

ILLINOIS POLLUTION CONTROL BOARD
October 21, 1993

ST. CLAIR COUNTY,)	
)	
Complainant,)	
)	
v.)	AC 92-33
)	Docket B
)	(Administrative Citation)
JAMES ALEXANDER, PRESIDENT)	
OF ALEXANDER DEVELOPMENT CO.,)	
)	
Respondent.)	

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

This matter is before the Board on an administrative citation filed by St. Clair County (County) pursuant to the Environmental Protection Act (Act). (415 ILCS 5/1 et seq. (1992).) The administrative citation was filed on May 4, 1992, and alleges that respondent, James Alexander violated Section 21(p)(1) of the Act by causing and allowing open dumping of waste resulting in open burning. Respondent filed a petition for review with the Board on May 20, 1992. A hearing was held on July 31, 1992, in St. Clair County Building, Belleville, Illinois, at which no members of the public were present. On February 25, 1993, the Board issued an order finding that the cited violation had occurred and imposed a five hundred dollars (\$500.00) fine.¹ The Board also directed the Clerk of the Board and the County to file an affidavit declaring the hearing costs associated with this matter within thirty (30) days of the date of the order.

On March 24, 1993, the Clerk of the Board filed an affidavit stating that the Board's hearing costs were five hundred fifty eight dollars and ninety-nine cents (\$558.99). The County did not file an affidavit declaring its costs. Therefore, the Board entered an order dated July 22, 1993, assessing the total hearing costs against respondent at five hundred fifty-eight dollar and ninety nine cents (\$558.99) and closed this docket.²

On September 13, 1993 the respondent filed a motion for reconsideration of the Board's hearing costs pursuant to Section 41

¹ The July 22, 1993 opinion and order incorrectly stated that the fine assessed against respondent was one thousand five hundred dollar (\$1,500.00).

² St. Clair County v. James Alexander, President of Alexander Development Co., Inc., (July 22, 1993), AC 92-33 Docket B.

of the Act. (415 ILCS 5/41 (1992).) Respondent argues in the motion for reconsideration that since it did not receive the order dated July 22, 1993 until August 27, 1993, 1 day after the 35 day deadline to file a motion for reconsideration respondent states he should be granted the motion for reconsideration. Respondent also argues that he never received the affidavit from the Board stating the hearing costs.

The Board's hearing costs for this hearing are the standard costs associated with holding hearings. Section 42 of the Act provides that in an administrative citation action any person found in violation shall pay a five hundred dollar (\$500.00) civil penalty for each violation and any hearing costs incurred by the Board and the Agency. (415 ILCS 5/42 (1992).) The hearing costs can be separated into two parts, court reporter costs and hearing officer costs. The court reporter cost of three hundred thirty-seven dollars (\$337.00), is calculated by standard contract with the Board. The Hearing Officer costs are as follows: the standard acceptance fee of fifty dollars (\$50.00), the hearing cost for half a day equaling one hundred and fifty dollars (\$150.00), the governmental rate for mileage totaling seventeen dollars (\$17.00), meal costs of two dollars thirty-eight cents (\$2.38)³, and postage and copying cost of two dollars sixty-one cents (\$2.61), which totals two hundred twenty one dollars and ninety-nine cents (\$221.99) for hearing officer's costs.

The Board's Clerk's records indicate that a certified copy of the July 22, 1993, order was mailed by certified mail on July 23, 1993. The Clerk's records indicate that on August 20, 1993 the Board received back the registered mail green card for that mailing. It was returned by the U.S. Post Office as "refused". The Clerk sent by First Class mail the July 22, 1993 order which respondent claims to have received on August 27, 1993.

The Board accepts the motion for reconsideration but affirms the assessment of the hearing costs. The costs assessed to the respondent are not unusual. The Board takes administrative notice that hearing costs often exceed the amount of the penalty, and have averaged seven hundred dollars (\$700.00) for the past two fiscal years. The Board finds that charges related to hearing costs as stated by the Clerk are appropriate.

Therefore, the total hearing costs to be assessed against the respondent is five hundred fifty-eight dollars and ninety-nine cents (\$558.98).

This opinion constitutes the Board's findings of facts and

³ The maximum allowable expense for a lunch meal, as established by contract with the Board, is four dollars and fifty cents (\$4.50).

conclusions of law in this matter.

ORDER

1. It is hereby ordered that within 30 days of the date of this order, respondent shall, by certified check or money order payable to the State of Illinois, designated for deposit to the General Revenue Fund, pay as compensation for hearing costs incurred by the Board the amount of five hundred fifty-eight dollars and ninety-nine cents (\$558.99) which is to be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, Illinois 62794-9276

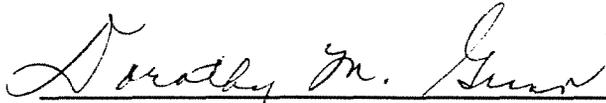
2. This docket is hereby closed.

IT IS SO ORDERED.

J. Theodore Meyer dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992).) provides for appeal of final orders of the Board 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 order was adopted on the 21st day of October, 1993, by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board