

ILLINOIS POLLUTION CONTROL BOARD  
December 2, 2010

DICKERSON PETROLEUM, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 09-87
	)	PCB 10-5
ILLINOIS ENVIRONMENTAL	)	(UST Appeal)
PROTECTION AGENCY,	)	(Consolidated)
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by A.S. Moore):

On September 27, 2010, Dickerson Petroleum, Inc. (Dickerson) filed a timely “Motion for Authorization of Payment of Legal Fees” (Mot.). Dickerson requests that the Board authorize payment of \$52,343.00 in attorney fees and \$676.29 in costs in a total amount of \$53,019.29 from the Underground Storage Tank (UST) Fund (Fund). The Illinois Environmental Protection Agency (Agency or Illinois EPA) has not responded to the motion.

After reviewing Dickerson’s motion and applicable law and regulations, the Board grants the motion and directs the Agency to reimburse Dickerson from the Fund for legal fees and costs in the amount of \$53,019.29 as corrective action costs.

Below, the Board first provides the procedural history of these consolidated cases before summarizing Dickerson’s motion for authorization of payment. In the discussion that follows, the Board reviews the legal background and applicable authorities and the Board’s previous finding that Dickerson has prevailed for the purposes of Section 57.8(1) of the Environmental Protection Act (Act). The Board then discusses whether to exercise its discretion to authorize reimbursement of fees. The Board determines to grant Dickerson’s motion and authorize reimbursement. In its order, the Board directs the Agency to reimburse Dickerson’s fees and costs from the Fund in the amount of \$53,019.29.

**PROCEDURAL HISTORY**

On February 4, 2010, the Board issued an opinion and order, which detailed the procedural background of this appeal to that date. Dickerson Petroleum, Inc. v. EPA, PCB 09-87, 10-5 (cons.), slip op. at 2-3 (Feb. 4, 2010) (Dickerson). On March 11, 2010, Dickerson filed a motion for reconsideration of the Board’s February 4, 2010 opinion and order (Mot. Recon.). On March 25, 2010, the Agency filed its response to Dickerson’s motion.

On September 2, 2010, the Board issued an opinion and order granting Dickerson’s motion to reconsider. On reconsideration, the Board found that Dickerson had prevailed before

the Board within the meaning of Section 57.8(l) of the Act. The Board directed Dickerson to file a statement of costs, and allowed the Agency to file a response to that statement.

On September 27, 2010, Dickerson filed a “Motion for Authorization of Payment of Legal Fees” (Mot. Auth.), accompanied by the affidavit of Edward W. Dwyer verifying fees (Aff.). Attached to the Affidavit as Exhibit 1 is an 18-page “Summary of Fees and Costs” (Exh. 1).

### **SUMMARY OF MOTION FOR AUTHORIZATION OF PAYMENT AND AFFIDAVIT**

Dickerson incorporates into its motion the discussion of authorizing payment of legal fees in its motion for reconsideration filed on March 11, 2010. Mot. Auth. at 2; *see generally* Mot. Recon.

In the motion for reconsideration, Dickerson stated that “[i]t is in the Board’s discretion to authorize the payment of legal fees. . . .” Mot. Recon. at 6, citing 415 ILCS 5/57.8(l) (2008). Dickerson argues that, in determining whether to award fees and whether requested fees are reasonable, the Board “has looked at the facts of the case.” Mot. Recon. at 6 (citations omitted). Although Dickerson acknowledges that “[t]he Board has declined to exercise its discretion and award legal costs in certain cases,” it seeks to distinguish those cases from its own. Mot. Recon. at 6 n.1 (citations omitted).

Dickerson cites Illinois Ayers Oil Co. v. IEPA, PCB 03-214, slip op. at 9 (Aug. 5, 2004) (Illinois Ayers), in which the Board directed the Agency to reimburse legal fees of \$44,456.49. Dickerson argues that, in Illinois Ayers, the petitioner prevailed on the issue of the corrective action budget and “on a technical issue involving the ultimate clean up of the site.” Mot. Recon. at 6, citing Illinois Ayers, slip op. at 8-9. Dickerson further argues that the Board found these results “persuasive in determining whether or not to allow for reimbursement of legal fees.” Mot. Recon. at 6, citing Illinois Ayers, slip op. at 9. Dickerson also claims that, in Illinois Ayers, the Agency had relied upon a rate sheet that had not been promulgated as a rule and was therefore not binding on the Board. Mot. Recon. at 6; *see* Illinois Ayers, slip op. at 15-16 (Apr. 1, 2004). Finally, Dickerson argues that the Board reviewed materials supporting Ayers’ request for reimbursement and “determined the fees to be reasonable.” Mot. Recon. at 6, citing Illinois Ayers, slip op. at 9; Prime Location Properties, LLC v. IEPA, PCB 09-67, slip op. at 4-5 (Nov. 5, 2009) (factors), *appeal docketed*, No. 5-10-0072 (5th Dist.) (Jan. 15, 2010) (Prime Location).

