

ILLINOIS POLLUTION CONTROL BOARD
September 7, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 78-132
)
 VILLAGE OF MILLSTADT AND TESTING,)
 ANALYSIS, AND CONTROL, INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by Mr. Goodman):

On July 3, 1978, Respondent Testing, Analysis, and Control, Inc., (TAC) filed a Motion to Dismiss for Want of Jurisdiction. On July 20, 1978, the Board ordered the parties to submit briefs on the issue raised in the Motion to Dismiss. TAC filed its brief on August 21, and the Environmental Protection Agency (Agency) filed its brief on September 1, 1978.

The Complaint in this matter alleges against TAC that TAC contracted with the City of Millstadt for operation and maintenance of a municipal wastewater treatment facility and caused or allowed violations of the Water Regulations and the Environmental Protection Act (Act). TAC alleges in its Motion to Dismiss that the Board lacks jurisdiction over TAC in this matter because the complaint failed to comply with Section 31(a) of the Act in that it did not and could not state the manner in which TAC violated any environmental provision. More precisely, TAC alleges that accepting jurisdiction in this matter would require the Board to determine third party contract rights and that such determination is beyond the Board's statutory authority.

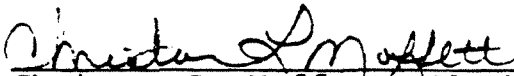
The Board finds that it does have jurisdiction over TAC in this matter. The Act prohibits any person (including corporations) from causing or allowing a violation of the regulations, regardless of whether such violation was caused or allowed as a result of a contractual arrangement. (See Environmental Protection Agency v. James McHugh Construction Co., et al., PCB 71-291.) The Board agrees that determination

of third party contract rights is the function of a court and not this Board. The only question before the Board is whether respondents did in fact cause or allow pollution, and that question must be resolved based upon evidence developed in the record. The Complaint before us alleges a cause of action against TAC over which we have jurisdiction under the Act. Whether indeed TAC did exercise such control as to cause or allow pollution must be resolved based on the record.

The Motion to Dismiss is hereby denied.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 7th day of September, 1978 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board