

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

PARKER'S GAS & MORE, INC. )  
    Petitioner, )  
    v. )      PCB 2019-079  
    )      (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
    Respondent. )

**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](mailto:carol.webb@illinois.gov))

Melanie Jarvis  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
([melanie.jarvis@illinois.gov](mailto:melanie.jarvis@illinois.gov))

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's 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 31<sup>st</sup> day of May, 2022. The number of pages in the e-mail transmission is 14 pages.

Respectfully submitted,

PARKER'S GAS & MORE, INC.  
Petitioner,

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](mailto:pdshaw1law@gmail.com)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PARKER'S GAS & MORE, INC.	)	
Petitioner,	)	
	)	
v.	)	PCB 2019-079
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

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

NOW COMES Petitioner, Parker's Gas & More, Inc., by its undersigned counsel, and pursuant to Section 57.8(1) of the Illinois Environmental Protection Act (415 ILCS 5/57.8(1)), petitions the Illinois Pollution Control Board (hereinafter "the Board") for an order authorizing payment of legal costs, and in support thereof states as follows:

1. On May 4, 2023, the Board issued an interim opinion and order entering judgment in favor of Petitioner and reversing the only deduction made by the Illinois Environmental Protection Agency appealed herein. Parker's Gas & More v. IEPA, PCB 19-79 (May 4, 2023)
2. Furthermore, the Board directed Petitioner to file a statement of legal fees that may be eligible for reimbursement with justification for why the Board should exercise its discretion to reimburse those fees. Id.
3. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$20,054.00, consisting of \$19,820.00 in attorney's fees and \$234.00 in costs. This affidavit is modeled on previous affidavits utilized by undersigned counsel and found to have been sufficient by the Board. E.g., Prime Location Properties v. IEPA, PCB No. 9-67, at p. 5 (Nov. 5, 2009). 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.

4. The Board has previously recognized undersigned counsel's experience in underground storage tank appeals. Prime Location Properties v. IEPA, PCB No. 9-67, at p. 6 (Nov. 5, 2009). His billing rate is \$200 per hour, which has been his hourly rate since 2014 and is believed to be a reasonable rate for environmental attorneys who practice before the Board, and which has been an acceptable billing rate in previous attorney-fee awards. E.g., City of Benton Fire Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016)

5. All of the legal costs sought herein were incurred "seeking payment under Title XVI and the plain language of Section 57.8(l) of the Act allows for the awarding of legal fees." Illinois Ayers Oil Co. v. IEPA, PCB 03-214, at p. 8 (Aug 5, 2004).

6. The award of legal costs are discretionary with the Board. Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003). Historically, the Board has initially and fully considered the reasonableness of the claimed legal defense costs before exercising its discretion to authorize their payment. Evergreen FS, v. IEPA, PCB No. 11-51 (Sept. 6, 2012). In Illinois Ayers Co. V. IEPA, PCB 03-214 (Aug. 5, 2004), the petitioner urged the Board to follow federal precedents arising under public interest statutes, which assume that a prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983). While the Board has made no express comment on this presumption, the Board has generally awarded litigation costs whenever the petitioner has prevailed on the issues either completely or substantially. See Reliable Stores v. OSFM, PCB 19-2, at p. 5 (Dec. 15, 2022) (awarding \$33,106.65); Dersch Energies v. IEPA, PCB 17-003, at p.

