

ILLINOIS POLLUTION CONTROL BOARD  
June 7, 1990

ST. CLAIR COUNTY, )  
 )  
 Complainant, )  
 )  
 v. ) AC 89-18 (Dockets A & B)  
 ) (Administrative Citation)  
 J & R LANDFILL, INC., ) County No. 89-1 SC  
 An Illinois Corporation, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Petition for Reconsideration and Clarification filed by J & R Landfill, Inc. ("J & R") on May 17, 1990. The motion requests that the Board reconsider its finding that "erosion gullies in final cover portions of landfill are subject to daily cover administrative citation charges as set forth in Section 21(p) of the Act."

The motion notes that this issue was thoroughly debated by the Board and led to the filing of several dissents, was a matter of first impression and may represent a departure from past practices. A portion of the motion questions the Board's ability to decide this particular issue because it hinges upon close questions of fact and law. The motion also opines that "the dissenters really have the better of the argument."

The Board has already, as the respondent points out, considered these matters long and carefully. The Board sees little in J & R's arguments, or its opinions, which requires the Board to reconsider these matters. Therefore, J & R's petition for reconsideration is denied.

The second issue raised in J & R's pleading is its request for clarification concerning hearing costs. In addition to the arguments contained in the instant motion, J & R filed its Objections to Affidavit of Costs on June 4, 1990. The affidavit, J & R claims, unfairly assesses all hearing costs against respondent when J & R was found liable on only half of the charges brought against it. J & R claims it should therefore be made responsible for no more than one-half the hearing costs.

J & R's argument is not new. In our decision in In the Matter of: Piolet Brothers' Trading, Inc., - PCB -, AC 88-51(B) (September 13, 1989) we held:

[W]hether or not a person prevails upon an issue is irrelevant to the assessment of

costs against a Respondent when a finding of violation of any provision of Section 21(p) or (q) has been found.

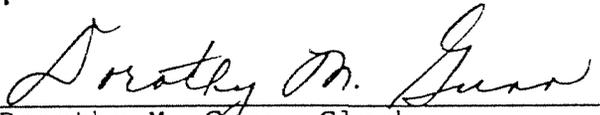
We think our analysis in that opinion was well reasoned and decline to alter that judgment now.

Regarding J & R's request to have the Board clarify which sort of hearing costs are allowed, the Board fully discussed this matter in its decision in County of DuPage v. E & E Hauling, Inc. - PCB -, AC 88-76, 88-77 (Docket B) (February 8, 1990). To the extent that reiteration of our prior decision "clarifies" our holding in this matter, we offer it to both parties. There we held that the term "costs" has acquired a fixed and technical meaning in the law. Costs are not the ordinary expenses of litigation, we said, but in the nature of incidental damages awarded by law. In E & E Hauling, therefore, we declined to grant the county reimbursement for expert witness fees or for those witnesses merely present at hearing but who did not testify. J & R is free to file any objection that it wishes once the County has submitted its costs. We fully trust that the County will exhibit good faith in doing so. We believe, however, that any decision of ours as to whether certain costs are recoverable, outside of the above, would be premature. Respondent J & R's motion to clarify and its objection to affidavit of costs are, therefore, denied.

IT IS SO ORDERED.

Board Members J.D. Dumelle and J. Anderson dissented.

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 June, 1990, by a vote of 5-2.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board