

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1988

IN THE MATTER OF:)
)
WASTE MANAGEMENT OF) AC 88-54
ILLINOIS, INC.,) (Case No. 88-EH 9)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On October 24, 1988, Tazewell County (County) and Waste Management of Illinois, Inc. (WMI) jointly moved the Board to enter a finding of no violation in this matter.

The joint motion recites that:

1. Tazewell County finds it is not economically reasonable to expend public resources in pursuing a finding of violation in this matter due to the fact that the Tazewell County Landfill operated by Waste Management of Illinois, Inc. does not have a history of non-compliance with Section 21(p) of the Environmental Protection Act and has not otherwise operated in a manner adversely affecting the residents of Tazewell County.
2. Waste Management of Illinois, Inc., finds that it is not economically reasonable to go to hearing in this matter.
3. Waste Management of Illinois, Inc. has agreed to make a contribution of \$250 to the Illinois Environmental Trust fund and \$250 to the Tazewell County Environmental Trust Fund.

The joint motion is denied. The Board finds that it lacks the statutory authority to grant the joint motion as framed. As the Board previously stated in AC 88-53, and as is equally applicable here:

In the "standard enforcement action" established by section 31(a), Section 33 prescribes the content of final orders of the board: generally, the Board may enter final orders or make final determinations, "as it shall deem appropriate under the circumstances". Among the Orders the appellate courts have interpreted as being appropriate pursuant to are these Sections Orders accepting stipulated settlements which accept penalty payments but which do not contain findings or

admissions of violations. E.g. Chemetco, Inc. v. PCB and IEPA, 488 N.E.2d 639, 140 Ill.App.3d 283 (5th Dist. 1986).

By contrast, in the administrative citation cause of action established by sections 21(p) and Section 31.1, Section 31.1 alone prescribes the content of final orders of the Board. Just as section 21(p) circumscribes the discretion of the Agency [in this case the County] in terms of the type of cause of action which may be brought, Section 31.1(d) circumscribes the discretion of the Board in terms of the final Order which may be entered. (Waste Management of Illinois, Inc. Respondent, AC 88-53, September 8, 1988, p. 1.2).

Section 31.1(d)(2) of the Environmental Protection Act (Act) states:

"If a petition for review is filed before the Board to contest an administrative citation issued under subsection (b) of this Section, the Agency or unit of local government shall appear as a complainant at a hearing before the Board to be conducted pursuant to Section 32 of this Act at a time not less than 21 days after notice of such hearing has been sent by the Board to the Agency or unit of local government and the person named in the citation. In such hearings, the burden of proof shall be on the Agency or unit of local government. If, based on the record, the Board finds that the alleged violation occurred, it shall adopt a final order which shall include the administrative citation and findings of violation as alleged in the citation, and shall impose the penalty specified in subdivision (b)(4) of Section 42. However, if the Board finds that the person appealing the citation has shown that the violation resulted from uncontrollable circumstances, the board shall adopt a final order which makes no findings of violation and which imposes no penalty."

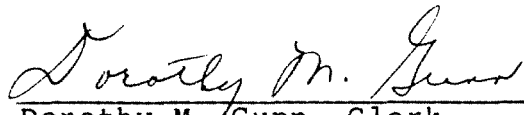
In the instant joint motion, both the relief requested and the underlying grounds and reasons are in conflict with the Act. The express procedural requirements of 31.1(d)(2), including the requirement for a hearing, that must occur before the Board can make a determination have not occurred here. Even if the procedural requirements were met, the Board is restricted in its determination, based solely on the issue of uncontrollable circumstances, either to find a violation and impose a Section 42(b)(4) penalty or find no violation and impose no penalty.

Again, the joint motion of the County and WMI is denied. Regarding the assertion of economic reasonableness contained in

the motion, WMI is free to move to withdraw its action unconditionally, or the County is free to move to dismiss its action, also unconditionally. The Board also notes that the matter of donations to the Environmental Protection Trust Fund is not properly before the Board in this proceeding.

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 3rd day of November, 1988, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board