4 (Oct. 20, 2022) (awarding \$32,676.30); KB Sullivan v. IEPA, PCB 21-78, at p. 3 (Oct. 20, 2022) (awarding \$7,860.00); Abel Investments v. IEPA, PCB 16-108, at p. 4 (Mar. 2, 2017) (awarding \$13,519.37); City of Benton Fire Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016) (awarding \$20,357.80); Knapp Oil Co. v. IEPA, PCB 16-103, at p. 3 (Nov. 17, 2016) (awarding \$9,990.38); Burgess v. IEPA, PCB 15-186, at p. 11 (Nov. 5, 2015) (awarding \$11,304.16); Estate of Gerald D. Slightom v. IEPA, PCB 2011-025 (Nov. 5, 2015) (awarding \$79,455.26 following appeal); Chatham BP v. IEPA, PCB 15-173 (Sept. 3, 2015) (awarding \$11,485.08); McAfee v. IEPA, PCB 15-84 (May 21, 2015) (awarding \$10,315.00); PAK-AGS v. IEPA, PCB 15-14 (March 5, 2015) (awarding \$10,355.00); Chatham BP v. IEPA, PCB 14-1 (Feb. 5, 2015) (awarding \$21,314.70); Evergreen FS v. IEPA, PCB 11-51 (Sept. 6, 2012) (awarding \$ 13,473.80); Wheeling/GWA Auto Shop v. IEPA, PCB 10-70 (Sept. 22, 2011) (awarding \$78,915.86); Zervos Three, v. IEPA, PCB 10-54 (June 2, 2011) (awarding \$73,347.88); Dickerson Petroleum v. IEPA, PCB 09-87 (Dec. 2, 2010) (awarding \$53,019.29); Prime Location Properties v. IEPA, PCB 9-67 (Nov. 5, 2009) (awarding \$10,088.18); Swif-T Food Mart v. IEPA, PCB No. (Aug. 19, 2004) (awarding \$11,291.37); Illinois Ayers Co. v. IEPA, PCB No. 03-214 (Aug 5, 2004) (awarding \$44,456.49); Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003) (awarding \$19,421.75).

8. Petitioner prevailed in full in reversing the only deduction challenged herein, a \$3,755.42 deduction for backfill material provided free of charge. A deduction of \$563.82 for grass seed was not appealed in the Petition for Review and was not at issue in this case. The legal costs were reasonable given that the case could not be resolved on the basis of legal briefing alone, but necessitated a hearing in which expert testimony was produced. The appeal

furthermore involved a significant issue pertaining to the proper interpretation and application of the Board's regulations governing rates which cover multiple components. In addition, clarification that construction demolition materials may be used for backfill in LUST cleanups will help prevent those materials from being discarded in landfills.

9. Accordingly, Petitioner asks the Board to exercise its discretion to award the legal defense costs incurred seeking payment for corrective action under Title XVI.

Respectfully submitted,

PARKER'S GAS & MORE, INC.,  
Petitioner

By its attorneys,  
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

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**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, Parker's Gas & More, Inc., in the case entitled Parker's Gas & More v. IEPA, PCB 2019-079.
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 began working on the appeal in December of 2018, filing the Petition for Review that month. Following multiple requests, the Agency filed the record in October of 2020, and I began working on the motion for summary judgment in December. The motion was filed in May

of 2021, to which the Agency filed a cross-motion for summary to which I responded in June. The Agency filed a motion for leave to file a reply to which I filed a response in opposition. The Agency filed a further supporting document to which I filed no response.

5. In July of 2022, the Board issued an opinion denying the cross-motions for summary judgment and directed the matter to hearing. Thereafter, I prepared for the hearing, which was held in November of 2022. In December of 2022, I filed a post-hearing brief and a reply to the Agency's response brief. The Board issued its opinion in May of 2022.

6. 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. Charges for computer-based legal research are made in proportion to the amount of time used in a matter. Filing fees, postage and photocopying charges are also identified when applicable.

7. The legal defense costs incurred in seeking payment for corrective action herein total \$20,054.00, consisting of \$19,820.00 in attorney-time, and \$234.00 in costs (which consist of the filing fee, copying charges and computer-based legal research charges).

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

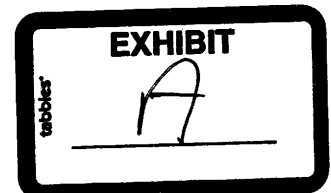
Law Office of Patrick D. Shaw  
 80 Bellerive Road  
 Springfield, IL 62704

Invoice submitted to:  
 Chase Environmental Group, Inc.  
 2701 East Ash Street  
 Springfield IL 62703

May 31, 2023

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
12/3/2018 Receive & review IEPA decision ltr from client; e-mail response Parker's Gas	0.20 200.00/hr	40.00
12/10/2018 Review e-mails; tel consultant re appeal issues Parker's Gas	0.50 200.00/hr	100.00
12/11/2018 Review similar filing; e-mail opinions re appeal Parker's Gas	1.30 200.00/hr	260.00
12/12/2018 Receive directions to appeal Parker's Gas	0.10 200.00/hr	NO CHARGE
12/18/2018 Review CAP and CAP approval ltr and other filings; begin drafting petition for review Parker's Gas	2.70 200.00/hr	540.00
12/20/2018 Draft petition for review Parker's Gas	5.20 200.00/hr	1,040.00
12/21/2018 E-mail petition to client w/ comments; revise and file petition Parker's Gas	0.70 200.00/hr	140.00
1/11/2019 E-mail to consultant w/ petition for review Parker's Gas	0.10 200.00/hr	20.00
1/17/2019 Receive & review Board order accepting appeal; receive & review Hrg Officer order Parker's Gas	0.10 200.00/hr	20.00





