BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SWIF-T FOOD MART, Petitioner, v. ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	PCB 03-185 (UST appeal)

MOTION FOR AUTHORIZATION OF PAYMENT OF ATTORNEYS' FEES AS COSTS OF CORRECTIVE ACTION

NOW COMES Petitioner, SWIF-T FOOD MART, through its undersigned attorney, and pursuant to 415 ILCS 5/57.8(l), submits its Motion for Authorization of Payment of Attorneys' Fees as Costs of Corrective Action. In support of this Motion, Petitioner states as follows:

1. By its Opinion and Order dated May 20, 2004, this Board reversed the Illinois Environmental Protection Agency's denial of $13,808.86 in reimbursement costs and application of a second $10,000.00 deductible to Swif-T Food Mart associated with remediation of leaking underground storage tanks at its facility, thereby awarding Swif-T Food Mart an additional $23,808.86 in reimbursement.

2. $23,808.86 constituted the full amount that Petitioner sought in the reimbursement appeal. Accordingly, Petitioner has fully and completely prevailed in its action before this Board seeking payment under Title XVI of the Illinois Environmental Protection Act.

3. Section 57.8(l) of the Environmental Protection Act, 415 ILCS 5/57.8(l), states 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."

4. Petitioner, having prevailed before this Board in its action seeking payment under Title XVI, now requests that this Board authorize the payment of legal fees incurred by Petitioner in this matter from the leaking underground storage tank fund. This motion is being made within 35 days following this Board's order granting Petitioner relief herein, and for jurisdictional purposes

Petitioner requests that this Board treat this motion as one for reconsideration or modification, as expressed on page 12 of this Board's May 20, 2004 order. This motion is being made at this time because until this Board entered its May 20 order, Petitioner had not yet prevailed before the Board, and so was not authorized to seek these amounts. See Ted Harrison Oil Co. v. IEPA, PCB 1999-127; slip op. (Oct. 16, 2003) (Board Order granting Sec. 57.8(l) attorney fees under this procedure, under similar circumstances).

5. Attached to and incorporated herein is the Affidavit of Stephen F. Hedinger Verifying Attorneys' Fees, documenting under oath the attorneys' fees and costs being sought in this matter, which total $11,291.37.

WHEREFORE, Petitioner, SWIF-T FOOD MART, requests that this Board authorize the payment from the leaking underground storage tank fund the amount of $11,291.37 in attorneys' fees and costs to Petitioner, SWIF-T FOOD MART, pursuant to 415 ILCS 5/57.8(l).

Respectfully submitted,

Swif-T Food Mart,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

By _____
Stephen F. Hedinger

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2601 S. Fifth St.
Springfield, IL 62703
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(217) 523-4366 fax

STATE OF ILLINOIS)
) SS
COUNTY OF SANGAMON)

AFFIDAVIT OF STEPHEN F. HEDINGER VERIFYING ATTORNEYS' FEES

Affiant, Stephen F. Hedinger, 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 Swif-T Food Mart in the case entitled, Swif-T Food Mart v. Illinois Environmental Protection Agency, PCB 03-185.

3. This affidavit is being filed with the Board in support of Petitioner's Motion for Authorization of Payment of Attorneys' Fees as Costs of Corrective Action.

4. Affiant, Attorney Stephen F. Hedinger, started work on this case in June 2003, and has represented Petitioner since that time. His total time for this case, representing Petitioner in this Fund reimbursement matter, including paralegal time, is $10,862.50.

7. Attached as Exhibit A is an accurate summary of the legal work done, and legal fees and costs incurred, with respect to this matter. The summary has been taken from actual invoices of the attorney and paralegal involved, and thus reflects actual work performed and fees and costs incurred. All time relates solely to this LUST fund reimbursement case (PCB 03-185). The summary reveals the date the work was performed, the description of work performed, the amount of time spent, and the total fees and costs incurred. The "time keeper" reflects the attorney or paralegal (SFH means Stephen F. Hedinger, and the initials ERA are those of Affiant's paralegal, Elaine Agnew); all paralegal work was conducted under the direct supervision and authority of the Affiant. The total number of hours incurred includes time spent

drafting pleadings, reviewing the record, discussing the case with the client and its representatives, preparing for and participating in the hearing, drafting the closing brief and reply brief, reviewing Respondent's briefs and pleadings, reviewing hearing officer and Board orders, and participating in all other litigation activities, including status conferences. The total number of attorney hours expended was 60.20, and the total number of paralegal hours expended was 14.30, which were reasonable and necessary for the issues involved. The hourly rate charged by me was $165.00, and the hourly rate charged by my paralegal was $65.00. These rates are commensurate with the prevailing rate for general legal services in Springfield, Illinois for the years represented, and are well below market rates for attorneys concentrating in environmental matters in Illinois, which generally are about double the amount actually charged in this case. Accordingly the total amount of legal fees incurred and sought herein, $10,862.50, is reasonable, legitimate and appropriate.

Further Affiant sayeth not.

Stephen F. Hedinger

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 4th day of June, 2004.

