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AUG 09 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RANDY'S SHELL, )  
 )  
 ) Petitioner, )  
 )  
 ) v. ) PCB No. 05- 21  
 ) (LUST - Ninety Day Extension)  
 )  
 ) ILLINOIS ENVIRONMENTAL )  
 ) PROTECTION AGENCY, )  
 )  
 ) Respondent. )

NOTICE

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

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

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

AUG 09 2004

STATE OF ILLINOIS  
Pollution Control Board

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

|                        |   |                               |
|------------------------|---|-------------------------------|
| RANDY'S SHELL,         | ) |                               |
|                        | ) |                               |
| Petitioner,            | ) |                               |
| v.                     | ) | PCB No. 05- 21                |
| 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 12, 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. The 125<sup>th</sup> day is November 11, 2004, a State holiday, and November 12<sup>th</sup> is the next business day. In support thereof, the Illinois EPA respectfully states as follows:

1. On July 8, 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's documents indicate that the final decision was received on July 9, 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

This filing submitted on recycled paper.



# 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 5914**

**JUL 08 2004**

L. Keller Oil Properties, Inc.  
Charles Keller  
#4 Avenue of Mid-America  
Effingham, IL 61920

RECEIVED  
JUL 9 2004  
OK

Re: LPC #1190850001 -- Piatt County  
Bement/ Randy's Shell  
249 South Macon Street  
LUST Incident No. 892516  
LUST Technical File

Dear Mr. Keller:

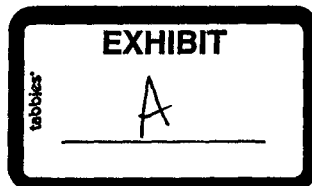
The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the "High Priority Corrective Action Plan Budget" (budget) submitted for the above-referenced incident. This budget, dated May 13, 2004, was received by the Illinois EPA on May 17, 2004. Citations in this letter are from the Environmental 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.



If you have any questions or need further assistance, please contact John Barrett at (217) 782-4869.

Sincerely,



Thomas A. Henninger  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

TAH:JDB

Attachment: Attachment A

c: CW<sup>3</sup>M  
Division File

## Attachment A

Re: LPC #1190850001 -- Piatt County  
Bement/ Randy's Shell  
249 South Macon Street  
LUST Incident No. 892516  
LUST Technical File

JUL 14 2004

Or

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

1. In accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(b), any action by the Illinois EPA to disapprove or modify a plan or budget submitted pursuant to Title XVI of the Act shall be provided to the owner or operator in writing within 120 days of receipt.

The Illinois EPA previously notified the owner or operator of its final action. Further, in accordance with Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f), the Illinois EPA's action to reject or require modification of the plan or budget, or the rejection of any plan or budget by operation of law, was subject to appeal to the Illinois Pollution Control Board within 35 days after the Illinois EPA's final action.

JDB

# BARNES & THORNBURG

Carolyn S. Hesse  
(312) 214-3301  
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

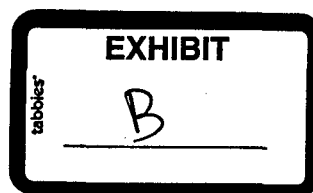
**RECEIVED**  
Division of Legal Counsel  
JUL 15 2004  
Environmental Protection  
Agency

Re: LPC #1190850001 - Piatt County  
Bement / Randy's Shell  
249 South Macon Street  
LUST Incident No. 892516  
LUST Technical File

Dear John:

On July 8, 2004, the Agency issued a letter with respect to the above-referenced LUST Incident. A new, amended High Priority Corrective Action Plan and Budget were submitted to the Illinois Environmental Protection Agency dated May 13, 2004. This was received by the Illinois EPA on May 17, 2004. The document was submitted 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.



Chicago

Elkhart

Fort Wayne

Indianapolis

South Bend

Washington, D.C.

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. A copy of the letter from the Agency is attached.

Randy's Shell 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 the appeals 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  
227683v1




## 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  
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