

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1994

COUNTY OF OGLE,)
)
 Complainant,)
)
 v.) AC 91-32 (Docket B)
) (Administrative Citation)
)
 ROCHELLE DISPOSAL SERVICE,)
 INC., and CITY OF ROCHELLE,)
 ILLINOIS,)
)
 Respondents.)

OPINION AND ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board on an administrative citation (AC) filed by the County of Ogle (County) pursuant to the Environmental Protection Act (Act). (415 ILCS 5/1 et seq. (1992).) The citation was filed with the Board on June 28, 1991. Respondent Rochelle Disposal Service Inc. (Rochelle) filed a petition for review with the Board, and a public hearing was held. On September 23, 1993, the Board issued an opinion and order finding that the cited violations had occurred, and imposed a \$1000 fine. The Board also directed the Clerk of the Board and complainant to file an affidavit declaring their hearing costs in Docket B for this matter. The Clerk of the Board filed its affidavit of costs on September 27, 1993 and the County filed its affidavit of costs on October 6, 1993. However, the County failed to serve Rochelle as directed by order and therefore its costs will not be assessed. On October 8, 1993, Rochelle filed a motion to reconsider the Board's order of September 23, 1993. On November 4, 1993, the Board entered an order affirming that order.

On December 6, 1993, Rochelle filed a petition for review with the Appellate Court of Illinois, Second Judicial District, of the Board's order. (Rochelle Disposal Service, Inc. v. Illinois Pollution Control Board; County of Ogle; and City of Rochelle, AC 92-64, AC 91-32, AC 92-26 Dockets A&B (2nd Dist. Sept. 16, 1994).) The court issued its decision on September 16, 1994, affirming the Board's order which assessed a \$1000 civil penalty and directed the Clerk of the Board and the County to file their hearing costs pursuant to Section 42(b)(4) of the Act.¹ The Board never issued an order in Docket B assessing hearing costs before the court issued its order on September 16, 1994.

¹ The Court issued its decision pursuant to Supreme Court Rule 23 causing the order not to be published or precedential.

In Miller v. PCB and Sangamon County Dept. of Health, AC 92-37 (4th Dist. Sept. 30, 1994), the court found that the Board's bifurcation of the administrative citation proceeding is improper. The court states:

The procedural regulations adopted by the Board cannot contradict the legislative provisions which require the filing of a single final order. The bifurcation of administrative citation proceedings does not further the interests of convenience and expediency. Rather, it inconveniences both the parties and the court with multiple appeals. Instead of expediting the matter, the bifurcation of the administrative citation proceedings may actually result in delay. (Id. at 7.)

Since the Miller court found that the Board's bifurcation of administrative citations is improper, and the court in Rochelle, in the instant case, affirmed without remanding the assessment of civil penalties, the Board believes it now lacks the authority at this time to issue a final Docket B order assessing hearing costs in this matter.

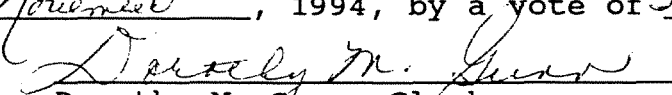
Therefore no hearing costs will be assessed against respondent in this matter and this docket is closed. Neither the court's decision in Miller nor this decision precludes the Board from assessing hearing costs in other administrative citations utilizing one final order.²

IT IS SO ORDERED.

J. Theodore Meyer dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246 "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 3rd day of November, 1994, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

² In fact, the Miller decision specifically reiterates the Board's authority to assess reasonable hearing costs in administrative citations.