

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE

SEP 22 2006

STATE OF ILLINOIS
Pollution Control Board

KNAPP OIL COMPANY, DON'S 66,)
Petitioner,)
)
v.) PCB 06-52
) (UST Appeal)
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

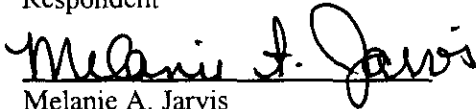
Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Carolyn S. Hesse
Barnes & Thornburg, LLP
One North Wacker Drive,
Suite 4400
Chicago, IL 60606-2833

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board an APPEARANCE, MOTION FOR SUMMARY JUDGEMENT, MOTION FOR LEAVE TO SUPPLEMENT ADMINISTRATIVE RECORD and the SUPPLEMENTAL ADMINISTRATIVE RECORD copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
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: September 21, 2006

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RECEIVED
CLERK'S OFFICE
SEP 22 2006
STATE OF ILLINOIS
Pollution Control Board

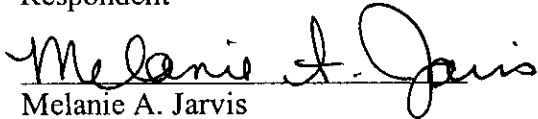
KNAPP OIL COMPANY, DON'S 66,)
) Petitioner,)
))
) v.) PCB 06-52
)) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
) Respondent.)

APPEARANCE

The undersigned, as one of its attorneys, hereby enters her Appearance on behalf of the Respondent, the Illinois Environmental Protection Agency.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
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: September 21, 2006

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

**RECEIVED
CLERK'S OFFICE**

SEP 22 2006

**STATE OF ILLINOIS
Pollution Control Board**

KNAPP OIL COMPANY, DON'S 66,)	
)	
Petitioner,)	
)	
v.)	PCB 06-52
)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

MOTION FOR SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.500, 101.508 and 101.516, hereby respectfully moves the Illinois Pollution Control Board ("Board") to enter summary judgment in favor of the Illinois EPA and against the Petitioner, Knapp Oil Company ("Knapp"), in that there exist herein no genuine issues of material fact, and that the Illinois EPA is entitled to judgment as a matter of law with respect to the following grounds. In support of said motion, the Illinois EPA states as follows:

I. STANDARD FOR ISSUANCE AND REVIEW

A motion for summary judgment should be granted where the pleadings, depositions, admissions on file, and affidavits disclose no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill.2d 460, 483, 693 N.E.2d 358, 370 (1998); McDonald's Corporation v. Illinois Environmental Protection Agency, PCB 04-14 (January 22, 2004), p. 2.

Section 57.8(i) of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/57.8(i)) grants an individual the right to appeal a determination of the Illinois EPA to the Board pursuant to Section 40 of the Act (415 ILCS 5/40). Section 40 of the Act, the general appeal section for permits, has been used by the legislature

as the basis for this type of appeal to the Board. Thus, when reviewing an Illinois EPA determination of ineligibility for reimbursement from the Underground Storage Tank Fund, the Board must decide whether or not the application as submitted demonstrates compliance with the Act and Board regulations. Rantoul Township High School District No. 193 v. Illinois EPA, PCB 03-42 (April 17, 2003), p. 3.

In deciding whether the Illinois EPA's decision under appeal here was appropriate, the Board must look to the documents within the Administrative Record ("Record" or "AR")(Supplemental Agency Record is cited as "SAR"). The Illinois EPA asserts that the Record and the arguments presented in this motion are sufficient for the Board to enter a dispositive order in favor of the Illinois EPA on all relevant issues. Accordingly, the Illinois EPA respectfully requests that the Board enter an order affirming the Illinois EPA's decision.

II. BURDEN OF PROOF

Pursuant to Section 105.112(a) of the Board's procedural rules (35 Ill. Adm. Code 105.112(a)), the burden of proof shall be on the petitioner. In reimbursement appeals, the burden is on the applicant for reimbursement to demonstrate that incurred costs are related to corrective action, properly accounted for, and reasonable. Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003), p. 9.

