**Section 1843.22 Petitions for Award of Costs and Expenses Under Section 525(e) of the Federal Act**

a) Who may file. Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the State Act which results in a final order being issued by the Department.

b) Where to file; time for filing. The petition for an award of costs and expenses including attorneys' fees must be filed with the Department within forty-five (45) days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

c) Contents of petition. A petition filed under Section 1843.22 shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition:

1) An affidavit setting forth in detail all costs and expenses including attorney's fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

2) Receipts or other evidence of such costs and expenses; and

3) Where attorney's fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services.

d) Answer.

 Any person served with a copy of the petition shall have thirty (30) days from service of the petition within which to file an answer to such petition.

e) Appropriate costs and expenses including attorney's fees may be awarded:

1) To any person from the permittee if:

A) The person initiates any administrative proceedings reviewing enforcement actions, upon a finding that a violation of the State Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the hearing officer determines that the person made a substantial contribution to the full and fair determination of the issues; or

B) The person initiates or participates in any proceeding under the State Act upon a finding that the person made a substantial contribution to a full and fair determination of the issues.

2) To a permittee from the Department when the permittee demonstrates that the Department issued a cessation order, a notice of violation or an order to show cause why a permit should not be suspended or revoked, in bad faith and for the purpose of harassing or embarrassing the permittee; or

3) To a permittee from any person where the permittee demonstrates that the person initiated a proceeding under Section 8.07 of the State Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee.

4) To the Department where it demonstrates that any person applied for review pursuant to Section 8.07 of the State Act or that any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the Department.

f) Awards. An award under these Sections may include:

1) All costs and expenses, including attorneys' fees; and

2) Expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the State Act.

(Source: Amended at 11 Ill. Reg. 8536, effective July 1, 1987)