

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

JEET SINGH, d/b/a AMAN FOOD & GAS,)
Petitioner,)
v.) PCB 23-90
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

NOTICE OF FILING AND PROOF OF SERVICE

TO: Carol Webb, Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
P.O. Box 19274
Springfield, IL 62794-9274
(carol.webb@illinois.gov)

Melanie Jarvis
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
(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, 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 10th day of October, 2023. The number of pages in the e-mail transmission is 14 pages.

Respectfully submitted,

JEET SINGH, d/b/a AMAN FOOD & GAS
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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v.)	PCB 23-90
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PETITIONER’S MOTION FOR AUTHORIZATION OF PAYMENT OF ATTORNEY’S FEES AS COSTS OF CORRECTIVE ACTION

NOW COMES Petitioner, JEET SINGH, d/b/a AMAN FOOD & GAS, 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 September 21, 2023, the Board entered an interim order finding that Petitioner’s budget amendment would not violate any legal provisions cited in the denial letter and “therefore reverses IEPA’s decision and orders IEPA to approve the budget amendment as submitted.” Interim Opinion, at p. 14.

2. The Board further directed Petitioner “to file a statement of legal fees that may be eligible for reimbursement and its arguments why the Board should exercise its discretion to order reimbursement of legal 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 \$19,759.77, consisting of \$19,540.00 in attorney’s fees and \$219.77 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 has been his hourly rate since 2014 and 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 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, 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. 14. 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 issue pertaining to the proper interpretation and application of several Board's regulations governing the treatment of replacement pavement when used as an engineered barrier. The decision will further allow competitive bidding for engineered barriers in situations where the presumptive rates are not available in the market.

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,

JEET SINGH, d/b/a AMAN FOOD & GAS,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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80 Bellerive Road
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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 the case entitled Jeet Singh, d/b/a Aman Food & Gas v. IEPA, PCB 23-90.
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 2023, filing the Petition for Review that month. There were (and remain) two other appeals pending before the Board regarding this cleanup and other than reviewing those files on February 22, 2023 to evaluate whether they had

any relevance to this appeal, all of the work herein relates exclusively to this appeal. The Agency filed the record in April, which was over 800 pages and contained documents back to 2014, which implied that the Agency viewed the case as involving issues well past the decision letter appealed. I reviewed the record while making notes and creating a chronology of all of the submittals, reports and other documentation of the cleanup.

5. In early May of 2023, I met with the consultant to review the record and evaluate what testimony or documents might be presented at hearing later in the month. As I have done in preparation for other hearings that were not preceded by summary judgment motions, I began drafting the post-hearing brief the week 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 postponed to late June at which time it was decided not to present any evidence at the time, but preparations were made in the case a consultant would need to respond to the Agency's presentation at hearing on June 22, 2023.

6. Following the hearing, I researched the regulatory history regarding competitive bidding and pavement costs, which was incorporated into the revised post-hearing brief filed on July 13, 2023 and the reply brief filed on August 4, 2023. On September 22, 2023, the Board issued its opinion herein.

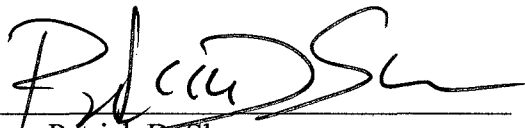
7. Exhibit A identifies the legal work performed and the attorney's fees incurred in this matter. It reveals the date the work was performed, the description of the work performed, the amount of time spent, and the total fees incurred. Filing fees, postage and photocopying charges are also identified when applicable.

7. The legal defense costs incurred in seeking payment for corrective action herein

total \$19,759.77, consisting of \$19,540.00 in attorney-time, and \$219.77 in costs (which consist of the filing fee and copying 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

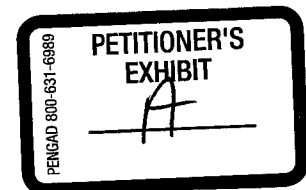
Law Office of Patrick D. Shaw
 80 Bellerive Road
 Springfield, IL 62704

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

October 10, 2023

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
2/1/2023 Receive and review budget amendments and IEPA responses; e-mail client re appeal Aman Three	1.70 200.00/hr	340.00
2/2/2023 Review on-line documents; draft petition for review Aman Three	2.50 200.00/hr	500.00
2/3/2023 Telephone consultant; review e-mail from consultant; revise and forward draft to client; file petition for review Aman Three	1.70 200.00/hr	340.00
2/8/2023 E-mail to client re petition for review Aman Food	0.10 200.00/hr	20.00
2/16/2023 Conference with client; receive & review Board order accepting appeal and Hrg Officer scheduling order Aman Three	.50 200.00/hr	100.00
2/17/2023 E-mail w/ Hrg Officer regarding hearing schedule; draft and file limited waiver of decision deadline Aman Three	0.20 200.00/hr	40.00



