

ILLINOIS POLLUTION CONTROL BOARD
January 9, 1975

CITIZENS FOR A BETTER ENVIRONMENT,
An Illinois Not-for-Profit Corp.,

COMPLAINANT

v.

CITIZENS UTILITIES COMPANY OF ILLINOIS
An Illinois Corp.,

RESPONDENT

PCB 74-367

ORDER OF THE BOARD (by Mr. Marder)

Citizens Utilities Company of Illinois filed its Motion to Dismiss on November 27, 1974. The Motion was directed to seven points which will be considered separately herein.

Citizens' first contention is to the standing of CBE in this matter. While it is true that CBE did not allege that it was either a customer or a user of the service provided by Citizens, the Board finds that Sec. 31 (b) of the Environmental Protection Act allows any person to file an action for enforcement. CBE cannot receive any private remedies from the Board and is actually bringing action for the people of the state, in order to prevent alleged environmental damage.

Citizens next contends that CBE is unlawfully representing citizens of the Village of Bolingbrook, in violation of Chap. 13, Ill. Rev. Stat., Sec. 1. Since it is the determination that CBE is representing itself and no other, and that CBE has standing in this matter, CBE is not representing others, and therefore is not practicing law in violation of statute.

Third, Citizens alleges that CBE cannot proceed pro-se. The Rules of the Pollution Control Board explicitly state that "a business, non-profit, or government organizations may appear by any bona fide officer, employee, or representative, or may be represented by an attorney licensed and registered to practice in the State of Illinois..." (emphasis added), Rule 106 (a) (2), Chapter 1, Procedural Rules. Therefore, the Board finds that CBE is properly represented "pro-se."

The question of whether the Board may levy a fine or issue a cease and desist order has been fully covered by the Illinois Supreme Court in City of Waukegan v. Pollution Control Board, et al., 57 Ill. 2d 170; Cobin v. Pollution Control Board, 16 Ill. App. 3d 958. Therefore, these allegations do not support a Motion to Dismiss.

The Board finds that the Complaint states enough material allegations to give Respondent notice as to what he is being charged with so that he may put forth an adequate defense. Complainant states that the water to the customers has too much iron in it, in violation of standards prescribed in law.

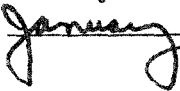
Citizens next alleges that Paragraph 4 of the Complaint is insufficient in that it charges a violation of Sec. 18 of the Act, while no regulations have been promulgated by the Board pursuant to Section 17 of the Act. The Board may find violation of the Act itself, even where no regulations have been promulgated or standards determined by the Board. The Board need not regulate every aspect of pollution problems but may allocate its resources as it sees best. Hall v. Environmental Protection Agency, et al., 16 Ill. App. 3d 864. Since compliance with the Board's regulations is only a prima facie defense to a violation of the Act (Sec. 49(e)) it would appear that one can violate the Act even if no regulations have been promulgated. Lloyd Fry Roofing Co. v. Pollution Control Board, et al., 20 Ill. App. 3d 301.

Respondent's final contention is that Rule 204 (a) does not apply to it, in that Rule 207 grants exception from the constituents listed in Rule 204 (b). Rule 207 states that constituents present naturally in ground water are excepted from meeting the water quality standards of Rule 204. The question of how Rule 207 applies to Rule 204 (a) is of first impression before this Board. The wide range of arguments presented to the Board indicate that it would be best to consider this question within the context of a hearing on the merits and with a complete record.

ORDER

IT IS THE ORDER of the Pollution Control Board that the Motion to Dismiss is denied.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Order was adopted by the Board on the 9th day of January, 1975, by a vote of 5 to 0.




Christan L. Moffett,
Clerk