

ILLINOIS POLLUTION CONTROL BOARD
June 6, 1994

PEOPLE OF THE)	
STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 93-59
)	(Enforcement)
FREEDOM OIL COMPANY,)	
)	
Respondent.)	

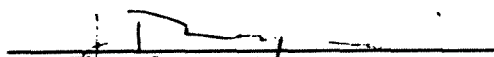
CONCURRING OPINION (by J. Theodore Meyer):

I concur with the majority's opinion, in both the May 5, 1994 opinion and order and the June 6, 1994 supplemental opinion and order. I agree that Freedom Oil violated 35 Ill. Adm. Code 731.162 and 731.163.

I concur 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, and that the request was pursued during this case. 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. In this case, the People provided that evidence, and furnished an affidavit of costs and fees. 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 recovery of 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, Freedom Oil's failure to comply with the regulations, the fact that the extent of contamination remains unknown because of that failure, and Freedom's recalcitrance over a three-year period lead to a conclusion that the penalty must be sufficient to deter continuing and future violations at sites owned by Freedom. 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 \$30,000 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 21st day of June, 1994.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board