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		<u>Hrs/Rate</u>	<u>Amount</u>
10/21/2019	Review files; tel conf. w/ client re status and issues in appeal ; e-mail IEPA atty requesting record; receive reply Parker's Gas	0.40 200.00/hr	80.00
11/27/2019	E-mail status of record to client Parker's Gas	0.30 200.00/hr	60.00
12/5/2019	E-mail client regarding status of case Parker's Gas	0.30 200.00/hr	60.00
1/27/2020	Tel conf. w/ Hrg Officer, request status of filing administrative record Parker's Gas	0.10 200.00/hr	20.00
8/10/2020	Tel conf. w/ Hrg. Officer/EPA; request record Parker's Gas	0.10 200.00/hr	20.00
9/22/2020	Receive & review e-mail from client; e-mail status of record to client Parker's Gas	0.10 200.00/hr	20.00
10/13/2020	E-mail Jarvis requesting record or hearing date; tel conf. with Jarvis; tel conf. w/ Hrg Officer; e-mail status to client with presumptive hearing date; receive & review Hrg Officer order; receive e-mail response from client Parker's Gas	1.10 200.00/hr	220.00
10/25/2020	Receive & review Agency appearance and administrative record; e-mail Jarvis; e-mail record with comments to client Parker's Gas	1.30 200.00/hr	260.00
11/6/2020	E-mail to Hrg Officer and EPA attorney re postponing hearing; receive replies Parker's Gas	0.10 200.00/hr	20.00
12/7/2020	Review record; draft chronology and table of contents Parker's Gas	3.50 200.00/hr	700.00
12/11/2020	Draft motion for summary judgment factual section Parker's Gas	1.20 200.00/hr	240.00
12/30/2020	Draft motion for summary judgment Parker's Gas	2.20 200.00/hr	440.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
12/31/2020 Draft motion for summary judgment Parker's Gas	4.00 200.00/hr	800.00
2/26/2021 Revise factual section; draft appendix a Parker's Gas	3.20 200.00/hr	640.00
3/17/2021 Draft legal standards of review section of motion Parker's Gas	2.00 200.00/hr	400.00
3/22/2021 Draft legal portion of motion Parker's Gas	3.90 200.00/hr	780.00
3/23/2021 Draft legal portion of motion (continued) Parker's Gas	1.20 200.00/hr	240.00
3/26/2021 Revise Motion for Summary Judgment and e-mail to client for review Parker's Gas	2.00 200.00/hr	400.00
5/18/2021 E-mails w/ client regarding review of motion for summary judgment; tel status conf. w/ Hrg Officer Parker's Gas	0.40 200.00/hr	80.00
5/20/2021 E-mail reply to client w/ opinions regarding appeal issues Parker's Gas	0.60 200.00/hr	120.00
5/24/2021 Revise and file motion for summary judgment; e-maile client Parker's Gas	2.00 200.00/hr	400.00
5/25/2021 Receive & review e-mail from client Parker's Gas	0.20 200.00/hr	40.00
6/3/2021 Receive & review EPA's Cross Motion for Summary Judgment Parker's Gas	0.90 200.00/hr	180.00
6/4/2021 E-mail Client Agency motion w/ explanations; receive & review e-mail reply Parker's Gas	0.80 200.00/hr	160.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
6/17/2021 Draft and file Response to Agency's Cross-Motion for Summary Judgment; e-mails with client Parker's Gas	5.60 200.00/hr	1,120.00
6/18/2021 E-mail Response to EPA's Cross Motion for Summary Judgment to client w/ comments; receive reply Parker's Gas	0.30 200.00/hr	60.00
6/24/2021 Receive & review Agency's Motion for Leave to File Reply Parker's Gas	0.50 200.00/hr	100.00
7/1/2021 E-mail EPA reply; tel conf. w/ client Parker's Gas	1.00 200.00/hr	200.00
7/2/2021 Receive & review e-mail from client Parker's Gas	0.20 200.00/hr	40.00
7/8/2021 Draft and file response in opposition to reply Parker's Gas	1.40 200.00/hr	280.00
7/12/2021 Receive & review IEPA Resp. in Support of Reply Parker's Gas	0.10 200.00/hr	20.00
10/26/2021 Tel Dudas regarding status of appeal Parker's Gas	0.10 200.00/hr	20.00
7/21/2022 Receive & review Board opinion Parker's Gas	1.00 200.00/hr	200.00
7/25/2022 E-mail Board opinion to client w/ comments Parker's Gas	0.40 200.00/hr	80.00
7/30/2022 Receive & review e-mail from consultant Parker's Gas	0.20 200.00/hr	40.00
8/29/2022 E-mail Mike in preparation for scheduling conference; receive response; provide opinions on procedures available going forward Parker's Gas	0.50 200.00/hr	100.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
8/30/2022 Tel conf. w/ Hrg Officer regarding scheduling hrg date; receive response from client; receive & review Hrg Officer Order; reply to clients Parker's Gas	0.40 200.00/hr	80.00
9/26/2022 E-mail Zack & Mike for hearing dates; receive responses; e-mail reply Parker's Gas	0.20 200.00/hr	40.00
9/27/2022 Tel conf. w/ Hrg Officer; receive Order; e-mail client re hrg Parker's Gas	0.20 200.00/hr	40.00
11/8/2022 Tel Mike Dudas Parker's Gas	0.50 200.00/hr	100.00
11/10/2022 Review file for hrg; e-mail client; respond Parker's Gas	1.00 200.00/hr	200.00
11/12/2022 E-mail to Dudas re hrg Parker's Gas	0.70 200.00/hr	140.00
11/14/2022 Tel Conf. w/ Duda & Page; preparation for hearing; draft outline; review e-mails from client; respond; respond to e-mails from Hrg Officer & Jarvis Parker's Gas	4.90 200.00/hr	980.00
11/15/2022 Revise hrg outline; Hearing; conf. w/ client re hrg; receive & review Hearing Officer Report Parker's Gas	3.00 200.00/hr	600.00
11/30/2022 Research procedural issues for brief; e-mail transcript to client Parker's Gas	1.40 200.00/hr	280.00
12/1/2022 Draft post-hearing brief Parker's Gas	0.90 200.00/hr	180.00
12/2/2022 Draft post-hrg brief Parker's Gas	2.10 200.00/hr	420.00
12/4/2022 Draft post-hearing brief Parker's Gas	2.60 200.00/hr	520.00

