

ILLINOIS POLLUTION CONTROL BOARD
April 4, 1974

STUDENTS FOR ENVIRONMENTAL CONCERN)
J.E. DUNWOODY & L.J. STONE)
COMPLAINANTS)
)
)
v.) PCB 73-439
)
)
WELDON SILICA COMPANY)
RESPONDENT)
)

ORDER OF THE BOARD (by Mr. Marder)

On March 18, 1974, Respondent filed five motions to dismiss the above-captioned matter with the Board. The grounds stated in these motions are as follows:

- 1) That Complainants' organization is not represented by counsel licensed to practice law in the state of Illinois.
- 2) That Sections 3 (n) and 12 (a) of the Environmental Protection Act are unconstitutionally vague as to violate due process.
- 3) That the power of the Board to impose penalties and monetary fines is an unconstitutional delegation of judicial power by the Legislature.
- 4) That there is a violation of due process as the hearing officer does not render a finding of fact based on the credibility and demeanor of witnesses called at hearing.
- 5) That Complainants do not have adequate standing to bring this action.

On March 29 Complainants filed a motion for Leave to File [Answer]. This motion is hereby granted.

Complainants respond to the motions as follows:

- 1) Complainants are presently represented by counsel licensed to practice in Illinois, and even had Complainants not been represented by a licensed attorney, this is not required by the Board's rules;
- 2) That taken with Chapter 3 of the Board's Rules and Regulations, prohibited conduct is adequately defined to meet the requirements of due process;
- 3) That this action is not sufficiently advanced to determine whether penalties or fines will be assessed by the Board, and that there is a conflict in the Appellate districts as to the delegation of these judicial type functions to the Board;

4) That this motion is premature for the reason that no hearing has been held in this matter and Rule 315 of the Board's Procedural Rules provides that the hearing officer must develop a clear and complete record, and Rule 318 provides that the hearing officer must submit a statement as to the credibility of witnesses and such statement becomes a part of the record.

5) That Complainants have standing to bring this action under Sec. 3 (i) and 31 of the Environmental Protection Act and also that Complainants are residents of the state and use the waters of Illinois for recreation and other purposes in the vicinity of Respondent's discharges.

The Board finds as follows:

1) The Environmental Protection Act does not require an organization to be represented by a licensed attorney before the Board. Section 31 (b) of the Act states that any person (emphasis added) may file a complaint with the Board. Section 3 (i) of the Act defines person to be an association. The Procedural Rules of the Board state that a business, non-profit, or governmental organization may appear by any bona fide officer, or may be represented by a licensed and registered attorney (Rule 106 (a) (2) Chap. 1 Rules and Regulations of the Pollution Control Board). Here, Complainants were represented by two officers, and this is sufficient to meet the requirements of the Act and Rules.

2) The language in Sections 3 (n) and 12 (a) is substantially the same as the language of Sec. 3 (a) and 9 (a) of the Act (Air Pollution). The Appellate Court for the Fifth District has upheld the definition of air pollution contained in the Act, as being in conformity with due process (see Southern Illinois Asphalt v. Environmental Protection Agency, 303 NE 2 606 (1973), and Cobin v. Pollution Control Board, 5th Ill. App. 3d 958 (1974). The Board finds that Sec. 3 (n) and 12 (a) are not unconstitutionally vague and do not violate due process.

3) The power of the Board to levy penalties and civil fines has been upheld by the Supreme Court in City of Waukegan v. Pollution Control Board, Docket #45984 (March 30, 1974).

4) Rule 318 (c) of the Procedural Rules mandates a statement by the hearing officer as to the credibility of witnesses which becomes a part of the record. Sec. 32 and 33 of the Act authorize a hearing before a hearing officer, but the intent of the Act is that the Board shall determine the truth of the facts from the record. This is what the Board does, with the aid of the hearing officer who judges the credibility and demeanor of witnesses.

5) Sec. 31 (b) of the Act provides that "Any person may file with the Board a complaint..." Rule 302 of the Procedural Rules provides, "An enforcement proceeding may be commenced by the Agency or by any person" (emphasis added). Complainants allege that they use the waters of the state for recreational and other purposes in the vicinity of Respondent's discharges. Complainants have proper standing.

Respondent's motions to dismiss (5) filed March 18, 1974, are hereby denied for the reasons stated above.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted by the Board on the 4th day of April, 1974, by a vote of 5 to 0.

Christan L. Moffett