

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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OCT 17 2005

STATE OF ILLINOIS
Pollution Control Board

KNAPP OIL COMPANY,)
DON'S 66,)
)
Petitioner,)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 06-52
(UST Appeal)

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 October 17, 2005 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: October 17, 2005

Respectfully submitted,

Knapp Oil Company, Don's 66

By: Carolyn S. Hesse
One of Its Attorneys

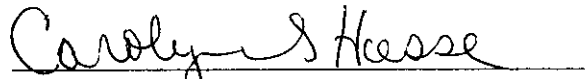
Carolyn S. Hesse
Barnes & Thornburg LLP
One North Wacker Drive
Suite 4400
Chicago, Illinois 60606
(312) 357-1313
299865v1

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 17th Day of October, 2005.



Carolyn S. Hesse

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

Knapp Oil Company, 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. Knapp Oil Company ("Knapp") is the owner of underground storage tanks (USTs) at a former gasoline service station known as "Don's 66" located at 700 East Main Street, Olney, Richland County, Illinois (the "Station"). The USTs stored gasoline and diesel fuel.
2. LUST Incident Number 901831 was assigned to the release. The site has also been assigned LPC #1590200007-Richland County.
3. On August 6, 2005, the Agency received a High Priority Corrective Action Plan ("Plan") and the associated budget ("Budget") to perform corrective action at the Station. *See* Exhibit A. The cover letter forwarding the Plan and Budget also contained responses to questions that

the Agency raised in a letter dated January 19, 2005 regarding a corrective action plan for the Station that had been submitted October 4, 2004. (*See* Exhibit B.)

4. By letter dated September 21, 2005 (the "Letter"), the Agency rejected the Plan for the reasons listed in Attachment A to the Letter and rejected the Budget for the reasons listed in Attachment B. *See* Exhibit C.
5. The Letter also advises Knapp of its right to appeal this final Agency decision.
6. The Agency's Letter includes as reasons for denying the Plan and Budget comments that are contradictory to the information that was previously provided and that are internally inconsistent and that exceed the Agency's authority.
7. In Item 1 of Attachment A to the Letter, the Agency makes contradictory comments regarding the diesel tank. First, the Agency states that delineation and remediation of releases from the diesel tank exceed the minimum requirements of the Act. Later, in Item 1, the Agency alleges that the Station is in violation for failing to report a release from the diesel tank.
8. In Item 1 of Attachment B to the Letter, the Agency claims that activities associated with the diesel tank are ineligible for reimbursement and are in excess of activities to meet minimum requirements of the Act. *See* Exhibit C.

9. The release from the diesel tank was reported and has the same incident number (901831) as the releases from the other tanks. This fact was also pointed out in the cover letter forwarding the Plan. The Illinois Office of the State Fire Marshal (“OSFM”) determined that the diesel tank is eligible for reimbursement. *See* Exhibit A, Appendix G.
10. Pursuant to Section 57.9(c) of the Illinois Environmental Protection Act, 415 ILCS 5/57.9(c), the OSFM determines whether a tank is eligible for reimbursement, not the Agency.
11. In Item 2 of Attachment A to the Letter, the Agency requests that additional samples be collected from areas where Knapp’s consultant has already advised the Agency that either samples could not be collected because of utilities located in the right-of-way or access was denied or because the area where the Agency wanted samples to be collected was beyond the area that modeling predicted was impacted and, thus, beyond the minimum requirements of the Act. *See* Exhibit B, pp. 1-2.
12. In the Letter dated September 21, 2005, in Item 3 of Attachment A, the Agency asks numerous questions based on the Agency’s assumption that bioremediation would be used.
13. Information responsive to questions in Item 3 were contained in the Cover Letter to the Plan dated August 2, 2005.
14. Knapp’s Plan and Budget are reasonable, consistent with the Act and regulations at 35 Ill. Admin. Code 732.

9. The release from the diesel tank was reported and has the same incident number (901831) as the releases from the other tanks. This fact was also pointed out in the cover letter forwarding the Plan. The Illinois State Fire Marshal (“ISFM”) determined that the diesel tank is eligible for reimbursement. *See* Exhibit A, Appendix G.
10. Pursuant to Section 57.9(c) of the Illinois Environmental Protection Act, 415 ILCS 5/57.9(c), the ISFM determines whether a tank is eligible for reimbursement, not the Agency.
11. In Item 2 of Attachment A to the Letter, the Agency requests that additional samples be collected from areas where Knapp’s consultant has already advised the Agency that either samples could not be collected because of utilities located in the right-of-way or access was denied or because the area where the Agency wanted samples to be collected was beyond the area that modeling predicted was impacted and, thus, beyond the minimum requirements of the Act. *See* Exhibit B, pp. 1-2.
12. In the Letter dated September 21, 2005, in Item 3 of Attachment A, the Agency asks numerous questions based on the Agency’s assumption that bioremediation would be used.
13. Information responsive to questions in Item 3 were contained in the Cover Letter to the Plan dated August 2, 2005.
14. Knapp’s Plan and Budget are reasonable, consistent with the Act and regulations at 35 Ill. Admin. Code 732.

15. The Agency's rejection of the Plan and Budget was arbitrary, and capricious and for the sole purpose of harassing Knapp and its consultant.

16. Petitioner is appealing the Agency's decision Letter dated September 21, 2005.

Wherefore, Knapp Oil Company, Don's 66, respectfully requests that the Board enter an Order to require that the Agency approve the Plan and Budget submitted on August 2, 2005 and for Petitioner's attorneys' fees and costs in bringing this appeal.

Respectfully submitted,

Knapp Oil Company, Don's 66

By: Carolyn S. Hesse
One of Its Attorneys

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