ILLINOIS POLLUTION CONTROL BOARD
November 1, 2007

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 96-98
	)	(Enforcement – Water)
SKOKIE VALLEY ASPHALT CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and president of SKOKIE VALLEY ASPHALT CO., INC., and RICHARD J. FREDERICK, individually and as owner and vice president of SKOKIE VALLEY ASPHALT CO., INC.,	)	
	)	
Respondents.	)	

MICHAEL C. PARTEE, ASSISTANT ATTORNEY GENERAL, OFFICE OF THE ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT; and

MICHAEL B. JAWGIEL, LAW OFFICE OF MICHAEL B. JAWGIEL, P.C., APPEARED ON BEHALF OF RESPONDENTS.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

This is an enforcement action brought by the Office of the Attorney General, on behalf of the People of the State of Illinois (People), against Skokie Valley Asphalt Co., Inc., Edwin L. Frederick, Jr., and Richard J. Frederick (respondents). The case concerns the asphalt-paving contractor's site in Grayslake, Lake County. The Board has already determined that respondents violated the Environmental Protection Act (Act) (415 ILCS 5 (2006)) and Board regulations regarding water pollution and the National Pollutant Discharge Elimination System (NPDES). Further, the Board held that respondents committed willful, knowing, or repeated violations and that they must pay a civil penalty of $153,000.

In addition to the $153,000 civil penalty, the People now ask the Board to order respondents to pay for $100,575 in the People's attorney fees and $3,482.84 in the People's costs. The Board today assesses against respondents the People's attorney fees in the amount of $30,225 and the People's costs in the amount of $2,291.20. The Board declines to award the People the balance of their requested fees and costs because the People did not provide sufficient evidence to determine whether those fees and costs are reasonable. With these findings, the Board also lifts the stay on respondents' obligation to pay the civil penalty.

In this opinion, the Board first summarizes its findings of violation and imposition of civil penalty from its September 2, 2004 decision. The Board then provides the relevant

procedural history of this case, after which the Board discusses and rules on the People's petition for attorney fees and costs. The order following this opinion sets forth the violation findings, lifts the stay on civil penalty payment, and states respondents' payment duties with respect to civil penalty, attorney fees, and costs.

OVERVIEW OF VIOLATIONS AND CIVIL PENALTY

In its September 2, 2004 decision, the Board first held that Edwin and Richard Frederick are personally liable for the activities of Skokie Valley Asphalt Co., Inc. (Skokie Valley) because of their participation or personal involvement in the company:

> The Fredericks, together, were responsible for the day-to-day operation of Skokie Valley. Both were present for environmental investigations and inspections. They also both corresponded and met with environmental government officials. While perhaps not driving the train, the Fredericks both sat beside the driver and gave instructions, and had the ability to control the activities that gave rise to the instant complaint. Accordingly, the Fredericks can be held personally liable under the doctrine set forth in [People v. C.J.R. Processing, Inc., 269 Ill. App. 3d 1013, 647 N.E.2d 1035 (3rd Dist. 1995)] for any violations committed by Skokie Valley. *See* People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 11 (Sept. 2, 2004).

The Board then addressed each of the five counts of the People's complaint in turn. In count I of the complaint, the People alleged that respondents violated the Act and Board regulations by falsifying Skokie Valley's December 1990 and January 1991 discharge monitoring reports (DMRs). The People alleged that respondents falsified the DMRs by altering the dates of previously submitted reports and submitting the duplicates to the Illinois Environmental Protection Agency (Agency). The Board found that respondents made a false statement, representation, or certification to the Agency in at least these two instances, and held that respondents violated Section 12(f) of the Act (415 ILCS 5/12(f) (2006)) and 35 Ill. Adm. Code 305.102(b). *See* Skokie Valley Asphalt, PCB 96-98, slip op. at 12-13.

The People alleged in count II of their complaint that respondents violated the Act and Board regulations by not applying for reissuance of Skokie Valley's NPDES permit 180 days prior to the expiration date contained in the existing permit. The Board found that Skokie Valley did have an NPDES permit, and that any permittee wishing to continue to discharge was required by regulation to file for renewal prior to 180 days before NPDES permit expiration. The Board further found that Skokie Valley did not timely apply for renewal, and therefore held that respondents violated Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a) and 309.104(a). *See* Skokie Valley Asphalt, PCB 96-98, slip op. at 13-14.

In count III of the complaint, the People alleged that respondents violated the Act and Board regulations by failing to submit DMRs to the Agency as required by Skokie Valley's NPDES permit and by not maintaining an accessible effluent sampling point for Skokie Valley's discharge from its lagoon. The Board found that respondents violated Section 12(f) of the Act, as well as 35 Ill. Adm. Code 305.102(b) and 309.102(a) and special condition number 4 of the

NPDES permit, by failing to properly submit DMRs on a regular basis. The Board also found, however, that the People failed to meet their burden of proof that respondents violated special condition number 1 of the NPDES permit, and the accompanying statutory and regulatory provisions, by failing to maintain an accessible sampling point. *See* Skokie Valley Asphalt, PCB 96-98, slip op. at 15.

Count IV of the complaint alleged that respondents violated the Act and Board regulations by causing or allowing the discharge of contaminants into a drainage ditch located east of the site. The Board found that from December 1994 through April 1995, there was an oily discharge in the ditch constituting the "discharge of a contaminant to the environment so as to cause water pollution, *i.e.*, a discharge to State waters that will or is likely to create a nuisance or render such waters harmful or detrimental or injurious." Skokie Valley Asphalt, PCB 96-98, slip op. at 17. Further, the Board found that the People met their burden of proving that the oily sheen in the drainage ditch was caused, threatened, or allowed by respondents. *Id*. Accordingly, the Board held that respondents violated Section 12(a) of the Act (415 ILCS 5/12(a) (2006)) and 35 Ill. Adm. Code 302.203, 304.105, and 304.106. Additionally, the Board found that respondents violated 35 Ill. Adm. Code 304.124(c) of the Board's effluent standards as laboratory analysis revealed that a water sample far exceeded 15 milligrams per liter (mg/L) of oil. *Id*.

The People alleged in count V of the complaint that respondents violated the Act and Board regulations by causing or allowing the discharge of effluent from the Skokie Valley facility to exceed concentration limits for total suspended solids (TSS) as set forth in Skokie Valley's NPDES permit. The permit contains effluent limits for TSS of (1) 15 mg/L for a 30-day average and (2) 30 mg/L for a daily maximum. After reviewing the DMRs submitted by respondents, the Board found nine exceedences of the 30-day average concentration limit and four exceedences of the daily maximum concentration limit. The Board further found that respondents violated the limits in the NPDES permit for two consecutive months twice and for three consecutive months in 1991. The Board held that respondents violated Section 12(f) of the Act and 35 Ill. Adm. Code 305.102(b) and 309.102(a). Skokie Valley Asphalt, PCB 96-98, slip op. at 18.

After finding the violations, the Board considered the factors set forth in Section 33(c) of the Act (415 ILCS 5/33(c) (2006)) to determine whether a civil penalty should be imposed on respondents. The Section 33(c) factors bear on the reasonableness of the circumstances surrounding the violations, including the technical practicability and economic reasonableness of reducing or eliminating the discharges or deposits at issue. After considering these factors, the Board found that a civil penalty was warranted. Skokie Valley Asphalt, PCB 96-98, slip op. at 18-20. The Board then considered the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)) to determine the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, including the duration and gravity of the violations. Based on the Section 42(h) factors, the Board imposed a $153,000 civil penalty on respondents. *Id*. at 20-23.

PROCEDURAL HISTORY

This proceeding was initiated on November 3, 1995, when the People filed their original complaint. The People filed a first amended complaint on December 29, 1997, and a second amended complaint on July 26, 2002. A hearing was held on October 30 and 31, 2003, and post-hearing briefs and pleadings were filed through the end of May 2004. As noted above, the Board issued an opinion and order on September 2, 2004, finding violations and assessing a civil penalty. A complete recitation of this case's procedural history leading up to that decision may be found in the Board's opinion of September 2, 2004. *See* Skokie Valley Asphalt, PCB 96-98, slip op. at 1-2 (Sept. 2, 2004). Below, the Board details the rest of the procedural history of this case only as it relates to the People's requested costs and attorney fees and the resolution of this proceeding.

The People filed their petition for attorney fees and costs on September 17, 2004. In the petition, the People requested attorney fees in the amount of $134,250 and costs in the amount of $3,482.84. Fee People Exh. 100 at 2. The People attached to their petition the affidavits and timesheets of Assistant Attorneys General (AAG) Mitchell Cohen, Joel Sternstein, and Bernard Murphy, and suggested an hourly attorney rate of $150. *Id*. at 2-3.

On September 28, 2004, respondents filed (1) an appeal with the Second District Appellate Court seeking review of the Board's September 2, 2004 decision (Skokie Valley Asphalt Co., Inc. v. IPCB, No. 04-0977 (2nd Dist.)) and (2) a motion with the Board to stay the obligation to pay the $153,000 civil penalty. In an order of October 4, 2004, the Board granted respondents' motion for stay. On November 18, 2004, the appellate court granted the Board's motion to dismiss the appeal for lack of jurisdiction to review a non-final Board order.

On December 16, 2004, the Board issued an order denying the People's November 19, 2004 motion to void the Board's order staying respondents' penalty payment duty. The Board stated:

> The stay of the $153,000 civil penalty imposed in the September 2, 2004 order will remain in effect until the Board issues a final order in this matter. In that final order, the Board will lift the stay, direct the respondents to pay the civil penalty and address the issue of attorney fees and costs. People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 2 (Dec. 16, 2004).

In an order of April 7, 2005, the Board noted that, in their January 10, 2005 motion to establish a discovery schedule on the requested fees and costs, respondents asserted that the affidavits attached to the People's September 17, 2004 petition were without basis in the hearing record, unsupported by sufficient documentation, and most likely fabricated solely for the purposes of the claim. Respondents further argued that it is difficult to justify the People's claim for fees and costs as it is approximately ten times the amount the three respondents combined paid to defend themselves in this action. People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 2-3 (Apr. 7, 2005). Under these circumstances, the Board ruled as follows:

> [T]o fully consider these allegations, the Board will grant the respondents additional time in order to conduct discovery and participate in a hearing regarding attorney fees and costs. *Id*. at 3.

