

ILLINOIS POLLUTION CONTROL BOARD
December 1, 1994

COUNTY OF DUPAGE,)
)
 Complainant,)
)
 v.) AC 94-92
) (Administrative Citation)
)
 WASTE MANAGEMENT OF ILLINOIS,)
)
 Respondent.)

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

This matter comes before the Board on the October 11, 1994 filing of an administrative citation by the County of DuPage (County) against Waste Management of Illinois (WMII) for its facility know as the Greene Valley Landfill. On October 21, 1994, WMII filed a motion to dismiss the County's administrative citation or alternatively grant review of the administrative citation. The County filed a response to the motion to dismiss on November 3, 1994.

On August 10, 1994, an inspection of the facility was done by Dean Olson, a County inspector, and Warren Weritz an Illinois Environmental Protection Agency (Agency) inspector. Based on the County inspector's direct observations of that day the County alleges that WMII, the present operator of the facility, violated Sections 21(o)(7) and (o)(10) of the Environmental Protection Act (Act). (415 ILCS 5/21(o)(7) and (o)(10) (1992).) Section 21(o)(7) of the Act prohibits landfill owners or operators from accepting waste without the necessary permits and Section 21(o)(10) prohibits acceptance of special waste without the required manifests.

The County specifically alleges that the observed waste was generated at the Sportsman's Park Gun Club (Gun Club) and on the same day of the inspection both the County and the Agency took grab samples of the waste at the Gun Club. The grab samples taken by the County were analyzed by First Environmental Laboratory Inc. on August 11, 1994 and they determined that the waste was of a non-hazardous nature. Additionally the grab samples taken by the Agency were tested at its laboratory and also were found to be non-hazardous. However, on August 25, 1994 the County contacted the Agency and requested the regulatory status of soil containing lead shot and broken clay bricks. The Agency responded that the soil would be considered special waste. On October 5, 1994 the County states it served WMII with notice of the administrative citation for violating the above named sections of the Act.

On October 21, 1994, WMII filed a motion to dismiss the administrative citation. WMII argues that the administrative citation does not "...provide the necessary support for the bare allegation of 'special waste'." (Mot. at 2.)¹ Also, WMII argues that the County failed to follow the delegation agreement between the Agency and itself and that therefore the administrative citation is void. Finally, WMII argues that the administrative citation was not based on direct observation as required by Section 31.1(b) of the Act. (415 ILCS 5/31.1(b) (1992).) WMII argues that because the waste in question was accepted at the landfill several days before the inspection of August 10, 1994, the County lacks the authority to issue the administrative citation based on that inspection.

In arguing against the motion to dismiss the County cites to the Illinois court precedent that "...all well-pleaded facts are taken as true and all reasonable inferences which can be drawn from them should be construed in the favor of the nonmovant" and that applying this standard here the motion to dismiss should be denied. Geick v. Kay, 236 Ill.App.3d 868, 603 N.E.2d 121, 125 (2nd Dist. 1992) and Meerbrey v. Marshall Field & Co., 144 Ill. 2d 535, 582 N.E.2d 108, 111 (1991). (Res. at 1.) Additionally, the County states that the administrative citation is sufficiently pled and that the arguments raised by WMII are appropriate for hearing. As to the alleged failure to follow the conditions of the delegation agreement, the County argues that there is nothing contained in the Act that would cause this administrative citation to be void. Finally, the County argues that it would be impossible to conduct the necessary testing of the waste at the site on the day of the inspection in order to find these violations through direct observation as suggested by WMII. Therefore the County concludes that WMII "...is imposing a set of criteria on complainants which simply does not exist and, certainly does not render the administrative citation void." (Res. at 4.)

For the following reasons the Board denies the motion to dismiss. The pleading is sufficient. Since the Board's procedural rules do not set forth relevant standards for motions to dismiss, we will determine the instant motion by the same principles applied to Illinois Code of Civil Procedure 2-615 and 2-619 motions to strike or dismiss. (735 ILCS 5/2-615 and 5/2-619.) As stated by the County all well-pleaded allegations in the complaint are to be taken as true (Import Sales v. Continental Bearings, (1st Dist. 1991) 217 Ill.App.3d 893, 577 N.E.2d 1205, 160 Ill.Dec. 634, 639) and a complaint should not be dismissed unless it clearly appears that no set of facts could be

¹The motion to dismiss filed by WMII will be referenced as "Mot. at " and the County response will be referenced as "Res. at ."

proven that would entitle a plaintiff to relief (Callaizakis v. Astor Development Co., (1st Dist. 1972) 4 Ill.App.3d 163, 280 N.E.2d 512). Based upon these and normal practice standards before the Board the complaint is sufficiently pled.

As to WMII second argument regarding the issue concerning the County's alleged failure to specifically follow its delegation agreement, there is no Section of the Act or Board procedural rules that would void an otherwise properly issued administrative citation if a condition of the delegation agreement between the unit of local government and the Agency is not met. While the parties may desire to further brief this issue during the course of the proceeding, the Board will not dismiss this administrative citation at this point.

Finally, the issue of whether the complaint needs to be based on direct observation of the alleged violation has been settled in prior Board cases. In Sangamon County v. Lee Hsueh, (July 1, 1993), AC 92-79, the Board found that inspectors are not required by statute to directly observe the violation, such as open burning, in order to file an administrative citation for that violation. The Board stated that the Act instead requires direct observations to support the finding of a violation of the Act. In this matter the County inspector will have to show through direct observation on August 10, 1994, that WMII had accepted waste that was special waste without having the proper permits and manifests. Therefore, we deny the motion to dismiss and accept WMII's petition for review. This matter will therefore proceed to hearing.

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 12th day of December, 1994, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board