

ILLINOIS POLLUTION CONTROL BOARD  
August 22, 1991

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

CONCURRING OPINION (by J. Theodore Meyer):

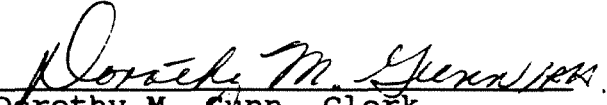
I agree with the majority's order in this case, assessing costs and attorney's fees against respondent. However, I am disappointed that the affidavit of costs filed by the Attorney General did not include a full request for all costs incurred while prosecuting this case.

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...". As I pointed out in my July 11, 1991 concurrence in this case, I believe that "costs" should include all actual costs, including 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. The affidavit filed by the Attorney General included just \$40 for clerical costs, and no figure at all for indirect costs (i.e. utilities, office supplies, rent, etc.). I note that in its proposed guidelines for the new operating permit system under the Clean Air Act, the United States Environmental Protection Agency (USEPA) requires that state permit programs include permit fees which cover all reasonable direct and indirect costs of the permit program. Among the considerations for setting these fees are "any associated overhead charges for personnel, equipment, buildings, and vehicles." (40 CFR §70.9(b)(1), proposed at 56 Fed. Reg. 21712, 21779 (May 10, 1991).) Additionally, federal funding grants include a figure for indirect overhead costs. I believe that we should follow these trends towards recovering indirect costs, and broadly construe the statutory language of Section 42(f).

For these reasons, I concur.

  
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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 29<sup>th</sup> day of August, 1991.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board