

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In the Matter of

Hoosier Spline Broach Corporation

Docket No V-W-16-93

(Application under EAJA)

Respondent

Supplemental Recommended Decision

A recommended decision was issued in this matter on September 17, 1996, awarding to Respondent its fees and expenses incurred in this proceeding after September 1994, and disallowing fees and expenses prior thereto. Respondent had originally applied for fees and expenses incurred since July 1993. Respondent was directed to submit a revised application itemizing the fees and expenses calculated in accordance with that decision.¹ The EPA appealed that decision to the Environmental Appeals Board. On October 11, 1996, the Environmental Appeals Board dismissed the appeal without prejudice as premature. The Board held that the decision was not immediately appealable as of right because the actual dollar amount of the fees and expenses to be awarded was still to be determined. The proceedings, accordingly, were remanded to the ALJ for determination of the dollar amount of the fees and expenses awarded.

Respondent on October 15, 1996, submitted its itemized fees and expenses calculated in accordance with the recommended decision of September 17, 1996. The sum total now requested is \$18,548.85. The EPA has not filed any objections to Respondent's calculations. It is, of course, understood that the EPA has not waived its original objections which formed the basis for its appeal. Nor does Respondent, by submission of its revised application, as made clear by its papers, intend to modify or withdraw its original application or waive its right to appeal.

Opinion

My recommended decision of September 17, 1996, is incorporated in and made a part of this supplemental recommended decision. I find that Respondent's

revised calculations are in accordance with my decision of September 17, 1996, except that I find that the claim for attorney's fees for work done in October 1996, in connection with the appeal is premature.² The dismissal of the appeal without prejudice does not mean that Respondent has prevailed on the appeal. According to Respondent's revised calculations, then, 5.6 hours of Ms. Horowitz's time and 16.5 hours of Ms. Gorczyca's time, or a total of 22.1 hours, is disallowed, but without prejudice to Respondent's right to request those fees upon the conclusion of the appeal, to the extent that they are allowable under the law.

The total amount so disallowed, calculated at the rate of \$75, per hour, is \$1,657.50.

Supplemental Order

Respondent is entitled to an award of fees and expenses in the amount of \$16,891.35.

Dated: November 13, 1996.

Gerald Harwood
Senior Administrative Law Judge

¹ The total amount claimed by Respondent. was \$67,273.64. In addition to reducing fees and expenses to those incurred after September 1994, Respondent's request for attorney's fees in excess of \$75 per hour was denied.

² The work done in connection with submitting the revised calculations is allowed because it is related to that part of the case on which Respondent did prevail.