

ILLINOIS POLLUTION CONTROL BOARD  
November 16, 2023

|                                   |   |              |
|-----------------------------------|---|--------------|
| JEET SINGH d/b/a AMAN FOOD & GAS, | ) |              |
|                                   | ) |              |
| Petitioner,                       | ) |              |
|                                   | ) |              |
| v.                                | ) | PCB 23-90    |
|                                   | ) | (UST Appeal) |
| ILLINOIS ENVIRONMENTAL            | ) |              |
| PROTECTION AGENCY,                | ) |              |
|                                   | ) |              |
| Respondent.                       | ) |              |

OPINION AND ORDER OF THE BOARD (by M. Gibson):

Jeet Singh, doing business as “Aman Food & Gas,” (Singh) is the operator of a convenience store that sells gasoline in Rock Island County at which underground storage tanks (UST) leaked petroleum. The Illinois Environmental Protection Agency (IEPA) rejected Singh’s Corrective Action Budget Amendment for a six-inch concrete engineered barrier that would cost \$21,350. Singh requested that the Board reverse IEPA’s rejection and approve the budget as submitted. In an interim opinion and order on September 21, 2023, the Board found that the record supported Singh’s request for reimbursement. The Board reversed IEPA’s determination and directed IEPA to approve Singh’s budget of \$21,350 for the six-inch replacement concrete engineered barrier from the UST Fund.

Singh now requests that the Board authorize payment of its legal fees. Below the Board finds that Singh’s appeal sought payment from the UST Fund and that it prevailed before the Board under Section 57.8(l) of the Environmental Protection Act (Act) (415 ILCS 5/57.8(l) (2022)); *see* 35 Ill. Adm. Code 734.630(g). The Board exercises its discretion to award legal fees and directs IEPA to reimburse Singh \$19,759.77 from the UST Fund.

Additionally, Singh filed a motion for modification of the Board’s September 21, 2023 interim order to include the full amount of the budget amendment for the six-inch replacement concrete barrier. The Board grants Singh’s motion and directs IEPA to approve Singh’s budget of \$30,706.90 for the six-inch replacement concrete engineered barrier.

The Board’s order begins below with an abbreviated procedural history. After providing the statutory and regulatory authorities, the Board discusses the issues, reaches its conclusion, and issues its order.

**PROCEDURAL HISTORY**

On February 3, 2023, Singh filed a petition asking the Board to review a December 28, 2022 determination of IEPA (Pet.). On February 16, 2023, a Board order accepted Singh’s

petition for hearing. On February 17, 2023, Singh waived the decision deadline to September 30, 2023. On April 5, 2023, IEPA filed its administrative record (R.).

On June 22, 2023, the Board held a hearing. The Board received the transcript on June 26, 2023. On July 13, 2023, Singh filed his opening brief and on July 27, 2023, IEPA filed a response brief. On August 4, 2023, Singh filed his reply brief (Singh Reply Br.).

On September 21, 2023, the Board concluded that Singh's budget amendment would not violate either of the Board rules cited in IEPA's denial letter. The Board therefore reversed IEPA's decision and ordered IEPA to approve the budget amendment as submitted. The Board set a deadline for Singh to file a statement of legal fees that may be reimbursable and also set a deadline for IEPA to respond.

On October 6, 2023, Singh filed its motion for modification of the Board order (Mot.). On October 10, 2023, Singh filed its request (Req.), attached to which was the affidavit of Patrick D. Shaw (Aff.). IEPA has not filed a response to Singh's motion or request.

### **STATUTORY AND REGULATORY AUTHORITIES**

Costs associated with "corrective action" may be reimbursed from the UST Fund. 415 ILCS 5/57.9(a)(7) (2022). "'Corrective action' means activities associated with compliance with the provisions of Sections 57.6 [early action] and 57.7 [site investigation and corrective action] of this Title [XVI Petroleum Underground Storage Tanks]." 415 ILCS 5/57.2 (2022).

Section 57.8 of the Act addresses reimbursement from the UST Fund. Subsection (l) provides in its entirety that "[c]orrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees." 415 ILCS 5/57.8(l) (2022); *see also* 35 Ill. Adm. Code 734.630(g).

### **BOARD DISCUSSION**

Below, the Board first addresses whether this appeal falls within the scope of Section 57.8(l) of the Act. If it does, the Board next addresses whether it will exercise its discretion to award Singh's requested legal fees and costs.

#### **Whether Section 57.8(l) Applies**

"The first question the Board must address is whether or not the proceeding falls within the parameters of the statutory provision." Knapp Oil Co. v. IEPA, PCB 16-103, slip op. at 2 (Nov. 17, 2016), citing Ill. Ayers Oil Co. v IEPA, PCB 03-214, slip op. at 7 (Aug. 5, 2004) (Ill. Ayers).

Singh argues that "[a]ll 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 the awarding of legal fees.'" Req. at 3, citing Ill. Ayers, slip op. at 8. Singh asserts that it "prevailed in full in

obtaining from the Board a reversal of the IEPA's decision and an order for IEPA to approve the budget amendment as submitted." Req. at 4.

