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APR 19 2005

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS AYERS OIL CO.,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

Nos. PCB 03-70  
PCB 03-214  
PCB 05-048  
(UST Appeals)

**NOTICE OF FILING AND PROOF OF SERVICE**

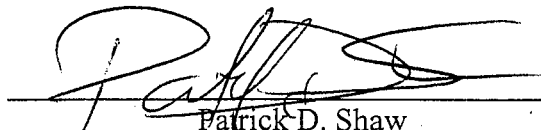
TO: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
State of Illinois Building, Suite 11-500  
Chicago, IL 60601

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Avenue East  
P.O. Box 19274  
Springfield, IL 62794-9274

John Kim  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE BE ADVISED THAT we are today filing with the Pollution Control Board by U.S. mail the original and nine copies of Petition For Supplemental Attorneys' Fees, a copy of which is attached hereto.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys at their business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Springfield, Illinois on the 18<sup>th</sup> day of April, 2005.



Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701  
Tel: (217) 528-2517  
Fax: (217) 528-2553

C:\Mapa\CSD Environmental\Notice of Filing 041805.wpd\crk 4/18/05 4:26 pm

THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

APR 19 2005

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS AYERS OIL CO.,	)	
	)	
Petitioner,	)	
	)	
v.	)	Nos. PCB 03-70
	)	PCB 03-214
ILLINOIS ENVIRONMENTAL	)	PCB 05-048
PROTECTION AGENCY,	)	(UST Appeals)
	)	
Respondent.	)	

**PETITION FOR SUPPLEMENTAL ATTORNEYS' FEES**

Now comes ILLINOIS AYERS OIL COMPANY (hereinafter "Illinois Ayers"), by its undersigned attorneys, pursuant to Section 57.8(l) of the Environmental Protection Act (415 ILCS 5/57.8(l)), and petitions the Board for attorney's fees, stating as follows:

1. On November 18, 2002, Illinois Ayers appealed the Agency's rejection of a High Priority Corrective Action Plan for a gasoline service station located in Beardstown, Cass County, Illinois. After the appeal was docketed as PCB No. 03-70 (Illinois Ayers I), Ayers and the Agency met to discuss issues raised in the Agency's rejection letter. (See Illinois Ayers v. IEPA, PCB 03-214, at p. 2 (April 1, 2004)) Pursuant to these discussions, Illinois Ayers filed a revised High Priority Corrective Action Plan with the Agency and stayed the appeal. As of today's date, this appeal remains pending awaiting payment for attorney fees stemming from PCB 03-214 (See Illinois Ayers I, PCB 03-70 (November 17, 2004)).

2. On May 7, 2003, Illinois Ayers petitioned the Board to review the Agency's rejection of the aforementioned revised High Priority Corrective Action Plan. The appeal was docketed as PCB 03-214 (Illinois Ayers II), and in its final order the Board directed the Agency to restore \$29,603.19 in costs to the Petitioner's High Priority Corrective Action Plan budget.

3. Also in Illinois Ayers II, the Board entered a supplemental order, directing the Agency to pay Illinois Ayers \$44,456.49 in legal costs, pursuant to Section 57.8(1) of the Environmental Protection Act (415 ILCS 5/57.8(1)). This order was entered after a lengthy and drawn-out series of motions filed by the Agency, which wrongfully accused Illinois Ayers of misstatements and also sought to introduce irrelevant testimony to further confuse the issues and delay the resolution. The Board's attorney fee order, entered August 5, 2004, was never appealed, nor has the Agency complied with it.

4. Illinois Ayers completed the work called for in the revised High Priority Corrective Action Plan approved by the Board. The Agency rejected the application for payment for the work for reasons that were required to be raised in Illinois Ayers II, but were not. An appeal from this decision was filed in PCB 05-048 (Illinois Ayers III) which has been dismissed.

5. By all appearances, the Agency is deliberately and systematically disregarding the Board's orders in Illinois Ayers II by refusing to reimburse attorney fees.

6. The Board is authorized to award legal fees under Section 57.8(1) of the Act (415 ILCS 5/57.8(1)). Specifically, Section 57.8(1) authorizes the Board to pay legal fees in the event the owner/operator prevails before the Board. A statutory award of reasonable litigation expenses includes all expenses incurred throughout the action, including those incurred seeking attorney's fees. Citizen's Organizing Project v. IDNR, 189 Ill.2d 593, 599 (2000).

7. Previously in support of its petition for attorney fees, Illinois Ayers submitted an affidavit and billing statements for legal expenses prior to April 30, 2004. Those attorney fees included legal expenses incurred preparing the motion for attorney fees, but did not include the

subsequent legal expenses incurred responding and replying to the Agency's opposition to the attorney fee petition. Nor did they include attorney fees expended in attempting to seek IEPA compliance with the Board's August 5, 2004, order. Attached hereto is the Affidavit of Fred C. Prillaman, substantiating the legal costs incurred from May 1, 2004 to the present day. These legal costs include not only responding to the Agency's opposition to attorney fees, but seeking to compel the Agency to comply with the Board's orders and preparing the subject motion.