Accordingly, discovery was limited to the subject of attorney fees and costs. To further narrow the discovery process, the Board, in its April 7, 2005 order, addressed the merits of respondents' objections to the People's fee request for AAG Sternstein. The Board had previously issued an order that disqualified AAG Sternstein from appearing in this proceeding. *See* People v. Skokie Valley Asphalt Co., Inc., PCB 96-98, slip op. at 5 (Oct. 16, 2003). Because of AAG Sternstein's disqualification, the Board held on April 7, 2005, that it would not award attorney fees for the time he spent working on this case:

> Although no prejudice resulted from AAG Sternstein's prior employment, the Board finds that awarding attorney fees for any of the work he did in a matter he was barred from participating in would not be appropriate. Skokie Valley Asphalt, PCB 96-98, slip op. at 4 (Apr. 7, 2005).

This ruling, disallowing all $33,675 of AAG Sternstein's requested fees, reduced the amount of the People's requested attorney fees from $134,250 to $100,575.

Following the Board's April 7, 2005 order, the parties pursued discovery regarding the balance of the People's attorney fees and costs. The parties also filed numerous procedural motions, including motions to strike, to compel, to quash, for sanctions, and for protective order, all of which were ruled upon by the Board or hearing officer. These activities took place from April 2005 through the end of 2006.

On September 7, 2006, the Board issued an order ruling on various motions, as well as setting dates for the remaining discovery and hearing on attorney fees and costs. The Board directed the hearing officer to hold the hearing no later than December 22, 2006, and to require briefing to conclude by January 19, 2007. On November 2, 2006, the Board denied respondents' October 10, 2006 motion for sanctions.

On December 7, 2006, the Board denied respondents' second motion for sanctions. On December 12, 2006, respondents filed a motion to strike part of the People's response to respondents' second motion for sanctions or alternatively to file a reply to the People's response. Respondents' motion claimed that the People's response includes a "de facto motion for a final order." Motion to Strike at 4. As indicated, respondents filed their motion to strike five days after the Board ruled on respondents' second motion for sanctions. The Board further notes that in its December 7, 2006 order, the Board did not construe the People's response as including a motion. Under these circumstances, the Board denies as moot respondents' December 12, 2006 motion to strike or alternatively to reply.

Also on December 12, 2006, respondents filed a "motion for final order," asking the Board to dismiss the People's petition for attorney fees and costs without hearing. Respondents simultaneously filed a motion to file only one copy of the voluminous transcripts of the depositions of AAGs Cohen and Murphy, which the Board grants. In their motion for final

order, respondents, citing deposition testimony, argue that the People failed to produce evidence of fees and costs to allow the Board to determine their reasonableness. On December 26, 2006, the People filed a response opposing respondents' motion for final order as untimely.

The Board denies respondents' motion for final order. The motion was filed on the same day that the Board hearing officer held the hearing on attorney fees and costs, December 12, 2006. The hearing officer provided notice of the hearing on October 6, 2006, and the depositions of AAGs Murphy and Cohen were taken on November 8 and 14, 2006, respectively. The Board's procedural rules call for pre-hearing motions directed to the Board to be filed sufficiently before a regularly-scheduled Board meeting prior to the noticed hearing date to allow the Board to consider the motion. *See* 35 Ill. Adm. Code 101.508. The Board held a regularly-scheduled meeting on December 7, 2006. Accordingly, respondents' December 12, 2006 motion for final order was not timely filed. Further, the Board now has the benefit of the hearing record and today issues a final order, the basis of which includes hearing testimony and exhibits and post-hearing briefs.

As stated, the hearing officer held the hearing concerning attorney fees and costs on December 12, 2006, resulting in a transcript of over 350 pages. Nine exhibits were admitted at hearing, six introduced by the People and three by respondents. Three witnesses testified at hearing: AAG Cohen; AAG Murphy; and Ms. Deborah Stonich. The hearing officer filed her hearing report on December 14, 2006, finding witness credibility to not be an issue. On January 19, 2006, the parties filed their post-hearing briefs.[1]

DISCUSSION OF ATTORNEY FEES AND COSTS

Legal Standards

Section 42(f) of the Act provides:

> Without limiting any other authority which may exist for the awarding of attorney's fees and costs, the Board or a court of competent jurisdiction may award costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants, to the State's Attorney or the Attorney General in a case where he has prevailed against a person who has committed a willful, knowing or repeated violation of the Act. 415 ILCS 5/42(f) (2006).

On September 2, 2004, the Board issued an opinion and order finding, among other things, that respondents committed willful, knowing, or repeated violations, referring, for example, to respondents repeatedly failing to file DMRs on a monthly basis. *See* Skokie Valley Asphalt, PCB 96-98, slip op. at 23 (Sept. 2, 2004). The Board therefore held that under Section

[1] To avoid any confusion with record citations in the Board's September 4, 2004 decision, citations in today's opinion to documents concerning the hearing on attorney fees and costs include the word "Fee," as follows: the hearing transcript is cited as "Fee Tr. at _"; the hearing exhibits as "Fee People Exh. _ at _" and "Fee Resp. Exh. _ at _;" and the post-hearing briefs as "Fee People Br. at _" and "Fee Resp. Br. at _."

42(f) of the Act, the Board could award reasonable attorneys fees and costs to the People in this case. *Id*.

Under the language of Section 42(f) (415 ILCS 5/42(f) (2006)) and long-standing court precedent (Kaiser v. MEPC American Properties, Inc., 164 Ill. App. 3d 978, 983, 518 N.E.2d 424, 427 (1st Dist. 1987), citing Fiorito v . Jones, 72 Ill. 2d 73, 377 N.E.2d 1019 (1978); Leader v. Cullerton, 62 Ill. 2d 483, 343 N.E.2d 897 (1976); *In re* Estate of Healy, 137 Ill. App. 3d 406, 484 N.E.2d 890 (2nd Dist. 1985)), only "reasonable" fees are allowed. "The trial court will award only those fees that are reasonable, consisting of reasonable charges for reasonable services." Mountbatten Surety Co., Inc. v. Szabo Contracting, Inc., 349 Ill. App. 3d 857, 873, 812 N.E.2d 90, 104 (2nd Dist. 2004), citing Kaiser, 164 Ill. App. 3d at 983. Determining the reasonableness of the requested fees is "left to the sound discretion of the trial court." Kaiser, 164 Ill. App. 3d at 983, 518 N.E.2d at 427, citing Fiorito; Leader; and Board of Education v. County of Lake, 156 Ill. App. 3d 1064, 509 N.E.2d 1088 (2nd Dist. 1987); *see also* Mountbatten Surety, 349 Ill. App. 3d at 873, 812 N.E.2d at 104; Pietrzyk v. Oak Lawn Pavilion, Inc., 329 Ill. App. 3d 1043, 1046, 769 N.E.2d 134, 137 (1st Dist. 2002).

The courts lack the power, however, to simply award costs and attorney fees on equitable grounds. *See* Vicencio v. Lincoln-Way Builders, Inc., 204 Ill. 2d 295, 300, 789 N.E.2d 290, 293-94 (2003); City of Springfield v. Beck, 34 Ill. App. 3d 784, 785, 340 N.E.2d 350, 351 (4th Dist. 1976). Rather, the prevailing party must come within the terms of the fee-shifting statutory provision, which must be narrowly construed, as statutes allowing such recovery are in derogation of the common law. *See* Vicencio, 204 Ill. 2d at 300, 789 N.E.2d at 293-94; *see also* Carson Pirie Scott & Co. v. Illinois Dept. of Employment Security, 131 Ill. 2d 23, 49, 544 N.E.2d 772, 784 (1989) ("[S]ince the common law prohibits a prevailing party from recovering attorney fees, statutes which allow for such awards must be strictly construed."); Gonzales-Blanco v. Clayton, 120 Ill. App. 3d 848, 850, 458 N.E.2d 1156, 1158 (1st Dist. 1983) (same regarding attorney fees and costs); Helland v. Helland, 214 Ill. App. 3d 275, 277, 573 N.E. 2d 357, 359 (2nd Dist 1991) ("[c]ontractual provisions for attorney fees must be strictly construed"); Negro Nest, LLC v. Mid-Northern Management, Inc., 362 Ill. App. 3d 640, 651, 839 N.E. 2d 1083, 1092 (4th Dist. 2005) ("Illinois law requires strict construction" of "statutory and contractual cost and fee-shifting provisions").

The party seeking the fees:

> always bears the burden of presenting sufficient evidence from which the trial court can render a decision as to their reasonableness. Kaiser, 164 Ill. App. 3d at 983, 518 N.E.2d at 427, citing Fiorito; Heckmann v. Hospital Service Corp., 104 Ill. App. 3d 728, 432 N.E.2d 891 (1st Dist. 1982); Ealy v. Peddy, 138 Ill. App. 3d 397, 485 N.E.2d 1182 (5th Dist. 1985); *see also* Weidner v. Szostek, 245 Ill. App. 3d 487, 493, 614 N.E.2d 879, 883 (2nd Dist. 1993), citing Kaiser, 164 Ill. App. 3d at 983; Fitzwilliam v. 1220 Iroquois Venture, 233 Ill. App. 3d 221, 235, 598 N.E.2d 1003, 1012 (2nd Dist. 1992), citing Kaiser, 164 Ill. App. 3d at 983.

The reasonableness of fees "cannot be determined on the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees." Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427,

citing Flynn v. Kucharski, 59 Ill. 2d 61, 319 N.E.2d 1 (1974); *In re* Marriage of Angiuli, 134 Ill. App. 3d 417, 480 N.E.2d 513 (2nd Dist. 1985). Instead, the petition for fees must:

> specify the services performed, by whom they were performed, the time expended thereon, and the hourly rate charged therefore [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427, citing Fiorito; Ealy]. Because of the importance of these factors, it is incumbent upon the petitioner to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427, citing Flynn; County of Lake].

If the trial court has been presented with these facts, it should then consider:

> a variety of additional factors such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter, the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing Ashby v. Price, 112 Ill. App. 3d 114, 445 N.E.2d 438 (3rd Dist. 1983)], and whether there is a reasonable connection between the fees and the amount involved in the litigation [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing *In re* Estate of Healy; *In re* Marriage of Ransom, 102 Ill. App. 3d 38, 429 N.E.2d 594 (2nd Dist. 1981)]. *See also* First Midwest Bank, N.A. v. Sparks, 289 Ill. App. 3d 252, 263, 682 N.E.2d 373, 381 (2nd Dist. 1997) (trial court should consider these additional factors "[o]nce presented with" detailed records maintained during the litigation), citing Kaiser, 164 Ill. App. 3d at 984; George v. Chicago Transit Authority, 107 Ill. App. 3d 784, 787, 438 N.E.2d 498, 500 (1st Dist. 1982); Neville v. Davinroy, 41 Ill. App. 3d 706, 711, 355 N.E.2d 86, 90 (5th Dist. 1976).