Because Singh prevailed when it sought payment from the UST Fund, the Board finds that this appeal falls within the scope of Section 57.8(l) of the Act. Accordingly, the Board below exercises its discretion to determine whether to award Singh its requested legal fees and costs.

### **Whether to Exercise the Board's Discretion to Award Fees**

Singh states that, in earlier cases, the Board considered the "reasonableness" of the claimed legal defense costs before exercising its discretion to authorize paying them. Req. at 3; *see Evergreen FS v. IEPA*, PCB 11-51, 12-61 (cons.), slip op. at 4 (Sept. 6, 2012). The Board agrees. *See City of Benton Fire Dept. v. IEPA*, PCB 17-1, slip op. at 3 (May 24, 2018) (Benton); *Prime Location Properties v. IEPA*, PCB 09-67, slip op. at 4 (Nov. 5, 2009) (Prime Location), citing *Swif-T Food Mart v. IEPA*, PCB 03-185, slip op. at 3 (Aug. 19, 2004); Ill. Ayers, slip op. at 8-9.

As the party seeking reimbursement, Singh has the burden of presenting sufficient evidence with which the Board can determine the reasonableness of the fees. Abel Investments v. IEPA, PCB 16-108, slip op. at 2 (Mar. 2, 2017); Prime Location, slip op. at 4, citing J.B. Esker & Sons v. Cle-Pa's P'ship., 325 Ill. App. 3d 276, 283, 757 N.E.2d 1271, 1277 (5th Dist. 2001); Sampson v. Miglin, 279 Ill. App. 3d 270, 281 (1st Dist. 1996). Singh "must set forth with specificity the legal services provided, the identity of the attorney providing the legal services, an itemization of the time expended for the individual service, and the hourly rate charged." Prime Location, slip op. at 4, citing J.B. Esker & Sons, 325 Ill. App. 3d at 283. While Singh must present a "sufficient basis" for determining whether the requested charges are reasonable, the Board may also consider "the entire record and its experience and knowledge of the case" in assessing whether the charges are reasonable. Prime Location, slip op. at 4, citing Cretton v. Protestant Mem'l. Med. Cent., 371 Ill. App. 3d 841, 868, 864 N.E.2d 288,315; Sampson, 279 Ill. App. 3d at 281, 664 N.E.2d at 289.

In determining whether Singh's request is reasonable, the Board may consider factors including "the skill and standing of the attorneys employed, the nature of the case, the novelty and difficulty of the issues involved, the degree of responsibility required, the usual and customary charge for the same or similar services in the community, and whether there is a reasonable connection between the fees charged and the litigation." Prime Location, slip op. at 4, citing Cretton, 371 Ill. App. 3d at 867-68, 864 N.E.2d at 315; Sampson, 279 Ill. App. 3d at 281, 664 N.E.2d at 289. The Board may apply its own expertise to "assess the time required to complete particular activities." Cretton, 371 Ill. App. 3d at 868.

Singh argues that its appeal "involved a significant issue pertaining to the proper interpretation and application of several Board's regulations governing the treatment of replacement pavement when used as an engineered barrier." Req. at 5. Singh asserts that its "legal costs were reasonable given the complexity of issues of first impression." *Id.* at 4-5.

Singh adds that “the Board has generally awarded litigation costs whenever the petitioner has prevailed on the issues either completely or substantially.” *Id.* at 3 (citations omitted).

Singh further argues that the Board has recognized Mr. Shaw’s experience in UST appeals. Req. at 3, citing Prime Location, slip op. at 6. Singh adds that the Board has accepted Mr. Shaw’s hourly billing rate as reasonable in earlier awards of legal fees. Req. at 2, citing Benton, slip op. at 3.

Singh points out that Mr. Shaw’s affidavit is modeled on previous affidavits submitted to the Board and found to be sufficient. Req. at 2, citing Prime Location, slip op. at 5. His affidavit is accompanied by a six-page invoice summarizing fees and costs. Aff., Exh. A. From the affidavit and summary, the Board can determine the date of services; a description of services; the hours and hourly rate billed; and the fee charged. *Id.* Mr. Shaw’s services began on February 1, 2023, a short time after IEPA issued its contested determination on December 28, 2022. His services continued to October 10, 2023.

Mr. Shaw’s summary totals 97.80 hours for total fees of \$19,540.<sup>1</sup> Exh. A at 5; *see* Aff. at 2-3. The summary describes work performed and the time allocated to that work in tenths of an hour. Exh. A. The summary also includes \$219.77 of itemized costs: \$144.77 for photocopying and the Board’s \$75.00 filing fee. *Id.* at 5-6.

The Board finds that the listings are itemized specifically enough to assess the reasonableness of the charges. *See* Prime Location, slip op. at 5, citing Sampson, 279 Ill. App. 3d at 281-82, 664 N.E.2d at 289. The summary submitted by Singh is generally similar to information provided in other UST cases in which the Board has directed IEPA to reimburse legal fees. *See, e.g.*, Dersch Energies, v. IEPA, PCB 17-3, slip op. at 4 (Oct. 20, 2022); Burgess v. IEPA, PCB 15-186, slip op. at 5-6 (Feb. 4, 2016) (Burgess). As noted above, IEPA has not filed a response or disputed the reasonableness of the requested fees and costs.