8. The underground storage tank program is dependent upon private enterprise cleaning up pollution in an economical and environmental fashion. The Agency's actions with respect to this site have caused needless delay and expense in furtherance of a cause that was ultimately determined to be detrimental to the environment. For the reasons set forth herein, as well as those justifying the initial attorney fee award, the Board should exercise its discretion to order a supplement award.

WHEREFORE, Illinois Ayers prays for an order as follows:

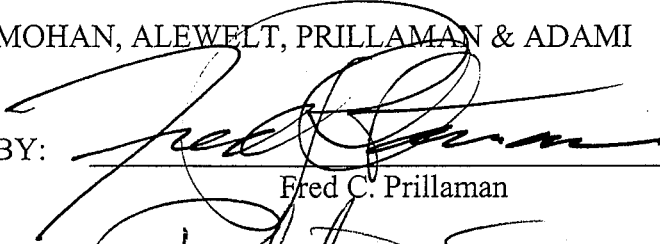
- A. The Agency is hereby ordered to submit a voucher for Illinois Ayers in the amount of \$44,456.49 for legal costs awarded in Illinois Ayers II within thirty (30) days of this order;
- B. In addition, the Agency shall submit a voucher for \$14,732.32 as additional legal expenses incurred by Illinois Ayers in seeking payment under the LUST program, also within thirty (30) days of this order; and
- C. Any voucher, whether original or supplemental, which is not submitted timely shall incur interest at the rate of 5% per annum, from the date due until the date submitted.

Respectfully submitted,

ILLINOIS AYERS OIL CO., Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:

  
Fred C. Prillaman

BY:

  
Patrick D. Shaw

MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701  
Phone: (217) 528-2517  
Fax: (217) 528-2553

STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF SANGAMON )

**AFFIDAVIT OF FRED C. PRILLAMAN  
VERIFYING ATTORNEY FEES**

AFFIANT, Fred C. Prillaman, 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 Illinois Ayers Oil Company in the case entitled Illinois Ayers Oil Company v. Illinois Environmental Protection Agency, PCB 03-70 (hereinafter "Illinois Ayers I"), Illinois Ayers Oil Company v. Illinois Environmental Protection Agency, PCB 03-214 (hereinafter "Illinois Ayers II"), and Illinois Ayers Oil Company v. Illinois Environmental Protection Agency, PCB 05-048 (hereinafter "Illinois Ayers III").

3.       I previously submitted an Affidavit in support of Motion for Authorization of Payment of Attorneys' Fees as Costs of Corrective Action in Illinois Ayers II (filed May 3, 2004), which detailed legal expenses incurred in Illinois Ayers II from May 2003 to April 30, 2004. Since April 30, 2004, the legal defense costs incurred in Ayers I, Ayers II, and Ayers III through the filing of the instant petition have been \$14,732.32, including \$13,571.50 in attorney fees and \$1,160.82 in associated legal costs.

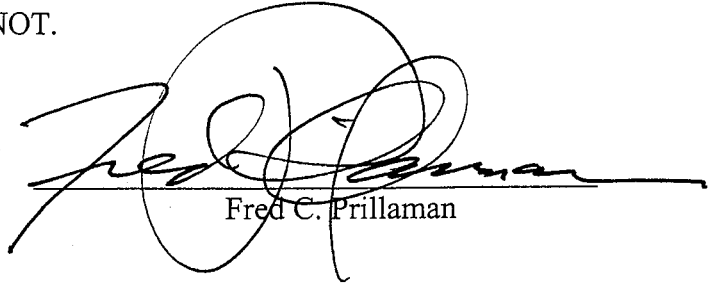
4.       Attached hereto as Exhibit A is an accurate summary of the legal work done, and legal fees incurred, with respect to this matter. This summary has been taken from the actual invoices and thus reflects actual work performed and fees incurred. The

summary reveals the date that work was performed, the description of the work performed, the amount time spent, and the total fees incurred. The hourly rates charged are commensurate with the prevailing rates for environmental legal services in Springfield Illinois for the years represented and are the rates charged to all clients of the respective attorneys. Work unrelated to the Ayers I, Ayers II, and Ayers III cases has been redacted since no reimbursement is sought for those legal activities. Also, no fees or expenses for Ayers III are included after January 6, 2005, the date on which that case was dismissed.

5. Also attached are the following exhibits in support of the Petition for Supplemental Attorneys' Fees:

- (a) Exhibit B, being your Affiant's letter of August 30, 2004, requesting the Agency to comply with the Board's orders;
- (b) Exhibit C, being your Affiant's letter of January 7, 2005, confirming that the Agency was then placing Illinois Ayers' Board-ordered attorneys' fees award in the Queue;
- (c) Exhibit D, being your Affiant's letter of February 18, 2005, again requesting that the Agency comply with the Board's orders; and
- (d) Exhibit E, being the Agency's most recent "Queue" list (April 12, 2005) showing 91 applications for reimbursement for which vouchers are being written but nothing for Illinois Ayers, despite the Board's August 5, 2004 Order and despite Illinois Ayers' persistent collection efforts.

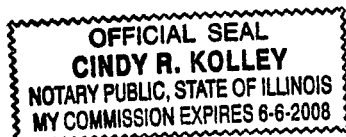
FURTHER AFFIANT SAYETH NOT.

