

ILLINOIS POLLUTION CONTROL BOARD
January 5, 1989

IN THE MATTER OF:)
)
BI-STATE DISPOSAL, INC.) AC 88-24
) AC 88-33
) Docket A
)
Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

On January 3, 1988, Bi-State Disposal filed a Consolidated Request for Reconsideration and Clarification in the above-captioned matter. The Board hereby grants the motion for reconsideration to clarify its Opinion and Order and in so doing stands by its decision in the Opinion and Order.

The first argument presented by the Respondent is that the Respondent had requested hearing on the Administrative Citations issued by the County of St. Clair. This hearing was scheduled for September 8, 1988. Bi-State maintains that no hearings were ever held on these Administrative Citations, but at the election of the County of St. Clair, a new proceeding was initiated concerning the Amended Administrative Citation presented by the county at hearing on September 8, 1988. Bi-State maintains that because it agreed to pay the fine to dispose of the Amended Administrative Citation, did not seek a hearing on the Amended Administrative Citation and did not receive a hearing on the original Administrative Citation, it should not be assessed hearing costs in the matter.

The Board disagrees with Bi-State's assessment that it did not receive a hearing on the original Administrative Citations as it had requested. The hearing on September 8, 1988, was in fact, held on the Administrative Citations as requested by the Respondent. At hearing, these Administrative Citations were amended to eliminate certain counts in the complaint. The amendments to the original citations were made on a joint motion of the parties (R. 6). The hearing officer clearly indicated that he was acting on the motion by withdrawing or excluding the counts from the original administrative citations as requested in the joint motion, and then forwarding the proposed settlement of the original administrative citations to the Board (R. 8). This is distinctively different from the Respondent's characterization of the hearing officer's action as failing to hold a hearing on the Administrative Citation and instead holding a hearing on the Amended Administrative Citation. The Respondent was given the hearing he requested and had the opportunity to present arguments against the counts in the Administrative Citations. The fact that Bi-State chose to enter into an agreement and file a joint motion to amend instead of using the forum to prove its innocence or justify its action does not excuse it from paying hearing costs imposed by the Board.

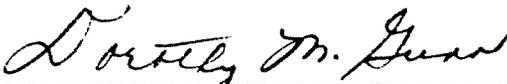
The other arguments presented by Bi-State is that there is no basis for an award of hearing cost to the County of St. Clair because Section 42(b)(4) of the Act only provides for assessment of "hearing costs incurred by the

Board and the Agency." However, Section 4(r) of the Act allows the Agency to delegate its inspecting, investigating and enforcement function to any unit of local government. The Agency has delegated its authority in this matter to the County of St. Clair. Therefore, in this matter, the County of St. Clair is in the position of the Agency and acts as the legal representative of the Agency. The hearing costs incurred by the County of St. Clair should therefore be reimbursed by the Respondent and given to the Illinois General Revenue Fund as directed in the Opinion and Order.

The Board upholds its Opinion and Order in this matter.

IT IS SO ORDERED.

I, Dorothy M Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 54 day of January, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk,
Illinois Pollution Control Board