

ILLINOIS POLLUTION CONTROL BOARD
March 14, 1986

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

ORDER OF THE BOARD (By B. Forcade):

This matter comes before the Board on a March 3, 1986, Celotex Corporation ("Celotex") Response in Opposition to Complainant's Motion Seeking Interlocutory Appeal from the Hearing Officer's October 7, 1985, Order, Complainants Motion to Overrule the Hearing Officer's Order, and Complainants Motion to Deny Sanctions ("Celotex Response in Opposition to Various Agency Motions"). Celotex also filed a Motion for Reconsideration of Denial of Celotex Motion for Sanctions on March 3, 1986. On March 4, 1986, the Illinois Environmental Protection Agency ("Agency") filed a Motion for Interlocutory Appeal and Appeal of the Hearing Officer's Ninth Order Regarding Various Matters and Celotex filed a response on March 11, 1986.

The Agency's motions, which Celotex responds in opposition to, have been disposed of in the Board's Order of February 26, 1986. As the balance of these Agency motions were decided in Celotex's favor, the Board is perplexed as to the purpose of Celotex's March 3, 1986, filing. Nonetheless, the Celotex Response in Opposition to Various Agency Motions clearly deals with issues already decided and is, therefore, moot. Celotex's March 3, 1986, Motion for Reconsideration of Denial of Celotex Motion for Sanctions is denied.

The Agency's March 4, 1986, Motion for Interlocutory Appeal is granted. The Hearing Officer's ruling from which interlocutory appeal is taken is affirmed. The Hearing Officer Order at issue provides for at least one day of additional deposition of Agency witness James Daugherty and provides a procedure for requesting additional deposition days if sworn justification is made to the Hearing Officer. The Agency does not object to the additional day of deposition but objects to the procedure outlined for requesting any subsequent depositions as it "does not impose a limitation on the number of times James Daugherty

can be deposed." The Board finds that the Hearing Officer's Order is consistent with the Board's Order of February 14, 1986, regarding Daugherty's deposition. The Board also finds that the procedure of requiring "sworn justification" for subsequent depositions and the Hearing Officer's practice of reviewing the deposition transcripts for repetition, relevancy and harrassment provide adequate safeguards to the Agency's witness. The Hearing Officer's Ninth Order regarding various matters is affirmed.

As a final matter, on February 28, 1986, Celotex filed a Celotex Response in Opposition to Complainants' Motion and Proposed Schedule to End the Celotex Hearing in 60 days. While this response requests Board action, it, more appropriately, should be addressed to the Hearing Officer.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 14th day of March, 1986, by a vote of 7-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board