

ILLINOIS POLLUTION CONTROL BOARD
August 4, 1988

WASTE MANAGEMENT OF)
ILLINOIS, INC.,)
) AC 88-31
Respondent.)

ORDER OF THE BOARD (By J. Anderson):

On May 19, 1988, the Board issued an Order in this matter making a finding of violation in this administrative citation action and ordering payment of a penalty on or before June 18, 1988. On June 17, Waste Management of Illinois, Inc. (WMI) entered a "special and limited appearance" for the purpose of objecting to allegedly improper service and resulting lack of Board jurisdiction.

WMI moved the Board to vacate the Order, as well as to stay the imposition of the penalty until 10 days after the Board's decision on this Motion. On July 30, 1988, the Board stayed the penalty payment date and reserved ruling on the Motion to Vacate until the County responded. The Board directed the County to file its response no later than July 11, 1988 to allow the Board to again consider this 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, because the Board today dismisses this proceeding on other grounds, this filing defect will not be considered fatal in this instance.

In its special and limited appearance, 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 sent by certified mail to Glen O'Bryan, WMI District Engineer, addressed to him at the Milam Landfill in East St. Louis, Illinois on April 11, 1988, by the Tazewell County Health Department. 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 vacate its May 19, 1988 Order as being based on an administrative citation which was 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 the Mr. O'Bryan is "an agent of Respondent for purposes of operation at the Tazewell County Landfill". The County argues that:

The primary purpose of the enforcement program is to advise Respondent of deficiencies in its operations in order that Respondent can take the necessary corrective action. Serving Mr. O'Bryan furthers the purpose of the program in that Mr. O'Bryan has the expertise to accomplish this purpose.

However, the County states that it will serve all future administrative citations upon CT Corporation Systems. The County "agrees that the method of service may not have been the best method to insure that Respondent could or would have successfully contested the administrative citation," and states that it would not object to a hearing on the citation. The County believes that the appropriate remedy would be to allow WMI leave to file a Petition for Review of the citation.

Based on these facts, the Board finds that the administrative citation was not properly served upon the Respondent, Waste Management of Illinois, Inc. 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 a Mr. Glen O'Bryan. The signature on the mail receipt appears to be "Scott Plafcan,"

apparently another WMI employee.¹ Although the County asserts that Mr. O'Bryan is "an agent of Respondent for purposes of operations" at the site, the Board is not persuaded that Mr. O'Bryan is "an authorized agent" for purposes of service of process. WMI is a Delaware Corporation with CT Corporation Systems as its registered agent; therefore, CT Corporation Systems would be an "authorized agent" for service of process. But the record makes no similar connection for Mr. O'Bryan.² All that Tazewell County has established is that Mr. O'Bryan is an employee of WMI. The Board is not persuaded to find "authorized agent" status on that basis alone.

The Board notes that compliance with the procedural requirements for service of process is particularly important in the administrative citation process. This process is unique in that the Act requires (1) that the administrative citation be issued and served within 60 days of the observed violations, and (2) that the Respondent petition for review within 35 days of service or (3) that the Board will enter an automatic finding of the violation and impose a penalty. If service of the citation is not proper, the first notice of process received by the Respondent might well be the order finding the violation and imposing the penalty. In light of this statutory framework, it is imperative that the Respondent have the opportunity to petition for review of the citation. The Board does not believe that such an opportunity exists when the administrative citation does not reach the proper individuals. Here, the proper individuals did not receive the administrative citation until it was too late to file a petition for review. Such an occurrence must be avoided.

The Board therefore finds that the named Respondent, Waste Management of Illinois, was not properly served with the

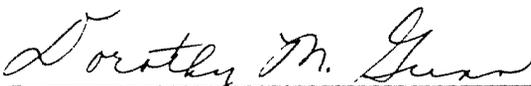
¹ In addition to the more general issue decided today, the Board questions whether the mail receipt was properly executed. "Scott Plafcan" signed the receipt in the box marked "Signature-Addressee." The addressee was Glen O'Bryan. The box marked "Signature-Agent" was left blank. Also, there is no indication as to the type of service afforded -- certified or registered mail. The Board need not address this issue here because (1) the parties provide little information on proper execution and (2) this case is disposed of on other grounds; however, the Board does note that Section 103.123 clearly requires "properly executed registered or certified mail receipt."

² The Board notes that "authorized agent" status has been found to exist in a similar proceeding, AC 88-54. There, the Board found authorization in a letter from Respondent's attorney to Tazewell County, the issuer of the administrative citation.

administrative citation. As no administrative citation was properly served upon Respondent within 60 days of the observed violation (as required by Section 31.1 of the Act), no administrative citation exists upon which to allow Respondent leave to file a Petition for Review, as is suggested by Tazewell County. The Board's May 19, 1988 Order is vacated. This matter is dismissed.

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