The Board concludes that this appeal presented significant issues regarding IEPA’s review and determinations under the UST program. Dersch, slip op. at 4; Burgess, slip op. at 6, citing Pak-Ags, slip op. at 7; Chatham BP v. IEPA, PCB 14-1, slip op. at 6 (Feb. 5, 2015). Based on its review of the record and authorities including prior Board decisions, as well as the absence of an IEPA response to the motion, the Board finds Singh’s requested legal fees and costs to be reasonable. Accordingly, the Board will exercise its discretion under Section 57.8(1) of the Act to grant Singh’s unopposed request and direct IEPA to reimburse the requested \$19,759.77 in legal fees and costs.

### **Singh’s Motion to Modify the Interim Board Order**

Singh requests that the Board modify its September 21, 2023 interim order to direct IEPA to approve the full amount of the budget amendment, which is \$30,706.90. Mot. at 3. According to Singh, the budget amendment did not only include \$21,350 for the six-inch replacement concrete engineered barrier; it also included “\$8,813.27 for consulting personnel

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<sup>1</sup> The invoice includes 0.1 hours showing “NO CHARGE.” Exh. A at 2.

cost for planning and overseeing the bidding process, and a related \$543.63 in consultant's materials costs." *Id.* at 2.

Section 101.520(a) of the Board's rules requires motions for modification of a Board order to be filed within 35 days after the receipt of the order. 35 Ill. Adm. Code 101.520(a). Any responses to a motion for modification must be filed within 14 days after the filing of the motion. 35 Ill. Adm. Code 101.520(b). Here, Singh timely filed the motion for modification on October 6, 2023. IEPA did not file a response to the motion.

The Board finds that the administrative record supports Singh's requested modification. In his petition for review, Singh asked the Board "direct the Agency to approve the budget as submitted." Pet. at 3. Singh stated that the "budget estimated \$30,706.90 to install the additional engineered barrier, which included the costs associated with conducting the bidding process pursuant to applicable Board regulations. *Id.* at 2. Furthermore, Singh submitted his August 22, 2022 budget amendment for "the costs associated with the replacement engineered concrete barrier and the bidding process." R. at 761. Singh's budget summary for this budget amendment included \$8,813.27 in consulting costs and \$543.83 in consultant material costs, for a total budget of \$30,706.90. *Id.* at 766.

As the Board's interim order stated, IEPA did not list Section 734.855 on bidding as a reason for rejecting Singh's budget. Singh v. IEPA, PCB 23-90, slip op. at 9 (Sep. 21, 2023); *see* R. at 805. Consequently, the Board found that "whether Singh's bidding process violated the Act or Board rules is not at issue." Singh, PCB 23-90, slip op. at 9. Additionally, IEPA did not file a response to Singh's motion for modification. Therefore, the Board grants Singh's unopposed motion to modify the Board's interim order.

### **CONCLUSION**

The Board finds that Singh's appeal sought payment from the UST Fund and that it prevailed before the Board under Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2022)). The Board exercises its discretion to award legal fees and directs IEPA to reimburse Singh \$19,759.77 from the UST Fund. The Board also grants Singh's motion to modify the Board's interim order and directs IEPA to approve Singh's budget of \$30,706.90 for the six-inch replacement concrete engineered barrier.

The Board incorporates by reference its findings of fact and conclusions of law from its September 21, 2023 interim opinion and order. This final opinion constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

1. The Board grants Singh's motion to modify the Board's interim order and orders IEPA to approve Singh's budget of \$30,706.90 for the six-inch replacement concrete engineered barrier.

2. The Board grants Singh's request to authorize payment of attorney's fees and directs IEPA to reimburse Singh \$19,759.77 in legal fees from the UST Fund under Section 57.8(l) of the Act. 415 ILCS 5/57.8(l) (2022).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2022); see also 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; see also 35 Ill. Adm. Code 101.902, 102.700, 102.702. Filing a motion asking that the Board reconsider this final order is not a prerequisite to appealing the order. 35 Ill. Adm. Code 101.902.

| <b>Names and Addresses for Receiving Service of<br/>Any Petition for Review Filed with the Appellate Court</b>   |   |
|--|---|
| <b>Parties</b>   | <b>Board</b>  |
| Patrick D. Shaw<br>Law Office of Patrick D. Shaw<br>80 Bellerive Road<br>Springfield, Illinois 62704<br>pdshaw1law@gmail.com   | Illinois Pollution Control Board<br>Attn: Don A. Brown, Clerk<br>60 East Van Buren Street, Suite 630<br>Chicago, Illinois 60605<br>don.brown@illinois.gov |
| Illinois Environmental Protection Agency<br>Attn.: Melanie A. Jarvis, Assistant Counsel<br>1021 North Grand Avenue East<br>PO Box 19276<br>Springfield, Illinois 62794-9276<br>melanie.jarvis@illinois.gov |   |

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 16, 2023, by a vote of 3-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board