

ILLINOIS POLLUTION CONTROL BOARD  
August 11, 1994

COUNTY OF OGLE, )  
 )  
 Complainant, )  
 )  
 v. ) AC 94-37  
 ) (Administrative Citation)  
 ROCHELLE DISPOSAL SERVICE, )  
 INC., and CITY OF ROCHELLE, )  
 ILLINOIS, )  
 )  
 Respondents. )

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

This action was initiated on June 27, 1994, by the filing of an administrative citation by the County of Ogle (County). The administrative citation was filed pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act). The authority to issue administrative citations was delegated to the County pursuant to Section 4(r) of the Act. (415 ILCS 5/31.1 and 5/4(r) (1992).) The administrative citation charges Rochelle Disposal Services (Disposal) and the City of Rochelle (City) with violation of Section 21(o)(1), 21(o)(5) and 21(o)(12) of the Act.<sup>1</sup> Disposal filed a motion to strike and dismiss itself from the complaint on the same day the administrative citation was filed. The County filed a response on July 6, 1994. On July 7, 1994, Disposal filed a "Motion for Bill of Particulars." The County as of the date of this order has not filed a response to the motion.

Disposal argues that it is not the holder of the operating permit issued by the Agency to operate the landfill and therefore it is not a proper party to the administrative citation. Disposal cites Environmental Protection Agency v. Pollution Control Board, 186 Ill. App. 3d 995, 134 Ill. Dec. 634, 542 N.E. 2d 1141 (1989) as authority for its position. In that case the court affirmed the Board's ruling that the Agency could not file an administrative citation to an operator of an unpermitted landfill under the section of the Act which applied to permitted landfills. That case is inapplicable because in this case there is a permitted sanitary landfill, and it is appropriate to issue

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<sup>1</sup>Section 21 of the Act was amended by Public Act 87-752, effective January 1, 1992. As a result, the two subsections enforceable through the administrative citation process have been changed from 21(p) and 21(q) to 21(o) and 21(p) respectively.

an administrative citation to the operator of a permitted landfill. In previous cases the Board has held that when where the County has issued administrative citations to both the City and Disposal, Disposal is a proper party to the action.<sup>2</sup> The Board finds no reason today to overturn those prior decisions.

Disposal also argues that because the Agency in a prior case, Rochelle Disposal Service v. Illinois Environmental Protection Agency, AC 89-68, stipulated that the parties agreed that the City of Rochelle would be responsible for the subject sanitary landfill and payment of the civil penalties, Disposal is not a proper party in the present proceeding. The fact that the Agency stipulated in AC 89-68 that Disposal was not responsible carries no weight in this proceeding. The contents of that stipulation are particular to that case at hand and cannot be used for evidentiary purposes or precedent in another matter. Therefore the motion to strike and dismiss is denied.

Disposal argues that the allegations in the administrative citation issued by the County are so wanting in details that a bill of particulars is necessary.<sup>3</sup> Disposal states that, since the administrative citation was issued against both itself and the City, but refers to the "Respondent" in the allegations of violations, Disposal is unable to determine what allegations apply to it.

The Board procedural rules do not contain a provision allowing for a motion for a bill of particulars. The Board procedural rule at 35 Ill. Adm. Code 101.100 states that in the absence of a specific provision in the Board's procedural rules the parties may argue that a particular provision of the Code of Civil Procedure and the Illinois Supreme Court Rules should apply. In this instance, Disposal is arguing that the Board should apply Section 5/2-607 of the Code of Civil Procedure to this matter. A bill of particulars is designed to appraise an opposing party of claims made in order to guide the opposing party in trial preparation, and ordinarily a party is limited to

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<sup>2</sup>See County of Ogle v. Rochelle Disposal Service and City of Rochelle, Illinois (August 26, 1993), AC 92-64; County of Ogle v. Rochelle Disposal Service and City of Rochelle, Illinois, (October 1, 1992), AC 92-64; County of Ogle v. Rochelle Disposal Service and City of Rochelle, Illinois, (September 23, 1993), AC 91-32; and County of Ogle v. Rochelle Disposal Service and City of Rochelle, Illinois, (June 4, 1992), AC 91-32. The Board notes that these cases have been appealed to the Appellate Court. (App. No. 2-93-1384(AC 91-32) and App. No. 293-1383.)

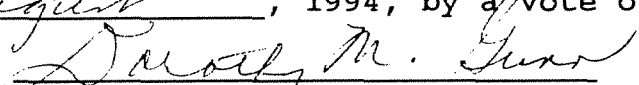
<sup>3</sup>The Code of Civil Procedure Section 5/2-607 discusses the use of the bill of particulars. (735 ILCS 5/2-607 (1992).)

proof of matters particularized. (Kolberg v. Cities Service Oil Co., 1951, 343 Ill. App. 355, 99 N.E.2d 152.)

The allegations in the administrative citation are explicit and not wanting in details as to what violations are alleged and to what Disposal and the City are to prepare for trial. The fact that the administrative citation is not clear as to whether the allegations apply to both the City and Disposal jointly or severally does not persuade the Board to grant the motion for the bill of particulars. Joint and several liability is presumed and the complaint is not wanting in detail. (See County of Ogle v. Rochelle Disposal Service and City of Rochelle, Illinois, (August 26, 1993), AC 92-64.) The motion for bill of particulars is denied.

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 17<sup>th</sup> day of August, 1994, by a vote of 6-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board