

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 02 2003

TED HARRISON OIL COMPANY,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

PCB 99-127

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

NOW COMES Petitioner, TED HARRISON OIL COMPANY, through its undersigned attorney, and pursuant to 415 ILCS 5/57.8(1), 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 July 24, 2003, which was received by Petitioner on August 4, 2003, this Board reversed the Illinois Environmental Protection Agency's denial of \$116,297.82 in reimbursement costs to Ted Harrison Oil Company associated with remediation of leaking underground storage tanks at its facility.
2. The \$116, 297.82 constituted the full amount that Petitioner sought in the reimbursement appeal. Accordingly, Petitioner has prevailed in its action before this Board seeking payment under Title XVI of the Illinois Environmental Protection Act.
3. Section 57.8(1) of the Environmental Protection Act, 415 ILCS 5/57.8(1), 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, 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 July 24,

2003 order. This motion is being made at this time because until this Board entered its July 24 order Petitioner had not yet prevailed before the Board, and so was not authorized to seek these amounts.

5. Attached to and incorporated herein is the Affidavit of Stephen F. Hedinger Verifying Attorneys' Fees, documenting under oath the attorneys' fees being sought in this matter, which total \$19,421.75.

WHEREFORE, Petitioner, TED HARRISON OIL COMPANY, requests that this Board authorize the payment from the leaking underground storage tank fund the amount of \$19,421.75 in attorneys' fees to Petitioner, TED HARRISON OIL COMPANY, pursuant to 415 ILCS 5/57.8(1).

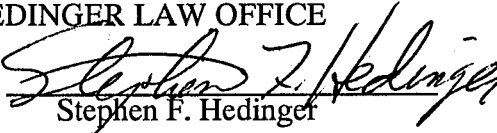
Respectfully submitted,

Ted Harrison Oil Company,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

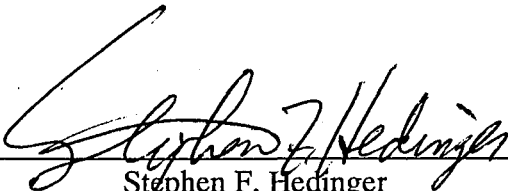
By


Stephen F. Hedinger

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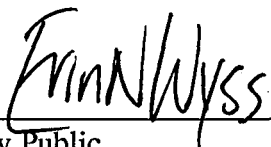
7. Attached as Exhibit A is an accurate summary of the legal work done, and legal fees incurred, with respect to this matter. The summary has been taken from actual invoices of the attorneys involved, and thus reflects actual work performed and fees incurred. All time relates solely to this LUST fund reimbursement case (PCB 99-127). The summary reveals the date the work was performed (for Mr. Ogren, the summary reflects the invoice dates), the description of work performed, the amount of time spent, and the total fees incurred. The "time keeper" reflects the attorney (ROV means Robert Ogren, BSM means Becky McCray, and SFH means Stephen F. Hedinger); the initials ERA are those of Affiant's paralegal, Elaine Agnew, all of whose work was conducted under the direct supervision and authority of the Affiant. The total number of hours incurred include time spent drafting pleadings, reviewing the record, drafting a motion for summary judgment and related documents, discussing settlement possibilities with Respondent, 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 113.55, and the total number of paralegal hours expended was 55.3, which were reasonable in light of the amount of money at stake (\$119,297.82). The hourly rate charged by attorneys ranged from \$95 to \$165, and the hourly rate charged by the paralegal ranged from \$50 to \$65. 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, \$19,421.75, 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
29th day of August, 2003.




Notary Public

My Commission Expires:

