

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2003

TED HARRISON OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 99-127
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On September 2, 2003, petitioner filed a motion for authorization of payment of attorney fees as costs of corrective action (Mot.). Petitioner asks that the motion be treated as a motion for modification of the Board's order entered on July 24, 2003. Respondent has not filed a response to the motion.

Petitioner argues that under Section 57.8(1) of the Environmental Protection Act (Act) (415 ILCS 5/57.8(1) (2002)), legal defense funds are reimbursable from the underground storage tank fund if the owner or operator prevails before the Board. Mot. at 1. Petitioner argues that, having prevailed before the Board, petitioner is now asking the Board to authorize payment of legal fees incurred by petitioner in this matter. *Id.* Petitioner attaches an affidavit verifying attorney fees of \$19,421.75.

BOARD'S JULY 24, 2002 ORDER

On July 24, 2003, the Board found that the record did not support the respondent's determination denying reimbursement for \$116,297.82. Specifically the Board found that the record did support the petitioner's request for reimbursement of \$2,906.25, for the 24-hour lab turnaround of the analysis of potentially impacted soil. The Board further found that the record supported the petitioner's request for reimbursement of \$33,250.07, which represents the denial of the 15 percent handling charge assessed by Harrison Environmental Solutions (HES). Finally, the Board found that the record supported the petitioner's request for reimbursement of \$80,141.50 in charges for site supervision for the activities performed by HES at the site.

DISCUSSION

Section 57.8(1) of the Act provides:

Corrective 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(1) (2002).

Title XVI is known as the Leaking Underground Storage Tank Program. The purpose of Title XVI includes administering and overseeing the underground storage tank fund, as well as establishing requirements for eligible owners to seek reimbursement from the underground storage tank fund. 415 ILCS 5/57 (2002).

The Act clearly authorizes the Board to allow for reimbursement of legal defense costs when an owner or operator prevails before the Board in seeking payment under Title XVI. The plain language of the Act states that the Board “may” authorize reimbursement (415 ILCS 5/57.8(1) (2002)), so the payment of legal fees is discretionary, not mandatory. The Board has reviewed the record in this proceeding to determine if the reimbursement for legal defense costs is warranted. The Board finds that the reimbursement of legal defense costs is warranted, based on the facts of this case. Therefore, the motion to modify is granted and the Board directs that \$19,421.75 be reimbursed. The Board will set forth the entire modified order below.

ORDER

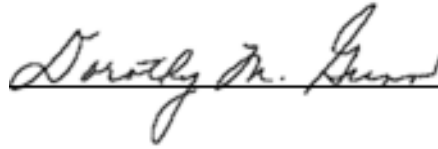
The Board reverses the Agency’s denial of reimbursement to Ted Harrison Oil Company and directs the Agency to provide reimbursement to Ted Harrison Oil Company for:

1. \$2,906.25, for the 24-hour lab turnaround of the analysis of potentially impacted soil;
2. \$33,250.07 for the 15 percent handling charge assessed by Harrison Environmental Solutions;
3. \$80,141.50 in charges for site supervision for the activities performed by Harrison Environmental Solutions at the site; and
4. \$19,421.75 in attorney fees for legal defense costs.

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 5/31(a) (2002)); *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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2003, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board