Dickerson likens itself to Illinois Ayers, stating that it “has prevailed before the Board on both technical and reimbursement issues.” Mot. Recon. at 7. Dickerson notes that the Board’s February 4, 2010 opinion and order remanded two separate determinations to the Agency. *Id.*; *see* Dickerson, slip op. at 28-29. Dickerson states that the first addressed a 45-Day Report and Addendum, “which detailed technical information on the release and early action activities.” Mot. Recon. at 7. Dickerson further states that the second provided the Agency’s response to a request for reimbursement from the Fund. *Id.* Dickerson notes that, although the Board remanded these determinations with a direction to cure their deficiencies and re-issue them within 30 days, the Agency responded “by issuing an NFR [No Further Remediation] letter for the incident and approving the reimbursement claim (minus the deductible and other non-

reimbursable portions of the claim).” *Id.*; *see* 415 ILCS 5/57.10 (2008) (NFR letters). Dickerson argues that “[t]he issuance of the NFR letter and reimbursement approval are evidence that there had been a release at the site, as the Petitioner has always maintained.” *Id.* Dickerson further argues that the determinations “demonstrate that the Illinois EPA did not have a basis for initially deeming the incident a non-LUST incident. . . .” *Id.*

Dickerson also likens itself to Ayers by arguing that the Agency “never provided an explanation for its policy that laboratory analysis showing contamination above Tier 1 ROs [remediation objectives] is required in order to confirm a release.” Mot. Recon. at 7, citing Dickerson, slip op. at 4-6 (Dec. 9, 2009) (Dickerson response brief). Dickerson argues that the Agency applied this policy in its two determinations although it had not been codified according to statutory rulemaking requirements. Mot. Recon. at 7. Dickerson claims that, because the Agency did not clarify whether confirmation of a release requires laboratory analysis, it could not negotiate a settlement with the Agency and “was forced to incur significant costs to appeal the application of an unpromulgated rule and to determine the basis for the rejection of Petitioner’s submittals.” *Id.* at 7-8. Dickerson argues that, because the Agency has issued an NFR letter and authorized payment of corrective action costs from the Fund, the Agency has recognized that a release occurred at the site and that it was subject to the UST program. *Id.* at 8.

As noted above under “Procedural History,” an affidavit of Edward W. Dwyer and a summary of fees and costs accompanied Dickerson’s motion for authorization of payment. *See* Aff., Exh. 1. Mr. Dwyer indicates that both he and Monica T. Rios represented Dickerson in these consolidated proceedings. Aff. at 1. Mr. Dwyer states that his representation of clients in the last 21 years has concentrated in environmental law and has included a “substantial practice” before the Board in UST proceedings. *Id.* He further states that Ms. Rios, a senior associate at Hodge Dwyer & Driver, “has represented a number of our firm’s clients before the Board, including rulemaking, permit and enforcement proceedings.” *Id.* Mr. Dwyer indicates that his firm represents Dickerson only with regard to the Agency determinations at issue in these consolidated appeals. *Id.* at 2.

Mr. Dwyer states that his firm began work on this case in March 2009 when Dickerson’s consultant contacted him regarding the Agency’s March 9, 2009 denial letter. Aff. at 2. Mr. Dwyer indicates that, with the assistance of Ms. Rios, he prepared petitions for review of the Agency’s March 9, 2009 and June 10, 2009 denial letters. *Id.* Mr. Dwyer continues that he also “communicated with Illinois EPA prior to and after filing the appeals, reviewed the record filed in these matters, prepared witnesses for hearing, and represented the Petitioner at hearing.” *Id.* Mr. Dwyer states that, after the hearing and again with the assistance of Ms. Rios, he “researched, prepared, and filed a post-hearing brief, reviewed Illinois EPA’s response, prepared and filed a reply, reviewed the Board’s February 2010 Order, filed a Motion for Reconsideration, and prepared this Motion for Authorization of Payment of Legal Fees.” *Id.*