In fee petition cases, "the attorney submitting billing statements for approval by the trial court has no fiduciary relationship with the party ultimately liable for payment of fees." Wildman, Harrold, Allen & Dixon v. Gaylord, 317 Ill. App. 3d 590, 596-97, 740 N.E.2d 501, 508 (1st Dist 2000). Therefore, "stricter scrutiny" is warranted in fee-shifting cases than when an attorney seeks payment from a former client. Gaylord, 317 Ill. App. 3d at 596-97, 740 N.E.2d at 508 (also noting that the Kaiser court "recognized the need for heightened scrutiny in fee petition cases.")

Analysis

In this case, the People ask the Board to order respondents to pay for $100,575 in the People's attorney fees and $3,482.84 in the People's costs. Fee People Br. at 12. Respondents oppose the People's request and maintain that the Board should award no attorney fees or costs to the People. Fee Resp. Br. at 19, 60.

Initial Matters

The Board must address several threshold arguments of the parties before turning to its detailed review of the claimed attorney fees and costs.

Claimed Unnecessary Litigation. Respondents assert that none of the People's requested fees and costs should be awarded because they all were:

> strictly the result of the Complainant's and its attorney's actions to avoid a reasonable resolution of this matter and to force litigation of the matter at great expense to both the Complainant and the Respondents. Fee Resp. Br. at 19.

In support of this position, respondents make unsubstantiated claims that they had reached various settlements with the Attorney General's Office and that the complaints therefore never should have been filed with the Board. *See*, *e.g.*, Fee Resp. Br. at 19-20. The Board finds, however, that in ruling on the People's request for attorney fees and costs, it is neither necessary nor appropriate for the Board to question the prosecutorial discretion exercised by the Attorney General's Office in bringing this enforcement action. Nor have respondents ever proven in this record any estoppel against the State. Regardless of respondents' misgivings, the fact remains that the case was litigated before the Board and resulted in a decision on the merits. That decision included a finding that respondents committed willful, knowing, or repeated violations, the predicate to an award of reasonable attorney fees and costs to the People under Section 42(f) of the Act.

Claimed Offset. Respondents claim that the Board, in its September 2, 2004 decision, "failed to consider offsets for the Complainant in determining the penalty imposed." Fee Resp. Br. at 58. Specifically, respondents state that they took "voluntary action" in addressing the petroleum release, spending in excess of $150,000. *Id*. According to respondents, because of their "common law right to an offset to the penalty imposed based on the expenditure and effort [they] made to mitigate and alleviate the problem," the People's claimed attorney fees and costs "should be reduced to zero." *Id*. at 59. Further, respondents argue that because they have spent more money addressing the release than the People are entitled to or even claim in attorney fees and costs, the Board should now reduce the total civil penalty imposed by the amount of respondents' remediation costs. *Id*.

Contrary to respondents' claims, the Board fully considered respondents' remediation efforts when imposing the $153,000 civil penalty in its September 2, 2004 decision. The Board first made numerous findings of fact concerning respondents' efforts, including the fact that "[t]o date, the Fredericks have paid Huff [their environmental consultant] at least $150,000 for environmental work performed at the site." Skokie Valley Asphalt, PCB 96-98, slip op. at 5-6 (Sept. 2, 2004). Then, in reviewing the Section 33(c) factors of the Act (415 ILCS 5/33(c) (2006)) as part of its civil penalty analysis, the Board specifically addressed respondents' remediation efforts:

> Respondents did, ultimately, address the water pollution in the Avon-Freemont drainage ditch, but only when under scrutiny by the U.S. EPA [United States Environmental Protection Agency] and the Agency.
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> ***
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> Protecting public health was compromised by the respondents repeatedly fail[ing] to comply with the NPDES permitting requirements and associated regulations. The water pollution in the Avon-Fremont drainage ditch also threatened the protection of public health. These facts outweigh the social and economic value of the site, the suitability of location, and the efforts made by respondents to comply and remediate.
>
> It was also technically practicable and economically reasonable to have complied with the requirements of the NPDES permit and to have remediated the site prior to the release that resulted in water pollution in the Avon-Freemont drainage ditch. Subsequent remediation came, but only after State and Federal enforcement was commenced. *Id*. at 19-20.

Finally, the Board further considered respondents' remediation efforts when it reviewed the Section 42(h) factors of the Act (415 ILCS 5/42(h) (2006)) as part of the Board's penalty determination. After noting that the People requested a $493,000 civil penalty, the Board stated:

> Efforts to remediate the water pollution in the Avon-Fremont drainage ditch did occur, and the Fredericks continue to fund the effort to eliminate any potential source of a release from the site. Further, the Fredericks have paid at least $150,000 in order to remediate the site. However, remediation efforts occurred only after the respondents came under the purview of the Agency and the U.S. EPA, and the State enforcement process was well underway. The Board ultimately weighs this factor against Respondents, but will consider the remediation and cost thereof, in mitigation of the ultimate penalty.
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> Respondents did remediate the water pollution, and have spent in excess of $150,000 in environmental work on the site. This compliance regarding the water pollution in the Avon-Freemont drainage ditch should be considered in determining the penalty amount.
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> In reducing the penalty from that sought by the People, the Board notes that the respondents have no previously adjudicated violations and have spent a significant amount of money on mitigation. Skokie Valley Asphalt, PCB 96-98, slip op. at 20-21 (Sept. 2, 2004).

As is plainly evident from the above passages, the Board thoroughly considered respondents' remediation efforts and, based on those efforts, reduced the civil penalty sought by the People. The Board rejects respondents' claim for offset.

Partial Fees and Costs. The People argue that the fee petition is reasonable because it "only represents a fraction of the actual time and labor required to resolve this now decade old

case." Fee People Br. at 11. Specifically, the People state that they seek fees only for attorney time spent on the case from May 2002 through mid-September 2004:

> The Fee Petition does not include AAG time spent litigating this case before May 2002, or the time AAGs' Cohen, Partee and Wheeler have spent litigating this case since September 15, 2004. *Id*. at 2
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> [S]ix out of the eight years that the People spent prosecuting this case are not included in their Fee Petition. In addition, more than two years have elapsed since September 16, 2004, the last date on the Petition, and none of this time is included either. *Id*. at 10 (emphasis in original); *see also* Fee People Exh. 100, Cohen Timesheet, Murphy Timesheet; Fee People Br. at 10 (AAGs "rounded down" their hours and AAG Murphy gave a "conservative estimate" of his time); *see also* Fee Tr. at 56, 201, 212-13, 215.

The Board emphasizes that it was the People's decision to petition only for those fees and costs they now seek. Neither the Board nor the Act constrained the People such that their fee petition "only covers 25% of the time spent prosecuting the environmental case." Fee People Br. at 11; *see also id*. at 9 ("The remaining $100,575 . . . represents only a portion of the People's actual time and labor required to resolve this case.").

The burden nevertheless remains on the People to demonstrate that the fees that they do request are themselves reasonable. Nor is this burden lessened because respondents committed willful, knowing, or repeated violations. The Board cannot award fees on the basis of equities, conjecture, or the opinion or conclusions of the attorneys requesting the fees. *See* Vicencio, 204 Ill. 2d at 300; Kaiser, 164 Ill. App. 3d at 983-84, City of Springfield, 34 Ill. App. 3d at 785; *see also* Fitzgerald v. Lake Shore Animal Hospital, Inc., 183 Ill. App. 3d 655, 662, 539 N.E.2d 311, 315 (1st Dist. 1989) (reversing trial court judge's decision to award half of the requested fees as "nothing short of Solomonic—he clove the baby in two.").

Burden of Proof. The People also incorrectly suggest that it is the respondents who have the burden of proof, stating that the "Fee Petition [s]hould [b]e [g]ranted [b]ecause [r]espondents [h]ave [f]ailed [s]pecifically to [i]dentify [a]ny [e]xcessive [f]ees or [c]osts [i]ncluded [t]herein." Fee People Br. at 4; *see also id*. at 12 ("Because Respondents have failed to substantiate their dispute of the People's Fee Petition, the Board should, as a matter of law, enter a final order assessing $100,575.00 in fees and $3,482.84 in costs against Respondents."). The Board's first task is to determine whether the *People* have provided sufficient evidence for the Board to determine the reasonableness of the fees and costs they request. Kaiser, 164 Ill. App. 3d at 983-84, 518 N.E.2d at 427-28.

Attorney Fees

The Board has carefully scrutinized each entry of attorney work description and time spent for AAG Cohen and AAG Murphy on a line-by-line basis and, for the reasons that follow, finds that the People have not met their burden of proof with respect to most of their requested attorney fees.

Each of the 105 entries from AAG Cohen's timesheet, attached to his affidavit in the People's fee petition, is set forth below verbatim in two tables, Tables A and C. The 105 entries consist of 527 total hours and cover the time period of 5/29/02 through 9/15/04. AAG Cohen used his actual time records to prepare his timesheet entries in the People's petition. Fee Tr. at 95-98; Fee People Exhs. 100, 101. AAG Cohen kept his time records on a generally contemporaneous basis with a computer-based calendar system, recording his time on the same day the work was performed "or possibly a day to two later." Fee Tr. at 45-46, 49-51, 54, 141; Fee People Exhs. 100, 101.

Only half of AAG Cohen's actual time records, printed off of the computer, were provided to the Board. Every other day's page is missing from the exhibit offered by the People and admitted into evidence at hearing. *See* Fee People Exh. 101. However, entered into evidence over the People's objection (Fee Tr. at 277) was a table in a hearing exhibit (Fee Resp. Exh. 102) offered by respondents that purports to provide a "verbatim" listing of all of AAG Cohen's actual time records.

AAG Cohen modified many of his timesheet entries in the petition (Fee People Exh. 100) from how the entries appear in his actual time record (*i.e.*, his time record that the People made available (Fee People Exh. 101), as supplemented by the mentioned table in respondents' hearing exhibit (Fee Resp. Exh. 102)). Fee Tr. at 95-98; Fee People Exhs. 100, 101. Time record entries that are materially different from those in the People's petition are identified within brackets in the tables below.

The People argue that the time entries of their AAGs provide "brief but adequate descriptions of the work involved." Fee People Br. at 10. The People add that their petition "identified the attorney requesting time, identified the time spent on the particular day of the entry, identified the subject matter of the work performed that day, and identified an hourly rate." *Id*. at 11.

