

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KB SULLIVAN, INC.,)	
Petitioner,)	
v.)	PCB 2021-078
)	(UST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer	Melanie Jarvis
Illinois Pollution Control Board	Division of Legal Counsel
1021 N. Grand Avenue East	1021 North Grand Avenue East
P.O. Box 19274	P.O. Box 19276
Springfield, IL 62794-9274	Springfield, IL 62794-9276
(Carol.Webb@illinois.gov)	(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 15th day of September, 2022. The number of pages in the e-mail transmission is 15 pages.

Respectfully submitted,

KB SULLIVAN, INC.,
Petitioner

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

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

NOW COMES Petitioner, KB SULLIVAN, INC., 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 August 11, 2022, the Board entered an interim opinion and order granting Petitioner's motion for summary judgment and reversing the Illinois Environmental Protection Agency's underlying decision in full. KB Sullivan, Inc. v. IEPA, PCB 21-78, slip op. at 7 (Aug. 11, 2018).
2. Furthermore, the Board directed Petitioner to file a statement of legal fees that may be eligible for reimbursement with justification why the Board should exercise its discretion to reimburse those fees. Id.
3. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$7,860.00, consisting of \$7,580.00 in attorney's fees and \$280.00 in costs. 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 an acceptable billing rate in previous attorney-fee awards. E.g., City of Benton Fire Department, PCB No. 17-1, slip op. at 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).

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 on the issues either completely or substantially. See City of Benton Fire

Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016) (awarding \$20,357.80); Abel Investments v. IEPA, PCB 16-108, at p. 4 (Mar. 2, 2017) (awarding \$13,519.37); Knapp Oil Co. v. IEPA, PCB 16-103, at p. 3 (Nov. 17, 2016) (awarding \$9,990.38) ; Burgess v. IEPA, PCB 15-186, at p. 11 (Nov. 5, 2015) (awarding \$11,304.16); Estate of Gerald D. Slightom v. IEPA, PCB 2011-025 (Nov. 5, 2015) (awarding \$79,455.26 following appeal); Chatham BP v. IEPA, PCB 15-173 (Sept. 3, 2015) (awarding \$11,485.08); McAfee v. IEPA, PCB 15-84 (May 21, 2015) (awarding \$10,315.00); PAK-AGS v. IEPA, PCB 15-14 (March 5, 2015) (awarding \$10,355.00); Chatham BP v. IEPA, PCB 14-1 (Feb. 5, 2015)(awarding \$21,314.70); Evergreen FS v. IEPA, PCB 11-51 (Sept. 6, 2012) (awarding \$ 13,473.80); Wheeling/GWA Auto Shop v. IEPA, PCB 10-70 (Sept. 22, 2011) (awarding \$78,915.86); Zervos Three, v.IEPA, PCB 10-54 (June 2, 2011) (awarding \$73,347.88); Dickerson Petroleum v. IEPA, PCB 09-87 (Dec. 2, 2010) (awarding \$53,019.29); Prime Location Properties v. IEPA, PCB 9-67 (Nov. 5, 2009)(awarding \$10,088.18); Swif-T Food Mart v. IEPA, PCB No. (Aug. 19, 2004) (awarding \$11,291.37); Illinois Ayers Co. v. IEPA, PCB No. 03-214 (Aug 5, 2004) (awarding \$44,456.49); Ted Harrison Oil Co. v. IEPA, PCB 99-127 (Oct. 16, 2003) (awarding \$19,421.75).

8. Petitioner prevailed completely in reversing the Agency's deduction of \$2,125.96 in corrective action costs incurred over a 5-year period. The legal defense costs incurred are less than those awarded in previous Board decisions in which fees were not reduced by apportionment. The importance of the decision herein rests in its affirmation that the Agency's denials and modifications must be based upon statute or regulation.

9. 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, KB SULLIVAN, INC., requests that the Board authorize payment from the Leaking Underground Storage Tank Fund in the amount of \$7,860.00, 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,

KB SULLIVAN, INC.,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW
Its attorney

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
80 Bellerive Road
Springfield, IL 62704
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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, Kb Sullivan, Inc., in the case entitled KB Sullivan, Inc. v. IEPA, PCB 2021-078.
3. Attached hereto as Exhibit A is a printout 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.

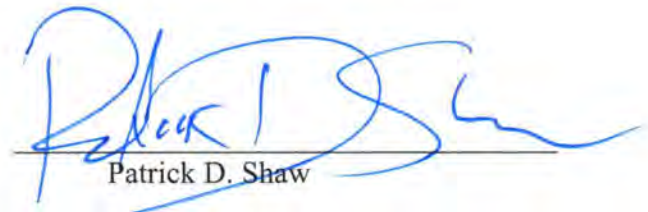
4. I began working on the appeal in February of 2021, filing the Petition for Review shortly thereafter. In March of 2022, the Agency filed the record and I began working on the motion for summary judgment the next month. The motion was filed in June of 2022, to which the Agency filed a cross-motion for summary to which I responded in July.

