

ILLINOIS POLLUTION CONTROL BOARD  
April 22, 1993

SANGAMON COUNTY,	)	
	)	
Complainant,	)	
	)	
v.	)	AC 92-37
	)	Docket A & B
	)	(Administrative Citation)
GERALD B. MILLER,	)	(SCDPH 92-AC-12)
	)	
Respondent.	)	

ORDER OF THE BOARD (by B. Forcade):

On February 22, 1993, the Board received a letter from Robert L. Smith, Assistant State's Attorney for Sangamon County. Mr. Smith seeks clarification from the Board as to the designation of the payee of the hearing costs in its February 4, 1993 order. In a March 11, 1993 order, the Board construed the letter from Mr. Smith as a motion for reconsideration and instructed Mr. Smith and the Environmental Protection Agency (Agency) to submit briefs on the issue by April 2, 1993. On March 12, 1993, Sangamon County filed a motion for reconsideration of the payee of the hearing costs designated in the Board's February 4, 1993 order. Sangamon County filed its brief on the issue of the payee of the hearing costs on April 1, 1993. The Agency filed its brief on April 20, 1993 along with a motion to file the brief instant. The Agency's motion to file instant is granted.

Also before the Board is a "Motion for Stay of Orders" filed on March 15, 1993 by Gerald Miller, requesting a stay of the Board's December 17, 1992 and February 4, 1993 orders. Sangamon County filed its response to the motion on March 22, 1993.

The December 17, 1992 order found Mr. Miller in violation of the Act, ordered the payment of a \$500.00 penalty, closed docket A and opened docket B to determine the amount of hearing costs to be paid. Payment of the \$500.00 penalty was to be made within 45 days of the order or by February 1, 1993 to Sangamon County. On February 4, 1993, the Board determined that the total amount of hearing costs in this matter was \$952.25 and ordered Mr. Miller to make payment within 30 days or by March 6, 1993 to the General Revenue Fund. Both orders noted that any payment not made within the prescribed time would incur interest at the rate set forth in the Illinois Income Tax Act unless payment of the penalty has been stayed during the pendency of an appeal. In its March 11, 1993 order the Board stayed the payment of the hearing costs by Mr. Miller until after resolution of the motion for reconsideration.

The Board will first address the issues relating to the motion for reconsideration and then rule on Mr. Miller's motion for stay.

Sangamon County in its motion for reconsideration, argues that the \$90.00 in hearing costs incurred by the county should be paid to Sangamon County. Sangamon County contends that pursuant to 42(f) of the Environmental Protection Act (Act) (415 ILCS 5/42(f) (1992))<sup>1</sup> any funds collected under this subsection where a State's Attorney has prevailed shall be retained by the county in which he serves.

The Board finds that Section 42(f) of the Act does not pertain to administrative citations. Section 42(f) allows for the recover of costs and reasonable attorney fees where a person has committed a wilful, knowing or repeated violation of the Act. The recovery of hearing costs associated with an administrative citation is provided by Section 42(b)(4):

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) or (q) of Section 21<sup>2</sup> of this Act shall pay a civil penalty of \$500.00 for each violation, plus any hearing costs incurred by the Board and the Agency. Such penalties shall be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979; except that if a unit of local government issued the administrative citation, 50% of the penalty shall be payable to the unit of local government.

While it is clear from the statute that the county is entitled to 50% of the civil penalty assessed in an administrative citation, the statute does not provide direction on the payment of the hearing costs. The Board recognizes that for record keeping purposes of both the Agency and the unit of local government, payment should be directed to the appropriate party for recording and distribution to the Environmental Protection Trust Fund or the unit of local government. For this reason, the Board in administrative citations brought by a unit

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<sup>1</sup> The Act was previously codified at Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001 et. seq.

<sup>2</sup> Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p).

of local government, directs the respondent to pay the full amount of the penalty to the unit of local government. The unit of local government upon receipt of the penalty, records payment and designates 50% to the Environmental Protection Trust Fund.

The Agency is authorized to enter into delegation agreements with any unit of local government, delegating all or portions of its functions. (415 ILCS 5/4(r) (1992).) The procedure for payment of the penalty and hearing costs in an administrative citation proceeding is specified in the delegation agreement. However, while the delegation agreement between the Agency and Sangamon County specifies how payment of the civil penalty is to be made in paragraph 11, the agreement does not address the issue of the hearing costs.

The Agency argues that payment of the county's hearing costs to the county is consistent with the legislative intent of the Act. The Agency contends that the legislature purposely did not specify a specific fund or manner to pay the costs because it was aware of the multitude of funds to be created when each unit of local government adopted its own financial accounting system. The Agency maintains that the effect of not recovering even small hearing costs could adversely affect the budget of the unit of local government.

Sangamon County and the Agency are in agreement that the hearing costs incurred by the unit of local government are recoverable by the unit of local government. The parties also agree that payment of hearing costs should be sent directly to the fund designated by the unit of local government. The Agency suggests that the Board require the unit of local government to indicate the proper payee when submitting its affidavit of costs.

The Board grants reconsideration of its February 4, 1993 order. The Board has previously interpreted the statute to allow for the recovery of hearing costs by a unit of local government in an administrative citation procedure. (In the matter of: Bi-State Disposal, Inc. (February 23, 1989), AC 88-33; County of Du Page v. E & E Hauling, Inc. (February 8, 1990), AC 88-76 & AC 88-77.) However, because the statute does not specify to whom or how payment is to be made the Board considers this issue to be a matter of accounting. The Agency has expressed approval for the payment of hearing costs incurred by the unit of local government bringing the administrative citation, being made directly to the payee designated by the unit of local government.

Because there is no statutory language on the distribution of the hearing costs and this is primarily an issue of accounting, the Board seeks input from the Office of the Comptroller. The Board will forward to the Comptroller, the briefs submitted by Sangamon County and the Agency. The Board requests the Comptroller to comment on the propriety of the

payment of hearing costs to the county. The Board requests the Comptroller to submit a comment to the Board on or before May 21, 1993. Copies of the comment from the Office of the Comptroller should also be provided to Sangamon County and the Agency.

Motion for Stay

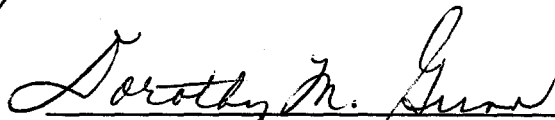
Mr. Miller in his "Motion for Stay of Orders" filed on March 15, 1993 requests the Board to enter an order staying the force and effect of the Board's December 17, 1992 and February 4, 1993 orders. Mr. Miller notes that he has filed appeals of both orders with the Illinois Appellate Court, Fourth District.

The Board in its March 11, 1993 order, stayed the payment of the hearing costs until after the resolution of the motion for reconsideration. The Board will continue to stay the payment of the hearing costs pending the resolution of the matters on review in the motion for reconsideration. The Board will rule on the motion for stay of the payment of hearing costs when it decides the motion for reconsideration.

The Board denies the motion for stay of the December 17, 1992 order. This order required Mr. Miller to pay a civil penalty of \$500 within 45 days of the date of the order. The order further noted that any penalty not paid within the prescribed time shall incur interest unless payment has been stayed during the pendency of an appeal. Payment of the civil penalty was due February 1, 1993. Mr. Miller filed his appeal of this order with the Appellate Court on or about January 22, 1993. The motion for stay was not filed with the Board until March 15, 1993. The Board finds the motion to stay untimely and denies the motion. The respondent may submit a motion for stay to the appellate court.

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 22<sup>nd</sup> day of April, 1993, by a vote of 6-0.

  
 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board