

ILLINOIS POLLUTION CONTROL BOARD
February 3, 1994

DEPARTMENT OF THE ARMY,)	
)	
Petitioner,)	
)	
v.)	PCB 92-216
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on an amended petition filed on January 8, 1993. On February 24, 1993, the Environmental Protection Agency (Agency) filed a status report in response to a hearing officer directive. On August 23, 1993, the hearing officer wrote the Agency attorney as follows:

At the urging of the Board, I have contacted ... [attorney for Department of Army] ..., concerning the status of this matter since our last contact back in February. At that time, it was indicated that the Department of the Army would submit their new data to you by March 11, and that the Agency would review that information.

[Department of the Army informs me] ... that such submittal was made and that they have been waiting for the Agency to make some manner of evaluation of that data.

Consequently, I would request that you give me an update of the Agency's efforts at this review and some indication as to when that review process will be completed.

The Agency did not respond to the hearing officer's inquiry.

On October 12, 1993, the hearing officer issued a formal order directing the Agency to submit a status report to both the hearing officer and the Board. The report was to be received by November 8, 1993. The Agency did not respond to the hearing officer's order. Thus, the Agency has not taken any formal action on this matter since February 24, 1993, and has ignored both an informal and formal hearing officer order for a status report.

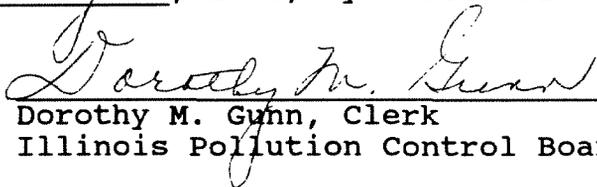
35 Ill. Adm. Code 101.280 provides for the imposition of sanctions where a party fails to comply with any order entered by a hearing officer. Moreover, we note that the appellate court has recently reminded this Board that the Board has "broad discretion" in determining whether to impose a sanction against

the Agency. (Grigoleit v. IEPA (May 6, 1993) 245 Ill.App.3d 337; 613 N.E.2d 371). Lawful orders issued by Board hearing officers are entitled to the same deference as are orders of the Board itself; sanctions may be imposed by the Board for violation of such orders. An intervening Board order which essentially repeats or duplicates the hearing officer's original order should not be necessary to secure compliance.

The Board hereby directs the Agency to file a status report with the Board and the hearing officer. The Agency shall include in the status report an explanation for the Agency's failure to respond to the hearing officer's inquiry and order. Such status report shall be received by the hearing officer and the Board on or before February 10, 1994.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of February, 1994, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board