III. ISSUES

The issues before the Board are:

- 1) Whether the Petitioner's activities at the site related to the diesel tank exceed the minimum requirements of the Act because the Petitioner did not report a release of a diesel tank to IEMA for their site located at 700 East Main Street, Olney, Richland County, Illinois. Further, the issue is whether the Petitioner is eligible for reimbursement from the fund for activities performed prior to the reporting of a release.
- 2) Whether additional samples are needed to fully delineate the area of contamination.

As will be argued below, the facts in this case are undisputed and clearly demonstrate that the decisions were appropriate and should be affirmed.

IV. THE ILLINOIS EPA IS ENTITLED TO SUMMARY JUDGMENT BASED ON THE FACTS AND LAW

A. Relevant Facts

The facts in the Illinois EPA record supporting this motion are as follows:

1. On July 3, 1990, Bill Knapp, representing Knapp Oil called in a leak of gasoline from an underground tank on his property at 700 E. Main Street, Olney, Illinois. This is evidenced by the Illinois Emergency Services and Disaster Agency Field Report filled out at that time. Incident Number 901831 was assigned. (SAR, p.2)
2. On July 19, 1990, Bill Knapp, from Knapp Oil sent a letter to the Illinois EPA stating that gasoline was found in a monitoring well next to a Super NoLead tank. (SAR, p.4)
3. On June 28, 1995, CW3M Company, on behalf of Knapp Oil, submitted a Site Classification Work Plan and Budget. (SAR, p. 5) This report stated as follows:

“On July 3, 1990, gasoline was found in a monitoring well next to one of the gasoline UST’s (this well is identified as Monitoring Well 3 on Drawing 005 of Attachment A). The free product which had accumulated in the monitoring well was removed and placed in 55-gallon drums. A total of 15 gallons of product was removed from the monitoring well.
* * * * *

Due to the release being related to overfill(s) of the gasoline tanks, the fact that no holes were noted in any of the tanks, and that all lines and tanks passed a tightness test, the only parameters analyzed for shall be BETX constituents.” (Emphasis added) (SAR, p. 12)
4. In another place in the June 28, 1995 report, there is a summary of the releases on the site. This summary clearly states that the diesel fuel, 1,000 gallon tank did not have a release and was not a part of incident number 901831. (SAR, p.39)
5. On June 26, 1995, Knapp Oil submitted an Application for Eligibility and Deductibility to the OSFM. The UST Information Sheet states that the diesel tank did not have a release. (SAR, p.66)

6. On July 25, 1995, the Office of the State Fire Marshal (“OSFM”) stated that the eligible tank was Tank 2, the 6,000 gallon tank. (SAR, p. 63) This is evidenced by a letter written by OSFM to Knapp Oil and submitted to the Illinois EPA by CW3M on behalf of Knapp Oil. This letter states as follows:

“The following tanks are also listed for this site:

- Tank 1, 8,000 gallon gasoline
- Tank 3, 1,000 gallon diesel

Your application indicates that there has not been a release from these tanks. You may be eligible to seek payment of corrective action costs associated with these tanks if it is determined that there has been a release from one or more of these tanks. Once it is determined that there has been a release from one or more of these tanks you may submit a separate application for an eligibility determination to seek corrective action costs associated with this/these tanks.” (Emphasis added) (SAR, p.65)

7. On September 13, 2000, CW3M, on behalf of Knapp Oil, submitted a Site Classification Completion Report. (SAR, p. 71) This report states as follows:

“As described in the introduction, Incident number 90-1831 was assigned to a release detected due to gasoline found within a monitoring well.

Due to the release being related to an overflow of gasoline, the fact that no holes were noted in any of the tanks, and that all lines and tanks passed a tightness test, only benzene, ethylbenzene, toluene, and total xylenes (BETX) were determined to be the constituents of concern in this case.

