

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

KNAPP OIL COMPANY,                    )  
    Petitioner,                        )  
    v.                                    )     PCB 2016-103  
  )     (LUST Permit 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)

Melanie Jarvis  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
(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, 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 24<sup>th</sup> of October, 2016. The number of pages in the e-mail transmission is 10 pages.

KNAPP OIL COMPANY

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)

THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

KNAPP OIL COMPANY,                    )  
    Petitioner,                         )  
    v.                                     )     PCB 2016-103  
   )     (LUST Permit Appeal)  
ILLINOIS ENVIRONMENTAL            )  
PROTECTION AGENCY,                )  
    Respondent.                       )

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

NOW COMES Petitioner, KNAPP OIL COMPANY, 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 September 22, 2016, the Board entered an interim opinion and order reversing the Agency's underlying decision and remanding the case to the Agency to approve the requested amounts. Burgess v. IEPA, PCB 15-186, at p. 11 (Nov. 5, 2015).
2. Furthermore, the Board directed Petitioner to file a statement of legal fees that may be eligible for reimbursement and arguments in favor of the Board exercise of its discretion to direct the Agency to award those fees. Id. at p. 11.
3. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$9,990.38. 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 is believed to be a reasonable rate for environmental attorneys who practice before the Board, and which has been the billing rate in previous attorney-fee awards. E.g., Burgess v. IEPA, PCB No. 16-103, at p. 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). In Illinois Ayers, the Board found that since a budget is required as a precondition to obtaining payment, the attorney fee provision of Section 57.8(l) provides reimbursement for appeals from plans and budgets. Id.

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. Burgess v. IEPA, PCB 15-186, at p. 11 (Nov. 5, 2015); Estate of Gerald D. Slightom v. IEPA, PCB 2011-025 (Nov. 5, 2015); Chatham BP v. IEPA, PCB 15-173 (Sept.

3, 2015); McAfee v. IEPA, PCB 15-84 (May 21, 2015); Piasa Motor Fuels, Inc. v. IEPA, PCB 14-31 (Mar. 19, 2015); PAK-AGS v. IEPA, PCB 15-14 (March 5, 2015); Chatham BP v. IEPA, PCB 14-1 (Feb. 5, 2015); Wheeling/GWA Auto Shop v. IEPA, PCB 10-70 (Sept. 22, 2011); Evergreen FS v. IEPA, PCB 11-51 (Sept. 6, 2012); Zervos Three, v. IEPA, PCB 10-54 (June 2, 2011); Dickerson Petroleum v. IEPA, PCB 09-87 (Dec. 2, 2010); Prime Location Properties v. IEPA, PCB 9-67 (Nov. 5, 2009); Swif-T Food Mart v. IEPA, PCB No. (Aug. 19, 2004); Illinois Ayers Co. v. IEPA, PCB No. 03-214 (Aug 5, 2004); Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003); see also Webb & Sons. v. IEPA, PCB No. 07-24 (May 3, 2007) (discretion exercised to award 45% of fees which was proportionate with the degree of success).

7. The Board has also considered whether the “case raised important issues regarding Agency determinations on reimbursement from the UST Fund.” PAK-AGS v. IEPA, PCB 15-14, at p. 7 (March 5, 2015). Herein, the Board for the first time ruled on the difference between direct and indirect costs, important, but undefined terms in Part 734, and created precedent that will likely be relevant in future matters. As to the remaining issues, the Agency’s role at the budget stage, in comparison with the actual reimbursement stage, and the documentation relevant at each stage, all also appear to be important to pending appeals. One of the reasons for creating a statutory fee-shifting provision is to give “those subject to regulation an incentive to oppose doubtful rules where compliance would otherwise be less costly than litigation.” Citizens Organizing Project v. IDNR, 189 Ill.2d 593 (Jan. 21, 2000). While the Illinois Supreme Court in that case was discussing invalid rules, the same principle applies here nonetheless. The Agency presumably decided to ignore its own past practices and guidance to improperly cut costs, that would normally have gone unchallenged, particularly given that the

State of Illinois was making no payments from the UST Fund when this policy was initiated.

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

WHEREFORE, Petitioner, KNAPP OIL COMPANY, requests that the Board authorize payment from the Leaking Underground Storage Tank Fund the amount of \$9,990.38 in attorney's fees and litigation costs pursuant to 415 ILCS 5/57.8(1), and such other and further relief as the Board deems meet and just.

Respectfully submitted,

KNAPP OIL COMPANY  
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

**BEFORE THE POLLUTION CONTROL BOARD  
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v. ) PCB 2016-103  
 ) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

STATE OF ILLINOIS )  
 ) ss.  
COUNTY OF SANGAMON )

**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, KNAPP OIL COMPANY, in the case entitled Knapp Oil Co. v. IEPA, PCB 2016-103.
3. Attached hereto as Exhibit A is a printouts 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. In reviewing the printout, there was one entry for July 18, 2016, that was not

related to this appeal, and I have blacked out that entry and deducted the corresponding \$900.00 from the total sought herein.

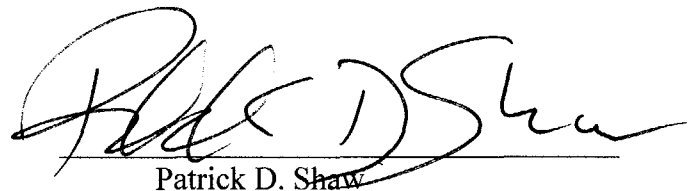
5. I began working on the appeal in April of 2016, and the matter proceeded to hearing on June 28, 2016, followed by the filing of post-hearing briefs. As I sometimes like to do, I started working on the post-hearing brief prior to hearing in order to help decide whether to present any testimony at the hearing. While we decided not to present testimony, the Agency decided to present testimony to explain its decision, which required significant modifications to the draft brief.