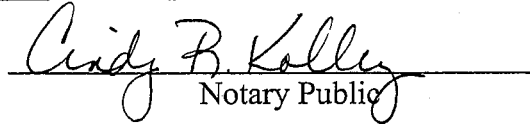
  
Fred C. Prillaman

STATE OF ILLINOIS     )  
                                      )     SS  
COUNTY OF SANGAMON )

Before me personally appeared Fred C. Prillaman and executed the above Affidavit, and after being duly sworn stated that the above information is true and correct according to the best of his information, knowledge and belief.

Subscribed and sworn to me this 18<sup>th</sup> day of April, 2005.



  
Cindy R. Kolley  
Notary Public

My Commission Expires:  
(seal)

C:\Mapa\CSD Environmental\Affidavit Fred Prillaman 041505.wpd\crk\4/18/05 4:08 pm

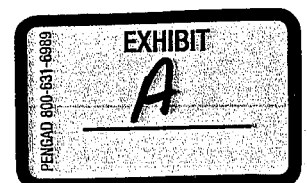
Mohan Alewelt Prillaman & Adami  
1 N. Old Capitol Plaza  
Suite 325  
Springfield, IL 62701

CSD Environmental Services  
2220 Yale Boulevard  
Springfield IL 62703

April 18, 2005

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
5/4/2004	Telephone Carol Sudman	0.10 195.00/hr	19.50
5/6/2004	Receive & review hearing officer order setting telephonic status conf	0.50 195.00/hr	97.50
5/7/2004	Telephone Cindy Davis	0.20 195.00/hr	39.00
5/18/2004	Receive & review motion for extension of time to respond from John Kim	0.10 195.00/hr	19.50
5/20/2004	Receive & review response to motion for attorneys' fees from John Kim	0.20 195.00/hr	39.00
	Draft reply; draft ltr to client	3.10 140.00/hr	434.00
5/21/2004	Draft reply re atty fee issues; draft legislative history	6.00 140.00/hr	840.00
5/24/2004	Memo to file re legal research/legal defense cost issues	0.30 195.00/hr	58.50
	Draft reply	3.90 140.00/hr	546.00



		<u>Hrs/Rate</u>	<u>Amount</u>
5/25/2004	Work on argument re legal defense costs	1.10 195.00/hr	214.50
	Draft reply	2.00 140.00/hr	280.00
5/26/2004	Revise reply	6.20 140.00/hr	868.00
5/27/2004	Revise reply	6.00 140.00/hr	840.00
5/28/2004	Revise and file reply; draft transmittal ltr to client	1.00 140.00/hr	140.00
6/3/2004	Receive & review surreply from John Kim; tel Cindy Davis	0.80 195.00/hr	156.00
	Review motion for leave to file surreply & surreply	0.40 140.00/hr	56.00
6/4/2004	Telephone Board; tel Davis	0.50 140.00/hr	70.00
6/7/2004	Draft opposition to motion for surrebuttal	3.70 140.00/hr	518.00
6/8/2004	Revise response	4.00 140.00/hr	560.00
6/9/2004	Draft ltr transmitting response and Agency motion to client	0.10 140.00/hr	14.00
	Prepare for and participate in status conf call w/John Kim and Carol Sudman	0.40 195.00/hr	78.00
7/1/2004	Telephone conference Carol Sudman (PCB) re: pending appeals	0.30 195.00/hr	58.50
7/6/2004	Telephone John Kim; receive and review faxed motion for leave to file amendment to response and amendment to response from John Kim; receive and review copy of e-mail from John Kim to Carol Sudman transmitting same	1.20 195.00/hr	234.00
	Receive & review motion for leave to amendment to response; fax copy to Cindy Davis	0.30 140.00/hr	42.00

		<u>Hrs/Rate</u>	<u>Amount</u>
7/7/2004	Receive & review motion for leave to file amendment and amendment to response from John Kim; tel Carol Sudman	0.20 195.00/hr	39.00
	Draft ltr to client transmitting same	0.50 140.00/hr	70.00
7/8/2004	Telephone conf. w/ Cindy Davis	0.50 140.00/hr	70.00
7/14/2004	Research payment of legal fees issue	2.50 140.00/hr	350.00
7/15/2004	Draft response to motion for leave to amend	3.60 140.00/hr	504.00
7/16/2004	Draft response to motion for leave to amend	6.00 140.00/hr	840.00
7/19/2004	Draft ltr transmitting filing to client	0.30 140.00/hr	42.00
8/3/2004	Telephone Carol Sudman and John Kim	0.50 195.00/hr	97.50
8/11/2004	Receive & review Board order granting motion for attys fees; fax same to Cindy Davis/Joe Truesdale	0.30 195.00/hr	58.50
	Receive & review Board's opinion	0.50 140.00/hr	70.00
8/24/2004	Legal Research at Pollution Control Board re Anest/Abraham case/deductibles	0.30 195.00/hr	58.50
8/27/2004	Telephone Sherry	0.10 195.00/hr	19.50
8/30/2004	Receive & review Agency approval letter and reimbursement request for corrective action activities re Illinois Ayers from Sherry Cockrum; fax letter to John Kim re cuts in budget/demand to reinstatement; fax same to Cindy Davis	1.50 195.00/hr	292.50
8/31/2004	Telephone John Kim (2x); fax letter to John Kim re extension of time to appeal in Ayers III	1.00 195.00/hr	195.00
9/1/2004	Telephone Carol Sudman, John Kim	0.70 195.00/hr	136.50

