

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 1995

PEOPLE OF THE	)	
STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 94-123
	)	(Enforcement-Air)
ARCHER DANIELS	)	
MIDLAND COMPANY,	)	
a foreign corporation,	)	
	)	
Respondent.	)	


CONCURRING OPINION (by J. Theodore Meyer):

While I agree that Archer Daniels Midland Company (ADM) violated 415 ILCS 5/25b-2, I concur with the majority's February 2, 1995 opinion and order for two reasons.

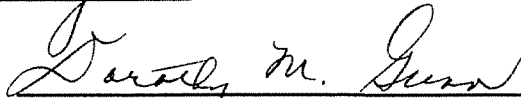
First, I regret that the People did not request an award of costs and attorneys' fees pursuant to Section 42 of the Act. The People have often requested costs and attorneys' fees in their complaint, but failed to pursue that request by providing evidence that the alleged violation was wilful, knowing, or repeated. In this case, the People pursued a civil penalty that excluded prosecution costs. As I have repeatedly stated, I believe that those who violate the Act should pay the costs of prosecution, when the General Assembly has made specific provisions for recovering those costs. I hope that pursuing costs and attorneys' fees will become the norm, when allowable, in enforcement cases.

Second, I concur because I believe that the penalty imposed in this case should have been higher. As the majority states, ADM's failure to comply with the regulations lead to a conclusion that the penalty must be sufficient to deter continuing and future violations at sites owned by ADM. Given that the Act allows for penalties of up to \$50,000 per violation, with an additional \$10,000 for each day that a violation continues, I believe that \$6,400.00 is insufficient to deter continuing and future violations.

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 2nd day of February, 1995.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board