Respondents, on the other hand, argue "[t]here is no way that anybody looking at the time entries submitted by Mr. Cohen and Mr. Murphy [can] determine whether or not what they did was reasonable any given day." Fee Tr. at 17. Respondents assert that AAG Cohen's "time entries throughout his tenure on this case fail to contain an adequate description of his work." Fee Resp. Br. at 33. According to respondents, the majority of AAG Cohen's entries "contain no legal activity or description of the work performed" (*e.g.*, 5/5/03, four hours for "discovery-paper" without identifying the type of discovery and whether he "researched, reviewed, drafted, edited, etc. the discovery"). *Id*. Other entries, continue respondents, do not contain the reason for the performance of the work or identify the documents being prepared, reviewed, or discussed, so one cannot determine if the work "advanced the case." *Id*. Respondents maintain that still other entries fail to identify the participants or subjects of meetings and calls or provide "only generic or general activity descriptions without more" (*e.g.*, 5/2/03, four hours for "work on discovery"; 10/2/03, seven hours including "doc rev."). *Id*. at 34.

The Board finds that each one of the 58 entries in Table A below, describing the work performed by AAG Cohen, is too brief and vague for the Board to assess whether the amount of

time stated for performance of the task was reasonable. *See* Kaiser, 164 Ill. App. 3d at 985-86, 518 N.E.2d at 428-29. Additionally, of the 58 entries, the 42 Table A entries that have been italicized by the Board are not only too general as to their purpose or subject matter, but they also state multiple tasks for which only a single number of hours spent is provided. There is no breakdown for the Board to assess the reasonableness of the time spent on each of the several items. *See* Weidner, 245 Ill. App. 3d at 493, 614 N.E.2d at 883; Kaiser, 164 Ill. App. 3d at 988, 518 N.E.2d at 430. As respondents point out, such timekeeping "prevents any assessment of whether a particular task was performed in a timely manner." Fee Resp. Br. at 31.

TABLE A

Date	AAG Cohen's Work Description	Time in Hours
5/29/2002	*Meeting re: file transfer, call to David O'Neill* [the actual time record states only "Brf Mtg w/Kelly call to David O'Neill"]	1.00
6/11/2002	*Subst. of Atty; Agreed Mo. To Cancel & Reschedule* [respondents' quote of the actual time record adds "Hrg" after "Resch."]	4.00
6/18/2002	*Rev. Mo., Complaint & Case Status Hrg*	1.00
6/19/2002	File Review	8.00
7/18/2002	File Review	4.00
7/19/2002	*PCB Status Hrg; Draft Amended Complaint*	4.00
8/20/2002	File Review	3.00
10/18/2002	*Rev. Bd. Order; discuss case strategy*	2.00
11/20/2002	*Prep. For & PCB Status Hrg*	1.00
12/20/2002	*Finalize Mo. & Rev. D's late answer* [respondents' quote of the actual time record identifies the motion as "Mo facts admitted/Summ. Judg."]	5.00
12/23/2002	*Prep. For & PCB Status Hrg*	2.00
1/6/2003	*Rev. & Discuss D's Resp. to Mo. -Summ Judg*	2.00
3/31/2003	*Rev. PCB Order & related docs* [the actual time record identifies Board order date of "3-20-03"]	3.00
4/16/2003	*Mtg & research re: aff. Defenses* [respondents' quote of the actual time record adds that the meeting was "w/ Joel"]	4.00
4/25/2003	*Rev. & Research Mo. To Dismiss*	3.00
4/28/2003	*Rev. & Research Mo. To Dismiss*	4.00
5/2/2003	work on discovery	4.00
5/5/2003	work on discovery [the actual time record entry reads "Discovery – paper"]	4.00
5/12/2003	*Rev Mot.s & Ds Mo for leave to reply* [respondents' quote of the actual time record states only "Rev. D's Mot. for Leave to reply"]	2.00
6/9/2003	*Rev PCB Order, related docs, Mo for ext. of time, etc.*	3.00
6/27/2003	*Prep. For & hrg, rev. D's Mo for reconsid.*	3.00
7/3/2003	*Disc rev, Hrg Off. Order, research Mo for reconsid.*	4.00
7/7/2003	*Resp to Mo. to Recons, discovery*	4.00
7/8/2003	*Research/drft mo to compel*	3.00
7/10/2003	*Rev. case status & hrg*	2.00

7/16/2003	*rev d's filings & related docs*	3.00
7/25/2003	*disc and rev. bd. Order*	2.00
7/29/2003	*Dep. Prep. & status hrg*	4.00
7/30/2003	Dep Prep/corp rep	4.00
8/4/2003	*Dep prep Fred. Bros*	3.00
8/21/2003	*dep prep Huff, rev D's resp to mo to compel*	6.00
8/25/2003	dep prep Huff	4.00
8/28/2003	*dep prep Huff & Kallis*	5.00
9/5/2003	*prep for hrg, rev bd order, rev rel doc., hrg* [respondents' quote of the actual time record states "hrg, rev. bd order, prep., rev. rel doc.s etc."]	3.00
9/10/2003	*rev. mo to dismiss, disc (cont. to late oct)* [the actual time record states "Rev. Mot. to dismiss, discovery[,] Disc. Cont. to late Oct"]	2.00
9/15/2003	*rev. pleadings, disc., pre-trial memo.* [the actual time record concludes with "etc."]	6.00
9/22/2003	*finalize pre-trial memo, rev. Ds Hrg Brief*	7.00
9/29/2003	*trial prep including conf. call w/ Gunnarson & Kallis*	7.00
10/2/2003	*trial prep, doc rev, Garretson test.*	7.00
10/7/2003	*hrg & trial prep*	4.00
10/8/2003	*trial prep & discov. Issues*	6.00
10/15/2003	*trial prep, docs, Garretson, Huff test.* [respondents' quote of the actual time record lacks the word "test."]	7.00
10/16/2003	*trial prep, rev. Bd order, met w/ RMC, Murphy & Sternstein*	4.00
10/17/2003	*complete file rev, hrg, conf. re: Issue of continuance* [respondents' quote of the actual time record states "REv file[,] contentious hrg – Bernie too[,] trying to proceed w/o continuance"]	8.00
10/22/2003	trial prep	6.00
10/23/2003	trial prep	4.00
10/24/2003	trial prep	6.00
10/25/2003	trial prep, resp. to mo to bar test. [respondents' quote of the actual time record states "Trial prep (6.0 hrs)[,] 3.0 hrs Resp. to Mot. to Bar Test."]	6.00
10/26/2003	trial prep [the actual time record states "Trial Prep 4.0 hr[,] 2.0 hr Review 8 Motions in limine"][2]	4.00
10/27/2003	trial prep	12.00
10/28/2003	*pre-trial prep, pre-trial, trial prep* [the actual time record states "Trial prep. 10 hrs[,] Pre-trial prep & hrg 2.0 hrs"]	12.00
10/29/2003	trial prep, travel [respondents' quote of the actual time record states "Travel 2.0 hrs[,] trial prep 12 hrs"]	14.00
10/30/2003	trial prep, travel, trial [the actual time record states "Trial Prep 5.0	5.0

[2] For the 10/25/03 and 10/26/03 entries, only the "Trial prep" time is provided in the right column of Table A, as the "Resp. to Mot. to Bar Test." time and "Review 8 Motions in limine" time are addressed later in this opinion as part of Table C.

	hrs[,] Trial 7.0[,] Travel 1.5"]	
10/31/2003	trial prep, trial, travel [respondents' quote of the actual time record states "Trial Prep 2.5 hrs[,] Trial 5.0[,] Travel 3.0"][3]	2.50
1/15/2004	*closing argument, calls. re: late filing, mot to file instanter*	7.00
5/21/2004	*rev D's mo to strike closing rebuttal, discuss w/ Murphy* [the actual time record also states "call into Carol Sudman," the Board hearing officer on the case]	2.00
5/24/2004	*Mo to strike D's mo to strike closing, resp. to mo to strike, related research* [respondents' quote of the actual time record states "Mo to strike RMS, research, drafting, discussions"]	4.00
9/8/2004	*rev PCB Order, app. Procedure, begin costs/fee petition*	5.00
Table A Total Hours		**261.50**

Fee People Exhs 100, 101; Fee Resp. Exh. 102.

Each of the 23 entries from AAG Murphy's timesheet, attached to his affidavit in the People's fee petition, is set forth below verbatim in two tables, Tables B and D. The 23 entries consist of 143.5 total hours and cover the time period of 10/3/03 through 9/16/04. The People argue that the time entries of AAG Murphy are "brief but adequate." Fee People Br. at 10. Respondents assert, however, that AAG Murphy's "abbreviated work descriptions do not allow a determination of the work he actually performed." Fee Resp. Br. at 36.

Of the 23 entries describing the work performed by AAG Murphy, the Board finds that each one of the 17 entries set forth in Table B is too brief and vague for the Board to assess whether the amount of time stated as spent for the task was reasonable. *See* Kaiser, 164 Ill. App. 3d at 985-86, 518 N.E.2d at 428-29. In addition, of the 17 entries, the 8 entries in Table B that have been italicized by the Board are not only too general as to their purpose or subject, but they also designate only a single hourly total for the performance of multiple tasks, precluding the Board from assessing the reasonableness of the time spent on each task. *See* Weidner, 245 Ill. App. 3d at 493, 614 N.E.2d at 883; Kaiser, 164 Ill. App. 3d at 988, 518 N.E.2d at 430.

Additionally, the People have provided no underlying time records kept by AAG Murphy. AAG Murphy testified that his timesheet entries in the petition also may not reflect his time records verbatim. Moreover, the People concede that the first three and a half weeks or so of AAG Murphy's time were not kept contemporaneously. Instead, AAG Murphy reconstructed this time after the fact based on his review of the file. Fee People Br. at 9-10; Fee Tr. at 196-99 (began contemporaneous timekeeping on 10/29/03, and "right about the same time I would have also tried to calculate the time I spent historically"), 208-09, 227-28, 253. Respondents argue that without the underlying time records, AAG Murphy's fee petition documents "lack foundation" and "cannot be the basis for determining the reasonableness of legal fees." Fee Resp. Br. at 26. The Board reiterates that the reasonableness of fees "cannot be determined on

[3] For the 10/30/03 and 10/31/03 entries, only the "trial prep" time is provided in the right column of Table A, as the "travel" time and "trial" time are addressed later in this opinion as part of Table C.

the basis of conjecture or on the opinion or conclusions of the attorney seeking the fees." Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427.

