

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

REED-CUSTER COMMUNITY UNIT)
SCHOOL DISTRICT NO. 255-U,)
)
Petitioner,)
)
v.) PCB 87-209
)
COMMONWEALTH EDISON COMPANY,)
and THE ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondents.)

ORDER OF THE BOARD (by J.D. Dumelle):

On December 31, 1987, Reed-Custer Community Unit School District No. 255-U (Reed-Custer) filed a petition to revoke certification of pollution control facility No. 21RA-ILL-WPC-85-15. On January 7, the Board ordered the parties to concurrently brief the issue of the Board's authority to entertain this petition. Both Reed-Custer and Commonwealth Edison (Com Ed) filed briefs on January 26, 1988 and reply briefs on February 1, 1988. Based on a review of the filings to date, the Board hereby orders that this matter be set for hearing.

Section 21a-6 of the Revenue Act of 1939 states in its entirety as follows:

Section 21a-6. Powers and duties of the certifying boards. Before denying any certificate, the Pollution Control Board shall give reasonable notice in writing to the applicant and shall afford to the applicant a reasonable opportunity for a fair hearing. On like notice to the holder and opportunity for hearing, the Board may on its own initiative revoke or modify a pollution control certificate or a low sulfur dioxide emission coal fueled device certificate whenever any of the following appears:

(A) The certificate was obtained by fraud or misrepresentation;

(B) the holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation,

or acquisition of pollution control facilities or a low sulfur dioxide emission coal fueled device;

(C) The pollution control facility to which the certificate relates has ceased to be used for the primary purpose of pollution control and is being used for a different purpose.

Prompt written notice of the Board's action upon any application shall be given to the applicant together with a written copy of the Board's findings and certificate, if any.

Amended by P.A. 82-134. Section 1, eff. Aug. 12, 1981.

(emphasis added).

First, the Board notes that it has delegated a substantial portion of its authority under Section 21a-6 of the Revenue Act of 1939 to the Illinois Environmental Protection Agency (Agency). The June 10, 1983, letter from the Chairman of the Pollution Control Board specifically delegating his authority under the Revenue Act of 1939 to the Agency states in pertinent part:

"Pursuant to the authority vested in me by Sections 21a-5 and 21a-13 of the Revenue Act of 1939, I hereby specifically authorize the following persons as my delegates to make findings, to issue or deny certification, and to revoke certificates under the circumstances set forth in Section 21a-6(C) or where revocation of the certification is requested by the taxpayer for pollution control facilities and for low sulfur dioxide emission coal fueled devices for purposes of the Revenue Act of 1939 ..."

(emphasis added).

Reed-Custer's petition alleges that Edison misrepresented certain issues to the Agency during the application procedures for certification of its Braidwood facility as a pollution control facility. Therefore, revocation of Com Ed's certification would be pursuant to Section 21a-6(A). As the Chairman has not specifically delegated authority to revoke certifications under Section 21a-6(A), the Board retains authority and jurisdiction over this type of proceeding.


Second, Com Ed asserts in its brief that the Board does not have authority to entertain a third-party petition to revoke tax certification. In support of its assertion, Com Ed argues that only "on its own initiative" may the Board revoke a pollution control certificate under Section 21a-6(A). Further, Com Ed argues "[t]hat the legislature did not provide for a third-party action indicates that it did not see that as a proper action."

The Board is not persuaded. Although Section 21a-6 states that "the Board may on its own initiative revoke ... a pollution control certificate," the Board does not believe that that language prohibits a third party from bringing issues justifying revocation of a certificate to the attention of the Board. In fact, the Board must necessarily rely on third party participation in these types of proceedings as the Board has no resources with which to investigate possible fraud or misrepresentation in applications for pollution control certificates. Moreover, as Section 21a-6 permits delegation of the Board's authority and as the Board has delegated that authority, the Board no longer has active involvement in the certification process. As a result, the Board has no opportunity to discover fraud or misrepresentation. Finally, the Board questions Com Ed's interpretation of "on its own initiative." The Board doubts that it would be proper for the Board to act as both prosecutor and ultimate decision-maker in a quasi-adjudicative proceeding.

For the foregoing reasons, the Board finds that the intent of Section 21a-6 permits the acceptance of a third-party petition alleging misrepresentation. Furthermore, the Board believes that this finding is not inconsistent with the language set forth in Section 21a-6. Therefore, this matter is accepted and set for hearing. Respondent's motion to strike and dismiss is denied. The Board believes that the Petition is sufficient to warrant a hearing in this matter. Any remaining issues will be addressed by future Board Order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of February, 1988 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board