9-13-2006

Ted Harrison Oil Company
LUST Fund Reimbursement

Date	Timekeeper	Description	Time	Total
5/31/1999	RVO	Draft and work on LUST reimbursement appeal	4.25	\$403.75
6/30/1999	RVO	Work on LUST reimbursement appeal	4.75	\$522.50
7/31/1999	RVO	Work on LUST reimbursement appeal	8.75	\$962.50
8/31/1999	RVO	Work on LUST reimbursement appeal	3.75	\$412.50
9/30/1999	RVO	Work on LUST reimbursement appeal	4.25	\$467.50
5/16/2000	BSM	Telephone conference with Ted Harrison regarding UST Fund appeal; voice mail to Dan	0.50	\$50.00
5/17/2000	BSM	Prepare for and meet with Gretta and Ted Harrison re: UST Fund appeal	2.00	\$200.00
5/19/2000	BSM	Research regarding status of pending appeal	0.50	\$50.00
5/24/2000	BSM	Review file documents	2.00	\$200.00
5/25/2000	BSM	Prepare entry of appearance; telephone conference with hearing officer John Knittle	3.00	\$300.00
6/5/2000	BSM	Telephone conference with Ted Harrison; revise and finalize motion to continue hearing; waiver of	2.70	\$270.00
6/7/2000	BSM	Receipt and review PCB docket sheet; left voicemail for atty Bob Ogren	0.30	\$30.00
6/13/2000	BSM	Telephone conference with Bob Ogren regarding background, strategy	0.50	\$50.00
7/5/2000	BSM	Prepare letter to Bob Ogren regarding transfer of files	0.50	\$50.00
7/19/2000	BSM	Receipt and preliminary review of administrative record and files from Bob Ogren	0.60	\$60.00
9/26/2000	BSM	Telephone conference with hearing officer John Knittle. Revise waiver of deadline for	0.50	\$50.00
11/8/2000	BSM	Telephone conference with Dan Merriman	0.20	\$20.00
1/5/2001	BSM	Telephone conference with hearing officer John Knittle	0.10	\$10.00
1/12/2001	BSM	Prepare for and participate in telephone status conference	0.50	\$50.00
1/29/2001	BSM	Receive and review hearing officer order	0.20	\$20.00
2/28/2001	BSM	Telephone conference with Ted Harrison	0.10	\$10.00
3/1/2001	BSM	Research re: LUST program issues	1.00	\$100.00
5/11/2001	BSM	Prepare for and participate in telephone status conference	0.50	\$50.00
5/25/2001	BSM	Telephone conference with Steve Hedinger; telephone conference with Ted Harrison	0.50	\$50.00
5/29/2001	SFH	Telephone conference with C. Rowe; t/c client; letter client; voicemail B. McCray; receive and review McCray fax	1.00	\$150.00
6/1/2001	BSM	Telephone conference with Steve Hedinger; prepare open waiver; prepare letter to Steve Hedinger	1.20	\$120.00
6/26/2001	ERA	Review notes and give to SFH; review LUST reimbursement files for meeting; prepare notes for SFH re: LUST reimbursement	1.30	\$65.00
6/26/2001	SFH	Telephone atty McCray	0.80	\$120.00
8/6/2001	ERA	Review file and notes re: LUST reimbursement costs	1.20	\$60.00

Ted Harrison Oil Company
LUST Fund Reimbursement

8/6/2001	SFH	Conference with ERA re: reimbursement issues.	0.20	\$30.00
8/7/2001	ERA	Continue review of file re: LUST reimbursement costs	0.80	\$40.00
8/8/2001	ERA	Finish review of file re: LUST reimbursement costs; memo to SFH re: same	3.10	\$155.00
8/10/2001	SFH	Revise and file appearance in reimbursement case	0.10	\$15.00
8/13/2001	BSM	Receive and review Hedinger & Howard appearance, motion for substitution of counsel	1.00	\$100.00
8/15/2001	SFH	Telephone hearing officer re: status conference call re: reimbursement appeal; research re: reimbursement caselaw; t/c IEPA atty Merriman re: background and status	0.50	\$75.00
10/12/2001	SFH	Telephone conference with IEPA atty Merriman and hearing officer	0.30	\$45.00
10/18/2001	SFH	Receive/review hearing officer order re: status of reimbursement appeal	0.10	\$15.00
10/26/2001	SFH	Telephone Jeff @ CW3M re: reimbursement review	0.10	\$15.00
10/30/2001	SFH	Meeting with Jeff from CW3M re: file review re: reimbursement case	0.20	\$30.00
12/7/2001	SFH	Telephone conference with IEPA atty Merriman and hearing officer	0.10	\$15.00
12/12/2001	SFH	Receive/review hearing officer status order	0.10	\$15.00
1/4/2002	SFH	Review file and prepare for meeting; meet with CW3M and discuss status of reimbursement matters	1.00	\$150.00
1/18/2002	ERA	Telephone Jeff @ CW3M re: status of review of LUST reimbursement case	0.30	\$15.00
1/29/2002	ERA	Telephone Jeff @ CW3M re: status of reimbursement package	0.10	\$5.00
2/25/2002	SFH	Receive/review hearing officer order re: status	0.10	\$15.00
4/19/2002	SFH	Telephone IEPA atty Merriman re: status; voicemail message hearing officer re: same; t/c Jeff @ CW3M re: same	0.30	\$45.00
4/25/2002	SFH	Receive/review hearing officer order re: status	0.10	\$15.00
5/23/2002	SFH	Telephone IEPA atty Merriman & conference call Merriman and hearing officer re: status of LUST Fund appeal	0.50	\$75.00
7/3/2002	SFH	Telephone conference with hearing officer and IEPA atty Merriman re: status and scheduling	0.30	\$45.00
8/21/2002	ERA	File review in preparation for filing summary judgment motion	0.80	\$40.00
8/21/2002	SFH	Conference with ERA re: reimbursement case and summary judgment; review file	0.30	\$45.00
8/22/2002	SFH	Review summary judgment pleadings (orig.); t/c Margaretta; t/c Jeff @ CW3M	0.60	\$90.00
8/30/2002	ERA	Draft motion to set case for hearing	0.40	\$20.00