		<u>Hrs/Rate</u>	<u>Amount</u>
9/2/2004	Telephone John Therriault (Pollution Control Board) re: Ayers	0.20 195.00/hr	NO CHARGE
9/3/2004	Receive & review request for extension from John Kim re Ayers III	0.20 195.00/hr	39.00
9/7/2004	Letter to John Kim re status of submittals	1.00 195.00/hr	195.00
9/9/2004	Telephone Cindy Davis	0.30 195.00/hr	58.50
9/14/2004	Receive & review copy of e-mail from Cindy Davis to Doug Clay (IEPA) re procedure to seek reimbursement for attorneys' fees from IEPA	0.40 195.00/hr	78.00
9/15/2004	Work on letter to John Kim re status of payments	1.00 195.00/hr	195.00
9/16/2004	Receive & review motion for reconsideration	0.50 140.00/hr	70.00
	Prepare for and participate in conf call w/John Kim & Carol Sudman; receive and review Agency motion for reconsideration from John Kim; fax letter to Cindy Davis transmitting same	1.00 195.00/hr	195.00
9/20/2004	Draft reponse in opp. to motion for recon.	3.60 140.00/hr	504.00
	Receive & review Board order granting extension in Ayers III	0.10 195.00/hr	19.50
9/21/2004	Revise and file response; draft ltr transmitting same to client	0.60 140.00/hr	84.00
9/27/2004	Fax letter to Joe Truesdale	0.30 195.00/hr	58.50
10/14/2004	Receive & review e-mail from Cindy Davis re Board's denial of Agency's motion for reconsideration/attorney fee issues; receive and review Board Order	0.50 195.00/hr	97.50
11/17/2004	Prepare for and participate in conf call w/John Kim and Carol (Sudman) Webb re status of pending cases	0.40 195.00/hr	78.00
11/24/2004	Telephone John Kim re: compliance w/Order (Ayers II); avoidance of filing new appeal	0.20 195.00/hr	39.00

		<u>Hrs/Rate</u>	<u>Amount</u>
12/1/2004	Finalize and file petition for review in Ayers III	0.50 195.00/hr	97.50
12/17/2004	Tel Cindy Davis; Discuss sanction motion w/PDS	0.40 195.00/hr	78.00
12/20/2004	Memo to PDS re available remedies arising from Agency's refusal to obey Board orders	1.00 195.00/hr	195.00
12/21/2004	Research and draft motion for sanctions & atty fees for Agency's refusal to comply w/Ayers II; draft affidavit of Prillaman	4.50 140.00/hr	630.00
12/22/2004	Draft petition for sanctions and suppl. atty fees and affidavit	2.50 140.00/hr	350.00
12/29/2004	Work on motion for sanctions	1.10 195.00/hr	214.50
1/4/2005	Telephone Cindy Davis re receipts of all but \$901 in Ayers III	0.20 195.00/hr	39.00
1/5/2005	Receive & review faxed list of LUST vouchers from Sheri (no voucher for atty fees)	0.20 195.00/hr	39.00
1/6/2005	Receive & review e-mail from Cindy Davis re Ayers III/Board decision and respond to same	0.20 195.00/hr	NO CHARGE
	Status conf (3 cases) w/Carol Webb and John Kim	0.30 200.00/hr	60.00
1/7/2005	Letter to John Kim confirming details regarding issuance of check for attorneys fees	0.50 195.00/hr	97.50
1/13/2005	Memo to PDS re Ayers III/timely filing issues; tel Cindy Davis	0.40 195.00/hr	NO CHARGE
1/20/2005	Receive & review current FMU list from Sheri; tel John Kim (2x)	1.00 195.00/hr	195.00
1/26/2005	Telephone Cindy Davis	0.30 195.00/hr	NO CHARGE
2/8/2005	Prepare for and participate in status conf call w/Carol Webb and John Kim	0.50 200.00/hr	100.00
2/9/2005	Receive & review e-mail from Cindy Davis re Ayers reimbursement; legal research re procedural issues	0.40 200.00/hr	80.00

		<u>Hrs/Rate</u>	<u>Amount</u>
2/10/2005	Receive & review hearing officer orders re pending cases/status hearing; letter to Cindy Davis re same	0.40 200.00/hr	80.00
2/16/2005	Work on letter to John Kim re IEPA's failure to comply w/Board Orders	1.00 200.00/hr	200.00
2/17/2005	Work on letter to John Kim	0.40 200.00/hr	80.00
2/18/2005	Complete and fax letter to John Kim	0.30 200.00/hr	60.00
2/21/2005	Fax letter to John Kim	0.10 200.00/hr	20.00
4/15/2005	Revise Motion for Supplemental Attorney Fees and Affidavit	1.20 150.00/hr	180.00
For professional services rendered		88.60	\$13,571.50

