

ILLINOIS POLLUTION CONTROL BOARD
November 16, 1995

PEOPLE OF THE STATE)
OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 96-80
) (Enforcement-Air)
BEHR PRECIOUS METALS, INC.,)
an Illinois corporation,)
)
 Respondents.)

DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority's acceptance of the stipulation and settlement in this case because I continue to be troubled by the absence of any mention of attorney's fees and costs in these settlement agreements.

Section 42(f) of the Environmental Protection Act (Act) provides that the Board may award costs and reasonable attorney's fees in cases brought on behalf of the citizens of Illinois. (415 ILCS 5/42(f) (1992)). This section should be construed broadly, and a violator of the Act should reimburse the Illinois taxpayer for all costs incurred by the Attorney General, including indirect expenses such as travel time, administrative support, printing, copying and overhead. In addition, attorney's fees should include the indirect costs of health and life insurance. After all, the time spent by complainant's attorney in prosecuting this matter certainly could have been used to handle other cases.

In this case, the complaint requests that the Board impose such costs and fees; however, the stipulation and settlement does not refer to this request, nor explain whether some percentage of costs and fees was figured into the penalty. Costs and fees should be pursued on behalf of the Illinois taxpayer, and I urge the parties to bear this in mind in future negotiations in this case.

In addition, the now common practice by state and local governments of charging a "user fee" to those who use a service (such as paying for photocopies) is certainly a cost that should be imposed on a party who has violated the Act. This case presented an opportunity to order the complainant to submit an affidavit of all costs, and I believe that the Board should have taken this opportunity.

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 _____ day of _____, 1995.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board