

ILLINOIS POLLUTION CONTROL BOARD
September 7, 1995

SANGAMON COUNTY DEPARTMENT)
OF PUBLIC HEALTH,)
)
Complainant,)
)
v.) AC 92-37
) (Administrative Citation)
) (On Remand)
GERALD B. MILLER,)
)
Respondent.)

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on remand from a mandate issued by the Appellate Court, Fourth Judicial District on May 23, 1995 in *Gerald B. Miller v. Sangamon County Dep't. of Public Health and IPCB*, Docket Nos. 4-93-0585 and 4-93-0047. In its September 30, 1994 opinion and order, the court upheld our decision that the respondent violated certain administrative citation provisions of the Environmental Protection Act (Act) and additionally, while the court's opinion also upheld the Board's power to assess hearing costs against a respondent for violating the Act, the court determined that some of the costs assessed in this case were not reasonable. (*Miller*, Slip. Op. at 16.) The court remanded this matter to the Board for a determination as to the reasonable costs to be assessed against the respondent, Gerald B. Miller.

While not representative of the actual costs incurred by the Board in conducting the hearing in this matter, we believe that under the circumstances, the sum of \$150 to cover the Board's transcript costs and a portion of the hearing officer's time, is an appropriate amount to be assessed. As we are presently considering our costs in the context of revising our procedural rules, this figure should not be relied upon in the future as precedent for the costs we may assess against responsible respondents in administrative citation cases. (*In the Matter of: Revisions of the Board's Procedural Rules*, (R95-1).)

Regarding costs requested by Sangamon County (\$60 attorney fee, \$20 witness fee and a \$10 mail document preparation cost), these costs were determined by the appellate court to be beyond the scope of "hearing costs" in this case.¹ (*Miller*, Slip Op. at

¹It should be noted that the appellate court held that an expert witness fee may be charged against a liable respondent in an administrative citation case; however, in this case the witness fee of \$20 is not appropriate because the witness was the party responsible for bringing the citation against Miller, rather than being a true, expert witness. Further, the appellate

16-18.) Thus, on remand, no costs will be assessed to Gerald Miller to cover Sangamon County's expenses related to this matter.

Therefore, within 45 days of service of this order, if not already paid, Gerald Miller shall, by certified check or money order, pay the civil penalty assessed in this case in the Board's decision of December 17, 1992, the sum of five hundred dollars (\$500) for violating Section 21(p)(1) of the Act, payable to the Environmental Protection Trust Fund. Additionally, within 45 days of this order, respondent shall, by certified check or money order payable to the General Revenue Fund, pay as compensation for hearing costs incurred by the Board, the amount of one hundred and fifty dollars (\$150.00). Respondent shall write the case name and number and social security or federal Employer Identification Number on each certified check or money order and send the payments by First Class mail to: Illinois Environmental Protection Agency, Fiscal Services Division, 2200 Churchill Road, P.O. Box 19276, Springfield, Illinois 62794. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.

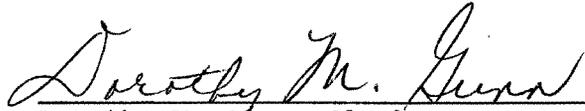
This docket is hereby closed.

IT IS SO ORDERED.

Section 41 of the Environment Protection Act (415 ILCS 5/41 (1995)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements.

Board Member J.Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of September, 1995, by a vote of 6-1.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board

preparing documents to mail, but that it could charge for postage and certified mail fee. Because the postage costs will be minimal, we will not assess costs for Sangamon County in this case under these circumstances.