ILLINOIS POLLUTION CONTROL BOARD September 2, 1982

UNITY VENTURES, Petitioner, v. PCB 80-175 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, Respondent.

ORDER OF THE BOARD (by I. G. Goodman):

On August 20, 1982 the Illinois Environmental Protection Agency (Agency) requested leave to file and filed a Motion to Strike Unity Ventures' (Unity) Response to Request for Admission of Facts. Unity filed a Response on August 31, 1982. The Agency's Motion for Leave to File is granted.

With its motion the Agency seeks to have Unity's Response to the Request for Admission stricken, and the facts listed therein The Agency fails to allege what hardship or prejudice admitted. was suffered as a result of Unity's not filing within the time allowed by Procedural Rule 314(c). The only prejudice evident to the Board is that the ninety-day decision period was to have expired August 25, 1982 pursuant to the June 10, 1982 Board Order, which was only fifteen days after Unity's Response was due according to the hearing officer's order. The Board finds that Unity's request for additional time constituted a pro tanto waiver of the ninety-day decision period. Furthermore, Unity has since formally waived the decision until December 31, 1982. Inasmuch as the hearing officer allowed the additional time and no resulting prejudice was alleged or determined, the Agency's Motion to Strike the Responses as untimely is denied.

The Agency further requests that the denials contained in Unity's Response which were not accompanied with an affidavit be stricken, and therefore be admitted. The Board finds that no prejudice will result if Unity is allowed to correct this defect. Therefore, Unity is ordered to submit affidavits, as appropriate, within ten days of this Order. Lastly, the Agency argues that the allegations set out in those requests which Unity objected to, alleging that they require conclusions of law, should be admitted. Pursuant to Procedural Rule 314(c), the Board refers this portion of the motion to its hearing officer in this matter.

IT IS SO ORDERED.

I, Christan L. Moffet, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2^{NP} day of September, 1982 by a vote of 5-0.

Christan L. Mofig Clerk Illinois Pollution Control Board