

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

1141 KINGSHIGHWAY, LLC,)	
Petitioner,)	
v.)	PCB 24-32
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer	Richard Kim
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)	(richard.kim@illinois.gov)

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, Petitioner's 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 28th day of June, 2024. The number of pages in the e-mail transmission is 12 pages.

Respectfully submitted,

1141 KINGSHIGHWAY, LLC
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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PETITIONER’S MOTION FOR AUTHORIZATION OF PAYMENT OF ATTORNEY’S FEES AS COSTS OF CORRECTIVE ACTION

NOW COMES Petitioner, 1141 KINGSHIGHWAY, LLC, 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 June 20, 2024, the Board entered an interim order finding that Petitioner’s reimbursement request would not violate any legal provisions cited in the denial letter and ordered “IEPA to approve Petitioner’s request for the maximum reimbursement rates for all three tanks.” Interim Opinion, at p. 17.

2. The Board further directed Petitioner “to file a statement of legal fees that may be eligible for reimbursement and its arguments that the Board should exercise its discretion to direct IEPA to reimburse those fees from the UST Fund.” Id.

3. Attached hereto is the Affidavit of Patrick D. Shaw, documenting the legal costs in this matter, which are \$19,729.00, consisting of \$19,654.00 in attorney-time and \$75.00 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). Through December 31, 2023, his billing rate was \$200 per hour, which has been his hourly rate since 2014. As of January 1, 2024, his billing rate has been \$260 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. Dickerson Petroleum v. IEPA, PCB 09-87, slip op. at 4 (Dec. 2, 2010) (\$295.00 per hour); Chatham BP v. IEPA, PCB 14-1 (Feb. 5, 2015)(\$275.00 per hour detailed in motion)

5. All of the legal costs sought herein were incurred "seeking payment under Title XVI and the plain language of Section 57.8(1) 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 Singh v. IEPA, PCB 23-90, at p. 5 (Nov. 16, 2023) (awarding \$19,759.77); Parker's Gas & More v. IEPA, PCB 19-79, at p. 5 (July 6, 2023) (awarding \$20,054.00); Reliable Stores v. OSFM, PCB 19-2, at p. 5 (Dec. 15, 2022) (awarding \$33,106.65); Dersch Energies v. IEPA, PCB 17-003, at p. 4 (Oct. 20, 2022) (awarding \$32,676.30); KB Sullivan v. IEPA, PCB 21-78, at p. 3 (Oct. 20, 20, 2022) (awarding \$7,860.00); Abel Investments v. IEPA, PCB 16-108, at p. 4 (Mar. 2, 2017) (awarding \$13,519.37); City of Benton Fire Department, PCB No. 17-1, slip op. at 3 (Feb. 4, 2016) (awarding \$20,357.80); 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 in full in obtaining from the Board a reversal of the IEPA's

decision and an order for IEPA to approve the budget amendment as submitted. Interim Opinion, at p. 17. The legal costs were reasonable given the complexity of issues of first impression, as evidenced by the Board's opinion herein. The appeal furthermore involved a significant first-time issue pertaining to the proper interpretation and application of several Board regulations as applied to compartment tanks, which is a type of tank that is relatively recent and will be increasingly encountered in the field.

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.

Respectfully submitted,

1141 KINGSHIGHWAY, LLC,
Petitioner

By its attorneys,
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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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 in the case entitled 1141 KINGSHIGHWAY, LLC v. IEPA, PCB 24-32.
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 was \$200 per hour in 2023 and \$260 per hour in 2024, 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 October of 2023, filing the Petition for Review in November. The record was not filed until January 31, 2024. Thereafter, I reviewed the record which was over 300 pages and made notes and a chronology of all submittals, reports and other

documentation of the cleanup. In March, the Agency moved to supplement the record with a document that appeared to me as having been discovered after the Agency decision.

Undersigned counsel moved to disallow the document, which was denied by the Hearing Officer.

In any event, said document was introduced at hearing subject to cross-examination, which satisfied the objection.

