

ILLINOIS POLLUTION CONTROL BOARD
July 12, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
)
 v.) PCB 72-242
)
)
 INTERNATIONAL HARVESTER COMPANY,)
 WISCONSIN STEEL DIVISION)
)

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle)

This is an enforcement action alleging violations of Section 12(a) of the Environmental Protection Act and Rules 5.0 and 1.04.1(c) of SWB 19 and 15 respectively, caused by a liquid discharge from respondent's vessel on the Calumet River on July 23, 1971.

The respondent has filed a motion to dismiss the case for the reason that the statutes and regulations charged are invalid under the supremacy clause because of conflict with or pre-emption by federal legislation, interference with interstate commerce and violation of federal maritime jurisdiction. We have examined respondent's memoranda in support of their motion but find no valid arguments upon which we could dismiss the action. To the contrary, the Agency's memorandum cites the Federal Water Pollution Control Act, (33 U.S.C. §§ 1151 (b) and (c)) which place the primary responsibility of water pollution control upon the states and expressly preserves local jurisdiction. The motion to dismiss is therefore denied.

As to the merits of the case, there is direct eyewitness testimony from two Agency inspectors that on July 23, 1971 they saw a red, spurting discharge coming from the side of the respondent's boat (Tr. 11-20, 87). They also observed that the red liquid had discolored the river in an area around the vessel of about fifty by two hundred feet (Tr. 20). Furthermore, photographs taken at the scene clearly show the red discharge (Agency Ex. 1-8, Resp. Ex. 1-5). One of the respondent's witnesses admitted that the cargo hold of the ship had been hosed down prior to the discharge and that the hold drains directly to the river. The reason for doing this was to remove iron ore residues preparatory to loading coal (Tr. 191-2).

Rule 5.0 prohibits the discharge of contaminated or polluttional bilge. Rule 1.04.1 (c) prohibits discharges producing color, odor or other conditions in such a degree as to create a nuisance. The Act itself defines "water pollution" as, among other things, the

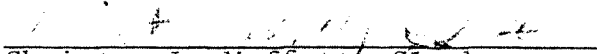
discharge of any contaminant into the water as will or is likely to create a nuisance. From the testimony and the photographs we clearly find all violations as alleged. We are pleased to see that the respondent has taken certain precautions so as to prevent such a spill in the future. We will, however, assess a penalty of \$500.00 simply because the spill did occur at the hands of the respondent and they must be held responsible.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

Respondent shall pay to the State of Illinois by August 15, 1973 the sum of \$500.00. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14th day of July, 1973 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board