

BEFORE THE POLLUTION CONTROL BOARD **RECEIVED**
OF THE STATE OF ILLINOIS CLERK'S OFFICE

MAR 24 2004

STATE OF ILLINOIS
Pollution Control Board

L. KELLER OIL PROPERTIES, INC. /)
SALEM / KELLER OIL (Pruden's Shell))
)
Petitioner,)
)
v.) PCB 04-168
) (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 March 24, 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: March 24, 2004

Respectfully submitted,

L. Keller Oil Properties, Inc.

By: Carolyn S Hesse
One of Its Attorneys

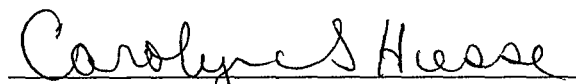
Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
211223v1

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 24th Day of March, 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. /)
SALEM / KELLER OIL (Pruden's Shell))

Petitioner,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

PCB 04-168
(UST Appeal)

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., owned tanks at a gasoline service station located at I-57 and Route 50 in Salem, Marion County, Illinois (the "Station"). This gasoline service station operated as Pruden's Shell and had underground storage tanks (USTs) on the property, which stored gasoline.
2. LUST Incident Number 901249 was obtained following a site investigation. The site has also been assigned LPC #1210450005-Marion County.

3. On July 28, 2003, the Agency received Petitioner's complete request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from December 1, 2001 to July 31, 2002 in the amount of \$17,075.58.
4. The Agency denied certain costs in the Request in a letter dated February 24, 2004, a copy of which is attached hereto as Exhibit A.
5. L. Keller Oil is appealing this February 24, 2004 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that certain costs were reasonable and/or lacked supporting documentation.
6. L. Keller disagrees with the Agency decision and believes that the costs submitted for reimbursement are for correction action activities. The Agency has approved these types of costs historically. The 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.

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 February 24, 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
211176v1



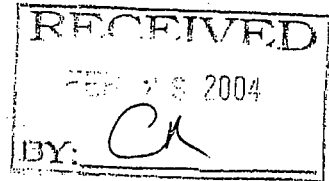
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

ROD R. BLAGOJEVICH, GOVERNOR

RENEE CIPRIANO, DIRECTOR

217/782-6762



FEB 24 2004

L. Keller Oil Properties, Inc.
Attn: Charles Keller
P.O. Box 571
Carlinville, Illinois 62626

Re: LPC #1210450005 -- Marion County
Salem/Keller Oil (Pruden's Shell)
I-57 & Rt. 50
LUST Incident #901249
LUST FISCAL FILE

Dear Mr. Keller:

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 December 1, 2001 to July 31, 2002. The amount requested was \$17,075.58.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated April 13, 1999. 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 July 28, 2003, 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 \$13,246.58 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 period may be extended for a period of time not to exceed 90 days by written notice from the

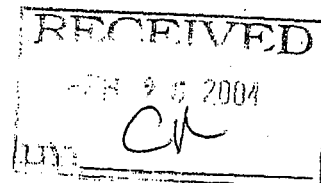
ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA -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

EXHIBIT
A

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 of my staff or Karl Kaiser of the LUST Section technical staff at 217/782-6762.

Sincerely,

A handwritten signature in black ink that reads "Douglas E. Oakley".

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

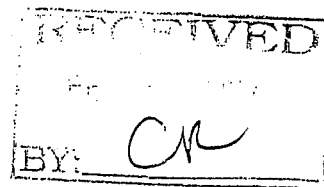
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Attachment

cc: CW3M

Attachment A
Accounting Deductions

Re: LPC #1210450005 -- Marion County
Salem/Keller Oil (Pruden's Shell)
I-57 & Rt. 50
LUST Incident No. 901249
LUST FISCAL FILE



Item # Description of Deductions

1. \$97.00, deduction for an adjustment in Handling Charges of greater than the allowed Sliding Scale (Section 22.18b(i)(2) of the Environmental Protection Act).

Handling reduced due to ineligible subcontractor costs in billing package.

2. \$982.00, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

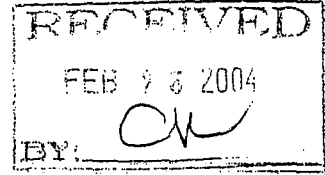
CW3M 1/02 – gloves, mobilization (Advanced), BTEX (Prairie) rates - \$304.00

CW3M 4/02 – gloves, mobilization (Advanced), BTEX (Prairie) rates - \$374.00

CW3M 7/02 – gloves, mobilization (Advanced), BTEX (Prairie) rates - \$304.00

DEO:DLG:bjh\043244.doc

Attachment A
Technical Deductions



Re: LPC #1210450005 -- Marion County
Salem/Keller Oil (Pruden's Shell)
I-57 & Rt. 50
LUST Incident No. 901249
LUST FISCAL FILE

Item # Description of Deductions

1. \$2,750.00 deduction for an adjustment in Bio-Slurry costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).
The owner/operator also failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

KEK