

ILLINOIS POLLUTION CONTROL BOARD
February 2, 1995

PEOPLE OF THE)
STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 94-389
) (Enforcement-Water)
VILLAGE OF PORT BYRON,)
an Illinois municipal)
corporation,)
)
Respondent.)

CONCURRING OPINION (by J. Theodore Meyer):

While I agree that Village Of Port Byron (Village) violated 35 Ill.Adm.Code 309.102(a) and 305.102(b), I concur with the majority's February 2, 1995 opinion and order for two reasons.

First, I am pleased that the People requested an award of costs and attorneys' fees pursuant to Section 42 of the Act. However, in this case, the People failed to provide evidence, and failed to furnish an affidavit of costs and fees. In the past, the People have often requested costs and attorneys' fees in their complaint, but failed to pursue that request by providing evidence that the alleged violation was wilful, knowing, or repeated. As I have repeatedly stated, I believe that those who violate the Act should pay the costs of prosecution, when the General Assembly has made specific provisions for recovering those costs. I hope that pursuing costs and attorneys' fees will become the norm, when allowable, in enforcement cases.

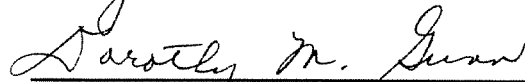
Second, I concur because I believe that the penalty imposed in this case should have been higher. As the majority states, the Village's failure to comply with the regulations lead to a conclusion that the penalty must be sufficient to deter continuing and future violations at the Village's water treatment facility. Given that the Act allows for penalties of up to \$50,000 per violation, with an additional \$10,000 for each day that a violation continues, I believe that \$1,000 is insufficient to deter continuing and future violations.

For these reasons, I concur.



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 2nd day of February, 1995.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board