5. 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. Filing fees, postage and photocopying charges are also identified.

6. The legal defense costs incurred in seeking payment for corrective action herein total \$9,890.38, consisting of \$9,800.00 in attorney-time, and \$90.38 in costs.

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

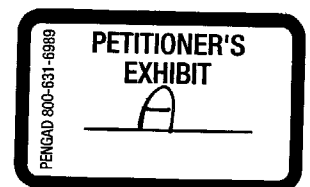
Law Office of Patrick D. Shaw  
 80 Bellerive Road  
 Springfield, IL 62704

Invoice submitted to:  
 Chase Environmental Group, Inc.  
 418 S. Poplar  
 P.O. Drawer AB  
 Centralia IL 62801

October 21, 2016

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
4/4/2016 Receive & review Agency decision; e-mail response re appealing same	0.20 200.00/hr	40.00
4/7/2016 Telephone client regarding appeal	0.50 200.00/hr	100.00
4/13/2016 Research Board decisions on budget disputes	1.00 200.00/hr	200.00
4/14/2016 Draft rough petition for review of LUST decision and bring to meeting with client	2.00 200.00/hr	400.00
Draft and finalize Petition for Review	3.60 200.00/hr	720.00
4/15/2016 Telephone conf. w/ client; foward petition for review to client	0.50 200.00/hr	100.00
4/25/2016 E-mails to/from Hearing Officer regarding Board acceptance of case and request for waiver; receive e-mails from Jarvis; receive Hrg Officer Order	0.20 200.00/hr	40.00
4/26/2016 Draft waiver of decision deadline	0.20 200.00/hr	40.00
4/29/2016 Receive & review Board order accepting appeal	0.10 200.00/hr	20.00
5/3/2016 Receive and review comment re petition for review from client; e-mail response and provide status	0.30 200.00/hr	60.00





Chase Environmental Group, Inc.

Page 2

	<u>Hrs/Rate</u>	<u>Amount</u>
5/3/2016 Telephone client re strategy for appeal	0.50 200.00/hr	100.00
5/23/2016 Telephone status call w/ Hrg Officer; tel client	0.30 200.00/hr	60.00
5/24/2016 E-mail to consultant Hrg Officer order and confirm availability if needed at hrg	0.10 200.00/hr	20.00
6/1/2016 Telephone IEPA atty; tel conf. w/ Board Hrg Officer; receive and provisional review of Agency record	0.50 200.00/hr	100.00
6/15/2016 Tel client re status and upcoming hrg	0.60 200.00/hr	120.00
6/20/2016 Draft initial outline of brief; tel client; e-mail record to client w/ comments about issues	4.50 200.00/hr	900.00
6/21/2016 Receive & review older submittals at site w/ rates; telephone consultant regarding older submittals at site;	0.50 200.00/hr	100.00
6/22/2016 Draft Brief	0.70 200.00/hr	140.00
6/24/2016 Review budget instruction forms on Agency website; status call w/ consultant for next week's hrg	0.30 200.00/hr	60.00
6/27/2016 Preparation for hearing; tel Jarvis (2x); tel consultant (4x); revise draft of brief	4.40 200.00/hr	880.00
6/28/2016 Appearance for Hearing; conference with consultant afterwards; receive and review Hearing Report	1.30 200.00/hr	260.00
6/29/2016 Telephone client re hrg	0.20 200.00/hr	40.00
7/13/2016 Receive & review transcript, forward copy to client with comments; tel conf. w/ client	0.80 200.00/hr	160.00
7/18/2016 <del>REDACTED</del>	4.50 200.00/hr	900.00
7/20/2016 Revise Post-Hrg Brief; forward draft to client	5.80 200.00/hr	1,160.00
7/22/2016 Telephone client; revise and file brief; draft waiver of decision deadline for reply brief	3.80 200.00/hr	760.00
7/25/2016 E-mail brief to client w/ information on schedule	0.10 200.00/hr	20.00

Chase Environmental Group, Inc.

Page 3

	<u>Hrs/Rate</u>	<u>Amount</u>
7/25/2016 Review recent Board decision in Friends of the Environment and e-mail client comments	0.50 200.00/hr	100.00
8/5/2016 Telephone client re status of briefing	0.20 200.00/hr	40.00
8/8/2016 Receive & review Response Brief; e-mail to client	0.30 200.00/hr	60.00
8/16/2016 Research and draft reply brief	4.60 200.00/hr	920.00
8/17/2016 Revise and forward copy of reply brief to client	4.70 200.00/hr	940.00
8/18/2016 Tel client; revise and file reply brief	1.10 200.00/hr	220.00
8/19/2016 E-mail reply brief filed yesterday to client w/comments	0.10 200.00/hr	20.00
9/23/2016 Receive & review Board order; e-mail copy of same to client w/ comments; tel conf. w/ client re decision and process going forward	1.00 200.00/hr	200.00
10/21/2016 Review bills; draft petition for attorney fees and affidavit	4.00 200.00/hr	800.00
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For professional services rendered	54.00	\$10,800.00
Additional Charges :		
4/14/2016 Filing Fee with Pollution Control Board		75.00
Copying cost for April 14, 2016		2.00
6/27/2016 Copying cost for exhibits, plus extra copy of record for cross-examination		13.38
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Total additional charges		\$90.38