

ILLINOIS POLLUTION CONTROL BOARD
May 4, 1995

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 92-164
) (Enforcement-Water)
 BERNIECE KERSHAW AND DARWIN DALE)
 KERSHAW, d/b/a KERSHAW MOBILE)
 HOME PARK,)
)
 Respondents.)


DISSENTING OPINION (by J. Theodore Meyer):

I respectfully dissent from the majority's order. The opinion and order issued on April 20, 1995 should have been modified because I believe legal fees in this case were much more than \$5,190.69, and the Board should have taken this opportunity to impose an even higher penalty on the Kershaws, a party who lacked due diligence and good faith during the fourteen-year history of this case.

Section 42(f) allows the Board to assess attorney's fees and costs incurred by the Office of the Attorney General. I believe that this section should be construed broadly, and that a violator reimburse the Illinois taxpayer for all costs incurred by the Office of the Attorney General, including indirect expenses such as travel time, administrative support, printing, copying and overhead. After all, the time spent by respondent's attorneys in prosecuting this matter over the years certainly could have been used to handle other cases.

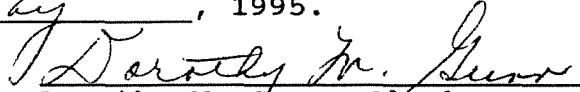
In addition, the now common practice by state and local governments of charging a "user fee" to those who use a service (such as paying for photocopies) is certainly a cost that should be imposed on a party who has violated the Act. Especially in light of the Kershaw's blatant disregard for the Act, this case presented an opportunity to order them to pay for all costs--both direct and indirect--incurred by the Office of the Attorney General and I believe that the Board should have taken this opportunity.

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 concurring opinion was filed on the 11th day of May, 1995.



Dorothy M. Gunn, Clerk
Illiois Pollution Control Board