

ILLINOIS POLLUTION CONTROL BOARD  
January 11, 1972

IN THE MATTER OF )  
 ) #R71-24  
BEVERAGE CONTAINER REGULATIONS )

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

A citizens' petition was filed with the Board by the "Concerned Group of Citizens and Students in Champaign County, Illinois" proposing that the sale of carbonated and fermented beverages in non-returnable bottles and cans be banned in the State of Illinois. The statement of reasons supporting the proposal was attached in accordance with Section 203 of the Procedural Rules of the Board. The matter was docketed as #R71-7.

On March 3, 1971, the Board entered an Opinion and Order dismissing the petition, noting that our authority to consider regulations relating to solid waste disposal and the recycling and reuse of solid waste materials was premised on receiving from the Solid Waste Management Task Force to be established by the Institute for Environmental Quality recommendations in this respect, pursuant to Section 6 of the Act. Since at the time of the order, no such recommendations had been received, we held that we were without authority to adopt the proposed regulation and, accordingly, no hearing need be held.

On November 15, 1971, the Institute transmitted to the Board the recommendations of the Illinois Solid Waste Management Task Force on beverage containers, Document #TF-1 IIEQ, together with a suggested form of regulation requiring a 5¢ deposit on the sale of beverages in beverage containers as defined in the proposed Regulation.

In Board Newsletter #37 dated December 5, 1971, the proposed regulation was published and notice given that hearings would be held on a state-wide basis, which have since been scheduled for Chicago, Champaign, Springfield and Alton.

On January 7, 1972, the Board received a letter from the law firm of Arvey, Hodes & Mantynband, on behalf of "certain parties who would be affected by the proposed beverage container regulations" requesting that the hearings scheduled be cancelled on the grounds that the Board does not have jurisdiction to consider the proposed regulation. We construe this letter as a petition for cancellation of hearings, which petition we deny. The petition is based on the assumption that because an early draft of the Environmental Protection Act contained a provision authorizing the Board to adopt the regulations specifically relating to

the sale and use of containers and bottles, which was subsequently deleted, the legislature has expressed an intention that the Board should not possess this power. However, as the March 3, 1971 Opinion in #R71-7 notes, this section was deleted and Section 6, in its present form, substituted in lieu thereof. As stated in the Opinion:

"The General Assembly in deleting specific power to ban such items substituted in its place a carefully drawn alternative that clearly represents a compromise between the bill's proponents, who desired the Board to have unrestricted authority in this field, and those who opposed such authority altogether. That provision, found in Section 6 of the Act, specifically directs the Institute for Environmental Quality to establish a Solid Waste Management Task Force to study the entire waste problem and to report to the Board, among other things, recommendations 'to expedite development of systems for the re-cycling and re-use of refuse' and 'to assure compliance with the purposes of this Act.' Upon receiving such reports 'the Board shall make rules and regulations on these subjects based on such recommendations.'

In our view, Section 6 is a clear statement of legislative intention to forbid the Board to ban nonreturnables until it has received the recommendations of the Solid Waste Management Task Force. Otherwise, the specific direction in Section 6 that the Board adopt regulations after receiving such recommendations would be wholly unnecessary. We view Section 6 as a deliberate limitation on the general authority conveyed by Section 22 to issue solid-waste regulations. This interpretation is confirmed by the testimony of the administration's spokesman for the bill, who in explaining the compromise amendments to a Senate subcommittee on the eve of the bill's passage said the Administration had accepted a 'narrowing of the proposed novel power to adopt regulations proposing the recycling of solid wastes.' Testimony of David P. Currie before Subcommittee of Senate Executive Committee on 3788, May, 1970. The same point was made even more explicitly in the administration's press release immediately upon passage of the bill:

'The proposed power to bar or limit the sale of non-returnable bottles...was eliminated. We...accepted an amendment allowing limited regulation after a research study of waste recycling...' Ill. News, #966-70 (May 29, 1970)."

Since the recommendation of the Solid Waste Task Force has been received, the condition precedent to considering regulations in this area has been satisfied. Furthermore, Section 6, detailing the role of the Solid Waste Task Force is completely compatible with Section 22 of the Act relating to the Board's authority to adopt regulations relating to land pollution and refuse disposal, Section 6 requiring the

Task Force recommendation before the consideration of regulations in the specific area of recycling, reuse and solid waste disposal. Nor is Section 6 in any way an invalid delegation of authority to the Institute or the Task Force created by it. The statutory organization and structure contemplates the Institute to furnish research and expertise upon which the Board may intelligently structure its regulations. Both entities are pursuing this legislative mandate.

By this opinion, we express no view on the propriety or wisdom of the regulations under consideration, but merely confirm our unquestioned authority and jurisdiction to consider them. Our order, likewise, does not foreclose petitioner from filing such further and additional petition or legal authorities as relates to jurisdiction which matters the Board will take with the case and consider in its ultimate decision on the proposed regulations.

IT IS THE ORDER of the Pollution Control Board that the petition for cancellation of hearings be and the same is hereby denied.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion was adopted on the 11 day of January, 1972.

A handwritten signature in cursive script that reads "Christan Moffett". The signature is written in black ink and is positioned to the right of the typed text.

