

ILLINOIS POLLUTION CONTROL BOARD

MARCH 28, 1974

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,)
)
v.) PCB 73-514
)
NATIONAL PHOSPHATE CORPORATION,)
Respondent.)

ORDER OF THE BOARD (by Dr. Odell)

On December 7, 1973, the Environmental Protection Agency (EPA) filed its Complaint against Respondent. On March 11, 1974, Respondent filed three motions to dismiss with the Pollution Control Board (Board). The grounds stated in the motion were:

1. Section 3(b) and Section 9(a) of the Environmental Protection Act (Act) are unconstitutional in that the definition of "air pollution" is so vague as to violate due process.

2. The Hearing Officer's function does not extend to making preliminary findings of fact as to the credibility and demeanor of witnesses. Respondent alleged that this violates due process.

3. The power of the Pollution Control Board to impose monetary penalties is an unconstitutional delegation of legislative and judicial powers in that standards are insufficient to properly circumscribe Board action.

Respondent's motions are denied for the following reasons. First, the Appellate Court for the Fifth District has upheld the definition of "air pollution" contained in the statute as not violating due process [see Southern Illinois Asphalt v. EPA 303 NE² 606 (October, 1973); Cobin v. Pollution Control Board No. 71-334 (January, 1974)]. Second, Respondent's objection to the limits imposed on the Hearing Officer is without foundation. Rule 318(c) of the Procedural Rules (effective March 6, 1974) mandates a statement by the Hearing Officer as to credibility of witness which becomes part of the official record. Third, the issue of the Board's power to impose penalties is now before the Illinois Supreme Court (see City of Waukegan v. EPA, No. 45984). However, even a ruling adverse to the Board's

authority would not warrant dismissal of this Complaint because Section 33(a) of the Act does not limit the Board's power merely to the imposition of penalties.

Motions to dismiss are denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 28th day of March, 1974, by a vote of 5 to 0.


Christan L. Moffett, Clerk