OFFICIAL SEAL
ERIN N. WYSS
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 9-13-2006

Notary Public

My Commission Expires:
9-13-2006

LUST Fund Reimbursement

Date	Timekeeper	Description	Time	Total
6/25/03	SFH	Review file materials & begin work on petition for review	0.50	$82.50
7/1/03	ERA	Review file; draft petition for review	2.20	$143.00
7/2/03	ERA	Revise draft petition for review; conf SFH re same	0.80	$52.00
7/2/03	SFH	Conference with EA re petition for review; review draft petition & review file; revise drat petition	0.90	$148.50
7/3/03	SFH	Revise, finalize & file petition for review	0.50	$82.50
7/17/03	SFH	Receive/Review PCB order re acceptance of petition & scheduling	0.10	$16.50
7/25/03	SFH	Receive/Review Swif-T hearing officer order	0.10	$16.50
7/30/03	SFH	Telephone hearing officer & IEPA atty Kim re scheduling and record; ltr client draft & file waiver of decision deadline	0.50	$82.50
9/17/03	SFH	Telephone conf call IEPA atty & hearing officer re status; draft decision deadline waiver & ltr Jake	0.30	$49.50
9/24/03	ERA	Receive/Review Hearing Officer Order; check IPCB website to see if record was submitted	0.20	$13.00
9/25/03	SFH	Receive/Review hearing officer order; message IEPA atty Kim re status of record	0.20	$33.00
9/26/03	SFH	Telephone IEPA atty Kim re record	0.20	$33.00
10/21/03	SFH	Telephone atty Kim; telephone hearing officer; draft add'l extension of decision deadline	0.20	$33.00
10/26/03	SFH	Receive/Review hearing officer order & forward to client	0.10	$16.50
12/15/03	SFH	Review file & record	0.50	$82.50
12/22/03	SFH	Review record; prep for status conf call; attend telephonic status & sched. Hrg.	0.50	$82.50
12/30/03	SFH	Telephone client re status of existing case	0.10	$16.50
1/6/04	SFH	Telephone hearing officer re hearing date & pretrial conf date	0.10	$16.50
1/8/04	SFH	Receive/Review hearing notice & hearing officer order	0.10	$16.50
1/13/04	SFH	Telephone client re hrg & status & strategy	0.10	$16.50
1/29/04	SFH	Review file & prepare for final pretrial; t/c hearing officer & IEPA atty Kim	0.50	$82.50
2/3/04	SFH	Review file re prep for hrg.; t/c Jake & Karl	2.50	$412.50
2/4/04	ERA	Review file for upcoming hearing; draft not to appear for IEPA personnel	4.20	$273.00
2/4/04	SFH	Conference with EA re record & hrg prep.; work on witness list; finalize & file; t/c IEPA atty Kim	1.00	$165.00
2/5/04	ERA	Draft not. of errata/refiling of witness list	0.20	$13.00
2/5/04	ERA	Review case law re handling charges	1.20	$78.00
2/5/04	SFH	Telephone IEPA atty Kim & conf call Kim & hearing officer re prep for hrg.; review file; t/c Kim; voicemail client	1.10	$181.50

2/6/04	ERA	Research re budget details	2.10	$136.50
2/6/04	SFH	Telephone client; rec & review add'l record pages from Kim	0.40	$66.00
2/9/04	ERA	Work on list of documents missing from record	0.90	$58.50
2/9/04	SFH	Telephone atty Kim re pre-hrg issues	0.50	$82.50
2/10/04	SFH	Letter to atty Kim re hearing witnesses; add'l prep for hrg.; rec & review add'l record docs from Kim; t/c client; to Libertyville & add'l hrg prep.	7.70	$1,270.50
2/11/04	SFH	Meeting with client & add'l hrg prep & record review; participate in hrg; return Spfld	9.00	$1,485.00
2/24/04	SFH	Receive/Review hearing transcript from PCB	0.20	$33.00
3/15/04	SFH	Review Swif-T file & work on closing brief	8.50	$1,402.50
3/16/04	SFH	Draft closing brief; revise, finalize & file	6.80	$1,122.00
4/7/04	SFH	Receive/Review IEPA response brief	1.20	$198.00
4/15/04	SFH	Work on reply (begin); gather materials	0.20	$33.00
4/20/04	SFH	Work on reply	7.00	$1,155.00
4/21/04	SFH	Final work on reply; draft motion for leave to file; revise, finalize & file all	5.00	$825.00
5/20/04	ERA	Draft motion for attorney fees	2.50	$162.50
5/20/04	SFH	Conference with EA re case decision; t/c (voicemail) to client re same; conference with EA re motion for attorney fees	0.30	$49.50
5/24/04	SFH	Telephone IPCB re status of decision; t/c client	0.10	$16.50
5/27/04	SFH	Receive/Review PCB order; revise draft of motion for attorney fees and research re same	2.90	$478.50
5/28/04	SFH	Research (add'l) re motion for attorney fees	0.30	$49.50
Total			74.50	$10,862.50

Date	Description	Cost
7/3/03	Filing fee for Petition for Review	$ 75.00
2/10/04	Mileage to/from hrg	$ 183.00
2/11/04	Hotel charges for 2/11/04	$ 93.24
4/9/04	Online research charges for March 2004	$ 19.86
4/22/04	Federal Express charges for shipment to IPCB on 4/22/02	$ 17.14
5/10/04	Online research charges for April 2004	$ 40.63
Total		$ 428.87

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NOTICE OF FILING AND PROOF OF SERVICE

To: Bradley Halloran, Hearing Officer
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John Kim
Division of Legal Counsel
Illinois Environmental Protection Agency
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P.O. Box 19276
Springfield, IL 62794-9276

The undersigned certifies that an original and nine copies of Petitioner's Motion for Authorization for Payment of Attorney's Fees as Costs of Corrective Action were served upon the Clerk of the Illinois Pollution Control Board and one copy was served upon the hearing officer and the above party of record in this case via first class U.S. Mail by enclosing same in envelopes with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois on the 4th day of June, 2004.

Stephen F. Hedinger

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THIS FILING IS SUBMITTED ON RECYCLED PAPER