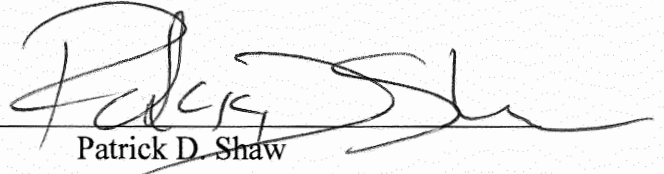
5. As I have done in preparation for other hearings that were not preceded by summary judgment motions, I began drafting the post-hearing brief a week or two before the hearing as a resource at hearing (essentially a trial brief), as well as to assist in determining what, if any, evidence should be presented at hearing. The hearing was held April 10, 2024, prior to which I met with the consultant to prepare for hearing. After the hearing, I revised the post-hearing brief in light of the testimony at hearing, including arguments implied by Agency testimony, and filed it on May 1, 2024. On May 20, 2024, I filed the reply brief, which incorporated additional research responsive to the Agency's response brief. On June 20, 2024, the Board issued its opinion herein.

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. 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 \$19,729.00, consisting of \$19,654.00 in attorney-time and \$75.00 in costs (which consist entirely of the filing fee).

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

Electronic Filing: Received, Clerk's Office 06/28/2024

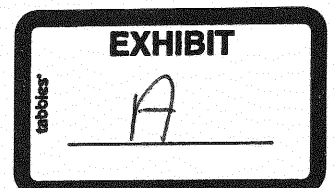
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704

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

June 28, 2024

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
10/23/2023 Review e-mail from client regarding Agency decision; review previous appeal regarding issue; e-mail response 1441 Kingshighway	2.10 200.00/hr	420.00
10/24/2023 Review e-mails w/ add'l information re cleanup 1441 Kingshighway	1.50 200.00/hr	300.00
10/25/2023 Review Agency on-line docs 1441 Kingshighway	1.10 200.00/hr	220.00
10/26/2023 Draft petition for review; research tanks issue 1441 Kingshighway	2.40 200.00/hr	480.00
10/27/2023 Draft petition for review; draft FOIA request to OSFM 1441 Kingshighway	3.50 200.00/hr	700.00
10/30/2023 Receive and review OSFM FOIA response; research tank regulations 1441 Kingshighway	2.30 200.00/hr	460.00
10/31/2023 Revise draft petition for review; e-mail to client with opinions about appeal 1441 Kingshighway	2.60 200.00/hr	520.00



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		<u>Hrs/Rate</u>	<u>Amount</u>
11/2/2023	Receive & review e-mail from client re petition 1441 Kingshighway	0.20 200.00/hr	40.00
11/3/2023	Revise and file petition for review; e-mail client 1441 Kingshighway	1.60 200.00/hr	320.00
11/13/2023	Draft and file date certain waiver 1441 Kingshighway	0.30 200.00/hr	60.00
11/16/2023	Receive & review Board order 1441 Kingshighway	0.10 200.00/hr	20.00
12/26/2023	E-mail Jarvis re administrative record 1441 Kingshighway	0.10 200.00/hr	20.00
1/3/2024	E-mail legal opinions regarding appeal to client; receive response and reply 1441 Kingshighway	0.90 260.00/hr	234.00
1/8/2024	E-mails w/ Hrg Officer and IEPA regarding status; receive & review Hrg Officer order 1441 Kingshighway	0.20 260.00/hr	52.00
1/31/2024	Receive and review appearance filed by Rich Kim 1441 Kingshighway	0.20 260.00/hr	52.00
2/7/2024	E-mail to Hrg Officer and IEPA about hearing date; e-mail client 1441 Kingshighway	0.30 260.00/hr	78.00
2/8/2024	Conference call w/ Hrg Officer & IEPA; receive & reveiw Hrg Officer order 1441 Kingshighway	0.30 260.00/hr	78.00
2/9/2024	Review record 1441 Kingshighway	1.00 260.00/hr	260.00
2/12/2024	Review record 1441 Kingshighway	1.10 260.00/hr	286.00
2/21/2024	Review record and draft chronology 1441 Kingshighway	1.00 260.00/hr	260.00
2/27/2024	E-mail client re hearing and record 1441 Kingshighway	0.30 260.00/hr	78.00
2/28/2024	E-mails with client re hearing issues 1441 Kingshighway	0.30 260.00/hr	78.00