Mr. Dwyer elaborates that Exhibit 1 to his affidavit “is an accurate summary of legal work completed and legal fees incurred with respect to this matter. This summary has been taken from the actual invoices, and thus, it reflects actual work performed and fees incurred.” Aff. at 2; *see* Aff., Exh. 1. After explaining the key to the exhibit, which attributes work to specific attorneys, paralegals, or legal assistants, Mr. Dwyer states that “all paralegal/legal

assistant work was conducted under the direct supervision and authority of an attorney.” *Id.* at 2-3.

The affidavit states that “[t]he total number of hours expended by attorneys and paralegal/legal assistant combined is 254.4 hours, which is reasonable and necessary for the issues involved.” *Aff.* at 3. Mr. Dwyer indicates that these hours encompassed

time spent drafting pleadings, reviewing the record, communicating with the client and its representatives, preparing for and participating in the hearing, reviewing Illinois EPA’s briefs and pleadings, reviewing hearing officer and Board orders, participating in all other litigation activities, including status conferences, and preparing this Motion [for Authorization of Payment of Legal Fees]. *Id.*

Mr. Dwyer further states that the summary reflects an hourly rate of \$295.00 per hour for the time of himself and attorney Katherine D. Hodge, a rate of \$250.00 per hour for the time of associate attorneys Monica T. Rios and Matthew C. Read, and a rate of \$100.00 per hour for paralegals/legal assistants. *Id.* The affidavit states that “[t]he hourly rates are commensurate with the prevailing rates for attorneys in Illinois with similar environmental legal skills and experience before the Board.” *Id.* Finally, Mr. Dwyer accounts for time marked in the summary as “No Charge” by stating that “no fees were charged for such time, although the time is included in the 254.4 hours referenced above.”<sup>1</sup> *Id.*; *see generally id.*, Exh. 1. The affidavit concludes by stating that “the total amount of legal fees and costs incurred and sought herein, \$53,019.29, is reasonable, legitimate, and appropriate.” *Id.* at 3.

The Agency did not file a response to the motion and therefore has waived objection to the Board’s granting the request. *See* 35 Ill. Adm. Code 101.500(d); *see also Hafele & Assocs v. Dept. of Employment Sec.*, 308 Ill. App. 3d 983, 987, 721 N.E.2d 782, 786 (3rd Dist. 1999) (“The law in Illinois is well-established that if an argument is not presented in an administrative hearing, it is waived and may not be raised for the first time on appeal”).

### **BOARD DISCUSSION**

As noted above, Dickerson seeks reimbursement of legal fees and costs of \$53,019.29 from the Fund. The Agency has filed no response to this request. In the following subsections, the Board first provides the applicable legal background and authorities. The Board then reviews its conclusion that Dickerson has “prevailed” within the meaning of Section 57.8(1) of the Act before determining whether to exercise its discretion to award Dickerson’s requested fees and costs.

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<sup>1</sup> The Board notes that the time marked “No Charge” in Exhibit 1 represents a total of 54.4 hours, which, if billed at the rates requested by Dickerson, would total \$11,834.00 in additional legal fees. *See Aff.*, Exh. 1.

### **Legal Background and Authorities**

Title XVI of the Act establishes the Leaking Underground Storage Tank Program. 415 ILCS 5/57 (2008). The purposes of Title XVI include administering a UST Fund and establishing requirements for eligible owners to seek reimbursement from it. 415 ILCS 5/57.3, 57.8 (2008). Under Section 57.9 of the Act, an owner or operator may be reimbursed from the Fund for “costs associated with corrective action.” 415 ILCS 5/57.9 (2008). Section 57.2 of the Act defines “corrective action” as “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 (2008).

Section 57.8(l) of the Act 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) (2008); *see* 35 Ill. Adm. Code 734.630(g). Because this subsection of the Act provides for the reimbursement of legal fees incurred in prevailing before the Board, it constitutes a “fee-shifting” statute. *See Brundidge, et al. v. Glendale Federal Bank, F.S.B.* 168 Ill. 2d 235, 245, 659 N.E.2d 909, 914 (1995). The Board must strictly construe fee-shifting statutes, and the amount of fees to be awarded lies within the broad discretionary powers of the Board. *See Globalcom, Inc. v. Illinois Comm. Comm’n.*, 347 Ill. App. 3d 592, 618, 806 N.E.2d 1194, 1214 (citations omitted). This discretion includes determining the reasonableness of the requested fees. *Illinois Ayers*, slip op. at 8 (citations omitted).

