

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1993

COUNTY OF CHRISTIAN,)	
)	
Complainant,)	
)	
v.)	AC 92-55
)	Docket A & B
MAX WAYMAN and CARLOTTA J.)	(Administrative Citation)
WAYMAN,)	(SCN 02180100002)
)	
Respondents.)	

MR. DAVID H. MARTIN APPEARED ON BEHALF OF COMPLAINANT,

MR. MAX WAYMAN AND CARLOTTA J. WAYMAN APPEARED PRO SE.

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

This matter comes before the Board on an Administrative Citation filed on July 15, 1992 and an Amended Administrative Citation filed on August 28, 1992 by the County of Christian (County) pursuant to Section 31.1 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/31.1.). The citations allege that respondents, Max and Carlotta J. Wayman (Waymans), violated Sections 21(p)(1), 21(p)(3), 21(p)(6), and 21(p)(4) of the Act by causing or allowing open dumping of waste resulting in litter, open burning, standing or flowing liquid discharge from the disposal site, and deposition of waste in standing or flowing waters.

The Waymans filed a request for hearing with the Board on August 10, 1992. Hearing was held October 2, 1992, in Taylorville, Illinois. Several members of the public attended the hearing. No briefs were filed.

BACKGROUND

On July 2, 1992, Joe Stepping, Christian County Solid Waste Inspector, conducted an investigation of the Waymans' property located in Bear Creek Township at the intersections of 800 East and 1000 North. (Tr. at 8, 16, 23.) Stepping testified that he verified that the Waymans were the owners of the property by examining the deed to the property which indicated that the property was transferred to the Waymans on April 9, 1991. (Tr. at 16.) Stepping testified that the vast majority of refuse previously observed at the site on February 5, 1992 remained at the site on July 2, 1992. (Tr. at 24; Exh. 10.) The waste consisted of metals (Tr. at 25-26; Exh. 10-A, 10-B, 10-E, 10-F), white goods (Tr. at 25-26; Exh. 10-C), an abandoned vehicle (Tr. at 26; Exh. 10-D), and refuse (Tr. at 27; Exh. 10-G.) Stepping also testified that he observed waste on the property in standing

or flowing water. (Tr. at 28.) Stepping testified that his July 2, 1992 inspection revealed white goods located in a stream on the Waymans' property. (Tr. at 28, 32.) An October 19, 1992 inspection revealed that the refuse in the stream had been removed. (Tr. at 29.)

Brett A. Rahar, Christian County Zoning Consultant, testified that he was present on the July 2 inspection and that he observed, white goods, metals, household debris, automotive parts, and automobiles on the property. (Tr. at 42-43.) He also observed such waste in the creek. (Tr. at 44-47.)

Max Wayman testified that he inspected the property before he purchased it and knew there was considerable debris on the property. (Tr. 49.) He testified that he called the Illinois Environmental Protection Agency and was informed that there was nothing that was of immediate concern, there was no hazardous waste on the property that needed to be cleaned up. (Tr. at 49.) Wayman determined it would take a substantial period of time to clean up the property, again called the Agency and was assured that there was no problem with beginning clean up before the property was transferred. (Tr. 50.) Wayman testified that he began the clean up, but did not get any receipts from the landfill where the waste was disposed. (Tr. 50-51.) There was considerable clean up before February of 1992, but no clean up during February through April. (Tr. at 51, 56.) Wayman testified that he requested more time to comply with the administrative warning notice issued March 23, 1992, but this letter apparently was never received by the County. (Tr. 52-53, 63, 65.) Wayman testified that because a neighbor to the rear must have access to his field, there is no way to deny access to his property. (Tr. at 53.) He also testified that there has been nothing deposited on the property since he purchased it except a few beer bottles. (Tr. at 54, 60.) Wayman testified that he had receipts for the clean up performed since issuance of the administrative warning notice, but he had not turned them in to the County because the work was not yet completed. (Tr. at 54-55.)

DISCUSSION

Because of the unusual procedural facts surrounding this case, the procedural history must be discussed. The County allegedly observed violations on February 5, 1992. On March 23, 1992, the County issued an administrative warning notice. The violations were allegedly again observed on July 2, 1992. On July 15, 1992, the County filed an administrative citation (hereafter the "first citation") with the Board alleging violations observed on February 5, 1992. The "first citation" was served on the Waymans on July 7, 1992. On August 10, 1992, the Waymans filed a petition for review. On August 28, 1992, the County filed an "Amended Administrative Citation" with the Board

based upon violations which allegedly occurred July 2, 1992. The Waymans did not file a second petition for review.

Initially, the Board addresses whether the "first citation" was timely served as required by the Act. Pursuant to Sections 31.1(b) of the Act, the County had 60 days from the date of the observed violations, February 5, 1992, to serve the "first citation" on the Waymans. (415 ILCS 5/31/1(b) (1992).) The Board failed to recognize this jurisdictional defect before this matter proceeded to hearing. Because this citation was not served until well after the 60-day deadline, the "first citation" was clearly not timely served and, therefore, the Board does not have jurisdiction over the February 5, 1992 violations alleged in the "first citation".

The Board must now address the effect of the "Amended Administrative Citation". The County captioned the July 15, 1992 filing as an "Amended Administrative Citation". However, this citation alleges different violations, which occurred July 2, 1992, than those earlier alleged violations in the "first citation" which occurred February 5, 1992. Because the "amended citation" is based upon a different date of alleged violation than the "first citation", it cannot be an amendment to the "first citation". The County cannot amend a citation over which the Board never had proper jurisdiction. The alleged violations of July 2, 1992 should have been the subject of a separate administrative citation. The failure to file the "Amended Administrative Citation" as a separate citation is a fatal flaw requiring that the "amended citation" also be dismissed. Although this matter should have been dismissed prior to hearing, the Board will not compound the error by proceeding to a decision on the merits simply because this jurisdictional defect was not noticed at an earlier stage in this proceeding.

For the reasons given, the Board dismisses both the administrative citation filed July 15, 1992 alleging violations on February 5, 1992 and the "Amended Administrative Citation" filed on August 28, 1992 alleging violations on July 2, 1992. Because no administrative citation has been properly filed against the Waymans, no civil penalty can be imposed on the Waymans.

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

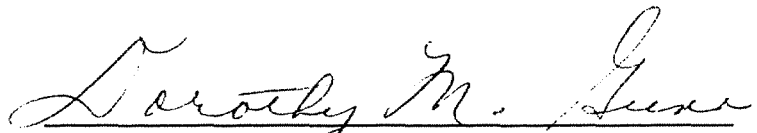
ORDER

The Board dismisses both the administrative citation and the amended administrative citation filed by the County. This matter is dismissed and the docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 11th day of March, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board