TABLE B		
Date	**AAG Murphy's Work Description**	**Time in Hours**
10/3/2003	*Pleading review, trial preparation*	2.5
10/6/2003	*Document review, trial preparation*	4
10/7/2003	*Attend hearing, trial preparation*	7
10/8/2003	Trial preparation	6
10/14/2003	*Trial preparation, resolve discovery issues*	6
10/16/2003	*Review Board order, conference w/ Sternstein and Cohe[n]*	7.5
10/17/2003	*File review, trial preparation*	3.5
10/22/2003	Trial preparation	7.5
10/23/2003	Trial preparation	9.5
10/24/2003	Trial preparation	9
10/25/2003	Trial preparation	4
10/27/2003	Trial preparation	10
10/28/2003	*Pre-trial preparation, conduct pre-trial, trial preparation*	10
10/29/2003	Trial preparation (11.25 hours), travel to venue (45 minutes)[4]	11.25
10/30/2003	Trial preparation (7 hours), conduct trial (7 hours)	7
10/31/2003	Trial preparation (5.5 hours), conduct trial (5 hours), travel to home (2.5 hours)[5]	5.5
9/8/2004	*Review Board order, analyze costs/fees issues*	2.5
Table B Total Hours		**112.75**

Fee People Exh. 100.

The Board does not question that AAG Cohen and AAG Murphy worked on this case for the time periods they represent. *See* Fee People Exh. 100, Cohen Affidavit, Murphy Affidavit; Fee Tr. 56, 202, 258. Rather, with respect to the claimed charges above, the Board finds that the evidence provided by the People is "devoid of any meaningful information to assist it in determining the reasonableness of the fees charged." Kaiser, 164 Ill. App. 3d at 985, 518 N.E.2d at 428.

[4] While the tasks in AAG Murphy's entry for 10/29/03 are aggregated into a single hourly total in his timesheet, the Table B entry is broken down based on AAG Murphy's travel voucher (Fee People Exh. 102 at 12). For this entry, only the "Trial preparation" time is provided in the right column of Table B, as the "travel to venue" time is addressed later in this opinion as part of Table D.

[5] While the tasks in each of AAG Murphy's entries for 10/30/03 and 10/31/03 are aggregated into a single hourly total in his timesheet, the Table B entries are broken down by hours based on Table A and AAG Murphy's travel voucher (Fee People Exh. 102 at 12). For these two entries, only the "Trial preparation" time is provided in the right column of Table B, as the "travel to home" time and "conduct trial" time are addressed later in this opinion as part of Table D.

The Kaiser court found to be insufficient descriptions of attorney work very much like the above entries of AAG Cohen and AAG Murphy. The fee documentation from Kaiser included work descriptions such as "'Court Appearance,' 'Review Doc's,' 'Pleadings,' 'Status,' and the like." Kaiser, 164 Ill. App. 3d at 985, 518 N.E.2d at 428. The court in Kaiser further summarized the inadequate attorney work descriptions, which are strikingly similar to those provided by the People and set forth above:

> Seven hours were attributed to "file review," four hours to "review of complaint," 15.75 hours to "review" or "document review" and 27.25 hours to "pleadings" or "review of pleadings." "Court appearances," without more, accounted for 35 hours of charges and 17.75 hours were billed for services described only as "status." "Research" charges totalled 5.5 hours and 5.25 hours were billed for "telephone calls," only 1.5 of which were accompanied by a notation identifying the person with whom the conversation was had. Similarly, "meetings" and "conferences," without further explanation, totalled 5.75 hours and meetings "with Hess," "with plaintiff's attorney," "with defendant's attorney," and "with Kaiser's attorney," accounted for 9.25 hours. Also included in the summary were charges for items listed only as "correspondence," "status letter," "discovery," "review of lease and complaint," and "attorney opinion." Kaiser, 164 Ill. App. 3d at 985-86, 518 N.E.2d at 428-29.

The appellate court in Kaiser affirmed the trial court's refusal to award attorney fees based on the above descriptions. The trial court found the list of descriptions "inadequate," ruling that:

> without detailed information concerning the nature of and the actual time expended on each of the legal tasks performed, the identity of who performed them, how they related to the litigation and whether they were necessarily required, it was impossible to render a finding that they were reasonable and, therefore, compensable. Kaiser, 164 Ill. App. 3d at 986, 518 N.E.2d at 429.

Other than disclosing the names of the attorneys performing the work, AAG Cohen and AAG Murphy, and providing daily time totals, the People's petition suffers from the same flaws.

"[I]t is incumbent upon the petitioner to present detailed records maintained during the course of the litigation containing facts and computations upon which the charges are predicated." Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 427-28; *see also* First Midwest Bank, 289 Ill. App. 3d at 263, 682 N.E.2d at 381. The Kaiser court cited County of Lake as standing for the proposition that a "timesheet and summaries containing only general descriptions of work performed are not an adequate substitute for detailed and contemporaneous time records." Kaiser, 164 Ill. App. 3d at 986, 518 N.E.2d at 429. In Kaiser, the underlying attorney time records had been destroyed and the court instead reviewed "daily time reports" and a "summary of charges." Kaiser, 164 Ill. App. 3d at 982, 985, 987, 518 N.E.2d at 427, 428, 430. Here, as noted above, the People provided no underlying time records for AAG Murphy and his time was not kept contemporaneously until the day before the October 2003 hearing. Though

respondents' hearing exhibit 102 states that it quotes all of AAG Cohen's time record entries, the People submitted only half of the actual time records of AAG Cohen.

Of course, the contemporaneity of timekeeping, while increasing the likelihood of accuracy, is no guarantee that the resulting records will be adequately detailed. At bottom, neither AAG Cohen's nor AAG Murphy's work descriptions set forth above are "sufficiently detailed to allow the [Board] to assess the reasonableness and necessity of the services rendered." Mountbatten Surety, 349 Ill. App. 3d at 874, 812 N.E.2d at 105.

The italicized entries in Tables A and B reflect another infirmity, also identified in Kaiser:

> it is impossible to determine exactly what amount of time was expended on each task listed because, in most instances, the time for all work performed by an attorney on a given day was aggregated into a single hourly total for that day. Consequently, there is no completely objective manner by which to determine the reasonableness of the charges. Kaiser, 164 Ill. App. 3d at 988, 518 N.E.2d at 430; *see also* Weidner, 245 Ill. App. 3d at 493, 614 N.E.2d at 883 (affirming denial of fees where the entries "listed a number of activities but listed only one total for time spent engaging in the activities collectively, rather than breaking down the activities individually.").

The Board recognizes that there may be cases where the aggregation of services alone does not preclude an award of fees. *See* Sampson v. Miglin, 279 Ill. App. 3d 270, 282, 664 N.E.2d 281, 289 (1st Dist. 1996). This is not such a case. The AAGs italicized work descriptions are not only an aggregation of multiple tasks into a single daily time entry—the descriptions are also so general as to their purpose or subject matter that the Board is unable to determine each task's reasonableness.

When the AAGs' work descriptions in Tables A and B do ascribe a singular type of activity to a time entry, they still uniformly fail to even briefly identify the scope of that undertaking or the issues being addressed. The Board finds that all of the above descriptions are "too vague and general to have any practical utility or to satisfy the burden [the prevailing litigant] was required to meet." Kaiser, 164 Ill. App. 3d at 986, 518 N.E.2d at 429.

None of these shortcomings were meaningfully remedied by the People at hearing. The AAGs' testimony about their above work on the case (*e.g.*, discovery, file review, hearing preparation) was only of the most general nature and failed to provide any breakdown or helpful explanation of these time entries. Fee Tr. at 24, 28-29, 32-35, 138, 192-96, 235-41; *see* County of Lake, 156 Ill. App. 3d at 1071, 509 N.E.2d at 1093 (attorney's "testimony and supplemental analysis are much too general to cure the deficiencies"). The People seem to acknowledge as much when they state that "[a]ny testimony lacking details of work performed on a specific day is entirely understandable after the lengthy passage of time." Fee People Br. at 10.

In fact, AAG Cohen testified that his time entries do not provide a "detailed description." Fee Tr. at 80-81. At hearing, AAGs Cohen and Murphy were repeatedly unable to provide

specific information about their respective time entries. Fee Tr. at 99, 100, 105, 107, 108, 109, 110, 111, 112, 117, 118, 119, 127, 128, 133, 134, 135, 151-153, 218-220, 230-31, 236, 237, 240-41, 246, 254. AAG Cohen was cross-examined about his entries of 6/19/02, 7/18/02, and 8/20/02, each of which states only "File review":

> Q. Mr. Cohen, on August 20, 2002, you wrote down "file review." What did you specifically review that day?
> A. I don't recall.
> Q. How is it different than what you reviewed on June 19, 2002 or July 18, 2002?
> A. How is the entry on my --
> Q. So your actual review that day?
> A. I don't recall how it was different. Fee Tr. at 127.

AAG Cohen further testified about his time entries regarding discovery and trial preparation:

> Q. Mr. Cohen, with respect to your entries regarding any work you did on discovery in Exhibit A [AAG Cohen's affidavit and timesheet], isn't it true that you specifically can't tell us what you reviewed on any given day?
> A. Yes.
> Q. And isn't it true with respect to your entries on trial preparation where you put trial prep, and I take that to mean trial preparation; is that correct?
> A. Correct.
> Q. That you cannot tell us with any specificity what you actually did specifically on those days?
> A. Correct. Fee Tr. at 133.

AAG Cohen was also cross-examined about his entries that aggregated multiple tasks under a single time charge:

> Q. With respect to any of the bills where you had multiple things that you did time entries, where you have multiple tasks that you performed, there's no way you can tell us specifically how much time you spent on any given task that's listed there; is that correct?
> A. Not at this time, no.
> Q. And that holds true throughout the entire attachment [timesheet] to the affidavit?
> A. Correct. Fee Tr. at 152-53.

AAG Murphy provided similar testimony on cross-examination:

> Q. *** I am trying to say on the affidavit where you've listed multiple tasks, specifically listed multiple tasks for any given day, can you tell me how much time is allotted for each of those tasks?
> A. No, I cannot, not from the face of this affidavit.
> Q. Fair enough. Now, certainly when we talk about more of a general category, for example, prepare draft of closing statement, there were multiple tasks involved in that that are not reflected in the affidavit; is that a fair statement?

A. I would agree with that.
Q. And the same holds true with trial preparation, when we see that entry, there's multiple tasks associated with trial preparation that's not listed on the affidavit?
A. Absolutely. Fee Tr. at 246-47.

Respondents maintain that "[i]f the person who performed the work and made the record cannot ascertain what the entry represents, it is inconceivable that an independent party can make a judgment as to whether or not the fees are reasonable." Fee Resp. Br. at 35-36. The Board concludes that the AAGs' work descriptions in Tables A and B are not adequate to "inform [the Board] of what the attorneys were doing." Mountbatten Surety, 349 Ill. App. 3d at 874, 812 N.E.2d at 105. For these claims, the Board finds that the People have not met their burden and that the Board cannot award the requested attorney fees.

