

ILLINOIS POLLUTION CONTROL BOARD  
October 20, 1988

IN THE MATTER OF: )  
 )  
DAN HEUSINKVED, County Clerk, ) AC 87-25(B)  
County of Whiteside, State of ) (IEPA Docket No.  
Illinois, ) 8302-C)  
 )  
Respondent. )

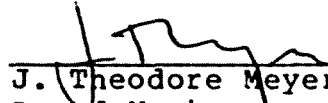
DISSENTING OPINION (by J. Theodore Meyer):

I dissent from the majority order in this matter because I do not believe that the majority order allows for recovery of all hearing costs incurred by the Board and the Illinois Environmental Protection Agency (Agency).

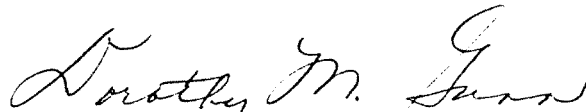
Section 42(b)(4) of the Illinois Environmental Protection Act (Act) provides that in an administrative citation action, "any person found to have violated any provision of subsection (p) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and by the Agency." (Emphasis added. Ill. Rev. Stat. 1987, ch. 111 1/2, par. 1042(b)(4).) The statement of costs submitted by the Agency seeks to recover only the travel costs of the Agency attorney (mileage, per diem, and hotel), for a total of \$110.07. The Board states that its costs are hearing officer costs (268.04) and court reporter costs (\$379.75), for a total of \$647.79. I believe that "hearing costs" as used in Section 42 includes other expenses such as attorney time, administrative and support staff time, and overhead costs. After all, the Agency attorney, for example, used a significant amount of time in preparation, travel, and appearance at hearing. That time could have been used to handle other matters if the instant administrative citation hearing had not been held. Likewise, the Board incurs more costs than simply hearing officer and court reporter expenses.

State and local government is now often imposing a series of "user fees", on the theory that those who use a service should pay for it. For example, most state agencies (including the Board) charge fees for photocopies of that agency's records and files. Since those who do not violate the Act are charged such fees, I believe that those who have been found to have violated the Act should be assessed costs to the full extent of the statutory authority. In this case, the Illinois General Assembly has stated that those found to have violated Section 21(p) shall pay hearing costs incurred by the Board and the Agency. I believe that this mandate should be given a broad interpretation, and all reasonable costs assessed against respondent.

For these reasons, I dissent.

  
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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 21<sup>st</sup> day of October, 1988.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board