

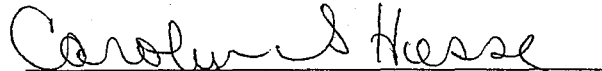


**CERTIFICATE OF SERVICE**

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 23<sup>rd</sup> Day of March, 2004.

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

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

MAR 23 2004

STATE OF ILLINOIS  
Pollution Control Board

L. KELLER OIL PROPERTIES, INC. / )  
EFFINGHAM / DOWNTOWN SUPER K )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

PCB 04-167  
(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., is the owner of underground storage tanks (USTs) at a former gasoline service station located at 3<sup>rd</sup> and Fayette Avenue, 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 January 6, 2003, the Agency received a complete application for payment for corrective action performed at the Station.
4. By letter dated March 4, 2004, the Agency denied payment for certain mobilization costs as being unreasonable. *See Exhibit A.*
5. Historically, IEPA has approved such mobilization costs as being reasonable and has done so on numerous occasions. The Agency's letter of March 4, 2004 provides no additional information regarding why IEPA denied these mobilization costs.
6. Petitioner believes the mobilization costs at issue are reasonable.
7. IEPA's actions are arbitrary and capricious and without authority under the Environmental Protection Act.

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 March 4, 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  
209752v1



# 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

MAR 04 2004

RECEIVED  
MAR 4 2004  
BY: *CR*

L. Keller Oil Properties, Inc.  
Attn: Charles Keller, President  
Post Office Box 571  
Carlinville, Illinois 62626

Re: LPC #0490255121 -- Effingham County  
Effingham/Downtown Super K  
3rd & Fayette Avenue  
LUST Incident No. 970848  
LUST FISCAL FILE

Dear Mr. Keller:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 14, 2003 and was received by the Agency on December 16, 2003. The application for payment covers the period from January 1, 2002 to June 30, 2003. The amount requested is \$241,316.25.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated February 8, 1999. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On January 6, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$237,416.25 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 application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) 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

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

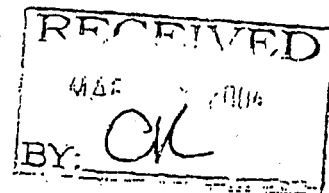
EXHIBIT  
A

Page 2

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 applicant 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 or require further assistance, please contact Eric Kuhlman of the technical section at 217/782-6762.

Sincerely,

*Douglas E. Oakley*  
Douglas E. Oakley, Manager  
LUST Claims Unit

Planning & Reporting Section  
Bureau of Land

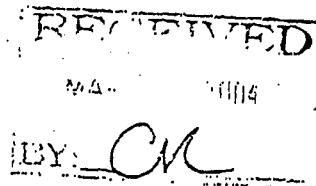
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Attachment

cc: CW3M Company

Attachment A  
Technical Deductions

Re: LPC #0490255121 -- Effingham County  
Effingham / L. Keller Oil Properties -- Downtown Shell  
203 South 3rd Street & Fayette Avenue  
LUST Incident No. #970848  
LUST Fiscal File



Citations in this attachment are from and the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$1,700.00, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). *Costs associated with mobilization of CAT 416CIT Backhoe, CAT 318 Trackhoe, CAT 953 Trackloader, and CAT 322BL Trackhoe.*
2. \$500.00, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). *Costs associated with mobilization of CAT Challenger/Spread equipment.*
3. \$700.00, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). *Costs associated with mobilization of CAT 318 Trackhoe and CAT 416C Backhoe.*
4. \$1,000.00, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). *Costs associated with mobilization and demobilization of CAT 318 Trackhoe.*

EK:EK