

ILLINOIS POLLUTION CONTROL BOARD
December 5, 1972

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

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

Motion to dismiss the above-captioned case has been filed on two independent legal theories, first, that the failure of the Hearing Officer to set a hearing within sixty days of the date of the filing of the complaint is a jurisdictional defect entitling Respondent to dismissal of the cause and secondly, that paragraph 4 of the complaint charges violation of Rule 1.03.1(c) of SWB-15 as a consequence of discharges into the Calumet River, and that according to Respondent the said Rule does not apply to the Calumet River.

With respect to the motion to dismiss based on failure to comply with Procedural Rule 307, we have previously held that violation of this Rule is not grounds for dismissal and that the 60-day Rule is not a jurisdictional requirement, Environmental Protection Agency v. Airport Landfill, #72-71, 5 PCB (June 20, 1972), and accordingly, dismissal on this ground is denied.

With respect to the applicability of SWB-15, Rule 1.03.1(c) the Agency has asked, by its Memorandum in Opposition to Respondent's Motion to Dismiss, for leave to amend the complaint on its face by deleting the reference in paragraph 4 to Rule 1.03.1(c) and substituting in lieu thereof, Rule 1.04.1(c), which motion to amend is hereby granted.

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

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the above Opinion and Order was entered on the 5th Day of December, 1972, by a vote of 4 to 0.

