

ILLINOIS POLLUTION CONTROL BOARD

MARCH 28, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
 Complainant,)
)
 v.) PCB 74-77
)
 HAMMOND ORGAN COMPANY,)
 Respondent.)

MOTION TO DISMISS

ORDER OF THE BOARD (by Dr. Odell)

A Complaint was filed against Respondent on February 26, 1974. Respondent filed a motion to dismiss on March 6, 1974, stating as its grounds:

1. The Pollution Control Board (Board) lacks the power to impose monetary penalties under the Illinois Constitution.
2. The imposition of a penalty without a jury trial violates the Illinois and United States Constitutions.
3. The activities of the Pollution Control Board in hearing and deciding enforcement actions violate the separation of powers doctrine of the Illinois Constitution.

Respondent's motion to dismiss is denied. First, the Illinois Supreme Court is presently reviewing the issue of whether the Board can impose monetary penalties (City of Waukegan v. EPA, No. 45984). Second, two Illinois appellate courts have ruled that the right to a jury trial does not guarantee trial by jury in special civil statutory proceedings unknown to common law [Ford v. Environmental Protection Agency 9 Ill. App.³ 711 (1973); Cobin v. Pollution Control Board, No. 71-334 (January, 1974)]. Third, the Fifth District Appellate Court has recently held that the powers delegated to the Board do not violate separation of powers [Meadowlark v. Pollution Control Board, No. 73-49 (February, 1974)].

Motion to dismiss is denied.

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 28th day of March, 1974, by a vote of 5 to 0


 Christan L. Moffett, Clerk