## Additional Charges :

		<u>Qty/Price</u>	
5/6/2004	Photocopying	96 0.20	19.20
	Postage	1 4.33	4.33
5/28/2004	Photocopying	182 0.20	36.40
5/31/2004	Lexis charges	1 217.48	217.48
6/8/2004	Photocopying	48 0.20	9.60
	Postage	1 2.49	2.49
6/10/2004	FAX to FCP from John Kim	6 0.20	1.20
6/30/2004	Lexis charges	1 46.80	46.80

		<u>Qty/Price</u>	<u>Amount</u>
6/30/2004	Federal Express charges to Clerk, Illinois Pollution Board on 6/1/04	1 18.29	18.29
7/6/2004	FAX to FCP from John Kim	9 0.20	1.80
7/16/2004	Postage	1 3.41	3.41
	Photocopying	60 0.20	12.00
7/23/2004	Postage	1 6.41	6.41
	Photocopying	192 0.20	38.40
7/30/2004	Lexis charges for July '04	1 215.66	215.66
8/31/2004	Lexis charges for August '04	1 2.35	2.35
9/16/2004	Photocopying	12 0.20	2.40
9/21/2004	Photocopying	48 0.20	9.60
9/24/2004	Postage	1 2.26	2.26
	Photocopying	78 0.20	15.60
9/29/2004	Postage	1 3.87	3.87
	Photocopying	134 0.20	26.80
	FAX to SEW from Cindy Davis	3 0.20	0.60
10/13/2004	Photocopying	17 0.20	3.40

		<u>Qty/Price</u>	<u>Amount</u>
10/14/2004	FAX to SW from Sheri	2 0.20	0.40
10/30/2004	Lexis charges for October '04	1 8.08	8.08
11/17/2004	FAX to FCP from Sherri	7 0.20	1.40
12/1/2004	Check #22481 to Illinois Pollution Control Board for filing fee	1 75.00	75.00
	Photocopying	84 0.20	16.80
	Federal Express charges for December 2004 to D. Gunn @ Ill. Pollution Control BDA	1 17.14	17.14
12/17/2004	Postage for December 2004	1 3.18	3.18
	Photocopying for December 2004	104 0.20	20.80
12/30/2004	Lexis charges for December 2004	1 144.86	144.86
12/31/2004	Telephone charges for December '04	1 0.15	0.15
1/31/2005	FAX charges for January 2005	7 0.20	1.40
	Lexis charges for January 2005	1 56.86	56.86
2/28/2005	Photocopying for February 2005	572 0.20	114.40
Total costs			<u>\$1,160.82</u>
Total:			\$14,732.32

MOHAN, ALEWELT, PRILLAMAN & ADAMI

LAWYERS

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\*ALSO ADMITTED IN MISSOURI

JAMES T. MOHAN

EDWARD J. ALEWELT

OF COUNSEL

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FAX (217) 528-2553

E-MAIL mapa@family-net.net

August 30, 2004

- VIA FACSIMILE -

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

Re: Illinois Ayers Oil Co. v. IEPA, PCB 03-214

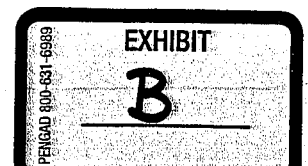
LPC #0170155047  
Beardstown/Illinois Ayers Company (Ayerco #7)  
310 State Street  
LUST Incident No. 20002020

Dear John:

In the ordering portion of the Board's April 1, 2004, Opinion and Order, the Board ordered the Agency to restore certain cuts to the budget. Nothing further was required to be filed by Illinois Ayers Oil Co. or by CSD Environmental (unlike the other cases we settled involving budgets, in which we agreed to file, and did file, amended budgets, reflecting our settlement).

The problem that has arisen now with this case is that the work has been done and a request for reimbursement has been submitted, in accordance with the approved budget (as modified by the Board-ordered restoration of cuts). Doug Oakley, though, is advising the Agency's project manager, Nancy Moore, not to pay anything more than what was approved by the Agency in its March 28, 2003 budget modification letter. Apparently, Oakley is completely ignoring the Board's order. Shades of Grigoleit.

John, I don't want to have to have to appeal this decision to the Board, but I will if the Agency doesn't restore the \$13,028.34 cut from its July 28, 2004 reimbursement approval letter. If I am not advised in writing by noon on Tuesday,

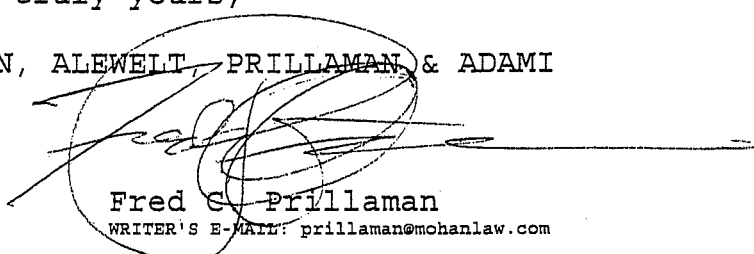


August 31, 2004, that these \$13,028.34 in cuts have been restored and approved for payment, I will appeal to the Board advising the Board that the Agency has refused to honor the Board's order, and will again demand that the Agency pay attorneys' fees for having to appeal something that has already been decided.

