

ILLINOIS POLLUTION CONTROL BOARD
February 14, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
) #72-112
 v.)
)
 U. S. SCRAP CORP., A)
 corporation)

HERMAN TAVINS, ASST. ATTORNEY GENERAL, FOR THE ENVIRONMENTAL
PROTECTION AGENCY
JAMES REGAS, FOR U. S. SCRAP CORP.

INTERIM OPINION AND ORDER OF THE BOARD (BY SAMUEL T. LAWTON, JR.):

On February 8, 1973, the Pollution Control Board received a two page transcript of the hearing held in this case. The errors found in this transcript require us to take corrective action.

The complaint, as filed, apparently included the wrong address of the respondent's facility. Through some strange misreading of our decision in Environmental Protection Agency v. Mystik Tape, #72-180, counsel for the complainant decided that he was precluded from filing an amended complaint. He therefore moved to dismiss the complaint, stating that a new complaint would be filed against the same facility within two weeks. Contrary to our procedural rules, the Hearing Officer granted the motion to dismiss.

The Mystik Tape case dealt with the pleading of dates in complaints which alleged violations "to the close of the record". We there forbade such pleadings, and no more.

Misunderstandings of a decision can occur. However, what is inexcusable is a Hearing Officer's failure to know the limits of his authority, especially when that authority is so clearly stated in the Pollution Control Board's Procedural Rules. Rule 302(f) states:

"The Hearing Officer shall rule upon all motions, except that he shall have no authority to dismiss or decide a proceeding on the merits, or for failure to state a claim, or for want of jurisdiction, or to strike any claim or defense for insufficiency or want of proof. The Hearing Officer shall refer any such motion to the Board. The Board may decide such motions at any time, but its inaction shall not stay proceeding nor preclude the Board from granting or denying the motion at a later time."

We trust that henceforth Hearing Officers will read the rules, and be familiar with the extent of their authority.

O R D E R

It is the Order of the Board that:

1. The Hearing Officer's grant of the motion to dismiss is vacated.
2. That leave is granted to the Complainant to file an amended complaint for the purpose of correcting the original complaint as to the respondent's address.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Interim Opinion and Order was adopted by the Board on the 14th day of February, 1973, by a vote of 3 to 0.

Christan L. Moffett