

ILLINOIS POLLUTION CONTROL BOARD
August 3, 1995

SANGAMON COUNTY,)
)
 Complainant,)
)
 v.) AC 95-48
) (SCDPH-95-AC-8)
 TOWN AND COUNTRY BANK) (Administrative Citation)
 TRUST #TA250,)
)
 Respondent.)

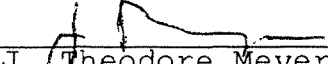
CONCURRING OPINION (by J. Theodore Meyer):

I concur with the majority's opinion and order in this case; however, I believe that attorney's fees and costs should be included in all penalties imposed in administrative citations.

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) (1992)). This section should be construed broadly and include administrative citation penalties brought by the State, or by any unit of local government vested with the authority to impose such citations, pursuant to Section 4(r) of the Act.

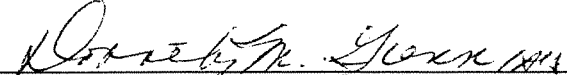
In addition to reasonable attorney's fees and costs, indirect expenses such as travel time, administrative support, printing, copying and overhead should also be pursued. After all, the time spent by complainant's attorney in prosecuting this matter certainly could have been used to handle other matters. Also, 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) is certainly a cost that should be imposed on a party who has violated the Act. This case presented an opportunity for the complainant to submit an affidavit of all costs, and I believe that the Board should have taken this opportunity to reimburse the county.

In this case, the administrative citation neither requests the imposition of such costs and fees nor explains whether some percentage of costs and fees was figured into the penalty. Attorneys' fees and costs incurred during the administrative citation process should be pursued on behalf of the Illinois taxpayer, and I urge the parties to bear this in mind in future negotiations in this case.



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 8th day of August, 1995.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board