Ted Harrison Oil Company
LUST Fund Reimbursement

9/16/2002	SFH	Review and revise draft motion to set case for hearing; finalize and file	0.30	\$45.00
9/18/2002	SFH	Telephone hearing officer re: scheduling hearing; t/c IEPA atty Merriman re: same	0.30	\$45.00
9/26/2002	SFH	Conference ERA re: reimbursement case hearing	0.10	\$15.00
9/27/2002	SFH	Receive/review hearing officer order scheduling LUST Fund case for hearing	0.10	\$15.00
10/23/2002	ERA	Conference with SFH re: hearing and witness lists	0.10	\$6.50
10/25/2002	ERA	Review file in preparation for hearing on LUST reimbursement issues	1.80	\$117.00
10/28/2002	ERA	Review files re: LUST reimbursement in preparation for hearing	1.90	\$123.50
10/29/2002	ERA	Finish drafting notices of hearing--notice to appear and produce for IEPA personnel; finish reviewing previous LUST reimbursements in preparation for hearing	0.50	\$32.50
10/29/2002	SFH	Revise draft witness list and notices to appear/produce; research	1.00	\$165.00
10/30/2002	ERA	Continue review of previous LUST reimbursements in preparation for hearing	3.50	\$227.50
10/30/2002	SFH	Revise and finalize notices to appear	0.10	\$16.50
10/31/2002	ERA	Continue review of prior LUST reimbursement packages in preparation for hearing	2.10	\$136.50
10/31/2002	SFH	Conference with ERA re: record and hearing issues	0.50	\$82.50
11/1/2002	SFH	Telephone IEPA atty Merriman and hearing officer re: Wednesday hearing	0.30	\$49.50
11/4/2002	ERA	Research cleanup costs of LUST sites on IEPA website for hearing	0.30	\$19.50
11/4/2002	SFH	Preparation for hearing; conference call hearing officer and IEPA atty Merriman	3.50	\$577.50
11/5/2002	SFH	Preparation for hearing; t/c Jeff (CW3M); t/c Ted; review record	6.50	\$1,072.50
11/6/2002	SFH	Preparation for hearing; conference Jeff (CW3M); conference Ted & Margaretta; to PCB offices and attend hearing; calendar briefing schedule	6.60	\$1,089.00
11/7/2002	ERA	Review administrative technical record for more information on labor and lab charges in preparation for brief	2.70	\$175.50
11/7/2002	SFH	Telephone atty Merriman; instructions ERA re: preparation for briefing/file review	0.30	\$49.50
11/8/2002	ERA	Continue review of administrative technical record for more information on labor and lab charges in preparation for brief	2.90	\$188.50
11/9/2002	ERA	Finish review of administrative technical record	0.40	\$26.00
11/11/2002	ERA	Memo to SFH re: review of administrative technical record	1.90	\$123.50
11/18/2002	SFH	Letters to PCB re: availability of transcript	0.20	\$33.00