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	<u>Hrs/Rate</u>	<u>Amount</u>
2/22/2023 Review files on older appeals for potential use in new appeal Aman Three	0.60 200.00/hr	120.00
2/24/2023 Receive & review E-mail from consultant; tel consultant Aman Three	0.60 200.00/hr	120.00
3/8/2023 E-mail Jarvis re e-mail from Kuhlman and intent to request hearing date at status conference; receive response Aman Three	0.20 200.00/hr	40.00
3/20/2023 E-mail client status; request availability dates for hrg; tel Jarvis; tel status conf/ w/ Hrg Officer; receive e-mail from Illinois EPA regarding report; e-mail client re same Aman Three	1.80 200.00/hr	360.00
3/21/2023 Review inspection report and Agency submittals; e-mail client; receive response; e-mail hrg officer regarding hrg date Aman Three	1.20 200.00/hr	240.00
3/23/2023 Receive & review notice of hrg Aman Three	0.10 200.00/hr	NO CHARGE
4/13/2023 Receive & review record; start drafting chronology Aman Food	1.20 200.00/hr	240.00
4/14/2023 Review and draft chronology of record Aman Food	2.20 200.00/hr	440.00
4/17/2023 Review record, revise chronology Aman Food	2.10 200.00/hr	420.00
4/24/2023 E-mail client portion of record w/ comments; receive and review response Aman Food	0.80 200.00/hr	160.00
4/26/2023 Tel Jarvis; e-mail client re discussion with comments Aman Food	2.20 200.00/hr	440.00
4/27/2023 Receive & review e-mail from client; review record; e-mail response Aman Food	2.30 200.00/hr	460.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
5/2/2023 Preparation for meeting with consultant tomorrow; e-mail record Aman Three	0.50 200.00/hr	100.00
5/3/2023 Meeting w/ consultant Aman Three	2.00 200.00/hr	400.00
5/15/2023 Draft fact section of post-hearing brief Aman Three	2.60 200.00/hr	520.00
5/17/2023 Draft fact section of post-hearing brief Aman Three	1.30 200.00/hr	260.00
5/18/2023 Draft brief Aman Three	3.60 200.00/hr	720.00
5/19/2023 Draft legal section of post-hearing brief Aman Three	5.10 200.00/hr	1,020.00
5/22/2023 Revise draft brief in preparation for hearing; receive e-mails regarding rescheduling hearing; tel client Aman Three	1.50 200.00/hr	300.00
Receive & review Hrg Officer Order and Notice of Hearing Aman Three	0.10 200.00/hr	20.00
5/26/2023 Receive & review e-mail from client Aman Three	0.10 200.00/hr	20.00
5/31/2023 E-mails to client re next month's hearing Aman Three	0.50 200.00/hr	100.00
6/5/2023 Research competitive bidding statute Aman Three	1.40 200.00/hr	280.00
6/16/2023 Research inflation statistics; insert info into draft brief Aman Three	2.20 200.00/hr	440.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
6/19/2023 E-mail to client re hrg; revise legal brief Aman Three	1.70 200.00/hr	340.00
6/20/2023 Preparation for hrg and revise brief; e-mail witnessing regarding potential hrg testimony Aman Three	2.70 200.00/hr	540.00
6/21/2023 Preparation for hrg; e-mails w/ client Aman Three	2.00 200.00/hr	400.00
6/22/2023 Meeting at consultants; attend hrg; post-hrg conference Aman Three	2.30 200.00/hr	460.00
6/26/2023 Review Board Hrg Officer; review procedural rules for challenging Hrg Officer evidentiary ruling; e-mail client re Hrg Officer Report Aman Three	1.20 200.00/hr	240.00
7/2/2023 Research and draft regulatory history memo Aman Three	3.00 200.00/hr	600.00
7/6/2023 Research and draft memo re regulatory history; e-mail to client re same Aman Three	3.90 200.00/hr	780.00
7/7/2023 Receive & review e-mail from client; respond Aman Three	0.50 200.00/hr	100.00
7/10/2023 Revise post-hearing brief and incorporate drafting history Aman Three	5.40 200.00/hr	1,080.00
7/11/2023 Revise post-hearing brief Aman Three	2.50 200.00/hr	500.00
7/12/2023 Revise post-hearing brief; e-mail draft of brief to client w/ explanations Aman Three	2.40 200.00/hr	480.00
7/13/2023 Revise and file post-hearing brief; Aman Three	3.50 200.00/hr	700.00

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	<u>Hrs/Rate</u>	<u>Amount</u>
7/27/2023 Receive & review Agency response brief; e-mails to client re briefing Aman Three	0.90 200.00/hr	180.00
7/31/2023 Draft reply brief Aman Three	2.30 200.00/hr	460.00
8/1/2023 Draft reply brief Aman Three	2.90 200.00/hr	580.00
8/2/2023 Draft reply brief Aman Three	3.70 200.00/hr	740.00
8/3/2023 Draft reply brief Aman Three	4.00 200.00/hr	800.00
8/4/2023 Revise and file reply brief; e-mail client Aman Three	3.70 200.00/hr	740.00
9/22/2023 Receive & review opinion; e-mail client; receive response; e-mail explanation of opinion Aman Three	1.90 200.00/hr	380.00
10/6/2023 Draft motion for modification of order; tel consultant Aman Three	1.60 200.00/hr	320.00
 Draft affidavit and motion for attorney fees Aman Three	 1.50 200.00/hr	 300.00
10/10/2023 Revise and file motion for attorney fees Aman Three	1.30 200.00/hr	260.00
 For professional services rendered	 <u>97.80</u>	 <u>\$19,540.00</u>
Additional Charges :		
2/3/2023 Pollution Control Board Filing Fee Filing Fee		75.00

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	<u>Amount</u>
5/12/2023	
Copying cost for administrative record (Fed Ex Offices) Photocopies	144.77
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Total additional charges	\$219.77