### **Prevailing before the Board**

The Board has stated that “[t]he plain language of Section 57.8(l) of the Act . . . guides the Board in our analysis of when to allow the prevailing party to receive legal defense costs. The first question the Board must address is whether or not the proceeding falls within the parameters of the statutory provision.” *Illinois Ayers*, slip op. at 7. In this case, the Board has determined that Dickerson prevailed before the Board in seeking payment under Title XVI. *Dickerson*, slip op. at 7-9 (Sept. 2, 2010); *see* 415 ILCS 5/57.8(l) (2008).

In PCB 09-87, Dickerson appealed the Agency’s March 9, 2009 determination that an incident at the Site was not subject to Part 731, 732, or 734 of the Board’s UST regulations (35 Ill. Adm. Code 731, 732, 734). The Agency had also determined that an Addendum to Dickerson’s 45-Day Report fell outside the scope and jurisdiction of the UST program. In PCB 10-5, Dickerson appealed a June 10, 2009 Agency determination. Responding to Dickerson’s request for reimbursement from the Fund, the Agency determined that the incident was not subject to the UST provisions of the Act or the Board’s regulations. The Agency declined to review Dickerson’s claim and submit it for payment. On August 6, 2009, the Board granted Dickerson’s motion to consolidate the two dockets.

In its February 4, 2010 opinion and order, the Board found that the Agency’s denial letters failed to comply with the requirements of 35 Ill. Adm. Code 734.505(b), which lists information that must be included in the Agency’s written rejection of a plan, budget, or report.

See 35 Ill. Adm. Code 734.505(b). The Board's order stated that "[e]ven a cursory review of the Agency's denial letters dated March 9, 2009, and June 10, 2009, shows that the letters fall short of these requirements." Dickerson, slip op. at 27. Consequently, the Board remanded the consolidated proceedings to the Agency, directed the Agency to cure the deficiencies in those letters, and further directed the Agency within 30 days to re-issue determinations consistent with the Board's order and with applicable statutory and regulatory requirements. *Id.* at 28-29. After remanding, the Board stated that it "cannot conclude that Dickerson has 'prevailed' within the meaning of Section 57.8(l) and thus declines to exercise its discretion to direct the Agency to reimburse Dickerson's attorney fees from the UST Fund." *Id.* at 29.

Addressing Dickerson's March 11, 2010 motion for reconsideration, the Board stated that, within 30 days of the Board's remand order, the Agency issued an NFR letter to Dickerson. Dickerson, slip op. at 8 (Sept. 2, 2010); see 415 ILCS 57.10 (2008). Also within 30 days of that order, the Agency issued a letter authorizing payment of \$62,780.63 of Dickerson's requested costs from the UST Fund. Dickerson, slip op. at 8 (Sept. 2, 2010). Of the \$84,090.69 in reimbursement requested by Dickerson, the Agency on various grounds denied reimbursement of \$11,310.66 after withholding a deductible of \$10,000. *Id.*

The Board noted that its February 4, 2010 opinion and order found numerous deficiencies in the Agency's determinations. Dickerson, slip op. at 8 (Sept. 2, 2010). Although the Board set a 30-day deadline to cure those deficiencies, the Agency before the end of that 30-day period issued an NFR letter to Dickerson and also approved reimbursement from the Fund. *Id.* On reconsideration, the Board recognized that it had not explicitly found that the Agency lacked any basis for its original determinations but had concluded that the determinations failed to comply with regulatory requirements regarding the contents of an Agency denial. *Id.*; see 35 Ill. Adm. Code 734.505(b). The Board determined that its decision setting a 30-day deadline for the Agency to cure its errors led directly and without delay to an NFR letter and reimbursement of \$62,780.63 from the Fund. Dickerson, slip op. at 8 (Sept. 2, 2010). The Board concluded that, even in the absence of an explicit reversal, its February 4, 2010 order resulted in relief including reimbursement substantially as sought by Dickerson. *Id.* Consequently, the Board concluded that Dickerson has "prevailed before the Board" for the purposes of Section 57.8(l) of the Act. *Id.*

### **Whether the Board Will Authorize Reimbursement of Attorney Fees**

Section 101.500(d) of the Board's procedural rules provides in pertinent part that, "[w]ithin 14 days after service of a motion, a party may file a response to a motion. If no response is filed, the party will be deemed to have waived objection to the granting of the motion, but the waiver of objection does not bind the Board or the hearing officer in its disposition of the motion." 35 Ill. Adm. Code 101.500(d). As noted above, the Agency has filed no response to Dickerson's motion for authorization of payment of fees.