6. 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. Charges for computer-based legal research are made in proportion to the amount of time used in a matter. Filing fees, postage and photocopying charges are also identified when applicable.

7. The legal defense costs incurred in seeking payment for corrective action herein total \$7,860.00, consisting of \$7,580.00 in attorney-time, and \$240.00 in costs (which consist of the filing fee and computer-based legal research charges).

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

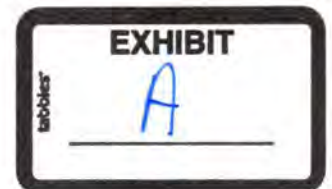
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704

Invoice submitted to:
CW3M Company
701 South Grand West
Springfield IL 62704

September 15, 2022

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
2/24/2021 Receive Agency decision letter from client KB Sullivan	0.10 200.00/hr	20.00
3/2/2021 Tel client re Agency decision KB Sullivan	0.40 200.00/hr	80.00
3/5/2021 Review file; draft memo re appeal issues KB Sullivan	0.80 200.00/hr	160.00
3/12/2021 Revise memo; e-mail to client; receive response; e-mail reply KB Sullivan	1.90 200.00/hr	380.00
3/18/2021 Telephone client re appeal KB Sullivan	0.60 200.00/hr	120.00
3/19/2021 Draft and file Petition for Review KB Sullivan	3.30 200.00/hr	660.00
4/1/2021 Receive & review Board and Hrg Officer orders KB Sullivan	0.10 200.00/hr	20.00



CW3M Company

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	<u>Hrs/Rate</u>	<u>Amount</u>
4/5/2021 Draft e-mail to Hrg Officer re decision deadline KB Sullivan	0.10 200.00/hr	20.00
3/18/2022 Receive & review appearance and index to record KB Sullivan	0.20 200.00/hr	40.00
3/22/2022 Tel conf. w/ Hrg Officer KB Sullivan	0.10 200.00/hr	20.00
4/1/2022 Review record KB Sullivan	1.00 200.00/hr	200.00
4/29/2022 Draft motion for summary judgment KB Sullivan	2.50 200.00/hr	500.00
5/23/2022 Draft motion for summary judgment KB Sullivan	1.00 200.00/hr	200.00
5/31/2022 Revise motion for summary judgment KB Sullivan	1.10 200.00/hr	220.00
6/2/2022 Draft motion for summary judgment KB Sullivan	2.90 200.00/hr	580.00
6/3/2022 Revise motion and e-mail draft to client with comments; receive e-mail KB Sullivan	2.50 200.00/hr	500.00
6/6/2022 e-mail to consultant KB Sullivan	0.20 200.00/hr	40.00
6/8/2022 Tel conf w/ Hrg Officer re status; receive Hrg Officer order KB Sullivan	0.10 200.00/hr	20.00
6/10/2022 Revise and file motion for summary judgment; e-mail to client KB Sullivan	2.00 200.00/hr	400.00
6/23/2022 Receive & review Illinois EPA's Cross Motion for Summary Judgment KB Sullivan	0.30 200.00/hr	60.00

CW3M Company

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	<u>Hrs/Rate</u>	<u>Amount</u>
6/27/2022 E-mail Agency's cross-motion to client w/ comments; receive response KB Sullivan	0.20 200.00/hr	40.00
6/28/2022 Draft response to cross-motion KB Sullivan	0.50 200.00/hr	100.00
6/30/2022 Draft response to cross motion for summary judgment KB Sullivan	3.50 200.00/hr	700.00
7/5/2022 Research response to cross motion KB Sullivan	3.40 200.00/hr	680.00
7/6/2022 Draft response to cross motion KB Sullivan	4.60 200.00/hr	920.00
7/7/2022 Revise and file response to cross motion; e-mail copy to client KB Sullivan	1.00 200.00/hr	200.00
8/15/2022 Receive & review Board order; e-mail to client w/ comments KB Sullivan	0.50 200.00/hr	100.00
9/9/2022 Draft motion for attorney fees KB Sullivan	1.50 200.00/hr	300.00
9/12/2022 Revise and file motion KB Sullivan	1.50 200.00/hr	300.00
For professional services rendered	<u>37.90</u>	<u>\$7,580.00</u>
Additional Charges :		
3/19/2021 Pollution Control Board filing fee Filing Fee		75.00
6/30/2022 Lexis computer research LEXIS		124.00

CW3M Company

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7/31/2022

Lexis computer research fee for July 2022
LEXIS

Amount

81.00

Total additional charges

\$280.00