

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RELIABLE STORES, INC.,)
 Petitioner,)
 v.)
)
OFFICE OF THE STATE FIRE)
MARSHAL,)
 Respondent.)

PCB 2019-002
(LUST Permit Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
(Carol.Webb@illinois.gov)

Nancy J. Tikalsky
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, IL 60602
(Nancy.Tikalsky@ilag.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, MOTION TO SUPPLEMENT MOTION FOR AUTHORIZATION OF PAYMENT OF ATTORNEY'S FEES AS COSTS OF CORRECTIVE ACTION, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 21st day of November, 2022. The number of pages in the e-mail transmission 13 pages.

RELIABLE STORES, INC.

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

RELIABLE STORES, INC.,)	
Petitioner,)	
v.)	PCB 2019-002
)	(LUST Permit Appeal)
OFFICE OF THE STATE FIRE)	
MARSHAL,)	
Respondent.)	

**MOTION TO SUPPLEMENT MOTION FOR AUTHORIZATION OF PAYMENT OF
ATTORNEY'S FEES AS COSTS OF CORRECTIVE ACTION**

NOW COMES Petitioner, RELIABLE STORES, INC., by its undersigned counsel, and pursuant to Section 57.8(1) of the Illinois Environmental Protection Act (hereinafter "the Act") (415 ILCS 5/57.8(1)), moves to supplement its pending Motion for Authorization of Attorney's Fees As Costs of Corrective Action, and in support thereof states as follows:

1. On April 1, 2021, the Illinois Pollution Control Board (hereinafter "the Board") issued its final order herein, finding that Petitioner was eligible for reimbursement from the Underground Storage Tank Fund for costs of corrective action.

2. On May 4, 2021, the Office of the State Fire Marshal (hereinafter "OSFM") petitioned the Appellate Court for direct review of the Board's final order.

3. On May 5, 2021, Petitioner timely filed with the Board a Motion for Authorization of Payment of Attorney's Fees as Costs of Corrective Action (hereinafter "Attorney's Fees Motion") in the amount of \$15,900.00.

4. The Attorney's Fees Motion was brought pursuant to Section 57.8(1) of the Act, which authorizes the Board to authorize payment of legal fees if an owner or operator of underground storage tanks prevails before the Board. (415 ILCS 5/57.8(1))

5. On June 24, 2021, OSFM moved to stay the Attorney's Fees Motion due to the pending appeal. In the alternative, OSFM requested that if the stay is denied, it be given an opportunity to respond to the Attorney's Fees Motion.

6. Following further filings on the issue of the stay, the Board entered an order on December 2, 2021, finding that the Board has jurisdiction to rule on the motion for legal fees as that issue is not before the Appellate Court and that grounds for a stay have not been demonstrated. However, the Board granted OSFM an until January 3, 2022, to file its response to the Attorney's Fees Motion.

7. On December 22, 2021, counsel for OSFM e-mailed the Hearing Officer and Petitioner's counsel to state "that upon further review, the People will not be filing an additional response to the pending legal fees motion."

8. On September 30, 2022, the Appellate Court affirmed OSFM's decision by which Petitioner prevailed before the Board, and the mandate issued on November 18, 2022.

9. Since filing the Attorney's Fees Motion, further legal defense costs have been incurred herein, both before the Board relating to payment of legal defense costs and before the Appellate Court in seeking to uphold the Board's order. Such expenses are legal defense costs that are reimbursable under the Act. See Estate of Slightom v. IEPA, PCB 11-25, slip op. at 2 (Nov. 5, 2015) (authorizing payment of \$79,455.26 for legal fees and costs incurred before the Board and the Appellate Court regarding eligibility and deductible decision). The prosecution of an appeal to the Appellate Court which issued a published opinion demonstrates the importance of the issues herein.

10. Attached hereto is the Supplemental Affidavit of Patrick D. Shaw, documenting the supplemental legal costs in this matter incurred since May 6, 2021, which are \$17,206.65, bringing the total amount requested to \$33,106.65. As with the previous affidavit filed herein, it sets forth the legal services provided, the identity of the attorney providing the legal services, and itemization of the time expended for the individual service, and the hourly rate charged. Id.

