

ILLINOIS POLLUTION CONTROL BOARD
October 19, 1995

PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 96-55
)	(Enforcement-Air)
LAFARGE CORPORATION)	
a Maryland corporation,)	
)	
Respondent.)	

CONCURRING OPINION (by J. Theodore Meyer):


I concur with the majority's acceptance of the stipulation and settlement in this case. However, I continue to be troubled by the absence of any mention of attorney's fees and costs in these settlement agreements.

Section 42(f) of the Environmental Protection Act (Act) provides that the Board may award costs and reasonable attorney's fees in cases brought on behalf of the citizens of Illinois. (415 ILCS 5/42(f) (1994). This section should be construed broadly, and a violator of the Act should reimburse the Illinois taxpayer for all fees and costs incurred by the Attorney General,

The concept of attorney's fees should include the employer's share of federal and Social Security taxes as well as health insurance and life insurance. Attorney's costs should not only include direct costs incurred by the individual attorney, but also indirect costs such as: travel time, administrative support, printing, copying and overhead. After all, the time and money spent by complainant's attorney in prosecuting this matter certainly could have been used to handle other matters.

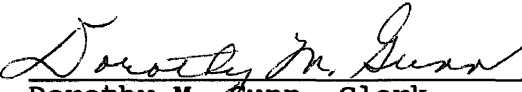
Regarding costs, the now common practice by state and local governments of charging a "user fee" to those who use a service (*such as paying for photocopies*) should be a cost imposed on a party who has violated the Act. This case presented an opportunity for the complainant to submit an affidavit of all fees and costs, and I believe that the Board should have taken this opportunity to reimburse the Illinois taxpayer.

In this case, the complaint requests that the Board impose such costs and fees; however, the stipulation and settlement does not refer to this request, nor explain whether some percentage of costs and fees was figured into the penalty. I continue to believe that costs and fees should be pursued on behalf of the Illinois taxpayer, and urge the complainant to bear this in mind in negotiating and preparing future stipulations.



J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the 30th day of October, 1995.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board