The Board has determined, however, that when combined with the Board's experience and consideration of the record, the entries in Tables C and D below, unlike those in Tables A and B, are sufficiently descriptive to enable the Board to assess their reasonableness. In determining the reasonableness of a fee request, the Board may "rely on its own experience." Cabrera v. First National Bank of Wheaton, 324 Ill. App. 3d 85, 104, 753 N.E.2d 1138, 1154 (2nd Dist. 2001), citing Heller Financial, Inc. v. Johns-Byrne Co., 264 Ill. App. 3d 681, 691, 637 N.E.2d 1085 (1st Dist. 1994). The Board "has the discretion to consider the contents of the record in determining whether a party is entitled to fees and whether the fees requested are reasonable." Kaiser, 164 Ill. App. 3d at 986, 518 N.E.2d at 429. The Board has "broad discretionary powers, may exercise [its] independent judgment and [is] not limited to the evidence presented by the parties in arriving at a reasonable fee." Gaylord**,** 317 Ill. App. 3d at 596, 740 N.E.2d at 508 (trial court has "discretion to independently review and consider the contents of the entire court file in determining whether a party is entitled to fees and whether the fees requested are reasonable."), citing *In re* Estate of Healy, 137 Ill. App. 3d at 411 and Kaiser, 164 Ill. App. 3d at 986.

The following entries are taken verbatim from the timesheets of AAG Cohen (Table C) and AAG Murphy (Table D) in the People's petition. For AAG Cohen, time record entries that are materially different from those in the People's petition are identified within brackets.

TABLE C

Date	AAG Cohen's Work Description	Time in Hours
7/26/2002	Prep Amended Complaint for filing	2.00
7/29/2002	Correct Notice of Filing	1.00
9/25/2002	Rev. Mo. To Strike Complaint	1.00
10/1/2002	Resp. to Motion to Strike	2.00
10/11/2002	Rev. Resp. Add. Info	1.00
12/18/2002	Prep. Mo. Deem Facts Admitted/Summ. Judgment	4.00
1/10/2003	Reply to D's Resp. to Motion [actual time record identifies motion as "Mo sum judg."]	2.00
1/17/2003	Finalize Reply to D's Response to Motion re: Summ. Judg.	2.00
4/17/2003	Mo. To strike aff. Ds	3.00

4/18/2003	Finalize Mo. To Stike Aff. Ds	3.00
4/30/2003	Rev. Ds Resp to Mo. To Strike Aff. Ds	2.00
5/6/2003	Mo to stike Ds Mot to Dismiss	3.00
5/7/2003	Finalize Mot to Strike Ds Mo to dismiss for filing	3.00
6/13/2003	D's Mo for ext of time - resp	2.00
6/16/2003	Resp to Mo for Ext of time	1.00
7/9/2003	drft 1st Mo to compel	3.00
7/28/2003	Mo to compel	2.00
8/5/2003	*prep & dep of Rich. Fred.*	4.00
8/6/2003	*prep & dep of Ed. Fred.*	4.00
8/29/2003	*dep prep & deps of Huff & Kallis*	8.00
9/11/2003	resp to D's mo to dismiss	3.00
9/18/2003	pre-trial memo	5.00
10/25/2003	trial prep, resp. to mo to bar test. [respondents' quote of the actual time record states "Trial prep (6.0 hrs)[,] 3.0 hrs Resp. to Mot. to Bar Test."]	3.00
10/26/2003	trial prep [the actual time record states "Trial Prep 4.0 hr[,] 2.0 hr Review 8 Motions in limine"][6]	2.00
10/30/2003	trial prep, travel, trial [the actual time record states "Trial Prep 5.0 hrs[,] Trial 7.0[,] Travel 1.5"]	8.50
10/31/2003	trial prep, trial, travel [respondents' quote of the actual time record states "Trial Prep 2.5 hrs[,] Trial 5.0[,] Travel 3.0"][7]	8.00
12/13/2003	rev trial transcript for closing arg	3.50
12/14/2004	rev trial transcript for closing arg	3.50
12/18/2003	Closing argument	7.00
12/19/2003	Closing argument	8.00
12/20/2003	Closing argument	11.00
12/21/2003	Closing argument	7.00
12/22/2003	Closing argument	7.50
1/11/2004	Closing argument	3.00
1/12/2004	Closing argument	6.00
1/13/2004	Closing argument	14.00
1/14/2004	Closing argument	10.00
3/29/2004	read Ds closing arg	3.00
4/5/2004	Closing rebuttal argument	8.00
4/6/2004	Closing rebuttal argument	8.00
4/7/2004	Closing rebuttal argument	8.00

[6] For the 10/25/03 and 10/26/03 entries, only the "Resp. to Mot. to Bar Test." time and "Review 8 Motions in limine" time are provided in the right column of Table C, as the "Trial prep" time was addressed earlier in this opinion as part of Table A.

[7] For the 10/30/03 and 10/31/03 entries, only the "travel" time and "trial" time are provided in the right column of Table C, as the "trial prep" time was addressed earlier in this opinion as part of Table A.

4/8/2004	Closing rebuttal argument	8.00
4/9/2004	Closing rebuttal argument	8.00
4/10/2004	Closing rebuttal argument	14.00
4/11/2004	Closing rebuttal argument	12.00
4/12/2004	Closing rebuttal argument	7.00
4/13/2004	Closing rebuttal argument	8.00
4/14/2004	Closing rebuttal argument	8.00
4/15/2004	Closing rebuttal argument	4.00
9/9/2004	costs/fee petition	4.00
9/15/2004	costs/fee petition	2.50
Table C Total Hours		**265.50**

Fee People Exhs. 100, 101; Fee Resp. Exh. 102.

TABLE D		
Date	**AAG Murphy's Work Description**	**Time in Hours**
10/29/2003	Trial preparation (11.25 hours), travel to venue (45 minutes)[8]	0.75
10/30/2003	Trial preparation (7 hours), conduct trial (7 hours)	7
10/31/2003	Trial preparation (5.5 hours), conduct trial (5 hours), travel to home (2.5 hours)[9]	7.5
11/17/2003	Prepare draft of closing statement	4
11/18/2003	Prepare draft of closing statement	4
4/12/2004	Review and revise reply in support of closing argument	1.5
4/12/2004	Preparation of fees affidavit and statement of hours work	1
5/21/2004	Review Respondent's motion to strike closing argument	3
9/16/2004	Compile fees work sheet, affidavit	2
Table D Total Hours		**30.75**

Fee People Exh. 100.

In determining the reasonableness of the requested fees, the Board may consider a number of factors:

> such as the skill and standing of the attorneys, the nature of the case, the novelty and/or difficulty of the issues and work involved, the importance of the matter,

[8] While the tasks in AAG Murphy's entry for 10/29/03 are aggregated into a single hourly total in his timesheet, the Table D entry is broken down by hours based on AAG Murphy's travel voucher (Fee People Exh. 102 at 12). For this entry, only the "travel to venue" time is provided in the right column of Table D, as the "Trial preparation" time was addressed earlier in this opinion as part of Table B.

[9] While the tasks in each of AAG Murphy's entries for 10/30/03 and 10/31/03 are aggregated into a single hourly total in his timesheet, the Table D entries are broken down by hours based on Table C and AAG Murphy's travel voucher (Fee People Exh. 102 at 12). For these two entries, only the "travel to home" time and "conduct trial" time are provided in the right column of Table D, as the "Trial preparation" time was addressed earlier in this opinion as part of Table B.

> the degree of responsibility required, the usual and customary charges for comparable services, the benefit to the client [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing Ashby], and whether there is a reasonable connection between the fees and the amount involved in the litigation [Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428, citing Estate of Healy; *In re* Marriage of Ransom]. *See also* First Midwest Bank, 289 Ill. App. 3d at 263, 682 N.E.2d at 381, citing Kaiser, 164 Ill. App. 3d at 984.

Before turning to the factors in their brief, the People appear to question the Board's application of the factors to Section 42(f) of the Act:

> Fundamentally, Section 42(f) of the Act includes no limitation on the Attorney General's fees and costs based on the nature of the cause and the novelty and difficulty of the questions at issue, because all fee petitions pursuant to Section 42(f), including the Fee Petition in the present case, involve cases of the same nature. Fee People Br. at 8.

The People do not further develop this statement and cite no authority for the inapplicability of the factors to this case. The Board notes, however, that the courts have applied the factors to fee-shifting statutes even though the statutory provisions at issue, like Section 42(f) of the Act, do not themselves articulate the factors. *See, e.g.*, Sampson, 279 Ill. App. 3d at 281-82, 664 N.E.2d at 288-89 (enunciating the factors in a fee-shifting case under the Illinois Municipal Code).

The People request an hourly rate of $150, though they assert that "the market for attorneys' fees would support an even higher rate." Fee People Br. at 11. According to the People, the issues in this enforcement action were "somewhat novel" because respondents "filed false documents with the Illinois EPA, and failed to cooperate in the People's water pollution investigation, and were difficult relative to other cases involving the Act." *Id*. at 8. The People add that the case involved water pollution, numerous statutory and regulatory violations over more than ten years, "including the atypical situation of repeated, knowing and willful violations," expert witnesses, evidentiary issues, and numerous, lengthy legal briefs. *Id*.

The People maintain that in this action, they were protecting the public's "right to [a] healthy and safe environment," and conclude that "[a] more important example of a public right cannot be imagined." Fee People Br. at 8, citing Meadowlark Farms, Inc. v. IPCB, 17 Ill. App. 3d 851, 856, 308 N.E.2d 829, 832 (5th Dist. 1974) ("By enactment of the Environmental Protection Act, the General Assembly declared the public policy of the State of Illinois with reference to water pollution, and subsequently the public policy of the State, by adoption of the 1970 Constitution, was declared to be that every person has an inherent right to a clean and healthful environment.").

Respondents assert that this action was "a simple enforcement case which is typical of the work performed by the Attorney General's Environmental Bureau on an ongoing basis." Fee Resp. Br. at 36. According to respondents, this case involved "routine" issues and "did not require exceptional skills on the part of the Complainant's attorney." *Id*. Respondents argue that

the billing rate in this case "should not be as high as other cases in which the Board may have allowed reimbursement when those cases required additional legal skills." *Id*. at 37.

Respondents, citing Section 1.5(b) of the Illinois Supreme Court's Rules of Professional Conduct, complain that the People failed to communicate the AAGs' billing rate to respondents "in a reasonable time after commencing their duties in this case." Fee Resp. Br. at 52. Respondents further complain that the People failed to submit to respondents, during the course of the litigation, monthly or quarterly statements of legal fees being incurred. *Id*. Respondents claim that because they "had no basis for knowing that the Complainant['s] attorney [was] of the opinion that they were entitled to the highest hourly rate ever awarded by the Board or that the Complainant's attorney would be so inefficient and nonproductive," respondents were "totally blind sided" by the People's fee and cost demand. *Id*. at 53. Respondents maintain that it is "exactly this type of ambush billing that Supreme Court Rule 1.5(b) is designed to avoid." *Id*. at 53-54.

