

ILLINOIS POLLUTION CONTROL BOARD
November 1, 1973

CITIZENS FOR A BETTER ENVIRONMENT)
AN ILLINOIS NOT-FOR-PROFIT CORP.,)

v.)

LT. COLONEL WILLIS S. ROSING,)
AS COMMANDING OFFICER, JOLIET)
ARMY AMMUNITION PLANT;)
BRIG. GENERAL LAURENCE E. VAN BUSKIRK,)
AS COMMANDING OFFICER, UNITED STATES)
ARMY AMMUNITION PROCUREMENT AND SUPPLY)
AGENCY;)
JAMES R. SCHLESINGER, AS SECRETARY OF)
DEFENSE; and)
UNITED STATES OF AMERICA,)

PCB 72-464

FORMERLY)

CITIZENS FOR A BETTER ENVIRONMENT, an)
Illinois Not-For-Profit Corporation)

v.)

JOLIET ARMY AMMUNITION PLANT,)
UNITED STATES ARMY PROCUREMENT)
AND SUPPLY AGENCY)

and)

UNIROYAL, INC., Operating Contractors,)
a New York Corporation)

Phillip Miller, for Citizens for a Better Environment
James R. Thompson by James K. Toohey, Assistant United States Attorney,
for Respondents

DISSENTING OPINION OF MR. HENSS

Under Section 313 of the Federal Water Pollution Control Act
Amendments of 1972, Federal agencies "shall comply with...State...
requirements respecting control and abatement of pollution to the
same extent that any person is subject to such requirements...."
(33 USC § 1323) This makes Respondent subject to those requirements

of the Illinois Environmental Protection Act which relate to control and abatement of pollution.

Some procedural and jurisdictional rules for enforcing the State environmental standards are found in Section 505, Federal Water Pollution Act Amendments of 1972 (33 USC § 1365). There, it is provided that any citizen may commence a civil action against the United States, and its agencies, alleging violation of an effluent standard. However, the right of a citizen to file an action is restricted somewhat. No action may be commenced unless the citizen-plaintiff has given 60 day notice of the alleged violation to the Administrator of the United States Environmental Protection Agency, to the State and to the alleged violator. This notice is apparently required in order to allow control of the lawsuit by those governmental agencies which are specifically charged with the duty of enforcing environmental laws. If the Administrator or State commence suit the citizen-plaintiff may not sue independently, but is allowed to intervene in the pending litigation.

In this case, Complainant CBE did not give the 60 day notice which is required under the Federal law. This alone should be sufficient cause for dismissal.

However, the jurisdictional question is even more basic. The Federal Act clearly gives jurisdiction to the United States District Court, but also indicates that such jurisdiction is not exclusive.

"Nothing in this Section shall restrict any right which any person (or class of persons) may have under any Statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or State Agency)." 33 USC § 1365(e) (emphasis supplied)

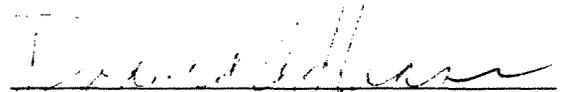
Although citizens are authorized to bring any action against the United States which they "may have under any Statute", in an action brought before this Board the pertinent Statute is the Illinois Environmental Protection Act. The Illinois Pollution Control Board as an administrative agency gets its authority and jurisdiction from just one source--the Illinois Legislature. We are not a court of general jurisdiction, but may exercise only that jurisdiction which is conferred upon us by the Illinois Environmental Protection Act. The Illinois Statute does not give us authority to hear actions which are brought under Federal Statutes. See: EPA Sec. 5.

We must therefore determine whether the Illinois Statute authorizes actions to be brought against the United States. The Illinois Environmental Protection Act provides that the following are "persons" subject to the Act:

"any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns." EPA Sec. 3(i)

One might argue that the United States is a "legal entity" and therefore subject to our jurisdiction. However, the definition of "person", when read as a whole, seems inapplicable to the United States. Therefore, my conclusion is that this Board is not given jurisdiction in this matter by the Illinois Environmental Protection Act. Since that Statute is the source of our authority it seems to me that the Complainants must look elsewhere for an appropriate forum. We do not derive our authority from Section 1323. Section 1323 actions are to be brought in the United States District Court, or perhaps in State courts of general jurisdiction or in a forum which is authorized by Statute to exercise jurisdiction over the United States.

The Majority Opinion assumes that this Board's jurisdiction is as broad as that of a court of general jurisdiction. It is not. We must look to the Illinois statute for our authority. The Illinois Legislature could have given us the jurisdiction to rule upon this type action, but did not. In my opinion this action was brought in the wrong forum.


Donald A. Henss, Member

I, Christan L. Moffett, Clerk of the Pollution Control Board, hereby certify that the above is a Dissenting Opinion filed by Mr. Henss on November 1, 1973.

