

ILLINOIS POLLUTION CONTROL BOARD
September 27, 1990

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

ORDER OF THE BOARD (by J. Anderson):

Currently before the Board in this case are 1) a "Motion to Strike or Disallow Respondent's Motion to Dismiss" that was made by Tazewell County ("Tazewell") at the July 31, 1990 hearing in this matter, and 2) a "Motion for Additional Time to File Response" that was filed by the Illinois Environmental Protection Agency ("Agency") on September 20, 1990.

Tazewell's Motion to Strike or Disallow Respondent's Motion to Dismiss

Tazewell's Motion to Strike comes in response to a Motion to Dismiss that was filed by Steve Zimmerman and Waste Ltd., Inc. ("Z & W") on July 27, 1990. On August 31, 1990, Tazewell filed a "Memorandum in Support of Complainant's Motion to Strike or Disallow Respondent's Motion to Dismiss". On September 17, 1990, Z & W filed "Respondents' Consolidated Brief in Lieu of Closing Arguments and Response to Complainant's Motion to Strike".

In its Motion to Strike, Tazewell asks the Board to enter an order denying Z & W's Motion to Dismiss, find Z & W in violation of Counts 1 through 34 of the Administrative Citation, and award cost to Tazewell. In support of its Motion to Strike, Tazewell states that the Administrative Citation was served on May 22, 1990, and that Z & W failed to file their Motion to Dismiss within 21 days of service of the Administrative Citation as required by 35 Ill. Adm. Code 101.243. Specifically, Tazewell states that the Motion to Dismiss should have been filed by June 12, 1990, rather than July 27, 1990.

In response, Z & W state that the pleading requirements of 35 Ill. Adm. Code 101.243, as well as the more specific provisions of 35 Ill. Adm. Code 103.140, apply to enforcement actions brought pursuant to Section 31 of the Environmental Protection Act ("Act") rather than Administrative Citation actions brought pursuant to Section 31.1 of the Act.

At the outset, the Board denies Z & W's request to file a memorandum supplementing their arguments opposing the Motion to

Strike. The Board also notes that neither Section 31 nor 31.1 reference the Board's procedural rules. Thus, it is not clear whether the 35 Ill. Adm. Code 101.243 time frame or the 35 Ill. Adm. Code 103.401 time frame applies. In any case, it is clear that Z & W did not file their Motion to Dismiss within either time frame. For purposes of this case, however, the Board will give Z & W the benefit of the doubt and waive the time frame for filing the Motion to Dismiss. Accordingly, Tazewell's Motion to Strike is denied.

Agency's Motion for Additional Time to File Response

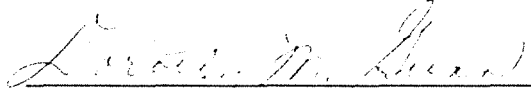
The Agency's Motion for Additional Time to File Response comes in response to a September 13, 1990 Order directing Tazewell and the Agency to respond to Z & W's Motion to Dismiss. The Board, in its Order, also stated that Z & W would be allowed to file a reply to the Agency's September 20, 1990 response. The Board specified that such reply was to be filed no later than October 1, 1990. On September 26, 1990, Z & W filed a "Response to Illinois Environmental Protection Agency's Motion for Additional Time."

In its Motion for Additional Time to File Response, the Agency requests the Board to grant it until October 31, 1990 to respond to Z & W's Motion to Dismiss. In support of its motion, the Agency states that additional response time is required because the Agency has not been following the case until the Board joined it as a party on August 30, 1990. As a result, the Agency has no documents other than a copy of the Administrative Citation Complaint in its possession, and has had to request the pending pleadings and motions from the Clerk of the Board. In their response, Z & W state that they have no objection to the Agency's motion, but request that they be given until November 11, 1990, to reply to the Agency's response.

Although 35 Ill. Adm. Code 101.241(b) states that the Board will not rule on a motion before the expiration of the seven day response period, the Board hereby grants the Agency's motion in order to avoid undue delay. The Agency is directed to file its response no later than October 31, 1990. Because the Board is granting the Agency's Motion for Extension, it also grants Z & W a corresponding extension in which to file their reply to the Agency's response. Such reply must be filed with the Board no later than November 11, 1990.

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 27th day of September, 1990, by a vote of 7-6.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board