ILLINOIS POLLUTION CONTROL BOARD January 17, 1972

ENVIRONMENTAL PROTECTION AGENCY)	
)	#71-300
v.)	
GEORGE E. HOFFMAN & SONS, INC.,)	
a corporation)	

OPINION AND ORDER OF THE BOARD (BY MR. LAWTON):

Complaint filed by the Environmental Protection Agency alleging air pollution in violation of the Environmental Protection Act and the Rules and Regulations Governing the Control of Air Pollution, was served upon George E. Hoffman & Sons, Inc., Respondent, on September 28, 1971, which complaint requested that a hearing be set, that a cease and desist order be entered against Respondent, and that Respondent be ordered to pay a penalty in the maximum statutory amount. The complaint was unsigned, although the typed names of William J. Scott, Attorney General and John C. Parkhurst, Assistant Attorney General, on behalf of the Environmental Protection Agency, appeared at both the foot of the complaint and the notice. The notice advised Respondent of the filing of the complaint with the Board and that a hearing date would be set.

On December 6, 1971, Richard J. Cooper, previously designated as Hearing Officer for this matter mailed a notice to Respondent setting January 10, 1972 as the hearing date on the complaint. Respondent has filed a Motion to Dismiss, asserting that the Board "lost jurisdiction in this matter 22 days after the service of the complaint and purported notice on this Respondent". In support of this contention, Respondent cites Section 31(a) of the Act requiring Respondent to answer the charges of the formal complaint at a hearing before the Board "at a time not less than 21 days after the date of notice" and Rule 307 of the Rules and Regulations of the Pollution Control Board providing that a hearing date be set not later than 60 days after the filing of the complaint. Why either of the above-cited provisions would cause the Board to lose jurisdiction 22 days after service of the complaint and notice is not clear, since the 21-day provision in the statutory section is a period of time after service of notice during which hearing shall not be set. The statute does not contain any provision providing a maximum period of time during which such hearing shall be scheduled.

Construing Respondent's Motion as one seeking dismissal for failure to hold a hearing within the 60-day period after filing of the complaint as provided by Rule 307, it will be noted that the Rule

makes no provision as to the consequences of the failure to so schedule a hearing. Dismissal of an action because of failure to comply with this Rule is not specifically provided, nor can such result be inferred. While our Rule is geared to assure speedy hearing and disposition of enforcement cases, it is silent on the consequences of failure to meet the time schedule. We cannot conclude that dismissal of the action is the consequence of failure to set the trial date within the 60-day period. Indeed, were we to so hold, we would deprive the Complainant and Respondent of a hearing without fault on their part, and would be violating the basic statute which directs that hearings be held on all complaints filed by the Agency. Section 31(a). Such a construction would, in effect, constitute a statutory amendment which obviously cannot be done by a Board regulation.

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

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order this /7 day of _______, 1972 by a vote of _______.

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