Ted Harrison Oil Company
LUST Fund Reimbursement

12/29/2002	ERA	Research re: LUST reimbursement cases for brief	0.50	\$32.50
12/30/2002	ERA	Continue research on LUST Fund reimbursement cases for brief	3.40	\$221.00
12/31/2002	ERA	Continue research re: reimbursement cases for brief	1.20	\$78.00
1/5/2003	ERA	Draft abstract of hearing	0.60	\$39.00
1/8/2003	ERA	Continue drafting abstract of IPCB hearing	1.60	\$104.00
1/9/2003	ERA	Outline of points to include in brief	3.50	\$227.50
1/9/2003	SFH	Telephone IEPA atty Merriman; conference ERA re: brief issues	0.40	\$66.00
1/10/2003	ERA	Continue outline of points to include in brief	1.80	\$117.00
1/12/2003	ERA	Continue summary for brief	0.70	\$45.50
1/13/2003	ERA	Finish summary for brief	2.40	\$156.00
1/21/2003	SFH	Review record; review ERA memo and notes; work on brief	1.10	\$181.50
1/23/2003	SFH	Review record and work on brief	3.00	\$495.00
1/24/2003	SFH	Work on closing brief; t/c hearing officer re: additional time for brief	1.30	\$214.50
1/27/2003	SFH	Telephone atty Merriman and hearing officer re: additional briefing time; work on closing brief	0.50	\$82.50
1/28/2003	SFH	Work on closing brief	0.60	\$99.00
1/30/2003	SFH	Work on closing brief; research, review record, draft, revise, finalize and file	7.50	\$1,237.50
1/30/2003	ERA	Draft standard of review portion of brief	1.40	\$91.00
2/25/2003	ERA	Review CAP, IEPA letter, permit, CACR for land treatment site information	0.30	\$19.50
3/4/2003	SFH	T/c IEPA atty Merriman re: LUST reimbursement case briefing	0.20	\$33.00
3/26/2003	SFH	Telephone atty Merriman; t/c hearing officer re: reply deadline	0.20	\$33.00
3/27/2003	SFH	T/c atty Merriman and receive and review IEPA brief re: LUST Fund appeal	0.60	\$99.00
3/28/2003	ERA	Review IEPA's brief; gather cases cited	1.40	\$91.00
4/4/2003	ERA	Review IEPA brief, compare information to record	1.70	\$110.50
4/7/2003	ERA	Finish reviewing IEPA's brief; summary notes	2.30	\$149.50
4/7/2003	SFH	Conference with ERA re: reply brief	0.30	\$49.50
4/22/2003	SFH	Work on reply brief; research; review record and response brief	4.70	\$775.50
4/23/2003	ERA	Telephone conference with Greta re LUST Fund reimbursement case	0.10	\$6.50
4/23/2003	SFH	Work on reply brief	2.20	\$363.00
5/9/2003	SFH	Draft reply; review record	2.50	\$412.50
5/12/2003	SFH	Draft reply brief; revise; research	5.60	\$924.00
5/13/2003	SFH	Revise reply brief; draft motion for leave to file; finalize and file	3.40	\$561.00

Ted Harrison Oil Company
LUST Fund Reimbursement

8/4/2003	SFH	Receive/review PCB order reversing IEPA; research re: recovery of atty fees; t/c CW3M re: status of site and additional reimbursement request	1.00	\$165.00
8/21/2003	SFH	T/c Rapps re: LUST Fund appeal legal invoices; receive and review fax from Terry Lendy (at Rapps) re: same	0.80	\$132.00
8/27/2003	SFH	Research and review files and conference with ERA re: atty fees (LUST Fund appeal)	0.80	\$132.00
8/27/2003	ERA	Review billing file in preparation for attorney's fees motion	2.90	\$188.50
8/28/2003	SFH	Work on LUST atty fees request; conference with ERA re: LUST reimbursement issues and pleadings	0.70	\$115.50
8/28/2003	ERA	Finish review of fees for atty fees motion to PCB; continue research re: award of atty fees from PCB; draft motion for atty fees.	3.40	\$221.00
8/29/2003	SFH	Review timesheets for all LUST Fund counsel; revise draft motion; revise affidavit; draft summary of time	5.50	\$907.50

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PCB 99-127

NOTICE OF FILING AND PROOF OF SERVICE

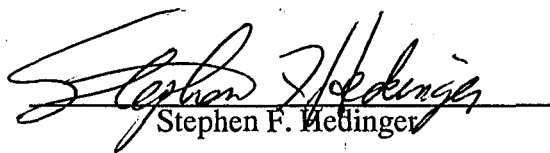
The undersigned certifies that the original and nine copies of Petitioner's Motion for Authorization of Payment of Attorneys' Fees as Costs of Corrective Action were served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the following party of record and the Hearing Officer in this cause by enclosing same in envelopes addressed to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Carol Sudman, Hearing Officer
Pollution Control Board
600 South Second Street, Ste. 402
Springfield, IL 62704

Daniel P. Merriman
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box in Springfield, Illinois before 5:30 p.m. on the ~~27th~~ day of August, 2003.


Stephen F. Hedinger

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Springfield, IL 62703
(217) 523-2753 phone
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This Pleading is being submitted on recycled paper