

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

VALERIE JOHNSON, MICHAEL BRENSTON,)
CHERYL JOHNSON, PEOPLE FOR)
COMMUNITY RECOVERY, INC.,)
)
Petitioners,) PCB 93-247
) (Enforcement)
v.)
)
EMERGENCY PREPAREDNESS &)
DISASTER SERVICES, CHICAGO FIRE)
DEPARTMENT, AND CITY OF CHICAGO,)
A MUNICIPAL CORPORATION.)
)
Respondents.)

ORDER OF THE BOARD (by M. McFawn):

On December 2, 1993, petitioners filed this petition for hearing before the Board. Petitioners seek to compel respondents to respond to their request for information, which information petitioners alleged should have been made available to them by respondents pursuant to the Emergency Planning and Community Rights To Know Act, 42 U.S.C. 11001 - 11050 ("EPCRTKA"), most specifically Section 311, 312, 313 and 324 of EPCRTKA (42 U.S.C. §§11021, 11022, 11023, and 11044). In seeking a hearing before the Board, petitioners cited Sections 25b-1(a)(2) and (b) 2(a)(5), (citations corrected), and 5(d) of the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) ("Act").

On December 20, 1993, two of the three named respondents, the City of Chicago and the Chicago Fire Department ("Respondents"), moved to dismiss the petition for lack of subject matter jurisdiction. On December 28, 1993, petitioners filed their response to that motion, and respondents filed their reply on January 5, 1994.

Petitioners argue that the Board has the authority to hear this case pursuant to Section 5(e) of the Act (sic), which provides in pertinent part:

The Board shall have authority to conduct hearings upon complaints charging violations of the Act. . .

Emphasis added. 415 ILCA
5/5(d); (correct citation.)

In general, petitioners alleges that the Local Emergency Planning Committee ("LEPC")¹ is in violation of the Act for failing to provide them with the information required to be filed under EPCRTKA by seven industrial facilities located in Chicago, Illinois, i.e., the Material Safety Data Sheets, Tier I and Tier II and follow-up written Emergency Notices. Respondents move to dismiss on the grounds that the Board lacks jurisdiction because Title VI-B of the Act does not fully incorporate EPCRTKA, and "does not even mention the LEPC much less require an affirmative action by LEPC." (Respondents' Reply of January 5, 1994.)

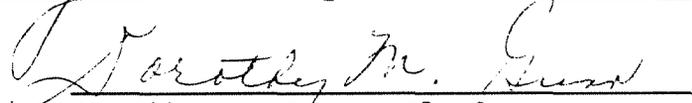
The Board agrees with respondents. The federal requirements of EPCRTKA are not fully incorporated into the Act. Title VI-B of the Act only addresses toxic chemical reporting, and in that regard mandates only that the Agency act as the repository for the Toxic Chemical Reporting forms required pursuant to Section 313 of EPCRTKA and to make those forms available to the public. The Agency also has additional obligations concerning toxic chemical information, but the federal requirements that facilities submit chemical information under Section 311 and 312 of EPCRTKA and the corresponding mandates to federal and local authorities are not incorporated by reference or otherwise into the Act. Therefore, the Board lacks jurisdiction to compel these respondents to provide the information sought by petitioners.

Respondents' motion is granted. This matter is hereby dismissed for lack of jurisdiction.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of February, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹In this case, the LEPC is the Emergency Preparedness & Disaster Services, which according to respondents' Motion is chaired by the City of Chicago Fire Department, but is autonomous from the City of Chicago or the Chicago Fire Department.