Very truly yours,

MOHAN, ALEWELT, ~~PRILLAMAN~~ & ADAMI

By

  
Fred C. Prillaman

WRITER'S E-MAIL: prillaman@mohanlaw.com

FCP/sew  
Enclosure

C:\MAPA\CDAVIS\Illinois Ayers Oil\Kim 08 30 04.wpd sew

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PATRICK D. SHAW

JOEL A. BENOIT\*

CHRISTOPHER D. OSWALD

\*ALSO ADMITTED IN MISSOURI

JAMES T. MOHAN

EDWARD J. ALEWELT

OF COUNSEL

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January 7, 2005

- VIA FACSIMILE AND MAIL -

John J. Kim  
Assistant Counsel  
Special Assistant Attorney General  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

Re: Illinois Ayers Oil Co. v. IEPA, PCB 03-214

Dear John:

Confirming our telephone conference of yesterday (January 6, 2005), Doug Oakley is in the process now of placing in the queue (sometimes referred to as the "FMU List") the \$44,456.49 ordered by the Board to be paid by the Agency to Illinois Ayers Oil, per the Board's order in this case entered on August 5, 2004.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By

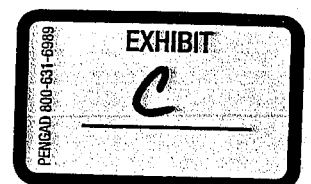
Fred C. Prillaman

WRITER'S E-MAIL: prillaman@mohanlaw.com

FCP/sew

cc: Doug Oakley

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February 18, 2005  
VIA FAX AND U.S. MAIL

John J. Kim, Assistant Counsel  
Special Assistant Attorney General  
Illinois EPA  
Division of Legal Counsel  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, IL 62794-9276

RE: Illinois Ayers Oil Co. Cases

Dear John:

In the event that you have not yet seen the letter sent by the Agency to Illinois Ayers Oil (copy to CSD Environmental) on February 3, 2005, I am enclosing a copy for your review (Exhibit A). In it, Bill Richards, who is the person you told me was responsible for preparing the Queue lists, states that my letter to you (copy to Doug Oakley) of January 7, 2005, confirming our telephone conference concerning payment of the \$44,456.49 judgment, is a "complete application for payment" which the Agency received for the first time on January 10, 2005. Consequently, Richards is using the January 10, 2005 date (rather than the August 5, 2004, date, which is when the Board rendered its decision on the attorney's fee issue, and sent it to the Agency) as the date for determining when the approved claim will be submitted to the Comptroller's Office for payment. This is just plain wrong. The operative date should have been August 5, 2004, not 5 months later. Even if you believe the "final resolution of the appeal" was not until sometime after August 5, the Agency still had only 60 days to forward to the Office of the State Comptroller a voucher in the amount of \$44,456.49. See 35 Illinois Administrative Code §732.603. This most recent Agency letter is one of the reasons we decided to ask the Board to reconsider its "jurisdictional" decision in 05-048. You should know, too, that even after you and the LUST Claims Unit said that this voucher would be so forwarded, it has not happened. See Exhibit B, which shows 119 vouchers forwarded recently, almost all of which involved applications received and/or final resolutions reached after the Board's August 5 order in this case.

Also, to the extent that you are not already aware of it, after we filed the permit appeal in 05-048 (but before the Board rendered its "jurisdictional" decision), the Agency sent a check to



John J. Kim  
February 18, 2005  
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Agency cover letter accompanying the check so the client had to do the math to identify the difference). The Board did not decrease handling charges in its April 1, 2004 decision in 03-214. The Agency's refusal to pay handling charges was another reason we chose to ask for reconsideration in 05-048.

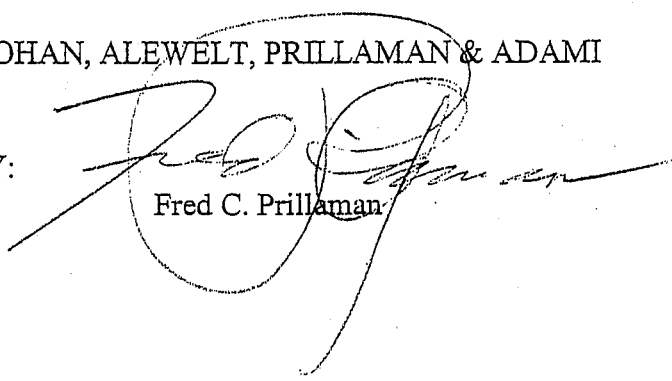
These and related issues need to be addressed immediately. We must reach an agreement within the next 10 days that would prevent future litigation, including a claim for additional attorney's fees necessary to enforce Board orders, and that would allow all pending litigation to be dismissed. Please telephone me by Tuesday, February 22, to arrange for such a conference.

