

ILLINOIS POLLUTION CONTROL BOARD
November 13, 1975

CITIZENS FOR A BETTER ENVIRONMENT,)
An Illinois Not-for-Profit Corp.,)
Complainant,)
v.) PCB 74-318
INTERNATIONAL HARVESTER COMPANY,)
An Illinois Corporation,)
Respondent.)

Mr. Sherwood L. Levin, appeared for Complainant;
Mr. Alan I. Becker, (Kirkland and Ellis) appeared for Respondent.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This action comes before the Board upon the August 29, 1974 complaint of Citizens for a Better Environment (CBE), an Illinois Not-for-Profit Corporation, against International Harvester Company, Wisconsin Steel Division (Harvester).

CBE alleges that Respondent Harvester in the operation of their coke ovens, has emitted various air pollutants since the expiration of their previous variance on July 26, 1973, which constitute violations of the following sections of the Air Pollution Control Regulations of Illinois:

1. Rule 103(b)(2)
2. Rule 104(a)
3. Rule 202(b)
4. Rule 203(d)(6)(B)(i)(aa)
5. Rule 203(d)(6)(B)(iii)
6. Rule 203(d)(6)(B)(iv)(aa)
7. Rule 307(a)(1)

In addition, CBE alleges violation of Section 9(a) of the Environmental Protection Act.

Harvester has been operating their coke ovens under a variance granted by the Board in PCB 73-176 and PCB 72-321. On July 22, 1974, Harvester submitted a petition to the

Board requesting an extension of this previous variance. CBE filed its complaint based upon the expiration of the original variance and the alleged lack of an operating permit by Harvester. On June 6, 1975, the Board issued its opinion in PCB 74-277 which granted an extension of variance including the time span during which the violations of the instant complaint allegedly occurred. The Board finds that the extended variance in PCB 74-277 is prima facie evidence of an effective affirmative defense to the alleged violations in this case with the exception of the alleged violation of Rule 103(b)(2), operating the coke ovens without an operating permit issued by the Illinois Environmental Protection Agency. This evidence standing un rebutted by CBE, the Board therefore dismisses, with prejudice, the complaint with respect to all allegations with the exception of the allegation of violation of Rule 103(b)(2).

Respondent Harvester has filed an appeal of the denial of its application for the operating permit for the same coke ovens and time period of which CBE complains in the instant action. Until PCB 73-211 is decided, the Board cannot determine whether Harvester was operating without a permit. Therefore, the Board finds that that portion of CBE's complaint concerning violation of Rule 103(b)(2) of the Air Pollution Regulations should be consolidated with PCB 73-211.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. That portion of the complaint alleging violation of Air Pollution Control Regulations 104(a), 202(b), 203(d)(6)(B)(i)(aa), 203(d)(6)(B)(iii), 203(d)(6)(B)(iv)(aa), 307(a)(1), and violation of Section 9(a) of the Environmental Protection Act, is dismissed.

2. That portion of the complaint alleging violation of Rule 103(b)(2) of the Air Pollution Control Regulations be consolidated for decision with PCB 73-211.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 13th day of November 1975 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board