In the Matter of :

CLIFFORD SUTHERLAND,   CASE NO. 95-CAA-1
SCOTT TENBRINK,
FRED E. FRANKLIN AND
AARON HAHN,

        COMPLAINANTS,   DATE: July 9, 1996

     v.

SPRAY SYSTEMS ENVIRONMENTAL AND
WILLIAM RAE SMITH,

        RESPONDENTS.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

ORDER

This case arises under the employee protection provisions of the Clean Air Act, 42 U.S.C. § 7622 (1988), and the Toxic Substances Control Act, 42 U.S.C. § 6971 (1988). On February 26, 1996, the Secretary issued a Final Decision and Order (F. D. and O.) allowing Complainants' counsel (counsel) to submit a petition for the payment of attorney's fees and costs for work attendant to this case before the Secretary. On April 25, 1996, an Interim Order was issued, requiring counsel to submit a detailed itemization of the hours claimed pursuant to his petition. Counsel timely submitted the itemization, to which Respondents objected.

The lodestar method is employed in calculating attorney's fees under the statutes. This method requires multiplying the number of hours reasonably expended in pursuing the litigation by a reasonable hourly rate. *Hensley v. Eckerhart,* 461 U.S. 424 (1983). Counsel's original petition requested an hourly rate of $130. Respondents did not object to this rate.

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[1]   This matter was filed before the Secretary of Labor pursuant to the Clean Air Act and the Toxic Substances Control Act. The Secretary issued a final decision and an interim order in this case. On April 17, 1996, a Secretary's Order was signed delegating jurisdiction to issue final agency decisions under this statute to the newly created Administrative Review Board. 61 Fed. Reg. 19978 (May 3, 1996)(copy attached). The Board has reviewed the interim order.

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations (61 Fed. Reg. 19982), implementing this reorganization is also attached.

As required by the Interim Order, counsel's fee itemization provides the date and time spent for each element of activity associated with the appeal before the Secretary. There is no requirement that counsel share his work product with Respondent, and the elements are self-explanatory. Respondents' objections to the itemization are ill-founded.

A petition for attorney's fees must be based on records, indicating date, time and duration necessary to accomplish the specific activity. Each activity item should be detailed and clearly identifiable as pertaining to the case. In like manner, all claimed costs should be specifically identified, and if possible, a receipt appended. With the exception of the actual time of day that the activity took place, which we hold inconsequential, counsel provided all necessary information.

We find counsel's claimed time of 16.3 hours to review Respondents' appeal brief, review the case record and prepare Complainants' response, as well reviewing Respondents' reply brief, reasonable, and reject Respondents' request that the same be reduced to six hours. We find Respondents' objection to counsel's claim of 2.1 hours work subsequent to the filing of Complainants' response brief disingenuous, since counsel's activity at that time was necessitated in response to Respondent Boyles' inappropriate and questionable direct contact with Complainants Tenbrink and Franklin. F. D. and O. at 7. Respondents' objection is rejected.

ORDER

Accordingly, Respondents Spray Systems Environmental and Willie Rae Smith are ordered to reimburse the Complainants as follows:

1) AB Legal Clinic for costs in the amount of $6.65.

2) Attorney's fees for Andrew L. Lichtenberg, 18.4 hours at $130/hour plus 5.5625% gross receipts tax for Bernalillo County, New Mexico = $2,525.05.

SO ORDERED.

> DAVID A. O'BRIEN
> Chair
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> KARL J. SANDSTROM
> Member
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> JOYCE D. MILLER
> Alternate Member