

ILLINOIS POLLUTION CONTROL BOARD
May 19, 1988

AMEROCK CORPORATION,)
)
 Petitioner,)
)
 v.) PCB 87-131
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a Motion to Clarify Issues filed by Amerock Corporation (Amerock) on May 4, 1988. Amerock requests that the Board issue an order that requires Amerock and the Illinois Environmental Protection Agency (Agency) to clarify issues, through briefs, concerning a discovery request by the Agency to which Amerock objects. The Agency filed a Response to Amerock's motion on May 13, 1988. ****On May 18, 1988, Amerock filed a Reply. Since the Board's procedural rules do not provide for such a reply, the Board has not considered Amerock's May 18th filing. In its discovery request, the Agency asked for**** specific information as to the financial status of Amerock as a business.

According to Amerock, the Hearing Officer, at hearing, instructed Amerock and the Agency to resolve the discovery matter; Amerock asserts that this issue has not been resolved.

The Agency contends that the Hearing Officer ordered Amerock to provide "sufficient" economic information to the Agency and that Amerock has refused to provide anything. It is the Agency's position that Amerock is seeking to circumvent the Hearing Officer's ruling by filing the May 4th motion with the Board.

****Given what transpired on record at hearing, the Board does not construe Amerock's motion as appeal of**** the Hearing Officer's ruling made at hearing. Rather, it appears that Amerock is merely requesting an additional opportunity for both sides to argue this discovery issue. Normally, such a motion would be handled by the Hearing Officer. However, since the Hearing Officer is out of the country until the end of this month, the Board will address the motion in an effort to expedite this proceeding.

The Board disagrees with the Agency that the Hearing Officer's ruling precludes Amerock's motion. It is apparent from the record, that the Hearing Officer left it up to the parties to work out the discovery problems. Although the Hearing Officer

denied Amerock's motion for a protective order, which would have precluded the Agency from obtaining any economic information, the Hearing Officer stated:

I do feel that the State [the Agency] has asked for information concerning, it appears to me, would lead to a discussion of the economic condition of the Appellant's stockholders and goes beyond what is appropriate for the State or for the Board to determine the economic condition of those who have invested in the Appellant. However, I do believe that the Appellant must, if it is to proceed with an argument of economic hardship, produce sufficient evidence so that the Board has before it the data necessary to resolve the issues reached by the parties, if it is their belief. However, therefore, I believe the Appellant must supply data which can be determined by modifying the request of the Environmental Protection Agency in a post-trial discussion between the two attorneys, and be added to the report at a later time. I would advise you, Mr. Steger, that the data to be presented must be sufficient, not just to show that the amount of money required to come into compliance is unreasonable in the light of the present discharges, but also that it is unreasonable in the light of the economic viability of the Appellant which may--probably does--violate your concept of the parameters of economic hardship. Are the parties prepared to get together at a later time rather than to extend this hearing to discuss what evidence you wish to add to the record on the Appellant's economic condition?

(R. 12-13)

Later in the hearing, the Hearing Officer also stated:

My understanding of the rules and the decision we've made so far is that the two of you will get together to see if the record can be augmented concerning the financial status of Amerock, without your objection. Anything you think you shouldn't submit, obviously, you have the right to resist.

(R. 41)

Consequently, while Amerock was to submit some economic information, the scope of that information had to be agreed upon

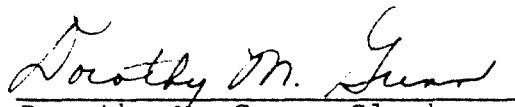
by both parties. Obviously, no agreement has been reached.

The Board finds that it would be useful to require the parties to brief the specifics with regard to the Agency's discovery request. Amerock is hereby ordered to file a brief detailing its objections for each item sought by the Agency's March 4, 1988 discovery request. This includes the Agency's interrogatories as well as its request for documents. Similarly, the Agency shall file a response brief which argues, for each item requested, reasons why its request should be granted. In addition, the briefs should cite any relevant caselaw as well as statutory or regulatory authority which would aid in the disposition of this issue. Amerock's brief is due June 6, 1988, and the Agency's brief is due June 20, 1988. After considering the briefs, the Hearing Officer shall rule upon the Agency's discovery request.

The Board, by this Order, is not taking any substantive position concerning the Agency's discovery request. At this point in this proceeding, it is the role of the Hearing Officer to resolve the discovery controversy. Today's order merely helps that process along given the temporary absence of the Hearing Officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of May, 1988, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board