

ILLINOIS POLLUTION CONTROL BOARD
May 15, 1997

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
) PCB 96-118
v.) (Enforcement - Air)
)
DENNIS FULTS d/b/a ST. CLAIR)
CONSTRUCTION AND PAVING,)
)
Respondent.)

AMY L. SYMONS-JACKSON, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE PEOPLE OF THE STATE OF ILLINOIS.

OPINION AND ORDER OF THE BOARD (by K.M. Hennessey):

This is an enforcement action by the People of the State of Illinois (State) against Dennis Fults d/b/a St. Clair Construction and Paving (Fults). On March 20, 1997, the Illinois Pollution Control Board (Board) entered an interim opinion and order finding that Fults had violated the Illinois Environmental Protection Act (Act), 415 ILCS 5/1 *et seq.* (1994), and Board regulations when Fults demolished a building in Collinsville, Illinois (the site).

Specifically, the Board found that Fults had violated Section 9(a) of the Act and 35 Ill. Adm. Code 201.141 by causing or allowing air pollution when he burned demolition debris at the site. The Board also found that Fults had violated Section 9(c) of the Act and 35 Ill. Adm. Code 237.102(a) by causing or allowing open burning. In addition, the Board found that Fults had violated Section 9.1(d)(1) of the Act by failing to notify the Illinois Environmental Protection Agency (Agency) of the demolition. The Board ordered Fults to pay a penalty of \$10,000.00 and to cease and desist from further violations of the Act. The Board also found that the violations were wilful and that the State was entitled to an award of fees and costs pursuant to Section 42(f) of the Act. The Board ordered the State to file an affidavit setting forth its fees and costs.

On April 21, 1997, the State filed a supplemental pleading attaching three affidavits regarding fees and costs. On April 28, 1997, the hearing officer entered an order allowing Fults until May 9, 1997 to file a response. Fults did not do so.

The Board has reviewed the State's supplemental pleading and affidavits. The first affidavit is that of Assistant Attorney General Amy Symons-Jackson (Symons-Jackson Aff.), to which she attaches an attorney time log. The attorney time log shows that Ms. Symons-Jackson spent 19.3 hours on this case, which Ms. Symons-Jackson states is an accurate reflection of the time she spent on this case. (Symons-Jackson Aff. at 1.) Ms. Symons-Jackson cites similar

cases in which courts have allowed an hourly rate of \$120/hour. (*Id.*) At that rate, the total cost of Ms. Symons-Jackson's time is \$2,316.00.

The Board notes that it has previously found a rate of \$120/hour to be reasonable for State of Illinois attorneys. (See, e.g., People of the State of Illinois v. ESG Watts, Inc. (May 4, 1995), PCB 94-127, slip op. at 18, aff'd, 282 Ill. App. 3d 43, 668 N.E.2d 1015 (1996).) The Board finds the time spent and the rate requested reasonable.

The second affidavit is that of James J. O'Donnell, assistant counsel for the Agency's Bureau of Air. He states that he spent a total of 13.5 hours on this case and, based on his pay scale, was paid \$451.38 for this time (an hourly rate of approximately \$33.43). The Board finds this time and rate reasonable.

The third affidavit is that of Ron Robeen, Environmental Protection Engineer for the Agency's Bureau of Air. He states that he worked 20 hours on this case and is paid at \$26.85 per hour. The cost of his time on this case is therefore \$537.00. The Board finds this time and rate reasonable.

The total cost of the State's time is \$3,304.38. The Board assesses Fults these costs in addition to the \$10,000.00 civil penalty assessed in the Board's March 20, 1997 order.

ORDER

1. The Board orders Fults to pay the State's costs in this matter in the amount of \$3,304.38 within 30 days of the date of this order. Payment of the costs must be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Hazardous Waste Fund, and sent by First Class mail to:

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

The certified check or money order shall clearly indicate Fult's Federal Employer Identification Number and that payment is directed to the Hazardous Waste Fund.

Any such costs not paid within the time prescribed shall accrue interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003(a) (1994)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal, during which payment of the costs will be stayed.

2. Payment of the \$10,000.00 penalty assessed in the Board's order of March 20, 1997 must be made within 30 days of the date of this order by certified check or money

order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and sent by First Class mail to:

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

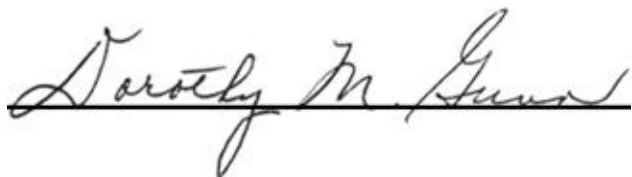
The certified check or money order shall clearly indicate Fult's Federal Employer Identification Number and that payment is directed to the Environmental Protection Trust Fund.

Any penalty not paid within the time prescribed shall accrue interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003(a) (1994)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal, during which payment of the costs will be stayed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1994)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. 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 15th day of May, 1997, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board