

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ABP PROPERTIES, LLC,	)	
Petitioner,	)	
v.	)	PCB 25-1
	)	(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](mailto:carol.webb@illinois.gov))

Richard Kim  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276  
([richard.kim@illinois.gov](mailto: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 28<sup>th</sup> day of February, 2025. The number of pages in the e-mail transmission is 10 pages.

Respectfully submitted,

ABP PROPERTIES, 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](mailto:pdshaw1law@gmail.com)



of the time expended for the individual service, and the hourly rate charged. Id.

3. 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). 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)

4. 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).

5. 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 1441 Kingshighway v. IEPA, PCB PCB 24-32, at p. 1 (Aug. 22, 2024) (awarding \$19,729.00); 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).

6. 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. 11. The legal costs were reasonable given the novelty of the issue of first

impression and the decision may help resolve other pending appeals that have similar issues, thus furthering the role of case-by-case determinations in defining the UST Program. E.g., R.W. Sheridan Oil v. IEPA, PCB 25-005; Green Oil Co. v. IEPA, PCB 25-007; Mazel 8 LLC v. IEPA, PCB 25-013; S&S Infinite Group v. IEPA, PCB 25-017.

7. 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,

ABP PROPERTIES, 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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ILLINOIS ENVIRONMENTAL	)	
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Respondent.	)	

**AFFIDAVIT OF PATRICK D. SHAW**  
**VERIFYING ATTORNEY FEES**

Affiant, Patrick D. Shaw, being first duly sworn, states as follows:

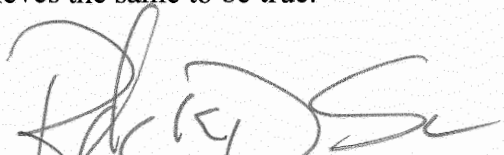
1. The statements made herein are based upon my personal knowledge, and I am competent to testify hereto.
2. I am an attorney duly licensed to practice law in the State of Illinois; and I am the attorney of record for Petitioner in the case entitled ABP PROPERTIES v. IEPA, PCB 25-1.
3. Attached hereto 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 \$260 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. This appeal involved a fairly straight-forward process of preparing a petition for review, receiving the administrative record, and drafting a motion for summary judgment and a reply in support of the motion for summary judgment. There was no hearing.

5. 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 \$10,995.00, consisting of \$10,920.00 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 02/28/2025

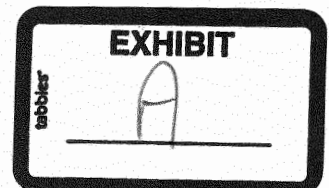
Law Office of Patrick D. Shaw  
80 Bellerive Road  
Springfield, IL 62704

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

February 28, 2025

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
5/22/2024 Receive & review e-mail w/ decision letter; e-mails re same ABP Properties	1.00 260.00/hr	260.00
5/24/2024 E-mails regarding decision ltr response ABP Properties	1.40 260.00/hr	364.00
7/3/2024 E-mail opinions on appealing decision to client ABP Properties	0.50 260.00/hr	130.00
7/5/2024 Receive response; draft and file petition for review ABP Properties	2.60 260.00/hr	676.00
7/11/2024 Receive & review Board order & Hrg Officer order ABP Properties	0.20 260.00/hr	52.00
7/22/2024 Draft waivers ABP Properties	0.10 260.00/hr	26.00
7/25/2024 Tel IEPA atty; tel status conf. w/ Hrg Officer; receive & review Hrg Officer order ABP Properties	0.10 260.00/hr	26.00
7/31/2024 Review administrative record; e-mail client re same ABP Properties	0.60 260.00/hr	156.00
8/19/2024 Draft motion for summary judgment ABP Properties	2.40 260.00/hr	624.00
8/21/2024 Draft motion for summary judgment ABP Properties	2.40 260.00/hr	624.00





	<u>Hrs/Rate</u>	<u>Amount</u>
8/23/2024 Draft motion for summary judgment ABP Properties	4.20 260.00/hr	1,092.00
8/26/2024 Draft motion for summary judgment ABP Properties	3.40 260.00/hr	884.00
8/27/2024 Draft motion for summary judgment ABP Properties	1.90 260.00/hr	494.00
8/28/2024 Draft motion for summary judgment; e-mail draft to client; e-mails w/ client re draft motion ABP Properties	3.90 260.00/hr	1,014.00
8/29/2024 Receive & review e-mails from client; revise and file motion for summary judgment ABP Properties	1.90 260.00/hr	494.00
Tel conf. w/ Hrg Officer and IEPA atty; receive & review Hrg Officer order ABP Properties	0.10 260.00/hr	26.00
8/30/2024 E-mail motion for summary judgment to client w/ comments ABP Properties	0.10 260.00/hr	26.00
9/6/2024 Draft and file waiver ABP Properties	0.10 260.00/hr	26.00
9/10/2024 Receive & review e-mail request from IEPA; e-mail response ABP Properties	0.10 260.00/hr	26.00
9/16/2024 Receive & review e-mail from client; review regulations ABP Properties	0.30 260.00/hr	78.00
9/20/2024 Receive response to motion for summary judgment; forward to client ABP Properties	0.20 260.00/hr	52.00
9/23/2024 Review response and e-mail opinions to client ABP Properties	1.30 260.00/hr	338.00
9/24/2024 Draft reply in support of motion for summary judgment ABP Properties	2.80 260.00/hr	728.00
9/25/2024 Draft reply in support of motion for summary judgment; e-mail draft to client ABP Properties	3.50 260.00/hr	910.00
9/26/2024 Draft motion for leave to file reply; review e-mails from client ABP Properties	0.40 260.00/hr	104.00
9/27/2024 Research new argument; revise and file motion and reply; e-mail client; receive response ABP Properties	4.00 260.00/hr	1,040.00

	<u>Hrs/Rate</u>	<u>Amount</u>
11/7/2024 Tel Conf. w/ Hrg Officer and IEPA; prepare for tel conf. ABP Properties	0.10 260.00/hr	26.00
12/2/2024 Draft and file waiver ABP Properties	0.10 260.00/hr	26.00
1/14/2025 E-mail Hrg Officer re Board agenda; e-mail status of case to client ABP Properties	0.30 260.00/hr	78.00
1/16/2025 Conf. call w/ IEPA attorney and Hrg Officer; receive & review Hrg Officer order ABP Properties	0.10 260.00/hr	26.00
2/6/2025 Receive & review Board decision; e-mail client ABP Properties	0.30 260.00/hr	78.00
2/28/2025 Draft and file motion for atty fees and affidavit ABP Properties	1.60 260.00/hr	416.00
For professional services rendered	<hr/> 42.00	<hr/> \$10,920.00
Additional Charges :		
7/5/2024 Pollution Control Board Filing Fee Filing Fee		75.00
Total additional charges		<hr/> \$75.00