

ILLINOIS POLLUTION CONTROL BOARD  
June 3, 1993

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

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on the issue of the proper payee of hearing costs in an administrative citation issued by a unit of local government. Also before the Board is a motion to stay the payment of the hearing costs by Mr. Miller.

On February 22, 1993, the Board received a letter from Robert L. Smith, Assistant State's Attorney for Sangamon County. Mr. Smith requested 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 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 payment of hearing costs 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. On April 22, 1993, the Board issued an order requesting a comment from the Office of the Comptroller on this issue. The Office of the Comptroller has not filed a response to the Board's order.

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. In a March 11, 1993 order, the Board stayed the payment of the hearing costs by Mr. Miller until after resolution of the motion for reconsideration.

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)) 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 recovery 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). This section of the statute allows for a civil penalty of \$500 for each violation, plus any hearing costs incurred by the Board and the Agency in an administrative citation. This section also provides that 50% of the civil penalty assessed in an administrative citation is payable to the unit of local government but does not make any designations concerning the payment of the hearing costs.

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 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 phrase "hearing costs incurred by the Board and the Agency" found in Section 42(b)4 of the Act, to include hearing costs incurred by a unit of local government in an administrative citation procedure due to the Agency's delegation of its authority and the legislative intent. (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.) In these cases, as in the vast majority of cases where hearing costs were recovered by a unit of local government, the Board ordered that all hearing costs be paid to the General Revenue Fund. This practice is

consistent with the procedure the Board follows when the hearing costs are incurred by the Agency.

The Board does not find any statutory language that directs how payment of hearing costs is to be made. The Agency and Sangamon County are in agreement that the payment of hearing costs should be made directly to the unit of government that incurred the costs. Therefore, the Board will follow this practice and direct the payment of hearing costs to the unit of local government that issued the administrative citation and incurred the hearing costs.

Accordingly, the Board vacates its February 4, 1993 order. The Board enters a new order in this matter requiring payment of \$90.00, representing the hearing costs incurred by Sangamon County, to be made to Sangamon County and the payment of \$862.25 to the General Revenue Fund representing the hearing costs incurred by the Board.

The Board finds that Mr. Miller's motion for stay of the Board's February 4, 1993 order is moot because the Board in this order has vacated its order of February 4, 1993. In addition, Mr. Miller has not presented any reason for the Board to stay the payment of the hearing costs.

#### ORDER

1. It is hereby ordered that within 30 days of the date of this order, Gerald B. Miller shall, by certified check or money order payable to the State of Illinois, designated for deposit to the General Revenue Fund, pay as compensation for hearing costs incurred by the Board, the amount of eight hundred sixty-two dollars and twenty-five cents (\$862.25) which is to be sent by First Class mail to:

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

2. It is hereby ordered that within 30 days of the date of this order, Gerald B. Miller shall, by certified check or money order payable to the County of Sangamon, pay as compensation for hearing costs incurred by the County of Sangamon, the amount of ninety dollars (\$90.00) which is to be sent by First Class mail to:

James D. Stone, Director  
Sangamon County Department of Public Health  
200 South Ninth, Room 301  
Springfield, IL 62701

- 3. Respondent shall write the case name and number and social security or federal Employer Identification Number on the certified check or money order.

Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.


- 4. This docket is hereby closed.

IT IS SO ORDERED.

J. Anderson concurred.

Section 41 of the Environmental Protection Act, (415 ILCS 5/41 (1992)), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3<sup>rd</sup> day of June, 1993, by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board