Table 3-1. Underground Storage Tank Summary

Tank Number	Capacity (gallons)	Product	Status	Release Type
1	8,000	Gasoline	Upgraded 9/7/90	None
2	6,000	Gasoline	Upgraded 9/7/90	Overfills
3	1,000	Diesel	Upgraded 9/7/90	None”

(Emphasis added)(SAR, p. 78)

8. On July 27, 2001, CW3M, on behalf of Knapp Oil, submitted a Site Assessment Report and Corrective Action Plan. (SAR, p. 150) In this report, the information set forth above from the September 20, 2000 report was reiterated, except that in this report, for the first time since 1990, the following statement was added:

“While prior reporting indicted that tank numbers 1 and 3 did not contribute to the release, contamination found during the site assessment beneath the pump island and at the east property line indicates that all three tanks may have contributed to the release.” (SAR, p.155)

9. On November 16, 2001, the Illinois EPA responded to the Site Assessment Report and Corrective Action Plan. Attachment A of the November 16, 2001 letter states, in part, as follows:

“c) The corrective action plan indicates a diesel tank may have leaked. This should be verified prior to corrective action. ***If contamination from the diesel tank is found to be present, the owner/operator must call in the tank and have an IEMA incident number assigned to the leak.***” (Emphasis added) (SAR, p.299)

10. On March 26, 2002, OSFM issued a revised eligibility determination including Tank 1, 8,000-gallon gasoline and Tank 3, 1,000-gallon Diesel. Part of this letter states as follows:

“An owner or operator is eligible to access the Underground Storage Tank Fund ***if the eligibility requirements are satisfied:***

5. The owner or operator ***notified the Illinois Emergency Management Agency of a confirmed release***, the costs were incurred after the notification and the costs were a result of a release of a substance listed in this Section. Costs of corrective action or indemnification incurred before providing that notification shall not be eligible for payment.” (Emphasis added) (AR, 303)

11. On August 2, 2005, CW3M, on behalf of Knapp Oil, submitted a High Priority Corrective Action Plan and Budget to the Illinois EPA. This plan and budget included actions and costs associated with the diesel tank. (AR, 1)

12. On September 21, 2005, the Illinois EPA issued a determination letter rejecting the plan and budget for reasons set forth in Attachments A and B. The rejection was partly based upon the fact that Knapp Oil has not notified the Illinois Emergency Management Agency of a confirmed release from the diesel tank. Therefore, the Illinois EPA could not approve the High Priority Corrective Action Plan and Budget for costs incurred prior to providing such notification. (AR, 323)

B. Relevant Law

35 Ill. Adm. Code 732.202(a), Early Action, states as follows:

- a) Upon confirmation of a release of petroleum from a UST system in accordance with regulations promulgated by the OSFM, the owner or operator, or both, shall perform the following initial response actions within 24 hours after the release:
 - 1) ***Report the release to IEMA (e.g., by telephone or electronic mail);***
 - 2) Take immediate action to prevent any further release of the regulated substance to the environment; and
 - 3) Identify and mitigate fire, explosion and vapor hazards. (Emphasis added)

35 Ill. Adm. Code 732.404, High Priority Site, states as follows:

- a) The owner or operator of a site classified as High Priority shall develop a corrective action plan and perform corrective action in accordance with the requirements of this Section. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in subsection (b) of this Section that caused the site to be classified as High Priority.
- b) The owner or operator shall develop a corrective action plan based on site conditions and designed to achieve the following as applicable to the site:
 - 1) For sites that have submitted a site classification report under Section 732.309, provide that:
 - A) After complete performance of the corrective action plan, applicable indicator contaminants identified in the groundwater investigation are not present in groundwater, as a result of the underground storage tank release, in concentrations exceeding the remediation objectives referenced in Section 732.408 of this Part at the property boundary line or 200 feet from the UST system, whichever is less;
 - B) After complete performance of the corrective action plan, Class III special resource groundwater quality standards for Class III special resource groundwater within 200 feet of the UST system are not exceeded as a result of the underground storage tank release for any indicator contaminant identified in the groundwater investigation;
 - C) After complete performance of the corrective action plan, remediation of contamination in natural or man-made exposure pathways as a result of the underground storage tank release has been conducted in accordance with 35 Ill.

