

ILLINOIS POLLUTION CONTROL BOARD
December 7, 1995

COUNTY OF WILL,)
)
 Complainant,)
)
 v.) AC 94-98
) AC 95-1
) AC 95-2
 CDT LANDFILL CORP.,) (Administrative Citation)
) (WC 94AC2, WC 94AC3, WC 94AC5)
 Respondents.)

MS. CYNTHIA CAMPBELL, ASSISTANT STATE'S ATTORNEY, APPEARED ON BEHALF OF COMPLAINANT;

SCOTT HOSTER, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Yi):

On December 5, 1994 and January 3, 1995 the County of Will (County), pursuant to authority delegated to the County under Section 4 of the Environmental Protection Act (Act) by the Illinois Environmental Protection Agency (Agency), filed three administrative citations pursuant to Section 31.1 of the Act. (415 ILCS 5/4 and 5/31.1 (1994).) The first citation filed on December 5, 1994, docketed as AC 94-98, alleges that CDT Landfill Corp. (CDT Landfill) violated Section 21(o)(9) of the Act. (415 ILCS 5/21(o)(9) (1994).) On January 3, 1995, the County filed two separate administrative citations, docketed as AC 95-1 and 95-2 alleging violations of Sections 21(o)(9) and 21(o)(11) of the Act, respectively. (415 ILCS 5/21(o)(11) (1994).) The Clerk of the Board received three petitions for review of the administrative citations on January 11, and February 6 and 7, 1995 filed by the CDT Landfill.

On October 5, 1995 in our interim opinion and order we found that the County had demonstrated that CDT Landfill violated Sections 21(o)(9) and (o)(11) of the Act as alleged in AC 95-1 and AC 95-2 and that these violations were not the result of uncontrollable circumstances. Additionally, the Board found that CDT Landfill did not violate Section 21(o)(9) of the Act as alleged in AC 94-98.

Penalties in administrative citation actions are prescribed by Section 42 (b)(4) of the Act which states:

In an administrative citation action under Section 31.1 of this Act, any person found to have violated any provision of subsection (p) 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. Such penalties shall be made payable to the Environmental Protection Trust Fund to be used in accordance with the provisions of "An Act creating the Environmental Protection Trust Fund", approved September 22, 1979, as amended; (415 ILCS 5/42(b)(4) (1994).)

Since the Board found two such violations, the penalty to be imposed against respondent is \$1000.00 plus hearing costs.

The interim opinion and order requested affidavits from the Clerk of the Board and the County to determine the hearing costs. On October 27, 1995, the County filed an affidavit stating that its hearing costs associated with AC 95-1 and AC 95-2 are as follows. In preparing administrative citations 95-1 and 95-2, the County landfill inspector expended 10 hours of time. In preparing his testimony and attending the hearing, the inspector expended 11 hours of time (\$34.00 per hour), which includes benefits (35% of hourly rate), for a total cost of \$714.00. Mr. Frank Kalisik, a County inspector, in inspecting the landfill and preparing administrative citations 95-1 and 95-2, Mr. Kalisik expended 11 hours. In preparing his testimony and attending the hearing, Mr. Kalisik expended 18 hours of time. Mr. Kalisik's hourly rate of pay is \$18.00, which includes benefits (35% of hourly rate). The total cost of Mr. Kalisik's services in this matter is \$522.00. Cynthia Campbell is a licensed attorney with 5 years of experience and an Assistant State's Attorney for the County. In preparing administrative citations 95-1 and 95-2, preparing for hearing and representing the County at the hearing, Ms. Campbell expended 25 hours of time. Her hourly rate is \$20.00, which includes benefits (35% of hourly rate) for a total cost of \$500.00. Lorean Likavec is a secretary for Waste Services. In preparing administrative citations 95-1 and 95-2, she expended 9 hours of time. Her hourly rate is \$13.00, which includes benefits (35% of hourly rate). The total cost of Ms. Likavec's services in this matter is \$117.00. Waste Services also incurred postage expense of \$17.00 and reproduction expense of \$20.00. The total costs and expenses incurred by the County was one thousand eight hundred ninety dollars (\$1890.00).

