

ILLINOIS POLLUTION CONTROL BOARD
September 8, 1988

CITY OF EAST MOLINE,)
)
 Petitioner,)
)
 v.) PCB 87-127
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by B. Forcade):

On August 22, 1988, the Illinois Environmental Protection Agency ("Agency") filed a motion for Board ruling. That motion seeks a determination of, "Whether discovery is authorized by the Board's Procedural Rules governing variances, 35 Ill. Adm. Code Part 104". The Agency argues that discovery is not clearly authorized in such proceedings. This motion is subsequent in time to a motion filed by the City of East Moline ("East Moline") with the hearing officer seeking to compel discovery from the Agency.

On August 29, 1988, East Moline filed a motion to strike the Agency's motion for Board ruling. East Moline asserts that the Agency's motion is frivolous and that, "...the Agency is using this case as a forum to air its grievances over an unrelated [regulatory] decision issued by the Board..." East Moline argues that discovery is clearly and specifically authorized in variance proceedings.

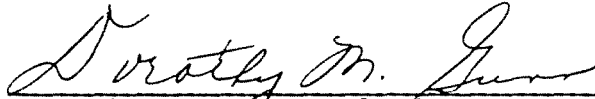
The Board agrees with East Moline that discovery is specifically and clearly contemplated in the procedural rules. Section 104.201 (a) states that, "Proceedings upon a petition for variance shall be in accordance with Part 103..." And, Section 103.101 provides that the rules in Part 103 apply to variance proceedings. The discovery provisions of Section 103.161 therefore apply to variance proceedings. The Board finds no merit in the Agency's assertions to the contrary.

On page 3 of its motion, the Agency states, "The Agency will take no action to respond to the Motion to Compel until directed to do so by the Board". A party to an adjudicatory proceeding should decide whether to respond to a motion based on the advice of learned Counsel. However, a party declines to respond to a motion at their own peril.

The Board has not been requested to, and would not lightly entertain, interfering with the hearing officer's authority to rule on discovery issues. Any discovery issues should be directed to the hearing officer.

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 14 day of September, 1988, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board