

ILLINOIS POLLUTION CONTROL BOARD
September 8, 1988

IN THE MATTER OF:)
)
WASTE MANAGEMENT OF) AC 88-53
ILLINOIS, INC.,) (IEPA Docket No. 8995-AC)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On September 2, 1988, WMI moved to withdraw its petition for review of this administrative citation, further requesting that "the Agency accede to and the Board enter a consent order in this matter without a finding of violation". In support of this motion, WMI asserts that Section 31.1(d) does not specifically address the situation in which respondent agrees to pay the proposed fine without admitting or denying the facts alleged, and further asserts that in "standard enforcement cases" arising under Section 31, the Board can issue an Order accepting a penalty which does not contain a finding or admission of violation. WMI's motion is supported by affidavit and other documentation indicating that it has already paid the civil penalty.

Although the time for response to this motion has not yet run, the Board believes it is appropriate to respond to this Order today, to avoid delay in resolution of this action.

In summary, the Board finds that it lacks statutory authority to grant WMI's motion as framed.

In the "standard enforcement action" established by Section 31(a), Section 33 prescribes the content of final orders of the Board: generally, the Board may enter final orders or make final determinations, "as it shall deem appropriate under the circumstances". Among the Orders the appellate courts have interpreted as being appropriate pursuant to are these Sections Orders accepting stipulated settlements which accept penalty payments but which do not contain findings or admissions of violations. E.g. Chemetco, Inc. v. PCB and IEPA, 488 N.E.2d 639, 140 Ill. App.3d 283 (5th Dist. 1986).

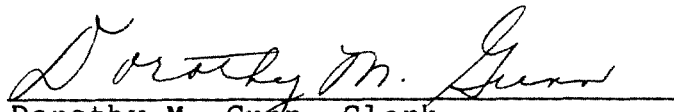
By contrast, in the administrative citation cause of action established by Sections 21(p) and Section 31.1, Section 31.1 alone prescribes the content of final orders of the Board. Just as Section 21(p) circumscribes the discretion of the Agency in terms of the type of cause of action which may be brought,

Section 31.1(d) circumscribes the discretion of the Board in terms of the final Order which may be entered. While WMI is correct that Section 31.1(d) does not specifically address the exact scenario it proposes, the Board notes that the Section otherwise does make clear that "appropriate" Orders to be entered (assuming jurisdiction has vested) are orders finding that violations did occur (Section 31.1(d)(1)) or violations did not occur (Section 31.1(d)(2)). While a respondent is not by the terms of Sections 31.1(d)(1) required to admit to violations if it does not wish to contest a violation, the Board is required to make a finding of violation. The only real distinction between that situation and the one here presented is that the Board and the Agency have already expended resources processing an appeal which WMI may choose not to pursue; to hold that such a filing extends the Board's statutory discretion would be to encourage the very sort of enforcement delay and paperwork proliferation the legislature sought to prevent in creating the administrative citation action.

WMI's motion is denied. WMI is free to pursue its appeal, or to move to withdraw its action unconditionally.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 8th day of September, 1988, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board