

ILLINOIS POLLUTION CONTROL BOARD  
September 13, 1989

IN THE MATTER OF: )  
 )  
PIELET BROTHERS' TRADING, INC., )  
an Illinois Corporation, ) AC 88-51, Docket B  
 ) IEPA DOCKET NO. 8983-AC  
Respondent. )

MR. WILLIAM SELTZER, STAFF ATTORNEY, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

MR. RAYMOND T. REOTT AND MS. REBECCA L. RAFTERY, OF JENNER AND BLOCK, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon a May 16, 1988 filing of an administrative citation by the Illinois Environmental Protection Agency ("Agency") pursuant to Section 31.1 of the Illinois Environmental Protection Act ("Act"). The administrative citation alleged that Pielet Brothers' Trading, Inc. ("Pielet Brothers") violated Sections 21(p)(1), 21(p)(2), 21(p)(4), 21(p)(5), 21(p)(6), 21(p)(7), 21(p)(8), 21(p)(9), and 21(p)(11) of the Act. The civil penalties established for each of these violations is \$500.00 plus any hearing costs incurred by the Board or the Agency.

On a petition for review filed by the Respondent, hearing was held on this matter on November 18, 1988. On July 13, 1989, the Board issued an Opinion and Order finding that the cited violations had occurred, except for violation of Sections 21(p)(9) and (11), and imposed a penalty of \$3,500.00. The Board also directed the Clerk of the Board and the Agency to file affidavits declaring their hearing costs.

On July 24, 1989, the Clerk of the Board filed an affidavit stating that the hearing costs incurred by the Board were \$1,460.28. The Agency filed an affidavit on July 28, 1989 stating that its hearing costs were \$114.65.

On August 28, 1989, Respondent filed a Motion for Stay of Payment of Costs and Fine and Objection to Costs. Apparently, on August 10, 1989, Respondent filed a petition for review of the July 13, 1989 Opinion and Order of the Board in the Appellate Court. Respondent requests the Board stay the payment of the civil penalty ordered by the Board and any payment of hearing costs pending the resolution of its appeal. In addition, Respondent objects to the payment in full of the costs of the Agency and the Board, alleging that it "prevailed on the central issue in the case", and that costs should be apportioned evenly

between the parties. No reply to this motion was filed by the Agency.

In regards to the issue of apportionment of costs, the Board finds that whether or not a person prevails on 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. As Section 42(b)(4) of the Act provides in part:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) or (q) of Section 21 of this Act shall pay a civil penalty of \$500 for each violation of each such provision, plus any hearing costs incurred by the Board and the Agency. (Emphasis added.)

In its July 13, 1989 Opinion and Order, the Board found that Respondent violated seven provisions of Section 21(p) of the Act, therefore Respondent violated "any provision of subsection (p)" and shall pay costs, according to the Act. No other objection to the hearing costs was made, therefore the costs incurred shall be assessed against Respondent. The total hearing costs to be assessed against Respondent as supplied through the affidavits noted above are \$1,574.93.

The Board further denies Respondent's motion to stay the payment of the civil penalty and hearing costs.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

#### ORDER

It is hereby ordered that within 30 days of the date of this Order, Piolet Brothers' Trading, Inc., shall, by certified check or money order, payable to the State of Illinois and designated for deposit into the General Revenue Fund, pay as compensation for hearing costs incurred by the Board and Agency, the amount of \$1,574.93 which is to be sent to:

Illinois Environmental Protection Agency  
Fiscal Service Division  
2200 Churchill Road  
Springfield, Illinois 62706

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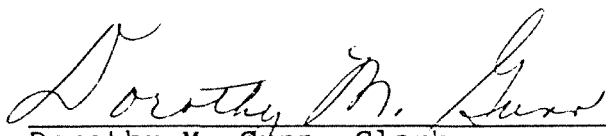
\*The Board notes that in its July 13, 1989 Opinion and Order it did not find that Respondent "prevailed on the central issue" in the appeal, nor does it do so here.

This docket is hereby closed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111½ 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.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13<sup>th</sup> day of September, 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board