

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

MAY 23 2003

STATE OF ILLINOIS  
Pollution Control Board

KELLER OIL PROPERTIES, INC., )  
 )  
 Petitioner )  
 )  
 v. ) PCB 03 - 130  
 ) (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

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

PLEASE TAKE NOTICE that on Friday, May 23, 2003, I 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 Decisions and Appearances for Carolyn S. Hesse and Beth A. Harvey.

Dated: May 23, 2003

Respectfully submitted,

By: Carolyn S. Hesse  
Carolyn S. Hesse

Carolyn S. Hesse, Esq.  
Beth A. Harvey  
Barnes & Thornburg  
2600 Chase Plaza, 10 South LaSalle Street  
Chicago, Illinois 60603  
312-214-8301

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KELLER OIL PROPERTIES, INC., )  
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ILLINOIS ENVIRONMENTAL )  
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**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY DECISIONS**

Keller Oil Properties, Inc. by its attorneys, Carolyn S. Hesse and Beth A. Harvey 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. Keller Oil Properties, Inc. ("Keller") is the owner of property located at 419 West Lincoln, Charleston, Coles County, Illinois. The site is a gasoline service station known as University BP or University Shell that has underground storage tanks (USTs) on the property, which store gasoline, heating oil, and diesel fuel.
2. LUST Incident Number 881670 was obtained following a site investigation.
3. On May 2, 2001, the Agency received Keller's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from July 1, 2000 to March 31, 2001, in the amount of \$71,173.17.

4. The Agency denied certain costs in the Request in a letter dated January 17, 2003, a copy of which is attached hereto as Exhibit A.
5. Keller is appealing this January 17, 2003 denial because:
  - (a) the Agency denied certain costs due to the deduction for an adjustment to Handling Charges greater than allowed by the sliding scale based on eligible subcontractor charges;
  - (b) the Agency denied certain costs by claiming that the costs that the owner/operator failed to demonstrate were reasonable; and
  - (c) the Agency denied certain costs due to lack of supporting technical documentation as the owner/operator failed to demonstrate that the costs are for corrective action performed in accordance with agency approved plans.
6. Keller disagrees with the Agency's decision and believes that the costs submitted for reimbursement are corrective action costs, are reasonable and are the types of costs that are eligible for reimbursement under the Act and implementing regulations.
7. The Agency's letter denying reimbursement, Exhibit A, provides no further explanation of the Agency's reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner's right to reimbursement under the UST Fund.
8. On February 24, 2003, the parties timely filed a joint notice to extend the appeal deadline. On March 6, 2003, the Board filed an order extending the appeal deadline until May 23, 2003, a copy of which is attached hereto as Exhibit B. Pursuant to the Board's March 6, 2003 order, this appeal is timely filed.

WHEREFORE, Keller Oil Properties, Inc. respectfully requests that the Board enter an order that will provide that it be reimbursed from the UST Fund for its submitted costs and for its attorneys fees and costs in bringing this appeal.

Respectfully submitted,

KELLER OIL PROPERTIES, INC.

By: Carolyn S Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
Beth A. Harvey  
Barnes & Thornburg  
2600 Chase Plaza  
10 South LaSalle Street  
Chicago, Illinois 60603  
312-214-8301



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

RENEE CIPRIANO, DIRECTOR

217/782-6762

JAN 18 2003

JAN 17 2003

L. Keller Oil Properties, Inc.  
Attn: Joe Henry  
P.O. Box 70  
Effingham, Illinois 62401

Re: LPC #0290105024 -- Coles County  
Charleston/Keller Oil  
419 West Lincoln  
LUST Incident #881670  
LUST FISCAL FILE

Dear Mr. Henry:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from July 1, 2000 to March 31, 2001. The amount requested was \$71,173.17.

The deductible amount for this claim is \$50,000.00, which was previously deducted from reimbursement requests received June 29, 1999, May 18, 2000, and March 26, 2001. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On May 2, 2001, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$60,830.57 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) and Section 40 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

A

JAN 1 8 2003

Page 2

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:

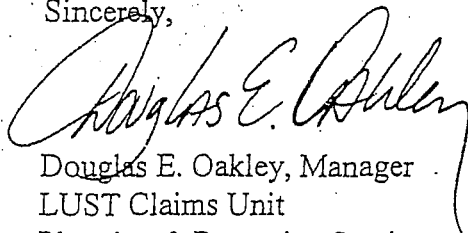
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

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

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

If you have any questions, please contact Diana Gobelman or Carol Hawbaker of the LUST Section technical staff at 217/782-6762.