Thank you.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY:



Fred C. Prillaman

Enclosures

FCP/llm

C:\Mapa\CSD Environmental\Illinois Ayers Oil\Kim ltr 2 16 05.wpd\llm\2/18/05

# CSD- FKI

## Vouchers To Financial Management Unit

by Site Name

	Application Accepted	Status Code	Class. Code	Site Name	Incident Number	Amount to be Paid
1.	9/1/2004	FMU	HP	BAUGHER IMPLEMENT CO	981572-43504	\$2,232.27
2.	9/28/2004	FMU	SC	BECK OIL CO	20021184-43842	\$34,340.00
3.	11/29/2004	FMU	HP	BELVIDERE OASIS NORTH	941815-44282	\$1,560.00
4.	10/5/2004	FMU	HP	BIGFOOT #176	20000231-43787	\$5,106.95
5.	10/5/2004	FMU	HP	BIGFOOT #177	20011893-43788	\$60,642.24
6.	8/30/2004	FMU	HP	BOILER MASONRY INCINERATOR	991116-43454	\$7,200.00
7.	11/5/2004	FMU		BOWENS AMOCO	900345-44318	\$634.86
8.	5/1/2004	FMU	HP	BRIGHTON AMOCO SERVICE	941839-43507	\$216,385.46
9.	10/25/2004	FMU		BUTLER AVIATION - MEIGS FIELD	932328-44244	\$31,966.48
10.	9/29/2004	FMU	SI	CANTON CITGO	930883-43740	\$33,675.63
11.	5/20/2004	FMU	HP	CARL & NICHOL SHELL	952403-43866	\$17,786.97
12.	9/8/2004	FMU	HP	CERMAK'S AUTO REPAIR	900811-43591	\$30,548.14
13.	7/9/2004	FMU		CHECKER STORE NO. 7547	912950-43016	\$13,512.71
14.	6/9/2004	FMU		CHEER STATION #7001	900891-43074	\$44,964.38
15.	9/17/2004	FMU	HP	CHRIEST GARAGE	932235-43833	\$55,288.14
16.	11/16/2004	FMU	SI	CLARK #5596	20030004-43822	\$43,315.06
17.	7/8/2004	FMU		CLARK OIL STORE #1268	930524-42988	\$85,827.19
18.	9/22/2004	FMU		CLARK OIL STORE #334	931986-41001	\$2,216.85
19.	10/6/2004	FMU	HP	CORNER EXPRESS	982183-43774	\$4,305.00
20.	11/19/2004	FMU	SC	DAVE'S GARAGE	20000722-43838	\$6,729.10
21.	12/10/2004	FMU	HP	DES PLAINES OASIS	941812-43845	\$113,417.10
22.	9/20/2004	FMU	HP	DICKEY'S SERVICE	20010275-43669	\$2,355.00
23.	9/29/2004	FMU	HP	DIX CAR & TRUCK STOP	982486-43326	\$7,428.55
24.	9/27/2004	FMU	SC	ELKVILLE SCHOOL	923159-1401	\$17,058.70
25.	10/12/2004	FMU	HP	EVERGREEN SCAVENGER	990724-43825	\$86,567.05
26.	9/21/2004	FMU	SC	GARY'S SERVICE	980276-43677	\$12,274.00
27.	11/16/2004	FMU	HP	GEORGE VITOVEC	20021048-43609	\$17,022.50
28.	9/23/2004	FMU	HP	GLEN DRAKE	20000038-43698	\$2,894.30
29.	9/20/2004	FMU	SC	HAN-DEE MART #27	981031-43639	\$1,295.40
30.	7/19/2004	FMU		HANNEL OIL COMPANY	930437-43087	\$12,884.76
31.	7/19/2004	FMU		HANNEL OIL COMPANY	930437-43085	\$18,007.12
32.	7/19/2004	FMU		HANNEL OIL COMPANY	930437-43086	\$15,251.00
33.	9/17/2004	FMU	HP	HARDIN PACKAGE	20000861-43637	\$25,890.22
34.	9/18/2004	FMU	HP	HARDIN PACKAGE	20000861-43636	\$30,657.33
35.	8/6/2004	FMU		HARPER OIL CO.	880825-43275	\$5,784.75

