

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1988

WASTE MANAGEMENT OF) AC 88-54
ILLINOIS, INC.,)
)
Respondent.)

ORDER OF THE BOARD (By J. Anderson):

On May 23, 1988, Tazewell County filed with the Board a copy of an administrative citation issued to Waste Management of Illinois, Inc. (WMI) for an alleged violation at its Tazewell County Landfill. On June 16, 1988, WMI filed a "Special And Limited Appearance For Purpose Of Motion To Dismiss For Improper Service And Lack Of Jurisdiction And Provisional Petition For Review And Request For Stay." On June 30, 1988, the Board issued an Order staying the appeal and directing Tazewell County to file a response to WMI's Motion no later than July 11, 1988 to allow the Board to again consider the matter at its July 13, 1988 meeting.

On July 13, 1988, Tazewell County filed its Response to WMI's Motion. The Board notes that this filing is late and was not submitted under Motion to File Instanter. However, as this proceeding has been stayed, the Board believes that no party has been prejudiced. Therefore, the filing is accepted. The Board today denies the motion to dismiss, accepts the Provisional Petition For Review, and sets this matter for hearing.

As a preliminary matter, the Board appreciates WMI's reasons for filing a "provisional petition for review" concurrently with a special and limited appearance. However, the Board notes that, in the absence of a procedural rule on special appearances, it will look to Section 2-301(a) of the Code of Civil Procedure of Illinois for guidance. Section 2-301(a) states:

"Section 2-301. Special appearance. (a) Prior to filing any other pleading or motion, a special appearance may be made either in person or by attorney for the purpose of objecting to the jurisdiction of the court over the person of the defendant. A special appearance may be made as to an entire proceeding or as to any cause of action involved therein. Every appearance, prior to judgment, not in compliance with the foregoing is a general appearance."

(emphasis added)

Here, WMI submitted its special and limited appearance not prior to but concurrent with its provisional petition for review. Were the Board to invoke Section 2-301(a), WMI would be held to have submitted to the general jurisdiction of the Board. However, the Board believes that WMI filed a special appearance to protect its right to contest jurisdictional matters without the 35 day petition for review period expiring. The Board will not require special appearances for the purpose of entertaining jurisdictional issues in the administrative citation context. Thus, the Board finds the "special appearance" unnecessary in any event. The Board will refer to the "special and limited appearance for purposes of motion to dismiss" simply as Respondent's "motion to dismiss."

In its motion to dismiss, WMI states that it is a Delaware Corporation with a corporate office in Oak Brook, Illinois, and that its registered agent in the State of Illinois is CT Corporation Systems. WMI further states that the administrative citation in question was apparently sent by certified mail to 3550 East Washington, East Peoria, Illinois on May 18, 1988, by the Tazewell County Health Department. WMI further notes that the return receipt was signed by "Delores Metiefa" and is dated May 31, 1988. WMI states that no such individual or anyone by a similar name is employed at the Tazewell County Landfill. WMI argues that such service is improper under Section 31.1 of the Environmental Protection Act (Act), which states that the citation "shall be served upon the person named therein or such person's authorized agent for service of process." WMI therefore moves the Board to dismiss the administrative citation as not properly served within 60 days after the date of the observed violation as required by Section 31.1(b) of the Act.

In its response, Tazewell County (County) agrees with WMI's statement of facts but disagrees with WMI's conclusions as to improper service. The County states it relied on a letter from Respondent dated March 29, 1988, in having the Respondent served at 3550 West Washington St., East Peoria, Illinois.

However, the County states that it will serve all future administrative citations upon CT Corporation Systems. The County believes that the appropriate remedy would be to allow WMI leave to file a Petition for Review of the citation.

Section 31.1 of the Act states that each administrative citation shall be served upon "the person named therein or such person's authorized agent for service of process." Section 103.123 of the Board's procedural rules (35 Ill. Adm. Code 103.123) states:

A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by

registered or certified mail with return receipt signed by the respondent or his authorized agent. Proof shall be made by affidavit of the person making personal service, or by properly executed registered or certified mail receipt. Proof of service of the notice and complaint shall be filed with the Clerk immediately upon completion of service.

(emphasis added)

The administrative citation names WMI as Respondent. Tazewell County sent the citation by registered or certified mail, as evidenced by returned receipt, to WMI at 3550 East Washington St., East Peoria, IL. The Board notes that the letter the County relied upon in serving the Respondent at the East Peoria address was attached to the County's Response. The letter, dated March 29, 1988, is from WMI's attorney to the Assistant State's Attorney for Tazewell County. This letter relates to the proper identification of the operator of the Tazewell County Landfill and names who may be served with a citation. The pertinent language states:

[t]he amended citation can be served directly on the operator, at its facility, Waste Management of Illinois, Inc., 3550 East Washington Street, East Peoria, Illinois 61611, together with courtesy copies sent to Waste Management of Illinois, Inc., 3003 Butterfield Road, Oak Brook, Illinois ...

(emphasis added)

Although this letter refers to another administrative citation that was being amended, the Board believes that Tazewell County was justified in believing that administrative citations for violations at the Tazewell County Landfill could be served at that address. In other words, the Board construes this letter as conferring "authorized agent" status under Section 103.123 upon the operator at the address of the facility for purposes of service of process.

WMI's motion to dismiss on this basis is therefore denied. Tazewell County has fulfilled all that is required of it by serving the citation on the proper respondent at a proper address within 60 days of the observed violation. If, after fulfilling these requirements, the issuer sends a citation package and an unknown individual signs the receipt, the burden necessarily falls upon the Respondent to file, within a reasonable time of its learning of the citation, (1) a motion to stay the proceeding

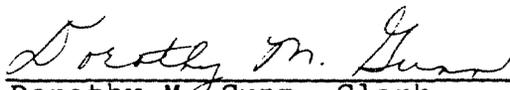
if necessary* and (2) a motion for leave to file a petition for review, if such petition would be filed after the statutory 35 day period. As the Board today denies WMI's motion to dismiss, and as WMI concurrently filed a "provisional petition for review", the Board grants WMI leave to file the petition for review and this matter is authorized for hearing.

Finally, WMI moved to dismiss the citation on the grounds that it does not include a description of the weather conditions prevailing during the inspection, as required by Section 31.1(b)(2) of the Act "insofar as it omits any reference to wind conditions." WMI argues that wind conditions are "obviously a crucial element of an administrative citation", especially in light of the litter violations charged therein. The Board believes that this issue would be appropriately addressed at hearing. All other matters raised in Respondent's motion may be addressed at hearing as well.

WMI's Motions To Dismiss are denied. This matter is set for hearing on WMI's Petition For Review.

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 4th day of August, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

* The Board fully recognizes the lack of procedural guidance encountered by Respondent in preparing its response to the citation and notes that the Respondent proceeded appropriately.
(continued)