Adm. Code 742;

- D) Threats to potable water supplies are remediated; and
 - E) Threats to bodies of surface water are remediated.
- 2) For sites that have submitted a site classification completion report under Section 732.312 of this Part, provide that, after complete performance of the corrective action plan, the concentrations of applicable indicator contaminants meet the remediation objectives developed under Section 732.408 for any applicable exposure route not excluded from consideration under Section 732.312.
- c) The owner or operator is not required to perform corrective action on an adjoining or off-site property to meet the requirements of this Section, even where complete performance of the corrective action plan under subsection (b)(1) or (b)(2) of this Section would otherwise require such off-site action, if the Agency determines that the owner or operator is unable to obtain access to the property despite the use of best efforts in accordance with the requirements of Section 732.411 of this Part.
 - d) In developing the corrective action plan, if the Licensed Professional Engineer or Licensed Professional Geologist selects soil or groundwater remediation, or both, to satisfy any of the criteria set forth in subsection (b) of this Section, remediation objectives shall be determined in accordance with Section 732.408 of this Part. Groundwater monitoring wells shall satisfy the requirements of Section 732.307(j)(3) and (4) of this Part.
 - e) Except where provided otherwise pursuant to Section 732.312 of this Part, in developing the corrective action plan, additional investigation activities beyond those required for the site evaluation and classification may be necessary to determine the full extent of soil or groundwater contamination and of threats to human health or the environment. Such activities may include, but are not limited to, additional soil borings with sampling and analysis or additional groundwater monitoring wells with sampling and analysis. Such activities as are technically necessary and consistent with generally accepted engineering practices may be performed without submitting a work plan or receiving prior approval from the Agency, and associated costs may be included in a High Priority corrective action budget plan. A description of these activities and the results shall be included as a part of the corrective action plan.
- 1) In addition to the potable water supply wells identified pursuant to Section 732.307(f) of this Part, the owner or operator must extend the water supply well survey if soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants extends beyond the site's property boundary, or, as part of a corrective action plan, the owner or operator proposes to leave in place soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants and

contamination exceeding such objectives is modeled to migrate beyond the site's property boundary. At a minimum, the extended water supply well survey must identify the following:

- A) All potable water supply wells located within 200 feet, and all community water supply wells located within 2,500 feet, of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants; and
 - B) All regulated recharge areas and wellhead protection areas in which the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants is located.
- 2) The Agency may require additional investigation of potable water supply wells, regulated recharge areas, or wellhead protection areas if site-specific circumstances warrant. Such circumstances must include, but is not limited to, the existence of one or more parcels of property within 200 feet of the current or modeled extent of soil or groundwater contamination exceeding the Tier 1 groundwater ingestion exposure route remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants where potable water is likely to be used, but that is not served by a public water supply or a well identified pursuant to Section 732.307(f)(1) of this Part or subsection (e)(1) of this Section. The additional investigation may include, but is not limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other material that requests information about the existence of potable wells on the property, etc.).
- f) The owner or operator shall submit the corrective action plan to the Agency for review in accordance with Section 732.405 of this Part. If the owner or operator intends to seek payment from the Fund, a corrective action budget plan also shall be submitted to the Agency for review.
 - g) Within 30 days after completing the performance of the High Priority corrective action plan, the owner or operator shall submit to the Agency a corrective action completion report in accordance with Section 732.409 of this Part.
 - h) Within 120 days, the Agency shall review the corrective action completion report in accordance with the procedures set forth in Subpart E of this Part and shall issue a No Further Remediation Letter to the owner or operator in accordance with Subpart G of this Part upon approval by the Agency.

35 Ill. Adm. Code 732.606(o) and (n), Ineligible Corrective Action Costs, states as follows:

Costs ineligible for payment from the Fund include but are not limited to:

- n) Costs of corrective action incurred before providing notification of the release of petroleum to IEMA in accordance with Section 732.202 of this Part;
- o) Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act;

C. No Genuine Issues Of Material Fact Exist

Issue 1: The Diesel Tank

The question in this case is not one of fact, but rather of law. Specifically, the question is whether the Petitioner's activities at the site related to the diesel tank exceed the minimum requirements of the Act because the Petitioner did not report a release of a diesel tank to IEMA for their site located at 700 East Main Street, Olney, Richland County, Illinois. Further, the issue is whether the Petitioner is eligible for reimbursement from the fund for activities performed prior to the reporting of a release.

