

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PIASA MOTOR FUELS, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 14-131
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**NOTICE**

John T. Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

William D. Ingersoll  
Brown, Hay & Stephens, LLP  
205 S. Fifth Street, Suite 700  
P.O. Box 2459  
Springfield, IL 62705-2459  
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Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

PLEASE TAKE NOTICE that I have today caused to be filed a RESPONSE TO PETITIONER'S MOTION FOR AUTHORIZATION OF PAYMENT OF LEGAL FEES with the Illinois Pollution Control Board, a copy of which is served upon you.


Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: February 4, 2015

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

Respondent,

BY:   
 \_\_\_\_\_  
 Scott B. Sievers  
 Special Assistant Attorney General

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**RESPONSE TO PETITIONER’S MOTION  
FOR AUTHORIZATION OF PAYMENT OF LEGAL FEES**

NOW COMES the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (“Illinois EPA”), by and through its attorney, Special Assistant Attorney General Scott B. Sievers, and responds to the Petitioner’s Motion for Authorization of Payment of Legal Fees Pursuant to Section 57.8(1) as follows:

**I. THIS BOARD SHOULD DENY THE PETITIONER ITS LEGAL FEES, AS IT PREVAILED ON A POINT NEVER RAISED IN ITS PETITION.**

In its Interim Opinion and Order, this Board affirmed Illinois EPA’s “determination regarding costs for **soil investigation** boring and sampling below the groundwater table,” but reversed “the Agency’s determination regarding costs for **groundwater investigation** boring and sampling below the groundwater table in borings B-4, B-5, B-10, B-12, and B-14 completed as groundwater monitoring wells.” *Id.* at 33 (emphasis added). Now the Petitioner seeks not just its legal fees for the portion of the case in which it prevailed but for the entire case.

Section 105.408(c) of this Board’s regulations provides that a petition for review must contain “[a] statement specifying the grounds of appeal.” 35 Ill. Adm. Code 105.408(c) (2015). In the instant case, the Petition for Review only contested Illinois EPA’s determination concerning

soil investigation and Section 734.315(a)(1); the Petition for Review never even mentioned groundwater investigation or Section 734.315(a)(2). *See* Pet. for Review 1-5.

Illinois EPA prevailed on the grounds of appeal asserted in the Petition for Review: soil investigation boring and sampling below the groundwater table. An award of the Petitioner's legal fees for prevailing on a point it never even asserted in its petition would be to award it a windfall. Consequently, this Board should deny the Petitioner all of its legal fees, as it lost on the grounds of appeal specified in its own Petition for Review.

**II. IF THE BOARD IS INCLINED TO AWARD FEES, IT SHOULD ONLY AWARD THEM IN PROPORTION TO THAT PART OF THE CASE IN WHICH IT FOUND THE PETITIONER HAD PREVAILED.**

In the case at bar, the Petitioner appealed Illinois EPA's determination concerning Stage I soil sampling below the groundwater table included as part of the Petitioner's Stage 2 Site Investigation Plan. (Pet. for Review ¶¶ 8-11.) That plan reported 12 borings from which 32 samples were taken, with 14 of those samples having been taken below the groundwater table in borings converted to groundwater monitor wells. (Adm. R. at 240-241, 320-331.) In its Interim Opinion and Order, this Board affirmed Illinois EPA's determination as to the soil samples taken below the groundwater table, except for those taken in monitoring wells, for which it was reversed. Thus, the Board has ruled in Illinois EPA's favor as to 18 of the 32 samples, or 56.25 percent, while ruling in the Petitioner's favor as to 14 of the 32 samples, or 43.75 percent.

As Illinois EPA has prevailed on 56.25 percent of the samples at issue, it won the majority of this case and the Petitioner should not be awarded any of its legal fees. However, if this Board is inclined to award Petitioner its fees, it should award them in proportion to the 43.75 percent of the case in which this Board found it to have prevailed. *See Webb & Sons, Inc. v. Illinois EPA*, PCB No. 07-24 (Opinion and Order of May 3, 2007).

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: February 4, 2015

Scott B. Sievers  
Attorney Registration No. 6275924  
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(217) 782-5544

Respondent,



BY:

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Scott B. Sievers  
Special Assistant Attorney General

*Piasa Motor Fuels, Inc. v. Illinois Environmental Protection Agency*  
Pollution Control Board No. 14-131

CERTIFICATE OF SERVICE

Scott B. Sievers, Special Assistant Attorney General, herein certifies that he has served a copy of the foregoing **RESPONSE TO PETITIONER'S MOTION FOR AUTHORIZATION OF PAYMENT OF LEGAL FEES** upon:

John T. Therriault  
Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

William D. Ingersoll  
Brown, Hay & Stephens, LLP  
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Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

by mailing true copies thereof to the addresses referred to above in envelopes duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois, on February 4, 2015.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Dated: February 4, 2015

Scott B. Sievers  
Attorney Registration No. 6275924  
1021 North Grand Avenue East  
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(217) 782-5544

Respondent,

BY:



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Scott B. Sievers  
Special Assistant Attorney General