WHEREFORE, Petitioner, RELIABLE STORES, INC., requests that the Board allow Petitioner to supplement its Attorney's Fees Motion with an additional \$17,206.65 in legal defense costs, authorize payment from the Leaking Underground Storage Tank Fund in the amount of \$33,106.65 in attorney's fees and litigation costs pursuant to 415 ILCS 5/57.8(l), and provide such other and further relief as the Board deems meet and just.

Respectfully submitted,

RELIABLE STORES, INC.
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW
Its attorneys

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

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

RELIABLE STORES, INC.,)	
Petitioner,)	
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v.)	PCB 2019-002
)	(UST Appeal)
OFFICE OF THE STATE FIRE MARSHAL,)	
Respondent.)	

STATE OF ILLINOIS)
) ss.
COUNTY OF SANGAMON)

**SUPPLEMENTAL AFFIDAVIT OF PATRICK D. SHAW
VERIFYING ATTORNEY FEES**

Affiant, Patrick D. Shaw, being first duly sworn, states as follows:

1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.
2. I am an attorney duly licensed to practice law in the State of Illinois; and I am the attorney of record for Petitioner in the case entitled Reliable Stores v. IEPA, PCB 2019-002.
3. Attached hereto as Exhibit A is a printout from my bookkeeping software detailing legal defense costs incurred in this matter. At all times relevant hereto my hourly rate has been \$200 per hour, which is the regular and ordinary billing rate charged all of my clients. I am generally familiar with the hourly rates of environmental attorneys practicing in Springfield, Illinois and before the Board, and believe this rate to be comparable, if not less, than other such attorneys.
4. I previously filed an affidavit in support of an Attorney's Fees Motion in this case on May 5, 2021. During the time I was preparing that motion and affidavit, the Office of the

State Fire Marshal filed an appeal to the Appellate Court.

5. The legal work involved from May 6, 2021 onward included work before the Pollution Control Board following the filing of the Attorney's Fees Motion. This generally involved responding to the Respondent's Motion for Stay filed on June 24, 2021, and Respondent's Motion for Leave to File Reply on July 22, 2021. The legal work also includes the preparation of the Supplemental Motion for Attorney's Fees.

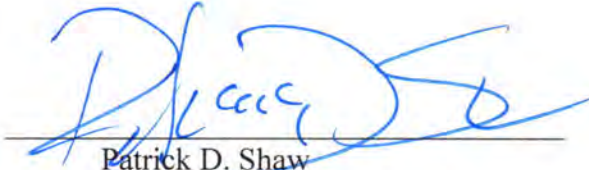
6. The legal work from May 6, 2021 onward also included work before the First District of the Appellate Court. This generally involved preparing a response brief in January of 2022, and preparing for and participating in oral argument in Chicago on September of 2022.

7. Exhibit A identifies the legal work performed and the attorney's fees incurred in this matter. It reveals the date the work was performed, the description of the work performed, the amount of time spent, and the total fees incurred.

6. The legal defense costs incurred in seeking payment for corrective action since May 6, 2021, total \$16,800.00 in attorney's fees and \$406.65 in costs, for a total of \$17,206.65.

FURTHER AFFIANT SAYETH NOT.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



Patrick D. Shaw

Electronic Filing: Received, Clerk's Office 11/21/2022

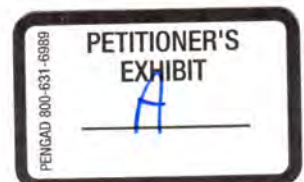
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704

Invoice submitted to:
Eagle Environmental Consultants
Attn: Brad Schumacker
3805 Illinois Avenue
St. Charles IL 60174

November 21, 2022

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
5/14/2021 Receive and review A.G. request for administrative to Board Reliable Stores	0.10 200.00/hr	20.00
5/17/2021 Receive Docketing Statement Reliable Stores	0.10 200.00/hr	20.00
5/21/2021 Receive & review Board appearance Reliable Stores	0.10 200.00/hr	20.00
6/4/2021 Receive & review Appellate Record Reliable Stores	0.30 200.00/hr	60.00
6/9/2021 Receive e-mail from OSFM atty requesting extension; respond; receive and review draft motion; reply; receive motion Reliable Stores	0.50 200.00/hr	100.00
6/18/2021 Receive & review Hrg Officer Order re ext. time Reliable Stores	0.10 200.00/hr	20.00
6/24/2021 Draft and file Entry of Appearance Reliable Stores	0.10 200.00/hr	20.00



