

ILLINOIS POLLUTION CONTROL BOARD
July 12, 1973

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 73-216
)
 WILLIAM A. DILLON AND CITY OF CHICAGO,)
)
 Respondents.)

ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

This is a complaint filed by the Environmental Protection Agency against the above designated respondents alleging violations of the Environmental Protection Act and the Rules and Regulations for Refuse Disposal Sites and Facilities, with respect to the operation of an alleged refuse disposal site.

The City of Chicago has filed a motion to dismiss, alleging in substance that the complaint fails to state a cause of action, the absence of need for the City to obtain a permit, the character of the refuse involved as not being subject to statutory control or limitation, the absence of jurisdiction of the Pollution Control Board over the City of Chicago based upon the home rule provisions of the 1970 Illinois Constitution, the alleged possibility of an imposition of a criminal penalty by the Board, and the alleged inability of the Board to resolve constitutional issues. We find the contention of the City of Chicago wholly lacking in merit and deny the motion to dismiss in its entirety.

An examination of the complaint discloses allegations of violation that are of sufficient specificity to inform respondents as to the nature of the violations alleged. Any detail or amplification necessary to properly prepare a defense may be obtained by resort to pre-trial discovery procedures as provided in the Board Rules.

Whether or not the activities of the respondents and the refuse involved are susceptible to statutory and regulatory provisions and ultimate Board order can only be determined after a full hearing on the facts of the case. Nothing in the

Illinois Constitution nor the Environmental Protection Act suggests in any way immunity of home rule municipalities from State regulation of a sort here involved. In fact, the exact opposite is the case. (See Environmental Protection Agency v. James McHugh Construction Company et al, PCB72-91.) Any penalty assessed by the Board would be a civil and not a criminal penalty. The Board is not promulgating constitutional rulings, but only carrying out its legislative function as mandated by the General Assembly pursuant to the Environmental Protection Act.

Because the foregoing contentions can be disposed of without oral argument, none will be heard. Motion to dismiss is denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Order was adopted by the Board on the 1st day of , 1973, by a vote of 4 to 0.

Christan L. Moffett