Tuesday, April 12, 2005

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EXHIBIT

E

PENGAD 800-631-6889

	<i>Application Accepted</i>	<i>Status Code</i>	<i>Class. Code</i>	<i>Site Name</i>	<i>Incident Number</i>	<i>Amount to be Paid</i>
36.	9/17/2004	FMU	HP	HAWTHORNE RACE COURSE	990171-43684	\$5,717.40
37.	9/29/2004	FMU	HP	HELMUT VITO SER INC	983104-43835	\$18,210.00
38.	8/13/2004	FMU	LP	HSK PARTNERS	982005-43387	\$15,055.30
39.	9/29/2004	FMU	HP	J & L OIL INC	941031-43745	\$17,804.90
40.	10/4/2004	FMU	HP	JIM'S MOBIL	982664-43799	\$382,102.60
41.	8/10/2004	FMU		JIM'S SHELL & MARINE	911259-44043	\$5,891.01
42.	9/21/2004	FMU	HP	JOHN M ZIEL	20000267-43857	\$10,603.90
43.	9/24/2004	FMU	HP	Jo-Ve Asphalt Inc.	941222-43713	\$38,389.68
44.	9/1/2004	FMU	HP	KELLY JOHNSON	20001580-43617	\$58,036.39
45.	8/2/2004	FMU		KERR MCGEE #121-7800	881209-43243	\$20,786.64
46.	8/2/2004	FMU		KERR MCGEE #7740	890305-43248	\$12,983.66
47.	8/8/2004	FMU		KILLION'S 66	923486-42779	\$5,170.08
48.	6/8/2004	FMU		KILLION'S 66	923486-42778	\$43,888.42
49.	8/18/2004	FMU		LARRY'S SUNOCO	912050-42860	\$21,980.93
50.	11/19/2004	FMU		LEE'S FOOD MART	890463-41951	\$8,897.21
51.	11/29/2004	FMU		LEONARD HENSON	902598-44239	\$854.00
52.	11/18/2004	FMU	HP	LINKER OIL CO	20000417-44045	\$13,714.70
53.	9/21/2004	FMU	SI	LOWE OIL CO	20020882-43675	\$27,272.73
54.	7/14/2004	FMU		MARATHON UNIT #1718	913478-43113	\$9,347.34
55.	8/10/2004	FMU		MARATHON UNIT 2353	912044-43398	\$1,641.70
56.	8/31/2004	FMU	HP	MUNSTERMAN SHELL STATION	942087-43518	\$29,065.73
57.	11/30/2004	FMU	HP	MUNSTERMAN SHELL STATION	942087-44341	\$1,782.00
58.	9/13/2004	FMU	HP	O'GUINN'S SERVICE	991616-43601	\$20,058.74
59.	11/10/2004	FMU	HP	PAW PAW SUNOCO	942249-44242	\$70.00
60.	9/28/2004	FMU	HP	PIONEER OIL CO	991633-43724	\$1,009.18
61.	9/28/2004	FMU	SI	Princeton, City of	903398-43715	\$6,708.06
62.	9/28/2004	FMU	SI	Princeton, City of	903398-43715	\$5,115.16
63.	8/22/2004	FMU	HP	PUMP N PANTRY	940168-43686	\$1,868.75
64.	8/30/2004	FMU		REEVES BROTHERS	922378-42961	\$58,272.15
65.	9/1/2004	FMU	HP	SCHAFER TEXACO	20001644-43970	\$7,643.50
66.	7/22/2004	FMU		SCOTT'S U-SAVE	922589-43118	\$18,531.73
67.	9/17/2004	FMU	HP	SEACO, INC.	902091-44042	\$9,121.03
68.	7/2/2004	FMU		SHELL OIL COMPANY	891320-43085	\$5,101.00
69.	8/30/2004	FMU		SHELL SERVICE STATION	932108-43532	\$2,970.84
70.	9/22/2004	FMU	HP	SHELL SERVICE STATION	20001614-43688	\$11,239.22
71.	9/22/2004	FMU	HP	SHELL STATION #1545-28	20002169-43688	\$12,989.15
72.	12/1/2004	FMU	HP	SIMPSON'S AUTO SERVICE	941010-44317	\$2,078.52
73.	7/29/2004	FMU		SPARTA AMOCO	923096-43193	\$12,418.75

Tuesday, April 12, 2005

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<i>Application Accepted</i>	<i>Status Code</i>	<i>Class. Code</i>	<i>Site Name</i>	<i>Incident Number</i>	<i>Amount to be Paid</i>
74. 9/24/2004	FMU	SC	SPEEDWAY STATION #5239	920831-33061	\$9,048.62
75. 8/10/2004	FMU		SPEEDWAY STATION #7216	920248-43313	\$1,554.04
76. 8/1/2004	FMU		STEINHEIMER PROPERTY	923370-42824	\$48,804.12
77. 9/13/2004	FMU	HP	SULLIVAN PLANT	970472-43802	\$8,880.00
78. 9/17/2004	FMU	HP	SUNRISE OIL CO	20000875-43865	\$3,708.60
79. 8/4/2004	FMU		THIELE GARAGE	920386-43253	\$2,921.25
80. 6/25/2004	FMU		THREE SQUARE FEEDS	900731-42912	\$44,318.32
81. 8/18/2004	FMU		TOM'S PUFF & STUFF	900824-42844	\$8,887.01
82. 9/7/2004	FMU	HP	TOWANDA MINI MART	20001913-43553	\$901.89
83. 8/26/2004	FMU	LP	TRAVEL HUT I	20000554-42825	\$16,547.31
84. 9/17/2004	FMU	HP	T-TOWN DRIVE THRU	982769-43844	\$15,559.63
85. 11/22/2004	FMU	HP	VANDALIA BUS GARAGE	941078-44245	\$14,281.53
86. 11/19/2004	FMU	HP	VANDALIA BUS GARAGE	941078-44245	\$5,321.88
87. 9/20/2004	FMU	HP	WABASH VALLEY OLNEY	991080-43540	\$2,595.15
88. 8/11/2004	FMU		WAUKEGAN GAS STOP, INC.	901232-42801	\$50,337.14
89. 8/23/2004	FMU	HP	WEBER REPAIR SHOP	950712-43736	\$240.00
90. 8/18/2004	FMU	HP	WILLIAM FEAR/ROBERT LOGAN	970608-43377	\$5,883.03
91. 9/20/2004	FMU	EA	Winfield Service	20040713-43557	\$31,898.04
			(91 Requests)	<b>Total Amount Paid:</b>	<b>\$2,206,496.69</b>
				<b>Average Payment:</b>	<b>\$24,247.22</b>