

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

TAZEWELL COUNTY AND)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY)
)
Complainant,)
)
v.) AC 90-40
) (Administrative Citation)
) (Tazewell Docket No. 90-EH-3)
STEVE ZIMMERMAN and WASTE)
LTD., INC.,)
)
Respondents.)

ORDER OF THE BOARD (by J. Anderson):

On July 27, 1990, Steve Zimmerman and Waste Ltd., Inc. ("Z & W") filed a Motion to Dismiss. On August 30, 1990 the Board issued an order directing the Tazewell County ("Tazewell") and the Illinois Environmental Protection Agency ("Agency") to file their responses to the Motion to Dismiss by September 20, 1990. The Board also stated that it would allow Z & W to file a reply. Such reply was to be filed by October 1, 1990. The Agency filed a Motion for Additional Time to File its Response on September 20, 1990. Tazewell filed its response to the Motion to Dismiss on September 21, 1990. On September 27, 1990, the Board granted the Agency's motion and directed it to file its response by October 31, 1990. The Board also gave Z & W a corresponding extension, until November 11, 1990, in which to file its reply. On October 30, 1990, the Agency filed its response to the Board's August 30, 1990 Order. Z & W did not file a reply. On November 29, 1990, the Board issued an Order directing the Agency to clarify its response and provide it with a copy of its Delegation Agreement with Tazewell. The Agency filed its response to the Order on December 12, 1990.

The Board will not provide a comprehensive summary of the Motion to Dismiss or the various responses, but will reiterate those portions of the documents that are relevant to our determination in this matter.

In its Motion to Dismiss, Z & W aver that Tazewell lacks standing to issue an Administrative Citation for Z & W's failure to submit reports and fees pursuant to the above regulatory sections because the Agency acquiesced in its late filing of the reports and fees via a May 9, 1990 settlement agreement between the Agency and Z & W, and thereby waived its rights under the above regulatory sections on the dates for which the Administrative Citation alleges that Z & W was in violation, and thereafter until May 23, 1990.

In response, Tazewell first argues that Z & W waived the

above objection to the issuance of the Administrative Citation because it failed to raise the argument prior to or simultaneously with its Petition for Review. Specifically, Tazewell argues that Z & W admitted that Tazewell had authority to issue the citation when it filed its Petition for Review. Finally, Tazewell argues that the Agency, in effect, repealed Tazewell's authority to levy a local solid waste disposal fee and prosecute those who violate reporting requirements when it allowed Z & W to delay the filing of reports, and that it is without authority to do so.

In its October 30, 1990 response, the Agency states that it would not have brought this action because the violations charged in the Administrative citation (i.e., violations of 21(p)(11) of the Illinois Environmental Protection Act ("Act") for failure to timely submit reports and fees) are the subject of an agreement between it and Z & W. Specifically, the Agency contends that, prior to the filing of the complaint in this case, it determined that Z & W failed to file the reports and fees required by 35 Ill. Adm. Code 858.307B, 858.308B, and 858.401(a). On March 15, 1990, it sent a second notice of the violations to Z & W. On May 17, 1990, the Agency completed the execution of its agreement with Z & W with regard to the delinquent reports and fees.

In its December 14, 1990 response, the Agency adds that, although it is not recommending dismissal of this case because of a belief that no violation occurred as a result of the Agency agreement with Z & W, it disapproves of this case because it had negotiated an agreement with Z & W prior to the filing of the case. When a delegated county files an administrative citation, a copy of the complaint is transmitted to the Agency for its review. In this case, Mr. William Seltzer, the Agency's attorney in this matter, asserts that he reviewed the complaint and telephoned Mr. Stewart Umholtz, Assistant State's Attorney for Tazewell, and informed him that the Agency did not approve of the action.

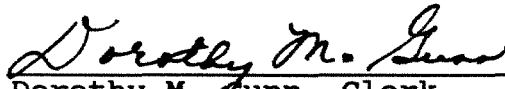
We hereby grant Z & W's Motion and dismiss this case in light of the Agency's actions in this matter and because we cannot state that Z & W's reliance on its agreement with the Agency's was misplaced or unreasonable. If the Board were to do otherwise, it would be unfairly punishing Z & W for such reliance. Illinois Environmental Protection Agency v. Johnson Blackwell, AC 90-27 (December 20, 1990).

Finally, we wish to take special note of the following language in the Delegation Agreement: "In appropriate cases, a matter may be referred for both formal enforcement and issuance of an administrative citation". We note that this statement is in direct contravention of Section 31.1(a) of the Act as well as the Board's interpretation of that section. Specifically, Section 31.1(a) provides that specified prohibitions of the Act

"shall be enforceable either by administrative citation or as otherwise provided by this Act" (emphasis added). Moreover, in the Blackwell case (cited above), we stated that the language of Section 31.1(a) prevents the use of both a formal enforcement action and the administrative citation process for the same violation.

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 20th day of December, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board