Respondents also argue that because of the "fixed salary structure" of the Attorney General's Office, AAGs "lack incentive to work productively, efficiently or in the best interest of the party that will be paying their fee." Fee Resp. Br. at 47. Respondents add that "[t]he attempt to convert the Complainant's bureaucratic based salaries into fees that are subject to review by a client results in extreme over billing and out-right fraud." *Id*. at 47-48. Respondents maintain that any fee reimbursement to the People should be based on the salary it pays the AAGs and that anything more "would provide the Attorney General's Office with a windfall." *Id*. at 39.

According to respondents, the People's originally requested legal fees and costs "in excess of $136,000 on a judgment that was unexpectedly and unreasonably high at $153,000," represent "89% of the actual judgment." Fee Resp. Br. at 41. Respondents assert that the Sampson court addressed this issue by "comparing the legal fees and cost claimed against the total amount of the judgment" and "found that the attorneys' fees and cost represented less than 30% of the total reward and therefore found that the award of fees was not so excessive to amount to an abuse of discretion." *Id*. at 40-41. Respondents observe that the People's request is "well in excess of the 30% established by the Sampson court" and argue that "[c]learly, the results obtained do not justify the costs and fees claimed by the Complainant." *Id*. at 41. Respondents add:

> It would be a dangerous precedence for the Board to allow the Attorney General's office to continue to assign inexhaustible resources to potentially reimbursable cases without allowing for some guidance as to the potential for judgment damages. *Id*. at 41.

The Board is not convinced by respondents' arguments that basing an award on an hourly fee rate rather than AAG salary would result in a "windfall" for the Attorney General's Office. Section 42(f) of the Act provides for "attorney's fees" and only for actions brought "in the name of the people of the State of Illinois." 415 ILCS 5/42(f) (2006). Moreover, any such fees awarded in an action brought by the Attorney General's Office are to be "deposited in the Hazardous Waste Fund created in Section 22.2 of this Act." *Id*.

Nor can the Board find that Section 1.5(b) of the Illinois Rules of Professional Conduct, by its terms, applies in this case. That provision reads:

> When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client before or within a reasonable time after commencing the representation. 139 Ill. 2d R. 1.5(b).

Respondents were simply not "clients" of AAGs Cohen and Murphy. *See* Gaylord, 317 Ill. App. 3d at 596-97, 740 N.E.2d at 508 (in fee petition cases, "the attorney submitting billing statements for approval by the trial court has no fiduciary relationship with the party ultimately liable for payment of fees."). Respondents cite no authority for their proposition that the fee communication requirements of Rule 1.5(b) would cover awards in statutory fee-shifting cases.

The Board is also not persuaded by respondents' argument based on Sampson. In affirming the trial court's award as neither so excessive or inadequate as to constitute an abuse of discretion, the appellate court in Sampson noted the fact that the "attorney fees and costs of $225,249 represented less than 30% of the total award of almost $770,000." Sampson, 279 Ill. App. 3d at 282, 664 N.E.2d at 289. The Board can find no support in Sampson, however, for respondents' suggestion that the court "established" a 30% cap on fees and costs.

Respondents concede that the hearing on the complaint over October 30 and 31, 2003, took ten hours to complete. Resp. Br. at 36, 45. The record of the proceeding corroborates this timeframe (12 hours of hearing, minus two one-hour lunch breaks), and it is undisputed that the two AAGs participated at hearing. The People assert that "there is no potentially duplicative supervisory or management level attorney oversight time requested." Fee People Br. at 9. AAG Murphy testified that he and AAG Cohen allocated between them the responsibilities for different witnesses, exhibits, and cross-examinations at hearing. Fee Tr. at 194-96, 247-49. Nowhere do respondents persuasively argue that having two attorneys at hearing on behalf of the People was duplicative or otherwise excessive and, in fact, attorneys Michael Jawgiel and David O'Neill appeared at hearing on behalf of respondents. *See* Richardson v. Haddon, No. 1-06-0715, 2007 Ill. App. LEXIS 861, at *9 (1st Dist. Aug. 10, 2007) ("time spent during the trial . . . cannot be said to be excessive").

In People v. J & F Hauling, Inc., PCB 02-21, slip op. at 2 (May 1, 2003), another enforcement action under the Act, the Board found $150 per hour to be reasonable for AAG time. That case involved a seven-count complaint alleging waste handling and disposal violations against a corporation. The People received summary judgment on the alleged violations without opposition from the respondent, which also did not participate at the remedy hearing. One witness testified at the remedy hearing and six exhibits were admitted into evidence. The hearing transcript was 39-pages long and only the People filed a post-hearing brief, which was 11 pages long. The Board imposed an order to cease and desist from further violations and to pay a $60,000 civil penalty. The Board awarded attorney fees and costs totaling $3,967.50, which were not contested. *Id.* at 1-3. The People assert that the Board's 2003 decision in J & F Hauling supports their request, "even without consideration of the annual increases in billing rates for environmental lawyers." Fee People Br. at 11.

In 2001, the Board issued a decision awarding attorney fees and costs in People v. Panhandle Eastern Pipeline Co., PCB 99-191 (Nov. 15, 2001). *See also* Panhandle, PCB 99-191 (Jan. 10, 2002) (on reconsideration of "cease and desist" order). Panhandle was a complex air emissions action involving enforcement of the Prevention of Significant Deterioration or PSD program under the federal Clean Air Act. The hearing lasted for seven days, resulting in approximately 1,500 pages of transcript. One hundred and eight hearing exhibits were entered into evidence and 16 witnesses testified. Post-hearing briefs were 138, 91, and 65 pages long. The Board found many years of violations, issued an order to cease and desist from further violations, imposed an $850,000 civil penalty, and awarded the People attorney fees and costs of $100,146 and $15,604.25, respectively. The attorney fee rate requested and granted was $120 per hour. Panhandle opposed the imposition of attorney fees and costs, but did not specifically contest the particular fees and costs, the adequacy of their documentation, or the hourly rate. *See* Panhandle, PCB 99-191, slip op. at 1-4, 35-36 (Nov. 15, 2001); *see also* Panhandle, PCB 99-191 (Jan. 10, 2002).

The Skokie Valley Asphalt hearing involved a five-count complaint, six witnesses, and 43 admitted exhibits, including environmental reports and asset sale documentation. The hearing resulted in a 524-page transcript. The alleged violations spanned many years and the issues presented included corporate and individual liability, water pollution, NPDES permitting, effluent exceedences, and the submission of false DMRs. As described above, the Board has imposed a $153,000 civil penalty in this case. *See* Skokie Valley Asphalt, PCB 96-98 (Sept. 2, 2004). At the time of the hearing on the complaint, AAG Cohen had approximately 16 years of experience as an attorney, including some 12 years as a prosecutor, and AAG Murphy had approximately 12 years of experience as an attorney, including roughly seven years as a prosecutor. Fee People Br. at 11; Fee People Exhs. 103, 104; Fee Tr. 69-70, 72, 206-07.

The parties disagree over whether respondents' one witness from the December 2006 hearing, Ms. Stonich, was qualified as an expert witness on the issue of attorney fees. Fee People Br. at 4-5; Fee Resp. Br. at 27. Respondents also argue that the People's failure to produce an expert witness to testify as to the reasonableness of their requested attorney fees is fatal to the People's claim. Fee Resp. at 21. The Board need not resolve the parties' dispute over Ms. Stonich's qualifications because today's decision does not rely on her opinion. In addition, the Board finds that although the People could have presented an expert witness on the issue of attorney fees, they were not required to do so. *See* Fitzwilliam, 233 Ill. App. 3d at 235, 598 N.E.2d at 1012 (expert testimony is not required as a matter of law on the issue of reasonableness of fees).

Based on Board precedent and after considering all of the applicable factors, including the nature of this enforcement case, the Board finds the People's requested hourly rate of $150 to be reasonable. The People's award will include $3,000 in attorney fees for the 10 hours of hearing time of AAGs Cohen and Murphy. *See In Re* Estate of Callahan, 144 Ill. 2d 32, 44, 578 N.E.2d 985, 990 (1991), citing Mireles v. Indiana Harbor Belt R.R. Corp., 154 Ill. App. 3d 547, 551, 507 N.E.2d 129 (1st Dist. 1987). The Board declines, however, to assess attorney fees for non-productive travel time; here, the 7.75 hours it took the AAGs to drive to and from the hearing. Fee Tr. at 146.

Based on the AAG entry dates and descriptions, the Board readily located within the record each of the filings noted in Tables C and D. Those filings are:

- The People's second amended complaint (filed 7/26/02); the People's corrected notice of filing for the second amended complaint (filed 7/29/02); respondents' motion to strike the second amended complaint (filed 9/25/02); the People's response to the motion to strike the second amended complaint (filed 10/1/02); respondents' additional information in support of the motion to strike the second amended complaint (filed 10/11/02);

- The People's motion to deem facts admitted and for summary judgment (filed 12/20/02); respondents' response to the motion to deem facts admitted and for summary judgment (filed 1/3/03); the People's reply to the response to the motion to deem facts admitted and for summary judgment (filed 1/17/03);

- The People's motion to strike or dismiss respondents' affirmative defenses (filed 4/18/03); respondents' response to the motion to strike or dismiss affirmative defenses (filed 4/30/03);

- Respondents' motion to dismiss respondent Edwin Frederick and respondent Richard Frederick (filed 4/23/03); the People's motion to strike, or alternatively a response to, the motion to dismiss (filed 5/7/03);

- Respondents' motion for extension of time for discovery schedule (filed 6/9/03); the People's response to the motion for extension of time (filed 6/16/03);

- The People's first motion to compel response to discovery requests (filed 7/9/03); the People's second motion to compel response to discovery requests (filed 7/28/03);

- Respondents' motion to dismiss the People's second amended complaint and to recuse AAG Sternstein (filed 9/9/03); the People's response to the motion to dismiss and recuse (filed 9/11/03);

- The People's pre-hearing memorandum (filed 9/22/03);

- The People's response to respondents' motion to bar testimony (filed 10/27/03);

- The October 30, 2003 hearing transcript (filed 11/12/03); the October 31, 2003 hearing transcript (filed 11/12/03);

- The People's post-hearing brief (closing argument) (filed 1/15/04); respondents' post-hearing response brief (filed 3/12/04); the People's post-hearing reply brief (closing rebuttal argument) (filed 4/15/04); respondents' motion to strike and objections to the People's closing argument and reply brief (filed 5/17/04); and

- The People's petition for attorney fees and costs (filed 9/17/04).