Nonetheless, having determined that Dickerson has under the facts and circumstances of this case has prevailed for the purposes of Section 57.8(l) of the Act (415 ILCS 5/57.8(l) (2008)), the Board turns to determining whether to exercise its discretion to award legal fees. See Illinois Ayers, slip op. at 7. Dickerson's motion for authorization requests payment of \$53,019.29,

\$676.29 of which represents costs such as filings fees, photocopies, facsimiles, and electronic research, and the remainder of which represents legal fees. *See* Aff., Exh. 1.

In determining whether to exercise its discretion to authorize payment, the Board considers the reasonableness of the requested legal fees and costs. Prime Location, slip op. at 4, citing Illinois Ayers, slip op. at 8-9; Swif-T Food Mart v. IEPA, PCB 03-185, slip op. at 3 (Aug. 19, 2004) (Swif-T). As the party seeking reimbursement of fees, Dickerson has the burden of presenting sufficient evidence with which the Board can determine the reasonableness of the fees. Prime Location, slip op. at 4, citing J.B. Esker & Sons, Inc. v. Cle-Pa's P'ship., 325 Ill. App. 3d 276, 283, 757 N.E.2d 1271, 1277 (5th Dist. 2001) (citation omitted); Sampson v. Miglin, 279 Ill. App. 3d 270,281, 664 N.E. 2d 281, 288-89 (1st Dist. 1996). Dickerson "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, 325 Ill. App. 3d at 283, 757 N.E.2d at 1278 (citation omitted).

While Dickerson "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., Inc., 371 Ill. App. 3d 841, 868, 864 N.E.2d 288, 315 (5th Dist. 2007); Sampson, 279 Ill. App. 3d at 281, 664 N.E.2d at 289. In determining whether Dickerson's request is reasonable, the Board may consider a range of 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, 864 N.E.2d at 315.

As noted above under "Procedural History," Dickerson's motion for authorization of payment of fees is accompanied by both an affidavit of Edward W. Dwyer and an 18-page summary of fees and costs. *See* Aff.; Exh. 1. To date, the Agency has not responded to that motion. The affidavit notes the initials by which the summary refers to various attorneys and paralegal/legal assistants and also the hourly rates at which the work of those persons is billed. Aff. at 2-3. Applying that background information to the summary, the Board can readily note the identity of the person providing legal services; the date on which the person provided them; a description of those services; the amount of time expended upon them; and the amount, if any, charged for them. Exh. 1; *see* J.B. Esker, 325 Ill. App. 3d at 283, 757 N.E.2d at 1278 (citation omitted).

The Board's review of the summary of fees and costs shows work on Dickerson's behalf beginning on March 25, 2009, and continuing to September 23, 2010. Exh. 1 at 1, 18. The summary reveals work including drafting a petition for review filed on April 15, 2009, in PCB 09-87; pursuant to a Board order, drafting an amended petition for review filed on May 26, 2009; drafting a petition for review filed on July 10, 2009, in PCB 10-5; drafting a motion to

consolidate also filed on July 10, 2009; preparation for and attendance at hearing on September 16, 2009; drafting a 34-page post-hearing brief filed on October 26, 2009; drafting a 10-page reply brief filed on December 9, 2009; drafting a nine-page motion for reconsideration filed on March 11, 2010; and drafting a motion for authorization of payment of fees filed on September 27, 2010. *See generally* Exh. 1.