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Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
6/24/2021 Receive & review OSFM's Motion to Stay Atty Fees Petition Reliable Stores	0.30 200.00/hr	60.00
6/25/2021 Receive & review OSFM's Motion for Extension of Time to File Appellate Brief Reliable Stores	0.10 200.00/hr	20.00
Research and review precedent for stays pending appeal Reliable Stores	3.00 200.00/hr	600.00
6/28/2021 Draft response in opposition to stay pending appeal Reliable Stores	5.30 200.00/hr	1,060.00
6/29/2021 Draft response in opposition to stay pending appeal Reliable Stores	1.40 200.00/hr	280.00
6/30/2021 Receive & review Court order Reliable Stores	0.10 200.00/hr	NO CHARGE
Draft response in opposition to stay pending appeal Reliable Stores	5.20 200.00/hr	1,040.00
7/7/2021 Research and draft jurisdictional section in opposition to stay Reliable Stores	4.40 200.00/hr	880.00
7/8/2021 Revise and file response in opposition to stay Reliable Stores	2.50 200.00/hr	500.00
7/9/2021 E-mail client recent filings with opinions Reliable Stores	0.30 200.00/hr	60.00
7/22/2021 Receive & review OSFM Motion for Leave to File Reply Reliable Stores	0.30 200.00/hr	60.00
7/26/2021 Review record on appeal Reliable Stores	0.50 200.00/hr	100.00

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Page 3

	<u>Hrs/Rate</u>	<u>Amount</u>
7/30/2021 Receive and review OSFM motion for 35-day extension of time for appellate brief Reliable Stores	0.10 200.00/hr	20.00
8/4/2021 Receive Appellate Court Order Reliable Stores	0.10 200.00/hr	20.00
8/5/2021 Draft Response in Opposition to Motion for Leave Reliable Stores	4.40 200.00/hr	880.00
9/3/2021 Receive & review Motion for Extension of Time re appeal Reliable Stores	0.10 200.00/hr	20.00
10/12/2021 Receive & review entry of amended appearance before Board Reliable Stores	0.10 200.00/hr	NO CHARGE
10/13/2021 Receive & review Motion for Extension of briefing schedule; Reliable Stores	0.10 200.00/hr	20.00
10/14/2021 Receive and review App Ct order Reliable Stores	0.10 200.00/hr	NO CHARGE
11/17/2021 Receive OSFM's motion for extension of time Reliable Stores	0.10 200.00/hr	20.00
11/23/2021 Receive & review Appellate Court Order Reliable Stores	0.10 200.00/hr	NO CHARGE
12/2/2021 Receive & review Board order denying OSFM's motion for stay Reliable Stores	0.40 200.00/hr	80.00
12/14/2021 Receive & review e-mail from OSFM; respond Reliable Stores	0.10 200.00/hr	20.00
12/15/2021 Receive & review Supplement to the Record Reliable Stores	0.10 200.00/hr	20.00

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Page 4

	<u>Hrs/Rate</u>	<u>Amount</u>
12/20/2021 Receive & review OSFM brief Reliable Stores	0.30 200.00/hr	60.00
12/22/2021 Receive & review OSFM e-mail notifying no response to fee petition Reliable Stores	0.10 200.00/hr	20.00
1/17/2022 Research appellate rules, begin draft response brief Reliable Stores	2.00 200.00/hr	400.00
1/18/2022 Draft response brief Reliable Stores	1.70 200.00/hr	340.00
1/19/2022 Draft response brief Reliable Stores	5.30 200.00/hr	1,060.00
1/20/2022 Draft response brief Reliable Stores	2.00 200.00/hr	400.00
1/21/2022 Draft response brief; e-mail to client regarding OSFM Appellate Brief Reliable Stores	5.00 200.00/hr	1,000.00
1/22/2022 Draft response brief Reliable Stores	3.40 200.00/hr	680.00
1/23/2022 Draft response brief Reliable Stores	5.80 200.00/hr	1,160.00
1/24/2022 Revise and file brief Reliable Stores	4.50 200.00/hr	900.00
1/25/2022 E-mail brief to client; respond to questions; draft ltr transmitting briefs to App. Ct. Reliable Stores	0.30 200.00/hr	60.00
2/22/2022 Review Board's request for extension of time Reliable Stores	0.10 200.00/hr	NO CHARGE

