

ILLINOIS POLLUTION CONTROL BOARD  
July 11, 1991

PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 89-157(A) & (B)
	)	(Enforcement)
CLYBOURN METAL FINISHING	)	
COMPANY,	)	
	)	
Respondent.	)	

CONCURRING OPINION (by J. Theodore Meyer):

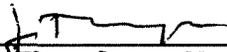
I agree fully with the opinion and order issued by the majority in this case. I concur only to articulate some additional considerations.

As the majority points out, Section 42(f) of the Environmental Protection Act (Act) allows the Board, under certain circumstances, to award "costs and reasonable attorney's fees, including the reasonable costs of expert witnesses and consultants...". I believe that "costs" should include all actual costs. In the past, in administrative citation cases, a majority of the Board has narrowly construed the phrase "hearing costs" to include only the travel costs of the complainant's attorney. (See County of DuPage v. E & E Hauling, Inc., AC 88-76(B) and AC 88-77(B), February 8, 1990; Illinois Environmental Protection Agency v. Land & Lakes Co., AC 89-292(B), August 30, 1990 (Dissenting Opinion, J. T. Meyer).) I believe that "costs" as used in Section 42(f) includes other expenses such as administrative and support staff time, and overhead costs. After all, the time spent by complainant's staff in prosecuting this case could have been used to handle other matters.

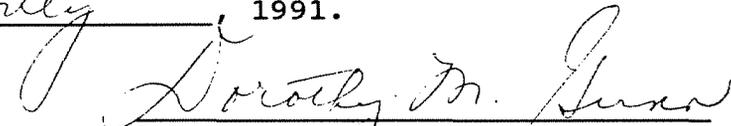
State and local government is now often imposing a series of "user fees", on the theory that those who use a service should pay for it. For example, most state agencies (including the Board) charge fees for photocopies of that agency's records and files. Since those who do not violate the Act are charged such user fees, I believe that those who have been found to have violated the Act should be assessed costs to the full extent of the statutory authority. In this case, the Illinois General Assembly has stated that those found to have committed a willful, knowing, or repeated violation of the Act are liable for "costs and reasonable attorney's fees". I believe that this mandate should be given a broad interpretation, and all actual reasonable costs assessed against respondent. This case presents an opportunity to fully

utilize the statutory provision. I urge the Attorney General to submit an affidavit setting forth all of the actual costs and attorney's fees incurred during prosecution of this case.

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 16<sup>th</sup> day of July, 1991.

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