The summary of fees and costs includes a total of 254.5 hours of work performed chiefly by Mr. Dwyer and Ms. Rios. *See generally* Exh. 1. Entries describe the work performed and list the time allocated to that work in tenths of an hour. *Id.* The Board notes that a number of entries combine a person's tasks on a single day into a total charge for that day. *Id.* Nonetheless, the Board finds that aggregated 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. As noted above (*see supra* at 4 n.1), the summary includes 54.4 hours of time marked "No Charge," which, if billed at the rates requested by Dickerson, would have totaled an additional \$11,834.00 in fees. *See Aff.*, Exh. 1. Listed costs in the amount of \$676.29 consist of charges of \$270.87 for electronic research, \$212.26 for copying, \$150.00 for Board filing fees, \$7.00 for facsimiles, and \$36.06 for conference call services. *Id.*

In its February 4, 2010 opinion and order, the Board noted Agency determinations that an incident involving USTs owned by Dickerson was not subject to the UST program. *See Dickerson*, slip op. at 27-28. The Board determined that the Agency's denials provided only a conclusory statement and failed to provide the required bases for its determinations. *Id.* The Board remanded the two determinations because they had failed to comply with regulatory requirements regarding the information that must be included in the Agency's rejection of a plan, report, or budget. *Id.* at 28-29; *see* 35 Ill. Adm. Code 734.505(b); Mot. Recon. at 7. Dickerson argues that the Agency's determination required it to incur significant appeal costs to determine the basis on which the Agency had acted. Mot. Recon. at 8. Dickerson claims that the Agency "has implicitly deemed the incident a LUST incident by issuing an NFR letter for the incident and authorizing payment for corrective action costs from the UST Fund." *Id.* Dickerson further claims that the NFR letter and reimbursement "are evidence that there had been a release at the site, as the Petitioner has always maintained." *Id.* at 7.

The summary of fees and costs submitted by Dickerson is generally similar in specificity to the information provided by the petitioners in *Illinois Ayers* and *Swif-T*. In *Illinois Ayers*, the petitioner requested reimbursement of \$42,744.50 in legal fees and \$1,711.99 in costs (*Illinois Ayers* (May 3, 2004) (motion for authorization of payment)), which the Board ultimately directed the Agency to provide. *Illinois Ayers*, slip op. at 10. In *Swif-T*, the petitioner requested reimbursement of \$10,862.50 in legal fees and \$428.87 in costs (*Swif-T* (June 7, 2004) (motion for authorization of payment)), which the Board ultimately directed the Agency to provide. *Swif-T*, slip op. at 3.

As noted above, the Agency has filed no response to Dickerson's motion for authorization of payment of fees. The Agency has thus not disputed sworn statements regarding the experience of Dickerson's attorneys of record in this case or their firm more generally. *See Aff.* at 1. The Agency has likewise not disputed the statement that "[t]he hourly rates charged are commensurate with the prevailing rates for attorneys in Illinois with similar environmental



legal skills and experience before the Board.” Aff. at 3. Furthermore, the Agency has not argued more generally that the requested legal fees or costs are unreasonable. *See Illinois Ayers*, slip op. at 9 (approving reimbursement of \$42,744.50 where “[t]he Agency did not challenge the reasonableness of the costs.”); *Swif-T*, slip op. at 2-3 (approving reimbursement of \$11,291.37 where Agency did not respond to motion for authorization of payment of fees). More than one year ago in *Prime Location*, the Board approved hourly rates of \$220 and \$165 per hour. *Prime Location*, slip op. at 5-6.

The Board concludes that these consolidated appeals presented a significant issue regarding Agency determinations in the UST program and regulatory requirements applicable to them. Resolution of this issue culminated in a 30-page Board opinion and order. That order, including a 30-day deadline to cure deficiencies in the Agency’s determinations, led directly and without delay to relief including an NFR letter and reimbursement from the UST Fund substantially as sought by Dickerson. Based on its review of the record, its knowledge of and experience with these consolidated appeals, and the absence of any Agency response opposing them, the Board finds Dickerson’s requested legal fees to be reasonable. Accordingly, the Board will exercise its discretion under Section 57.8(l) of the Act to direct the Agency to reimburse Dickerson from the UST Fund for legal fees in the amount of \$52,343.00 and costs in the amount of \$676.29, for a total reimbursement of \$53,019.29.

### **CONCLUSION**

For the reasons discussed above, the Board concludes to exercise its discretion under Section 57.8(l) of the Act to grant Dickerson’s motion for authorization of payment of legal fees. Specifically, the Board grants the motion and directs that \$53,019.29 in legal fees and costs be reimbursed to Dickerson from the UST Fund as corrective action costs.

### **ORDER**

1. The Board grants Dickerson’s motion for authorization of payment of legal fees.
2. The Board directs the Agency to provide Dickerson with reimbursement for legal fees and costs in the amount of \$53,019.29 from the Fund as corrective action 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 5/41(a) (2008); *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, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 2, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board