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Page 5

	<u>Hrs/Rate</u>	<u>Amount</u>
2/23/2022 Receive & review App Court order Reliable Stores	0.10 200.00/hr	20.00
3/28/2022 Receive & review Motion for Extension of time Reliable Stores	0.10 200.00/hr	NO CHARGE
3/30/2022 Receive & review App Court order Reliable Stores	0.10 200.00/hr	20.00
5/3/2022 Receive & review Board's motion for extension of time Reliable Stores	0.10 200.00/hr	NO CHARGE
5/16/2022 Receive & review App Ct Order Reliable Stores	0.10 200.00/hr	20.00
6/13/2022 Receive & review Board Response Brief Reliable Stores	1.50 200.00/hr	300.00
6/16/2022 Receive & review e-mail from AGO; reply Reliable Stores	0.10 200.00/hr	NO CHARGE
6/20/2022 Receive & review OSFM's motion for extension of time Reliable Stores	0.10 200.00/hr	NO CHARGE
6/22/2022 Receive & review App Ct Order Reliable Stores	0.10 200.00/hr	20.00
7/25/2022 Receive & review Reply Brief of OSFM Reliable Stores	1.50 200.00/hr	300.00
8/11/2022 Receive & review e-mail from client; e-mail status of briefing to client; receive reply Reliable Stores	0.40 200.00/hr	80.00
8/18/2022 Receive & review notice of oral argument Reliable Stores	0.10 200.00/hr	20.00

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Page 6

	<u>Hrs/Rate</u>	<u>Amount</u>
8/22/2022 Receive & review OSFM motion re oral argument dates Reliable Stores	0.10 200.00/hr	20.00
8/31/2022 Receive revised Oral argument schedule Reliable Stores	0.10 200.00/hr	20.00
9/2/2022 Receive & review amended oral argument; serve acknowledgement Reliable Stores	0.10 200.00/hr	20.00
9/8/2022 Tel from Board atty Reliable Stores	0.40 200.00/hr	80.00
9/15/2022 Review briefs for argument; take notes; tel Board atty; e-mail client re oral argument next week Reliable Stores	2.80 200.00/hr	560.00
9/19/2022 Preparation for oral argument; draft argument outline; tel Appellate Court Reliable Stores	3.00 200.00/hr	600.00
9/20/2022 Court Appearance for Oral Argument; travel to/from Chicago Reliable Stores	8.50 200.00/hr	1,700.00
9/26/2022 E-mail client re oral argument last week; receive responses Reliable Stores	0.10 200.00/hr	20.00
9/30/2022 Receive & review App. Ct. Opinion; e-mail to client with explanation Reliable Stores	1.00 200.00/hr	200.00
11/7/2022 Receive file and bills; draft motion to supplement atty fee petition Reliable Stores	3.00 200.00/hr	600.00
11/21/2022 Revise and file supplemental atty fee motion Reliable Stores	0.50 200.00/hr	100.00
For professional services rendered	<u>84.90</u>	<u>\$16,800.00</u>

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Page 7

Additional Charges :

	<u>Amount</u>
6/24/2021 Appellate Court Filing Fee Filing Fee	30.87
1/25/2022 Postage for paper copies of brief for App. Ct. Postage	9.90
 Copying cost for copies of brief for App. Ct. Photocopies	 12.50
1/31/2022 Lexis research charges for January 2022 LEXIS	43.00
9/20/2022 Mileage Reimbursement for September 20, 2022 (407 miles) Mileage Reimbursement	254.38
 Parking Garage Fee Parking	 50.00
9/30/2022 Lexis Computer Research Charges for September 2022 LEXIS	6.00
 Total additional charges	 <u>\$406.65</u>