

ILLINOIS POLLUTION CONTROL BOARD
February 17, 1982

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 81-190
)
 CITY OF CHICAGO, JOHN B.W. COREY and)
 INGERSOL PRODUCTS, CORP.)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On December 31, 1981, the City and John Corey moved to dismiss counts V through VII. On January 21, 1982 the Attorney General filed a Response in Opposition.

The motion is denied as to Counts V and VII, which the Board finds sufficient in stating a cause of action.

The issue concerning Count VI can be framed as whether allegation of the violation of Technical Policy Statements 314(c) and (d)(4), without allegations of a resulting violation of any underlying Board regulation or provision of the Act, is sufficient to state a cause of action under the Act.

The City respondents assert that the Board has no jurisdiction under Section 31(b) of the Act to consider violations of Rules which have not been adopted by the Board itself, and that alternatively, Section 31(b) jurisdiction is limited to a complaint brought by the Agency.

As the City respondents themselves note, Rules 314(d) of Chapter 6: Public Water Supplies authorizes the Agency's adoption of "specific conditions for control of unsafe cross-connections" in accordance with Rule 212 procedures concerning "Technical Policy Statements" (TPS). Attorney General Opinion S-1408 (January 10, 1979) determined that the Agency has authority to adopt Technical Policy Statements, finding that the Board

"has not [improperly] delegated its authority to adopt regulations concerning public water supplies to the Environmental Protection Agency. The Agency's statutory powers to approve and monitor public water supplies and to administer the Board's permit requirements authorize the Agency to adopt technical policy statements for public water supplies" (at p. 6).

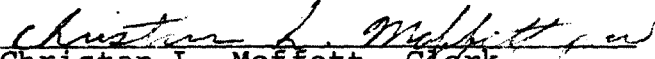
This Opinion of the Attorney General does not however address the issue as to whether these TPS are enforceable under the Act independent of citation to underlying Board regulations or the Act.

Section 4 of the Act, establishing the Agency's duty and authority, gives the Agency rulemaking authority only to carry out its authority "to accept, receive, and administer...any grants, gifts, loans or other funds" [Section 4(1)]. Section 5, defining the Board's authority, provides that the Board "may adopt rules and regulations in accordance with Title VII of this Act" [Section 5(g)]. Section 31(b) of the Act provides that "any person may file with the Board a complaint, ..., against any person allegedly violating this Act or any rule or regulation thereunder or any permit or term or condition thereof".

Reading these sections together, the Board finds no legislative direction to it to consider complaints based on violations of what the Attorney General has characterized as "guidelines as to how the Agency administers the Board's regulations" (S-1408 at p.5). Count VI is accordingly dismissed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 17th day of February, 1982 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board