On October 18, 1995 the Clerk of the Board filed its affidavit stating that the costs to hold the hearing for the three administrative citations are as follows \$120.00 (\$24.00 per hour for 5 hours) court reporter attendance fee, \$1168.50 (4.75 per page of transcript for 246 pages) and \$10.00 (20.00 per hour for ½ hour) for court reporter travel time for the total of one thousand two hundred ninety eight dollars and fifty cents (\$1298.50). The respondent did not file a response to the affidavits concerning the hearing costs pursuant to the Board's October 5, 1995, interim opinion and order.

DISCUSSION

The Board finds, pursuant to Miller v. Pollution Control Board, 204 Ill. Dec. 774, 642 N.E.2d 475, that the requested hearing costs from the County for the time spent in preparation of administrative citations 95-1 and 95-2 which included the preparation for testimony, attending the hearings, the time spent inspecting the landfill by its employees and the attorney costs are not reimbursable hearing costs. The court in Miller stated "[o]nly those items designated by statute may be allowed as costs, and attorney fees are 'not of that character'." (Id. at 485.) Additionally, the court stated that "... a County employee, employed for the purpose of inspecting property and issuing administrative citations, should not receive a witness fee for testifying against the respondent to an administrative citation issued by that employee", and that the fee for "preparation and mailing of documents" should be reduced to the cost of mailing the administrative citation. (Id.) The court was silent as to whether reproduction costs associated with the preparation of the administrative citation are recoverable costs, but does state that "...expense incurred in the preparation of the documents is not, however, recoverable as 'costs'." (Id.) The Board concludes that reproduction expense is a cost associated with preparation of the documents and therefore not reimbursable as hearing costs. (Id.) Therefore, the total hearing costs requested by the County that will be reimbursed is seventeen dollars (\$17.00) which was the cost of mailing the administrative citations.

The Board finds that the costs included in the affidavit by the Clerk of the Board are reasonable hearing costs for the three administrative citations. The contract under which the Board employs the court reporters for the Chicago area was entered into pursuant to the Illinois Purchasing Act (30 ILCS 505/1 et. seq. (1994).) and represents the actual cost for the court reporting services. However, since the Board found that CDT Landfill was not in violation as alleged in one of the administrative citations, AC 94-98, we will reduce the Board's hearing costs by one third. Therefore, the Board will only assess a total amount of eight hundred sixty-five dollars and sixty-seven cents (\$865.67) as hearing costs in this matter.

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

ORDER

1. Respondent is hereby found to have been in violation of 415 ILCS 5/21(0)(9) and (0)(11)(1994) on December 15, 1994 and November 23, 1994, respectively, for the reasons expressed in the Board's interim opinion and order of October 5, 1995.

2. Within 45 days of this Order Respondent shall, by certified check or money order, pay a civil penalty, if not already paid, in the amount of one thousand seventeen dollars (\$1,017) payable to the County of Will, which shall be sent by First Class mail to:

County of Will
Land Use Department
501 Ella Avenue
Joliet, Illinois 60433

3. It is hereby ordered that within 45 days of the date of this order, respondent shall, by certified check or money order payable to the State of Illinois, designated for deposit to the General Revenue Fund, pay as compensation for hearing costs incurred by the Board, the amount of eight hundred sixty-five dollars and sixty-seven cents (\$865.67) which shall be sent by First Class mail to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 192756
Springfield, IL 92794-9276

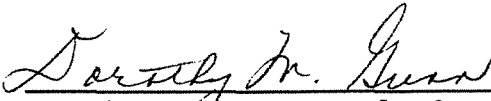
4. Respondent shall write the case name and number and social security or federal Employer Identification Number on each certified check or money order.
5. Penalties unpaid after the due date shall accrue interest pursuant to Section 42(g) of the Illinois Environmental Protection Act.
6. This docket is hereby closed.

IT IS SO ORDERED.

Board members Marili McFawn and J.Theodore Meyer dissented.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 7th day of December, 1995, by a vote of 4-2.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board