		<u>Hrs/Rate</u>	<u>Amount</u>
3/1/2024	E-mail w/ client 1441 Kingshighway	0.10 260.00/hr	NO CHARGE
3/18/2024	Review Hrg Officer order granting motion to supplement; review motion to supplement on-line 1441 Kingshighway	0.30 260.00/hr	78.00
3/20/2024	E-mail client regarding motion to supplement, start drafting motion 1441 Kingshighway	1.10 260.00/hr	286.00
3/21/2024	Receive client response to e-mail 1441 Kingshighway	0.10 260.00/hr	26.00
3/22/2024	Draft and file motion to reconsider 1441 Kingshighway	3.20 260.00/hr	832.00
3/25/2024	Receive & review e-mails from client; review record for drafting brief 1441 Kingshighway	1.40 260.00/hr	364.00
3/26/2024	Draft post-hrg brief from record; e-mail consultant re hearing 1441 Kingshighway	2.70 260.00/hr	702.00
3/27/2024	Draft post-hrg brief 1441 Kingshighway	2.50 260.00/hr	650.00
3/28/2024	Draft post-hearing brief; e-mail consultant re hrg 1441 Kingshighway	2.50 260.00/hr	650.00
3/29/2024	Draft post-hearing brief 1441 Kingshighway	4.10 260.00/hr	1,066.00
4/1/2024	Research reg history; draft brief 1441 Kingshighway	2.20 260.00/hr	572.00
4/2/2024	Revise brief; e-mail client 1441 Kingshighway	1.50 260.00/hr	390.00
4/5/2024	Meeting w/ consultant 1441 Kingshighway	2.20 260.00/hr	572.00
4/8/2024	Receive & review Hrg Officer order denying motion for reconsideration 1441 Kingshighway	0.20 260.00/hr	52.00
4/9/2024	Preparation for hearing; outline testimony questions; e-mail client re Hrg Officer ruling and tomorrow's hrg 1441 Kingshighway	2.90 260.00/hr	754.00
4/10/2024	Meeting with consultant; Hearing at Board; receive & review Hrg Report 1441 Kingshighway	3.00 260.00/hr	780.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
4/12/2024 Draft and file certification of exhibits 1441 Kingshighway	0.20 260.00/hr	52.00
4/18/2024 E-mails regarding transcript status w/ attorneys; receive transcript and e-mail to client 1441 Kingshighway	0.50 260.00/hr	130.00
4/25/2024 Draft post-hearing brief 1441 Kingshighway	1.10 260.00/hr	286.00
4/29/2024 Draft post-hrg brief, incorporating transcript 1441 Kingshighway	2.00 260.00/hr	520.00
4/30/2024 Revise brief; e-mail client 1441 Kingshighway	2.90 260.00/hr	754.00
5/1/2024 Revise and file brief; e-mail to client 1441 Kingshighway	2.90 260.00/hr	754.00
5/15/2024 E-mail response brief to client 1441 Kingshighway	0.10 260.00/hr	26.00
5/16/2024 Review Response brief; e-mails w/ client 1441 Kingshighway	2.00 260.00/hr	520.00
5/17/2024 Draft reply brief; research regulations & manifold tanks; e-mails w/ client 1441 Kingshighway	6.40 260.00/hr	1,664.00
5/18/2024 Draft reply brief 1441 Kingshighway	1.80 260.00/hr	468.00
5/20/2024 Draft and file reply brief 1441 Kingshighway	4.00 260.00/hr	1,040.00
6/21/2024 Receive & review Board interim opinion; e-mail client 1441 Kingshighway	0.50 260.00/hr	130.00
6/28/2024 Draft and file motion for atty fees and affidavit 1441 Kingshighway	2.00 260.00/hr	520.00
For professional services rendered	<u>79.80</u>	<u>\$19,654.00</u>
Additional Charges :		
11/3/2023 Pollution Control Board filing fee Filing Fee		75.00
Total additional charges		<u>\$75.00</u>