

ILLINOIS POLLUTION CONTROL BOARD  
May 7, 1992

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 89-215(Docket B)  
 ) (IEPA No. 9926-AC)  
OMER THOMAS, ) (Administrative Citation)  
 )  
Respondent. )  
 )

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on an administrative citation filed by the Illinois Environmental Protection Agency (Agency) pursuant to the Illinois Environmental Protection Act (Act). (Ill. Rev. Stat. 1987 ch. 111 1/2, par. 1001 et. seq.) The citation was filed October 5, 1989, and alleges that respondent, Omer Thomas, the operator of a facility located in Shelby County, Illinois is in violation of Section 21(q)(1)<sup>1</sup> of the Act for causing or allowing open dumping of waste that results in litter.

A petition for review was filed with the Board on November 1, 1989. Hearing was held on July 27, 1990, and July 19, 1991. On January 23, 1992, the Board issued an opinion and order finding that the cited violation had occurred and imposed a penalty of five hundred dollars (\$500.00). The Board also directed the Clerk of the Board and the Agency to file affidavits declaring their hearing costs.

The Clerk of the Board filed an affidavit stating that the Board's hearing costs were one thousand seven hundred and thirty five dollars and seventy cents (\$1,735.70). The Agency filed its motion for leave to file instanter and statement of costs on March 23, 1992. The Agency's motion to file instanter is granted. The Agency statement of costs asserts that the Agency did not have any hearing costs in this matter. On April 6, 1992, Omer Thomas filed an objection to the affidavit of costs from the Board.

Mr. Thomas first contends that the affidavit of costs filed by the Clerk of the Board should be stricken and considered of no force and effect because it was not filed within 30 days as

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<sup>1</sup> Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively.

instructed in the Board's January 23, 1992 order. Mr. Thomas further objects to the inclusion of costs from the July 27, 1990 hearing, which was attended by neither party because the complainant was seeking a continuance due to the illness of its primary witness. Mr. Thomas further objects to the costs from the July 27, 1990, hearing because the charges are grossly excessive and insupportable to any extent. Mr. Thomas also contends that the hearing officer's charges relating to the July 19, 1991, hearing are excessive and outrageous. Mr. Thomas contends that the hearing officer's charge for a full day of hearing for a hearing that took two hours and required two hours of travel time is outrageous. Mr. Thomas also argues that the hearing officer's charge for miscellaneous services is not supported by the record and should be itemized.

The Board will accept and consider the Clerk's affidavit of costs as filed. The Board believes that no prejudice has resulted from the late filing of the affidavit. The affidavit was received by the Board before Docket B was closed, respondent was provided with adequate time to respond to the affidavit and has filed an objection to the affidavit.

The July 27, 1990 hearing was not attended by either party due to the pending request by the Agency for a continuance. The attorney for the Agency informed Mr. Thomas's attorney that the hearing would not proceed as scheduled due to the illness of the Agency's witness. The Agency attorney further informed him that he would contact everyone to let them know. The Agency attorney did not contact the hearing officer but did leave a message requesting a continuance. The Board notes that the Agency attorney lacked the authority to instruct the respondent not to appear at the hearing and respondent was not obligated by his agreement to not appear at the scheduled hearing. The Board's procedural rules require that all motions be made in writing unless orally made at hearing. (Section 101.240(a).) While the Agency did submit a written request for continuance, it was not received by the Board until July 30, 1990, three days after the scheduled hearing. The Agency failed to request the continuance in time for the hearing to be cancelled.

While these hearing costs were necessary, the Board agrees with Mr. Thomas that it was the responsibility of the Agency to cancel the hearing in time. The Board agrees with Mr. Thomas's contention that he should not be required to pay the charges associated with the hearing on July 27, 1990. Mr. Thomas will not be required to pay the costs associated with the July 27, 1990 hearing because the continuance was at the request of the Agency. The costs associated with the July 27, 1990 hearing amount to \$959.20 which will be deducted from the total amount on the affidavit. Therefore, the appropriateness of these costs are not at issue.

The hearing costs related to the July 19, 1991 hearing are of the type normally and consistently imposed by the Board. Hearing costs may exceed the amount of the penalty, (EPA v. Curtis A. Newlan (December 6, 1991), AC 91-40), and average from \$200 to \$1000. (EPA v. Dennis Grubaugh (February 27, 1992), AC 92-3.) The Board finds the charges related to the hearing on July 19, 1991, and the charges of the hearing officer appropriate.

Therefore, the total hearing cost to be assessed against the respondent is seven hundred seventy-six dollars and fifty cents (\$776.50).

ORDER

1. It is hereby ordered that within 30 days of the date of this order, Omer Thomas 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 \$776.50 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.

Respondent shall write the case name, case 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.

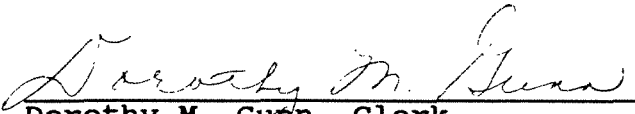
2. This docket is hereby closed.

IT IS SO ORDERED.

J. T. Meyer dissented.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991 ch. 111 1/2, par. 1041) 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 7<sup>th</sup> day of May, 1992, by a vote of 6-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board