

ILLINOIS POLLUTION CONTROL BOARD  
March 3, 1971

In the Matter of )  
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NON-RETURNABLE CANS & BOTTLES ) #R 71-7

Opinion and Order of the Board (by Mr. Currie):

This is a citizen petition asking that we ban the sale of beverages in nonreturnable cans and bottles. The petition is accompanied by an eloquent statement of reasons detailing the enormous waste both of metal and glass and of land that the throwing away of such containers entails, and it is signed by at least 200 persons. We have held no hearing on this subject before. Therefore, unless the petition is "plainly devoid of merit," we are required by section 28 of the Environmental Protection Act to hold a hearing.

We certainly cannot say that as a matter of policy the proposed regulation is unthinkable. But in the technical sense the proposal is without "merit" in the sense that, whatever our views on the desirability of adopting it, we have no authority at this time to do so. It is true that we are given power by section 22 to adopt regulations to promote the purposes of Title V of the Act, which specifically refers to the desirability of recycling and to the problems created by excessive quantities of refuse. It is also true that the mere omission of a specific grant of authority to ban nonreturnables, which was contained in the original bill, does not necessarily impair our authority to act under more general grants in the Act. See In the Matter of Procedural Rules, # R70-4, decided Oct. 8, 1970, where we held the omission of statutory authorization for such matters as intervention to have been intended to leave the issue to the Board's discretion.

But in the case of nonreturnable containers we have more than a mere omission. 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 of 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. Currrrie 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).

Accordingly, we hold that until the recommendations of the Task Force are received we are without authority to adopt the proposed regulation, and no hearing therefore need be held. We shall refer a copy of the petition to the Institute for the benefit of the Task Force in its deliberations, and we shall invite the petitioners to testify in any hearings on the subject held after receipt of the Task Force reports.

The petition is dismissed.

I, Regina E. Ryan, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this 5th day of March, 1971.

