

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 1980

ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 79-145
	)	
CELOTEX CORPORATION and	)	
PHILIP CAREY COMPANY,	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by Mr. Goodman):

The Agency's March 24, 1980 Motion for Sanctions against Respondent Celotex, responded to on April 1, 1980, is granted in part as follows.

Interrogatories. On January 21, 1980 the hearing officer ordered Respondent to answer Interrogatories 1-3, 5-18, and 20 on or before February 18, 1980. The Agency has received none of these answers as of March 24, 1980. Respondent Celotex itself admits that as of March 24, 1980 it had not responded. (Par.2, Opposition to Motion for Sanctions).

Respondent has therefore violated the order of the hearing officer. The Board finds that the Agency has been substantially and materially prejudiced by Respondent's violations in that it is now unable to prepare for hearing and is subject to surprise at that hearing. In order to alleviate this hardship the Board orders that Respondent be barred from introducing evidence, including witnesses and documents, at hearing regarding facts relevant to any paragraphs of the complaint to which answers of the above-cited interrogatories are material.

Production of Documents. The Agency pleads that Respondent has produced no documents since being ordered to do so on January 21, 1980 by the hearing officer. These documents, prior to entry of that order, had been due on or before November 1, 1979. Respondent states that on December 4, 1979 it offered to produce the documents, but does not state that they were made available by February 18, 1980 as ordered by the hearing officer.

The Board finds that the documents could reasonably have been available to the Agency after January 21, 1980 and therefore denies sanctions in this regard. The Board orders that the Agency shall inspect and copy those of the documents produced which it desires on or before April 25, 1980.

Hearing. The parties are ordered to file any and all additional discovery requests within thirty days. In the event additional requests are served, all discovery shall be completed on or before June 13, 1980 and hearings shall be held on or before July 25, 1980. In the event no additional requests are served, hearings shall be held on or before May 23, 1980.

All parties shall adhere to the following schedule:

1. All additional discovery requests are to be served on or before May 5, 1980. If any requests are served, responses and/or objections are due on or before June 2, 1980. The hearing officer shall rule on any objections to discovery on or before June 6, 1980; all discovery shall be completed by June 13, 1980 and all hearings set and held by July 25, 1980.


2. If no additional discovery requests are served on or before May 5, 1980, the Hearing Officer shall arrange that hearings be set and held on or before May 23, 1980.

3. At hearings, Respondent is barred from introducing any and all evidence regarding facts relevant to any allegations of the complaint to which answers to Interrogatories 1-3, 5-18, and 20 are material. All objections to the hearing officer's rulings on materiality are to be made at hearing, on the records and with clear and concise language.

IT IS SO ORDERED.

Mr. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Oder was adopted on the 3RD day of April, 1980 by a vote of 4-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board