

ILLINOIS POLLUTION CONTROL BOARD
February 19, 1981

IN THE MATTER OF:)
)
PROPOSED BEVERAGE CONTAINER) R71-24, 75-14
REGULATIONS) (Consolidated)

NOTICE OF DISMISSAL
OPINION OF THE BOARD (by J.D. Dumelle):

This Opinion Supplements the Board's Order of dismissal of January 22, 1981.

A citizens petition was filed with the Board on February 22, 1971 by the "Concerned Group of Citizens and Students in Champaign County, Illinois" proposing a ban on non-returnable beverage containers. On March 3, 1971 the Board dismissed that proceeding on the basis that its authority to consider regulations relating to solid waste disposal and the recycling and reuse of solid waste materials was premised upon prior receipt of recommendations from the Solid Waste Management Task Force of the Illinois Institute for Environmental Quality (now Institute of Natural Resources), and no such recommendation had been received.

Such a recommendation was, however, received on November 15, 1971, as was a draft regulation proposing a mandatory 5¢ deposit on beverage containers. That proposal was docketed as R71-24, and published in the Board's Newsletter #37 (December 5, 1971).

A motion to cancel hearings on that proposal was filed by the law firm of Arvey, Hodes and Mantynband on behalf of "certain parties who would be affected by the proposed beverage container regulations." That motion alleged that the Pollution Control Board lacked jurisdiction to consider such a regulation. The Board entered an Opinion and Order on January 11, 1972, denying the motion and maintaining that the Board does in fact have jurisdiction to regulate in this area.

However, an injunction preventing the holding of hearings was entered in the Circuit Court of Cook County on January 13, 1972, and remained in effect until July 31, 1972, when it was set aside and vacated by the Appellate Court.

Thereafter, eleven days of hearings were held around the state between December 6, 1972, and February 23, 1973.

On May 23, 1973, the Board continued the consideration of the proposed regulation to enable the Board to receive the benefit of a report on Oregon's first year's experience with a mandatory deposit law. Hearings were next held on December 3 and 4, 1974.

On July 24, 1975, the Board ordered that the proceeding be stayed for the Illinois Institute for Environmental Quality to prepare a new study of the economic impact of the proposed regulation. It had been nearly four years since the proceeding had begun and updating was felt to be necessary, especially in light of the 1973-74 OPEC oil embargo and subsequent increases in energy costs.

Since that time, two more proposals concerning mandatory deposits on bottles and cans have been filed with the Board. One was filed by a student group in Carbondale on October 17, 1975, and docketed as R75-14. That proposal was published in the Environmental Register #112 (November 3, 1975). That was later consolidated with the R71-24 proposal. The present proposal was filed by the Illinois Environmental Council on July 9, 1980, and adopted both proposals of the consolidated proceeding.

The Economic Impact Study was completed by the Illinois Institute of Natural Resources and filed with the Board on July 25, 1980. Seven hearings were scheduled and held to consider that study and any new information affecting the proceeding. Times and places are indicated below:

1. October 6, 1980, in Oak Park
2. October 14, 1980, in Des Plaines
3. October 17, 1980, in Peoria
4. October 21, 1980, in Streator
5. October 28, 1980, in Champaign
6. November 19, 1980, in Chicago
7. November 21, 1980, in Chicago

Following the closing of hearings numerous public comments were received, and memoranda were submitted on behalf of the Illinois Environmental Council and collectively on behalf of the Can Manufacturers Institute, the Glass Packaging Institute, the Illinois Soft Drink Association, and the United States Brewers Association. The entire record includes several thousand pages and more than a hundred exhibits.

Two questions have recurred during the course of the proceedings in this matter. These are the availability of an adequate enforcement mechanism and the desirability of Board regulation in this area.

An important factor weighing heavily in the Board's reluctance to proceed further is that beverage container regulations would affect broader questions of landfill usage and energy tradeoffs, as well as having substantial impact in other areas (e.g. dislocation of employment). The question of whether to establish a mandatory deposit system is a major one of public policy. The Board has in the past, and will certainly in the future, make decisions which have expanded ramifications, but in this case the Board finds that these public policy considerations are easily as important as the environmental ones and, therefore, the decision is one that should best be made by the legislature.

In addition, of the eight states which have imposed a mandatory deposit on beverage containers, all, except Delaware, have done so initially through specific legislation that assigned administrative responsibility to agencies that were not necessarily focused on environmental protection. Indeed, by letter in the record, the Illinois Environmental Protection Agency strongly opposed assuming responsibility for enforcement of such a program. This pattern, as well as the inadequate record before the Board concerning such administrative questions, led to the Board's determination that the legislature should define and allocate enforcement responsibility and funding for the administration of such a program.

Nevertheless, one proposed area more easily adaptable to Board regulation alone concerns a ban on detachable pull-tabs. The Board has considered the enactment of such a regulation. Unlike the other areas of beverage container regulation, the injury to the public is direct. However, testimony at the hearing clearly indicates that the industry as a whole is moving away from detachable pull-tabs.

For these reasons the Board is dismissing the proceedings in R71-24, 75-14 (Consolidated). The Board does note, however, that an extensive record has been developed by the Board during the course of this proceeding and that the record is available to the public and the legislature should this question come up for determination before the legislature.

N.E. Werner concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion was adopted on the 19th day of February, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board