

ILLINOIS POLLUTION CONTROL BOARD
December 7, 1995

COUNTY OF WILL,)	
)	
Complainant,)	
)	
v.)	AC 94-98
)	AC 95-1
CDT LANDFILL CORP.,)	AC 95-2
)	(Administrative Citation)
Respondent.)	(WC 94AC2, WC 94AC3, WC 94AC5)


DISSENTING OPINION (by J. Theodore Meyer):

I dissent from today's opinion and order because I disagree with the Board's reliance on the Miller case. There, the Appellate Court found that attorney fees and ordinary expenses of litigation cannot be recovered by the prevailing party of an administrative citation, absent a statute or contract to the contrary. (Miller v. Pollution Control Board, 267 Ill.App.3d 160, 642 N.E.2d 475 (4th Dist. 1994).) The Court reasoned that "no specific language appears in section 42(b)(4) of the [Illinois Environmental Protection] Act authorizing the award of attorney fees", therefore a county's attorney's fees cannot be included as hearing costs. (Id. at 173, 642 N.E.2d at 485.)

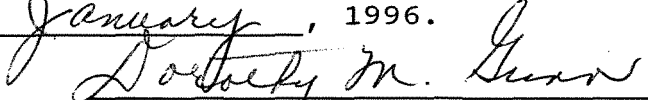
In fact, Section 42(f) does allow the Board to assess attorney's fees and costs incurred by the State's Attorney of the county in which the violation occurred. (415 ILCS 5/42(f)(1994).) Contrary to the Court's dicta in Miller, I believe this section should be construed broadly, and that a violator reimburse the Illinois taxpayer for all costs incurred by the county, including indirect expenses such as travel time, administrative support, printing, copying and overhead. After all, the time spent by complainant's attorney in prosecuting this matter certainly could have been used to handle other cases.

The same reasoning should be applied to hearing costs so that all costs incurred by the Board and the county in which the hearing was held can be recovered. 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 method of imposing costs that should be employed in administrative citations.

For these reasons, I respectfully dissent.


J. Theodore Meyer
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 2nd day of January, 1996.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board