

ILLINOIS POLLUTION CONTROL BOARD
May 28, 1981

ALBURN, INC.)
)
) Petitioner,)
)
) v.) PCB 80-189
) 80-190
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson)

This Order disposes of the discovery-related motions now pending before the Board in these consolidated actions. These motions and responses begin with the Agency's May 8, 1981 Motion for Sanctions for failure to respond to the Hearing Officer's discovery Order of April 8, 1981, which directed that interrogatories be answered pursuant to an Agency motion to compel. Alburn filed its Response May 14, 1981; on May 15 the Agency moved for leave to file a Reply thereto instantler, which motion is granted.

On May 14, the Agency requested that the Board call a special meeting to decide the motion for sanctions, premised on the need for a Board decision prior to the scheduled hearing date of May 26, 1981. The need for a special Board decision was eliminated by the Hearing Officer's decision, over strenuous Agency objection, to continue the hearing until June 9, 1981. The May 14, 1981 motion is therefore moot, and is denied.

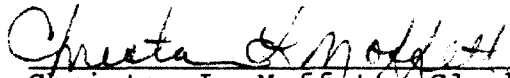
Finally, on May 20, 1981 Alburn moved to strike the above listed Agency pleadings, as well as a May 19, 1981 Agency pleading to the Hearing Officer in Opposition to Continuance of Hearing and Request to Reinstate Rescheduled Hearing Date. The Agency filed its Reply May 26, 1981.

The Agency's Motion for Sanctions and Alburn's Motion to Strike are denied. As Alburn had moved on April 22, 1981 for additional time in which to comply with the Hearing Officer's April 8, 1981 discovery order, sanctions are not deemed to be warranted at this time. The Board is, however, persuaded by the Agency's various pleadings that resolution of this appeal must not be further delayed. Further, Alburn's delay is especially troubling in light of the Board's stay of conditions of the contested permit, based on Alburn's allegations of irreparable economic harm. (The Agency's May 22, 1981 Motion to Lift Stay is still unripe for decision.)

Hearing in this action shall be scheduled and held on or before June 19, 1981. This hearing date shall not be further continued by the Hearing Officer. Leave is given the Agency to reinstate its Motion for Sanctions in the event that the requested discovery is not timely produced.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 28th day of May, 1981 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board