Pursuant to 35 Ill. Adm. Code 732.404(a), the owner or operator of a site that has been certified by a Licensed Professional Engineer or Licensed Professional Geologist as a High Priority site and approved as such by the Illinois EPA shall develop a corrective action plan and perform corrective action in accordance with the requirements of 35 Ill. Adm. Code 732.404. The purpose of the corrective action plan shall be to remediate or eliminate each of the criteria set forth in 35 Ill. Adm. Code 732.404(b) that caused the site to be classified as High Priority. The plan submitted by the Petitioner that is at issue in this appeal failed to meet the above requirement because Incident Number 908131 was reported as a result of free product observed in an observation well located in the gasoline tank basin, specifically next to the super no-lead tank. (SAR, p. 2 and p. 4) The substance was reported as a release of gasoline only. (SAR, p. 65) The Petitioner specifically stated that the diesel tank did not have a release. The gas station continued to operate in the interim. A release of the

diesel tank was never called in to IEMA as required by 35 Ill. Adm. Code 732.202. Further, the release was classified as High Priority based on the elevated concentrations of gasoline indicator contaminants (BTEX). Site Classification was approved by the Illinois EPA on January 3, 2001 based upon the information supplied by the Petitioner to the Illinois EPA in the Site Classification completion report received on September 12, 2000. (SAR, p.71) This report states that there was no release from the diesel tank, and diesel indicator contaminants were not analyzed for during site classification. Therefore, any activity associated with the delineation and remediation of diesel fuel indicator contaminants exceed the minimum requirements to comply with Title XVI of the Act. The costs associated with a diesel release, removal of a diesel tanks and excavation of areas contaminated with PNA only constituents are not reimbursable pursuant to 35 Ill. Adm. Code 732.606(o).

Please note that the Petitioner did have the Office of State Fire Marshal issue a new eligibility determination listing the diesel tank as an eligible tank, however, that does not replace the need for IEMA to be notified. Further, even that determination states that the eligible tanks would only be able to access the Leaking Underground Storage Tank Fund if a confirmed release was reported for the tanks in question. The simple fact is that to this day, a confirmed release from the diesel tank was never reported to IEMA. The Illinois EPA cannot approve a High Priority Corrective Action Plan that includes remediation of a release that was never reported.

Issue 2: Additional Sampling

It is the Illinois EPA's position that additional activities are required in order to define the full extent of soil and groundwater contamination pursuant to 35 Ill. Adm. Code 732.404(e). The Illinois EPA requested that the Petitioner request access from the Elliot Avenue Highway Authority for the purpose of investigation in the right-of-way area on the west side of the street. Further, the Illinois EPA requested that if such access was not

possible, that additional delineation beyond the Bank of Olney property was needed for verification that soil or groundwater contamination does not extend down gradient beyond the Bank of Olney property.

On January, 19, 2005, the Illinois EPA requested a sworn affidavit for off-site access refusal by the Bank of Olney. (AR p.314) It was further requested that right-of-way access be requested on the west side of the street to fully delineate soil and groundwater contamination. Then if this was denied, that additional delineation beyond the Bank of Olney property would then be necessary. Petitioners responded to these requirements in the cover letter of their next submittal on August 2, 2005. (AR p. 1) In that submittal, the Petitioners stated that the affidavit was not appropriate at that time and would be submitted with the Corrective Action Completion Report (“CACR”) in case the bank changed its mind. The Petitioner also asserted that due to the urban setting and the utilities located in the right-of-way, such an investigation was impractical.

The Illinois EPA did not accept that argument. The plume area that has not been delineated indicates that the highest levels of soil contamination are in the street with the possibility that it is crossing onto off-site property. The Illinois EPA believes that it is imperative that delineation of the plume either be achieved by the right-of-way sampling or off-site access denial and confirmation that the contamination levels do not impact properties beyond the Bank of Olney who is refusing off-site access. Assuming that the contamination levels have not impacted those properties is not sufficient when the plume has not been delineated. This must be analytically verified. So far the source width of the groundwater plume had not been ascertained making modeling of this plume inaccurate. The Petitioner needs to comply with 35 Ill. Adm. Code 732.404(e) and define the full extent of the soil and groundwater contamination.

