. For example, among other things, the Agency is requesting supporting documentation for the use of the conversion factor of 1.67 tons per cubic yard, even though that is the conversion factor specified in Appendix C of 35 Ill. Admin. Code 732. IEPA is also requesting justification for a proposed asbestos inspection prior to demolishing a structure even though failure to do so could be a violation of the asbestos NESHAPs standard found at 40 CFR part 61, subpart M. and, in particular, section 61.145.

**COUNT I**  
**ADMINISTRATIVE PROCEDURES ACT**

12. Petitioner realleges Counts 1 through 11 as if fully stated herein.
13. The Agency is using this request for additional information as a rule to make a final decision to reject the Budget.
14. Neither the Act nor current regulations require Petitioner to provide the cost comparisons and level of documentation that IEPA required in its letter dated August 6, 2004.
15. The Agency's request for additional information is unreasonable and is an invalid rule because it has not met any of the requirements of the Administrative Procedures Act, 5 ILCS 100/1 *et seq.* (2002) (the "APA").

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

WHEREFORE, L. Keller Oil Properties (Charleston) respectfully requests that the Board enter an order requiring the Agency to approve the High Priority Corrective Action Plan Budget to allow L. Keller Oil Properties (Charleston) to cover the costs of the cleanup at this facility and for L. Keller Oil Properties' (Charleston) attorneys' fees and costs in bringing this appeal.

**COUNT II**  
**IEPA'S STATUTORY AUTHORITY**

16. Petitioner realleges Counts 1 through 15 as if fully stated herein.
17. IEPA's letter of May 21, 2004 asked only for additional information regarding "the number of personnel and number of personnel hours required to complete corrective action."
18. Petitioner's June 2, 2004 Budget modified Petitioner's March 12, 2004 Budget to include the information required in IEPA's May 21, 2004 letter and, thus, the modified Budget of June 2, 2004 was a timely modification pursuant to 35 Ill. Admin, Code 732.503(f).
19. IEPA's letter of May 21, 2004 does not raise any of the 22 items listed in IEPA's letter of August 6, 2004 (the "Letter"), even though all of the budget information is identical in Petitioner's submissions of March 12, 2004 and June 2, 2004, except that the June 2, 2004 submission also includes responses to the questions IEPA raised in its May 21, 2004 letter.
20. Because IEPA's letter of May 21, 2004 only required certain additional information regarding personal time and the number of personal, IEPA approved all other items in the Budget.

21. IEPA violated its statutory authority by re-reviewing information it had previously approved, and IEPA may not re-review and deny Budget items that IEPA previously approved.

The Supreme Court has held that an administrative agency has no inherent authority to amend or change a decision and may undertake a reconsideration of a decision only where authorized by a statute.

\* \* \*

[N]o such authority to modify or reconsider its decisions has been granted by statute to the Agency, and no such procedures have been provided by rule.

(See *Reichold Chem. v. PCB*, 204 Ill. App. 3d 674, 561 N.E.2d 1333, 1345, 149 Ill. Dec. 647 (3d Dist. 1990).

WHEREFORE, L. Keller Oil Properties (Charleston) respectfully requests that the Board enter an order requiring the Agency to approve the High Priority Corrective Action Plan Budget to allow L. Keller Oil Properties (Charleston) to cover the costs of the cleanup at this facility and for L. Keller Oil Properties' (Charleston) attorneys' fees and costs in bringing this appeal.

**COUNT III**  
**COMPLETENESS REVIEW**

22. Petitioner realleges Counts 1 through 21 as if fully stated herein.
23. The Agency's request for the detailed documentation is untimely because pursuant to 35 Ill. Admin. Code 732.502, the Agency has 45 days to do a completeness review and IEPA's August 6, 2004 request for the detailed additional information was more than 45 days after the Budget was originally submitted on March 12, 2004.

24. Pursuant to 35 Ill. Admin. Code 732.502(d), because the Agency failed to notify Petitioner within 45 days that additional documentation was needed, the Budget is deemed complete and the Agency may not request additional information.

WHEREFORE, L. Keller Oil Properties (Charleston) respectfully requests that the Board enter an order requiring the Agency to approve the High Priority Corrective Action Plan Budget to allow L. Keller Oil Properties (Charleston) to cover the costs of the cleanup at this facility and for L. Keller Oil Properties' (Charleston) attorneys' fees and costs in bringing this appeal.

**COUNT IV**  
**ABUSE OF DISCRETION**

25. Petitioner realleges Counts 1 through 23 as if fully stated herein.
26. Upon information and belief, IEPA has not required this level of documentation from other owners/operators of underground storage tanks.
27. The documentation required by the Letter does not appear on any IEPA forms.
28. Petitioner's consultant CW<sup>3</sup>M sued IEPA in Sangamon County alleging that IEPA's use of rate sheets violated the Administrative Procedures Act and to obtain copies of the Rate Sheets pursuant to the Freedom of Information Act and the Illinois Environmental Protection Act. CW<sup>3</sup>M has also actively participated in the Underground Storage Tank Rulemaking Proceeding, R04-22 and R04-23.
29. If IEPA wished to obtain information regarding various activities, such as those listed in its August 6, 2004 letter for purposes of using the

[This filing submitted on recycled paper as defined in 35 Ill. Adm. Code 101.202]

information to develop proposed rules, IEPA could request numerous consultants to provide this type of information in a cooperative effort as part of the Rulemaking proceeding, but, IEPA has failed to do so.

30. IEPA's demand for the detailed information listed in the August 6, 2004 Letter was for the sole purpose of harassing Petitioner's consultant, CW<sup>3</sup>M, and to increase Petitioner's administrative costs of preparing the Budgets and is an abuse of IEPA's discretion.

WHEREFORE, L. Keller Oil Properties (Charleston) respectfully requests that the Board enter an order requiring the Agency to approve the High Priority Corrective Action Plan Budget to allow L. Keller Oil Properties (Charleston) to cover the costs of the cleanup at this facility and for L. Keller Oil Properties' (Charleston) attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

**L. Keller Oil Properties (Charleston)**

By: Carolyn S. Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
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Chicago, Illinois 60606  
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