Sincerely,



Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:DLG:bjh\033564.doc

Attachment

cc: CW3M

Attachment A  
Accounting Deductions

JAN 18 2003

Re: LPC #0290105024 -- Coles County  
Charleston/Keller Oil  
419 West Lincoln  
LUST Incident No. 881670  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$1,117.60, deduction for an adjustment in Handling Charges of greater than the allowed Sliding Scale (Section 22.18b(i)(2) of the Environmental Protection Act).

Amount reduced due to rate allowable per sliding scale based on total of eligible subcontractor charges in billing package. Reduced for amount billed for ineligible subcontractor invoices.

2.      \$175.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

CW3M 1/01 -- Administrative assistant and engineer rates - \$54.00

CW3M 2/01 -- Project manager and engineer rates - \$121.00

DEO:DLG:bjh\033564.doc

Attachment A  
Technical Deductions

JAN 18 2003

Re: LPC #0290105024 -- Coles County  
Charleston / Keller Oil  
419 West Lincoln  
LUST Incident No. 881670  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$9,050.00, deduction for costs that lack supporting technical documentation as the owner or operator failed to demonstrate that the costs are for corrective action performed in accordance with the plans approved by the Agency (Section 22.18b(d)(4)(F) of the Environmental Protection Act). In addition, this amount is being deducted for costs that the owner/operator failed to demonstrate were reasonable. (Section 22.18b(d)(4)(C) of the Illinois Environmental Protection Act).

These costs are associated with LEL and Air Operated Recovery Pump rates. There are no corresponding Personnel hours for the LEL that would demonstrate LEL use and no corresponding Personnel hours that would be required for a manual pumping as described in the letter dated June 15, 2001 to Diana Gobelman justifying the need for a technician to manually pump the Varsity Inn sump.



ILLINOIS POLLUTION CONTROL BOARD

March 6, 2003

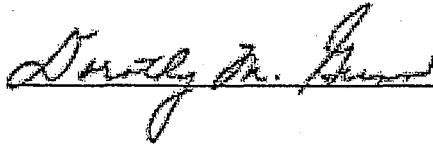
KELLER OIL (July 1, 2000 – March 31, 2001),	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-130
	)	(UST Fund)
	)	(90-Day Extension)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

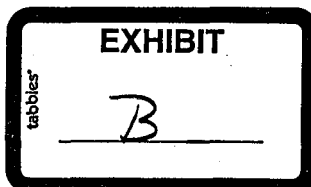
On February 24, 2003, the parties placed in the U.S. mail a joint request to extend the 35-day period within which Keller Oil may appeal a January 17, 2003 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(c), 105.208(a), (c). Keller Oil was served the Agency's determination on January 18, 2003. Because the joint request's postmark date is within the filing period following Keller Oil's receipt of the Agency decision, the petition is timely filed. See 35 Ill. Adm. Code 101.300(a), 101.300(b)(2), 105.404. The Agency issued a reimbursement from the Underground Storage Tank Fund in the amount of \$60,830.57. Keller Oil requested \$71,173.17. This matter regards Keller Oil's leaking underground storage tank site at 419 West Lincoln in Charleston, Coles County. The Board extends the appeal period until May 23, 2003, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.208(a). If Keller Oil 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 March 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board



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APPEARANCE

NOW COMES the undersigned, Carolyn S. Hesse, and enters an appearance for the  
Petitioner, KELLER OIL PROPERTIES, INC., in the above captioned matter.

Dated: May 23, 2003

Keller Oil Properties, Inc.

By: Carolyn S. Hesse  
One of Its Attorneys

Carolyn S. Hesse  
Barnes & Thornburg  
10 S. LaSalle Street  
Suite 2600  
Chicago, Illinois 60603  
(312) 214-8301

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Petitioner )

v. )

PCB 03 - 130

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent )

APPEARANCE

NOW COMES the undersigned, Beth A. Harvey, and enters an appearance for the  
Petitioner, KELLER OIL PROPERTIES, INC., in the above captioned matter.

Dated: May 23, 2003

Keller Oil Properties, Inc.

By: Beth A. Harvey  
One of Its Attorneys

Beth A. Harvey  
Barnes & Thornburg  
10 S. LaSalle Street  
Suite 2600  
Chicago, Illinois 60603  
(312) 357-1313

**CERTIFICATE OF SERVICE**

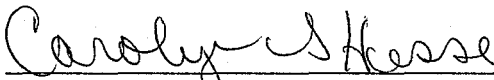
I, on oath state that I have served the attached PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DECISIONS and APPEARANCES for Beth A. Harvey and Carolyn S. Hesse by placing a copy in an envelope addressed to:

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

via U.S. mail this 23 day of May, 2003.

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

via Hand Delivery this 23 day of May, 2003.

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