The Board has revisited and carefully considered each of these filings, along with related orders of the Board and the hearing officer. The Board notes that:

> Time records, although important, are not conclusive in determining a fee award and should be scrutinized to determine whether they represent a reasonable expenditure of time in the context of the work performed [Weidner, 245 Ill. App. 3d at 493-94, 614 N.E.2d at 883, citing Fitzwilliam, 233 Ill. App. 3d at 236]. A trial judge's experience and knowledge may be relied upon in determining what constitutes a proper expenditure of time [Weidner, 245 Ill. App. 3d at 494, 614 N.E.2d at 883, citing Fitzwilliam, 233 Ill. App. 3d at 235-36].

With several exceptions discussed below, the Board finds the AAGs' work associated with these pleadings and the time charged for it to be reasonable. The Board bases this decision on its familiarity with the record and knowledge of the issues presented by this litigation, as well as on all of the applicable factors articulated above, including "the novelty and/or difficulty of the issues and work involved." Kaiser, 164 Ill. App. 3d at 984, 518 N.E.2d at 428.

Initially, the Board observes that the entries in Tables C and D are not susceptible to respondents' claims that they are being asked to pay for newly-assigned AAGs "getting up to speed" on this case because of the departure or disqualification of an already-assigned AAG. Fee Resp. Br. at 52; Fee Tr. at 31-32, 98-99, 110, 138, 194, 231-32, 237-38.

The Board will charge only one-half hour of the requested two hours for AAG Cohen's 7/26/02 entry of "Prep Amended Complaint for filing." AAG Cohen testified that this task entailed "[n]otices, certificates of service, arranging for the document to be filed" and that he drafted the notice without using a form available to other AAGs. Fee Tr. at 117-19. Nor will the Board require respondents to pay for opposing counsel's one hour of time in remedying the People's procedural oversight, *i.e.*, correcting the notice of filing on 7/29/02 for the second amended complaint filed three days earlier.

Further, the Board declines to award the People attorney fees for their unsuccessful motion to deem facts admitted and for summary judgment, or the related reply (8 hours on 12/18/02, 1/10/03, 1/17/03). The Board denied the People's motion in an order of March 20, 2003. In Panhandle, PCB 99-191 (Nov. 15, 2001), the Board deducted 109.6 AAG hours of the People's requested 944.15 hours. The deduction reflected the time spent on three of the People's motions (motions to reverse a hearing officer ruling, strike portions of Panhandle's response brief, and reconsider affirming a hearing officer ruling), all three of which were opposed by Panhandle and denied by the Board. The Board held that it:

> will not order Panhandle to pay attorney fees for the People's three unsuccessful motions described above. In so doing, the Board is not finding that the People's motions were frivolous. Rather, the Board is exercising its discretion, under Section 42(f) of the Act, by not requiring Panhandle to pay $13,152 in attorney fees that are attributable solely to motions on which the People did not prevail. Panhandle, PCB 99-191, slip op. at 36.

The same reasoning applies in this instance.

Regarding post-hearing briefing, the Board recognizes the necessity and quality of the People's 48-page post-hearing brief and 42-page reply brief. The People claim 88.5 hours of attorney time for the preparation of their initial post-hearing brief, including review of the hearing transcript. The People claim 97.5 hours of attorney time to prepare their reply brief, including review of respondents' 44-page response brief. Attached to the People's reply brief are several exhibits concerning attorney fees and costs. Based on the Board's experience and considering the issues presented, the Board finds 75 hours and 60 hours for the initial brief and reply brief, respectively, to be reasonable and reduces the People's time charges accordingly. *In re* Estate of Healy, 137 Ill. App. 3d at 411, 484 N.E.2d at 894 ("The trial judge may also use his own knowledge and experience to assess the time required to complete similar activities."); Fee Tr. at 37-38, 147.

The Board also will not charge respondents the full 9.5 hours of attorney time allocated to preparing the People's petition for fees and costs with its various attachments. The tabulation of AAG Cohen's timesheet took longer than was necessary. Fee Tr. at 96. The petition itself is only four pages long. The Board finds a total of four hours to be a reasonable amount of attorney time for this task.

The deposition transcripts relating to AAG Cohen's entries of 8/5/03, 8/6/03, and 8/29/03 were not filed with the Board. The Board is not finding that the depositions or AAG Cohen's related work were without merit, only that without the deposition transcripts, the Board cannot assess the reasonableness of the claimed 16 hours.

Accordingly, the Board deducts 94.75 hours from Tables C and D, including two hours from the hearing to reflect the two one-hour lunch breaks. The Board therefore awards the People $30,225 in attorney fees (201.50 hours at $150 per hour).

Costs

The Board has carefully scrutinized each document provided by the People regarding their requested costs totaling $3,482.84. The Board awards the People $1,796.65 in court reporting transcription costs, which are supported by Toomey Reporting invoices identifying this case and the deposition of respondent Edwin Frederick ($311.80), the deposition of respondent Richard Frederick ($292.90), and the depositions of October 2003 hearing witnesses Chris Kallis and James Huff ($1,191.95). Fee People Exh. 102 at 1-3, 21, 22; Fee People Exh. 100, Exh. D; Fee Tr. at 61-62. Respondents do not specifically dispute these documented costs. Fee Resp. Br. at 55.

The Board declines to assess respondents for outside photocopying expenses. The People presented copies of invoices from Kinko's for $63.70, $466.64, and $589, totaling $1,119.34. Fee People Exh. 102 at 4-6, 20, 23; Fee People Exh. 100, Exh. D. There is, however, no adequate explanation of how the copying related to the enforcement action (*e.g.*, items copied or for what purpose). The Board finds that the People have not met their burden of demonstrating that these costs are reasonable. *See* Kaiser, 164 Ill. App. 3d at 989, 518 N.E.2d at 431 ("Absent

substantiation that this expense was necessarily required by the litigation, we cannot say that it was a reasonable and recoverable cost . . . .").

The Board will award the People certain of the requested $566.85 in "travel and lodging" expenses associated with the October 30-31, 2003 hearing. The hearing took place in Libertyville, some forty miles from the Attorney General's Office in Chicago. The commutes for the AAGs between Libertyville and their respective residences in Chicago took up to 2.5 hours. Fee People Exh. 102 at 7, 12. The hearing began at 9:00 a.m., lasted all day, and continued the next day at 9:00 a.m. Under these circumstances, the Board finds that lodging near the hearing site was warranted for the two AAGs on the nights before the first and second days of hearing. The AAGs stayed at a Holiday Inn in Gurnee and the People have provided the hotels bills, reflecting the $87.69 nightly rate with taxes. Fee People Exh. 102 at 9, 13; Fee People Exh. 100, Exh. D. The Board will assess the AAG's hotel lodging costs against respondents.

The Board will also award the People the costs of mileage, tolls, and *per diem* meals in connection with the hearing. Fee People Exh. 102 at 7, 12. Respondent's argument that "attorneys do not charge for meals on a per diem basis" (Fee Resp. Br. at 57) ignores the fact that State attorneys are reimbursed on that basis and Section 42(f) of the Act allows for the award of costs incurred by State attorneys, not private attorneys. On October 29, 2003, however, the day before the hearing commenced, the Board will deduct for all but the dinner *per diem* charges. Also, as the hearing adjourned on the afternoon of October 31, 2003, and both AAGs had returned to their respective residences by 6:00 p.m., the Board will not require respondents to pay for the AAGs' requested dinner *per diem* charges on that day. Fee People Exh. 102 at 7, 12.

The Board will also not assess respondents for AAG Cohen's parking charge of $15 (7:29 a.m. to 6:28 p.m.) on October 28, 2003, when AAG Cohen traveled from his residence to his office. AAG Cohen drove to Libertyville on October 29, 2003. The parking charge was therefore incurred the day before he traveled to Libertyville for the October 30-31, 2003 hearing. Fee People Exh. 102 at 7, 8. AAG Cohen testified that he drove to the office on October 28, 2003, so he could put the case file in his car for the hearing. Fee Tr. at 143, 145. The Board finds that the People have not adequately demonstrated the necessity of this full-day parking charge incurred two days before hearing. Nor will the Board assess respondents $8.30 for AAG Murphy's personal phone calls made while at the Holiday Inn. Fee People Exh. 102 at 12. The Board therefore will assess a total of $494.55 for travel and lodging costs associated with the hearing.

Based on the above analysis, the Board requires that respondents pay the People a total of $2,291.20 in costs.

CONCLUSION

The Board awards the People $30,225 in attorney fees and $2,291.20 in costs, for a total of $32,516.20. The Board finds, however, that the People failed to meet their burden of proof to demonstrate that the remainder of their requested fees and costs are reasonable. Under Section

42(f) of the Act, the $32,516.20 in attorney fees and costs must be deposited in the Hazardous Waste Fund. *See* 415 ILCS 5/42(f) (2006).

With this ruling, the enforcement case is concluded, and the Board accordingly lifts the stay it imposed on respondents' obligation to pay the $153,000 civil penalty. Under Section 42(a) of the Act (415 ILCS 5/42(a) (2006)), the civil penalty must be paid to the Environmental Protection Trust Fund. The order below contains the Board's findings of violation and respondents' payment duties regarding the civil penalty and the People's attorney fees and costs.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board finds that respondents violated Sections 12(a) and (f) of the Act (415 ILCS 5/12(a), (f) (2006)) and 35 Ill. Adm. Code 302.203, 304.105, 304.106, 305.102(b), 309.102(a), and 309.104(a).

2. The Board lifts the stay on respondents' obligation to pay $153,000 in civil penalties. No later than December 17, 2007, which is the first business day following the 45th day after the date of this order, respondents must pay $153,000 in civil penalties and $32,516.20 in attorney fees and costs of the People. Respondents must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. Respondents must pay the attorney fees and costs by certified check or money order, payable to the Hazardous Waste Fund. The case number and case name must be included on each certified check or money order.

3. Respondents must send each certified check or money order to:

   Illinois Environmental Protection Agency
   Fiscal Services Division
   1021 North Grand Avenue East
   P.O. Box 19276
   Springfield, Illinois 62794-9276

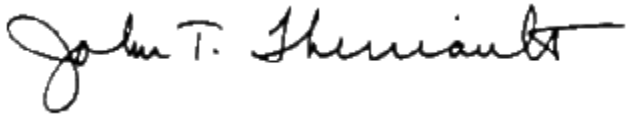
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The

Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 1, 2007, by a vote of 4-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board