

ILLINOIS POLLUTION CONTROL BOARD  
August 24, 1995

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) AC 94-96  
 ) AC 94-97  
M.K. O'HARA CONSTRUCTION, ) (Administrative Citation)  
INC., KENNETH O'HARA AND )  
MADALYN O'HARA, )  
 )  
Respondents. )

CONCURRING OPINION (by J. Theodore Meyer):

I concur with the majority's opinion and order in this case; however, I believe that attorney's fees and costs should be included in all penalties imposed in administrative citations.

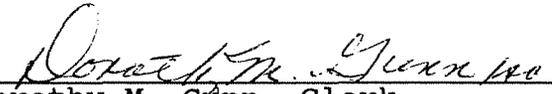
Section 42(f) of the Environmental Protection Act (Act) provides that the Board may award costs and reasonable attorney's fees in cases brought on behalf of the citizens of Illinois. (415 ILCS 5/42(f) (1992)). This section should be construed broadly and include administrative citation penalties brought by the State, or by any unit of local government vested with the authority to impose such citations, pursuant to Section 4(r) of the Act.

The concept of attorney's fees should include the employer's share of federal and Social Security taxes as well as health insurance and life insurance. Attorney's costs should not only include direct costs incurred by the individual attorney, but also indirect costs such as: travel time, administrative support, printing, copying and overhead. After all, the time and money spent by complainant's attorney in prosecuting this matter certainly could have been used to handle other matters. Also, the now common practice by state and local governments of charging a "user fee" to those who use a service (*such as paying for photocopies*) is certainly a cost that should be imposed on a party who has violated the Act. This case presented an opportunity for the complainant to submit an affidavit of all fees and costs, and I believe that the Board should have taken this opportunity to reimburse the Illinois taxpayer.

In this case, the administrative citation neither requests the imposition of such costs and fees nor explains whether some percentage of costs and fees was figured into the penalty. I urge the Agency to begin seeking reimbursement in administrative citations.

  
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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 25<sup>th</sup> day of August, 1995.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board