Chase Environmental Group, Inc.

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	<u>Hrs/Rate</u>	<u>Amount</u>
12/5/2022 Draft post-hearing brief; email portion of draft to client; emails with client Parker's Gas	4.50 200.00/hr	900.00
12/6/2022 Review email response from client; revise and file post-hrg brief Parker's Gas	6.80 200.00/hr	1,360.00
12/9/2022 E-mail final brief to client Parker's Gas	0.10 200.00/hr	NO CHARGE
12/20/2022 Receive & review Agency Response Brief, e-mail to client Parker's Gas	0.30 200.00/hr	60.00
12/21/2022 Review e-mails from client Parker's Gas	0.40 200.00/hr	80.00
12/26/2022 Draft Reply Brief Parker's Gas	5.60 200.00/hr	1,120.00
12/27/2022 Revise and file Reply Brief; e-mail to client Parker's Gas	5.50 200.00/hr	1,100.00
2/23/2023 E-mail status to client Parker's Gas	0.10 200.00/hr	20.00
5/4/2023 Receive & review Board opinion; e-mail to client Parker's Gas	0.30 200.00/hr	60.00
5/5/2023 Receive & review e-mail from client; respond Parker's Gas	0.70 200.00/hr	140.00
5/30/2023 Draft attorney fee petition Parker's Gas	1.50 200.00/hr	300.00
5/31/2023 Revise and file Petition for Attorney's Fees Parker's Gas	1.50 200.00/hr	300.00
For professional services rendered	<u>99.30</u>	<u>\$19,820.00</u>

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Additional Charges :

	<u>Amount</u>
12/21/2018 Pollution Control Board filing fee: Filing Fee	75.00
Copying cost for December 21, 2018 Photocopies	2.00
12/1/2022 Lexis research for Decemember 2022 LEXIS	157.00
Total additional charges	<u>\$234.00</u>