

ILLINOIS POLLUTION CONTROL BOARD
July 10, 1975

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
)
 v.) PCB 75-179
)
CITY OF CARBONDALE,)
 Respondent.)

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

On June 23, 1975, City of Carbondale (Carbondale) filed before the Pollution Control Board (Board), a Motion to Dismiss for Lack of Jurisdiction, or, in the alternative, Motion to Dismiss for Failure to Allege a Complaint, or Cause of Action Against the Respondent. This motion is in response to a complaint filed by the Environmental Protection Agency (Agency) on April 28, 1975, alleging development and operation of a solid waste management site without the necessary permits in violation of Rule 201, 202(a) Solid Waste Regulations, and Section 21(e) of the Environmental Protection Act (Act).

Initially, the Motion to Dismiss was untimely. Rule 308(a) of Procedural Rules provides that "all motions to dismiss or strike the complaint or challenging the jurisdiction of the Board must be filed within 15 days after receipt of the complaint..." Respondent received the complaint on or about April 30, 1975. The Motion to Dismiss was not filed until June 23, 1975.

The Board's jurisdiction is proper. Carbondale contends that the Board lacks subject matter jurisdiction. Respondent, as a Home Rule City, pursuant to Article VII, Section 6-a of the 1970 Illinois Constitution, has enacted local environmental legislation. Respondent contends that the State has authority to pre-empt such Home Rule legislation only pursuant to specific constitutional authorization and procedure; i.e., that pre-empting legislation must do so specifically and be passed by a three-fifths majority of the State Legislature. Respondent contends in conclusion that as the Legislature did not proceed in that manner in passing the Act, therefore the Act was not specifically passed as, and does not constitute legislation pre-empting the powers of Home Rule Municipalities such as Respondent.

The Supreme Court of the State of Illinois has held in City of Chicago v. Pollution Control Board, 59 Ill. 2d 484, that home-rule units under Article VII of the 1970 Illinois

Constitution are not exempted from regulation under the provisions of the Act regardless of whether they have enacted their own legislation on the environment.

The complaint adequately states a cause of action. Respondent alleges in the alternative, that the complaint fails to state a cause of action, contending that, "no concise statement of facts upon which respondent is deemed to be in violation", is advanced. Respondent cites Procedural Rule 304(c)(2) to this effect. Rule 304 as respondent cites it, has been superceded. Under the Procedural Rules adopted by the Board as of February 14, 1974, Rule 304(c)(2) requires a complaint to contain, "the dates, location, events, nature, extent, ...of discharges or emissions and consequences alleged to constitute violations of the Act or regulations..." The wording of the complaint adequately puts the respondent on notice as to the dates, location and nature of the alleged violations as well as informing it of the specific law and regulations alleged to have been violated.

Respondent also alleges the complaint fails to state what constitutes operation of a solid waste management site. The very use of the term "solid waste management site" is sufficient as description. Rule 104(u) of Solid Waste Regulations, defines solid waste management as, "the processes of storage, processing or disposal of solid wastes...". Rule 104 also defines solid waste disposal, "refuse", and "site". These definitions adequately describe the activity of "solid waste management site operation, for the purpose of allowing respondent to adequately respond to the complaint.


Therefore, Carbondale's Motion to dismiss must be denied.

ORDER

It is the Order of the Pollution Control Board that the City of Carbondale's motion to dismiss be and hereby is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 10th day of July, 1975 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board