

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

SANGAMON COUNTY DEPARTMENT OF PUBLIC HEALTH,)	
)	
Complainant,)	
)	
v.)	AC 92-79
)	Docket B
LEE HSUEH (SPRINGFIELD/HSUEH))	(Administrative Citation)
)	(SCDPH-92-AC-20)
Respondent.)	

ORDER OF THE BOARD (by B. Forcade):

This matter comes to the Board on an Administrative Citation filed by the Sangamon County Department of Public Health (County) pursuant to the Illinois Environmental Protection Act (Act) (415 ILCS 5/1 et. seq. (1992)). The citation was filed on November 12, 1992, and alleges that respondent, Lee Hsueh, the owner of property in Sangamon County violated Sections 21(p)(1) and 21(p)(3) of the Act by causing or allowing open dumping of wastes that resulted in litter and open burning.

On July 1, 1993, the Board found, in Docket A of this appeal, Mr. Lee Hsueh in violation of section 21(p)(1). The Board imposed a penalty of \$500 against Mr. Hsueh for this violation and also ordered him to pay hearing costs. The Board instructed the Clerk of the Board and Sangamon County to submit affidavits of hearing costs. On July 12, 1993, Sangamon County filed an affidavit of costs claiming \$250.00 in attorney fees and \$55.00 in witness fees.

Although section 42(b)(4) of the Act does not define "hearing costs," the term "costs" has acquired a fixed and technical meaning in the law. "Costs are allowances in the nature of incidental damages awarded by law to reimburse the prevailing party, to some extent at least, for the expenses necessarily incurred in the assertion of his rights in court." (Galowich v. Beech Aircraft Corp., 92 Ill. 2d 157, 441 N.E.2d 318, 321 (1982).) "A successful litigant, however, is not entitled to recover the ordinary expenses of litigation and trial preparation, and only those items designated by statute to be allowable can be taxed as costs." (Id., 441 N.E.2d at 322.) Attorneys' fees are separate and distinct from costs and are not recoverable as such. (Meyer v. Marshall, 62 Ill. 2d 435, 343 N.E. 41 (1943); Ritter v. Ritter, 381 Ill. 549 46 N.E. 2d 41 (1943).) Additionally, an expert witness' fees for testifying are not recoverable as "costs." (Naiditch v. Schaf Home Builders, Inc., 160 Ill. App. 3d 245, 512 N.E.2d 486, 498 (2d Dist. 1987).)

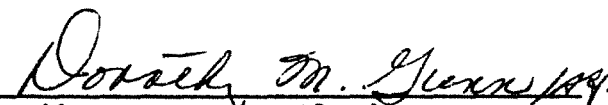
The Board finds that Sangamon County's affidavit of hearing

costs improperly seeks reimbursement for attorney fees and for expert witness fees for testifying. The affidavit departs from prior affidavits of hearing costs submitted in Administrative Citation Docket B proceedings where the Agency or unit of local government (see, Bi-State Disposal, Inc. (February 23, 1989), AC 88-33, County of DuPage v. E & E Hauling (February 8, 1990), AC 88-76, AC 88-77 (cons.)) has been reimbursed for the travel expenses of their attorney and inspector.

Therefore, Sangamon County is directed to submit a new affidavit of hearing costs within 30 days of this order. Sangamon County's affidavit should specify costs consistent with this order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board hereby certify that the above order was adopted on the 26th day of August, 1993 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board