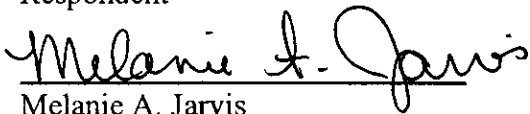
V. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board affirm the Illinois EPA's decision to reject the High Priority Corrective Action Plan and Budget in the September 21, 2005 final decision for the above reasons.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent



Melanie A. Jarvis

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: September 21, 2006

This filing submitted on recycled paper.

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

KNAPP OIL COMPANY, DON'S 66,)	
Petitioner,)	
)	
v.)	PCB 06-52
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

MOTION FOR LEAVE TO SUPPLEMENT ADMINISTRATIVE RECORD

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel and Special Assistant Attorney General, and, pursuant to 35 Ill. Adm. Code 101.508 and 105.212, hereby requests that the Illinois Pollution Control Board ("Board") grant leave to file a supplement to the Administrative Record filed previously. In support of this motion, the Illinois EPA states as follows:

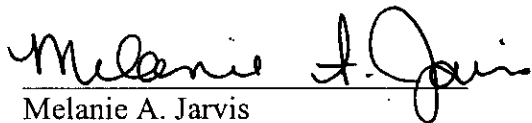
1. On December 29, 2005, the Illinois EPA mailed for filing the Administrative Record in this proceeding.
2. This case was reassigned to the undersigned attorney in April, 2006.
3. Through the course of recent file review and discussions with Illinois EPA staff, several documents were provided that were not included in the Administrative Record but were relied upon by Illinois EPA staff in making their decision. (See attached affidavit)
4. The omission of this document was not due to any bad faith, but rather was an oversight when the original record was compiled.
5. No hardship to the Petitioner should occur due to the filing of this Supplemental Administrative Record as all of these documents were either submitted to the Illinois EPA by the

Petitioner or sent to the Petitioner by the Illinois EPA. The Board has allowed such supplements to Administrative Records in the cases of Strube v. IEPA, PCB 91-205; Des Plaines River Watershed Alliance et. al. v. IEPA and the Village of New Lenox, PCB 04-88; and Quantum Chemical v. IEPA, PCB 89-16. The inclusion of these documents should be allowed to complete the Administrative Record before the Board.

WHEREFORE, for the reasons stated herein, the Illinois EPA respectfully requests that the Board grant leave to file a supplement to the Administrative Record.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
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: September 21, 2006

This filing submitted on recycled paper.

STATE OF ILLINOIS)
) SS
SANGAMON COUNTY)

AFFIDAVIT

I, Carol Hawbaker, upon my oath, do hereby state as follows:

1. I am employed as an Environmental Protection Specialist III for the Illinois Environmental Protection Agency ("Illinois EPA").
2. I have reviewed the Illinois EPA's Motion for Leave to Supplement Administrative Record and the Supplemental Administrative Record.
3. The documents contained within the Supplemental Administrative Record were relied upon me in reviewing the submittal at issue in Knapp Oil v. IEPA, PCB 06-52

FURTHER AFFIANT SAYETH NOT.

Carol Hawbaker 9/18/06
Carol Hawbaker

Subscribed and sworn to before me
this 18th day of Sept., 2006.

Catherine R. Hunter
Notary Public



CERTIFICATE OF SERVICE

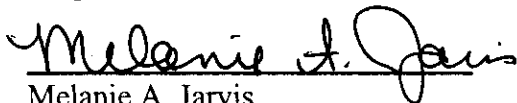
I, the undersigned attorney at law, hereby certify that on September 21, 2006 I served true and correct copies of an APPEARANCE, MOTION FOR SUMMARY JUDGEMENT, MOTION FOR LEAVE TO SUPPLEMENT ADMINISTRATIVE RECORD and the SUPPLEMENTAL ADMINISTRATIVE RECORD by placing true and correct copies thereof in 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 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

Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P. O. Box 19274
Springfield, IL 62794-9274

Carolyn S. Hesse
Barnes & Thornburg, LLP
One North Wacker Drive,
Suite 4400
Chicago, IL 60606-2833

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)