

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1995

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 94-174
) (Enforcement-Air)
FEENEY OIL COMPANY, INC.,)
an Illinois corporation,)
)
Respondent.)

CONCURRING OPINION (by J. Theodore Meyer):

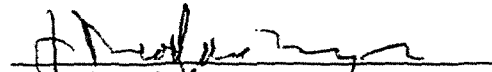
I concur with the majority's acceptance of the stipulation of settlement in this case. However, I continue to be troubled by the absence of any mention of attorney's fees and costs in these settlement agreements.

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 to allow the violator of the Act to reimburse the Illinois taxpayer for all fees and costs incurred by the Attorney General.

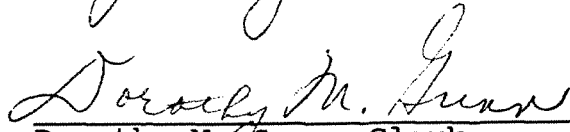
Attorney's fees should include the employer's share of federal and Social Security taxes as well as health insurance and life insurance. Attorney's costs should not only include direct costs incurred by the individual attorney, but also indirect costs such as: travel time, administrative support, printing,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

In addition to fees, costs should include a "user fee" for services like photocopying, and violators of the Act should pay the user fees. This case presented an opportunity for the Attorney General to submit an affidavit of all fees and costs, and I believe that the Board should have requested the Attorney General to include these costs in its settlement. If the Board would pursue these fees and costs, then the Illinois taxpayer could be reimbursed.

For these reasons, I concur.


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 4th day of January, 1996.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board