

ILLINOIS POLLUTION CONTROL BOARD

August 23, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
vs.) PCB 73-322
)
AJAX SAND AND GRAVEL, INC. an)
Illinois corporation, HARRIS TRUST)
& SAVINGS BANK, as Trustee under)
Trust #31605 and WESTERN NATIONAL)
BANK OF CICERO, a National Bank)
Corporation, as Trustee under its)
Trust #3513, GARY-WHEATON BANK)
as Trustee under Trust #1176)

ORDER OF THE BOARD (by Mr. Henss)

Respondents move to strike the Complaint on the following grounds: that imposition of a fine by this Board is not permitted under the Constitution; that the procedure being followed deprives Respondents of their right to a jury trial.

The motion is denied. The City of Waukegan case, 11 Ill. app. 3rd 189(1973) relied upon by Respondents is now pending in the Supreme Court of the State of Illinois on Certificate of Importance and will decide whether this Board has constitutional authority to impose monetary penalties. This issue has been decided differently by the Appellate Courts of this State. In order to be consistent and uniform in its application of the law to pollution problems in various parts of the State this Board will continue to exercise its apparent authority to impose monetary penalties pending review of this issue by the Illinois Supreme Court. The Statute does not provide for a jury trial. This is entirely consistent with Section 13 of Article 1 of the 1970 Illinois Constitution which provides "the right of trial by jury as heretofore enjoyed shall remain inviolate." The Constitution does not guarantee trial by jury in special statutory proceedings of the type involved here.

The Motion to Strike Complaint is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted this 23rd day of August, 1973 by a vote of 3 to 0.

