ILLINOIS POLLUTION CONTROL BOARD May 8, 1975

PEOPLE OF THE STATE OF ILLINOIS, Complainant)))
V.) PCB 75-118
STAR UTILITY COMPANY AN ILLINOIS CORPORATION: AND MIDWEST UTILITY COMPANY, AN ILLINOIS CORPORATION Respondent)))

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

This matter comes before the Board on the motion of Respondent, Star Utility Company, to dismiss the complaint on various grounds.

Respondent's first contention attacks the standing of the Attorney General of the State of Illinois to commence and prosecute actions before the Pollution Control Board without specific legal authority in the form of a statute.

The powers and duties of the Attorney General include not only those powers conferred upon him by statute, but also those powers and duties inherent in the office as it existed at common law. People v. Crawford Distributing Co. (1972) 53 Ill.2d. 332, 291 NE 2d. 648.

Article 11 §2 of the 1970 Illinois Constitution speaks in terms of "each person", expanding the rights of citizens to bring actions against polluters regardless of special injury. The constitutional commentary suggests that it was not the intent thereof to prevent the Attorney General from having standing to bring such suits. Indeed, the term "person" as defined in the "Environmental Protection Act", 111 1/2 Ill. Rev. Stat. §1003 is sufficiently broad to include the Attorney General as representative of the State. 111 1/2 Ill. Rev. Stat. §1031 (b), therefore, grants the Attorney General the requisite standing to bring this action.

Respondent's second contention involves an alleged conflict of interest in having the Attorney General prosecute this action as the Attorney General represents the Illinois Commerce Commission to which respondent is also subject. We find this allegation specious in view of the lack of any definite damage to the respondent. Respondent fails to state whether there are proceedings pending before the I.C.C., involving Respondent, which are in conflict with the instant proceeding. In any event, the I.C.C. does not have jurisdiction to hold hearings or issue orders concerning violations of the Environmental Protection Act.

The next two contentions of Respondent involve interpretations of Rule 602(b). In both contentions, Respondent argues that 602(b) refers only to Combined Sewers and Treatment plants bypasses. The language of 602(b) states: "...Overflows from sanitary sewers are expressly prohibited." As the respondent admits to operating a sanitary sewer, Rule 602(b) plainly applies to it.

We find that Rules 602(b) and 601(a) are not so vague, indefinite or ambiguous and arbitrary as to be unenforceable or contrary to the constitutions of the State of Illinois or the United States.

Respondent's contention that it has a duplicate power plant does not meet all the allegations of paragraph 6 of the complaint, It does raise a question of fact which will be disposed of after a hearing on the merits.

The Complaint does state dates of alleged violations of the Act and sufficiently puts the Respondent on notice of specific violations complained therein so as not to be subject to a motion to dismiss. See EPA v. Ashland Chemical Co. & et al PCB 72-188.

Finally, Respondent contends that the Board does not have authority to impose monetary penalties or cease and desist orders. It is well settled that the Board does have authority to impose monetary penalties and cease and desist orders. Such authority is neither an unlawful delegation of judicial power or a denial of due process and equal protection of law. Cobin v. P.C.B. et al 16 Ill. App.3d. 958, 397 NE 2d. 191 (1974); City of Monmouth v. E.P.A. et al 57 Ill.2d 482, 313 NE 2d 161 (1974); Ford v. E.P.A. et al, 91 Ill. App. 3d. 711, 292 NE 2d. 540 (1973); City of Waukegan v. P.C.B., 57 Ill.2d. 170, 311 NE 2d 146 (1974).

It is the opinion of the Board the Respondent's motion to Dismiss be 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 810 day of 1975 by a vote of 3-0

Christan L. Moffet, Clerk

Illinois Pollution Control Board