

ILLINOIS POLLUTION CONTROL BOARD
February 2, 1978

OWENS-ILLINOIS, INC.,)
)
 Petitioner,)
)
 v.) PCB 77-288
)
 ENVIRONMENTAL PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Young):

On January ^{affirmed} 13, 1978, Respondent Environmental Protection Agency filed an Objection to and seeking reversal of an Order entered on that date by the Hearing Officer directing, by Paragraph II(a) and II(b) of the Order, the Respondent to answer certain interrogatories. On January 16, 1978, the Hearing Officer requested a Board ruling on the Objection, pursuant to Rule 313(f) of the Procedural Rules. Petitioner, on January 18, 1978, entered an Objection to Paragraph II(c) of the Hearing Officer's Order together with a memorandum in support of Paragraph II(a) and II(b) of the Order.

The scope of discovery permissible in an action to contest Agency denial of a permit under Section 40 of the Act is controlled by the general issue presented; obviously inquiry into matters outside of the general issue will not produce relevant evidence and should not be allowed.

It is proper to inquire, and discovery should be allowed, to insure that the record filed by the Agency is complete and contains all of the material concerning the permit application that was before the Agency when the denial statement was issued.

If the Agency knows or ascertains, during the pendency of a permit application, that either the facts or conclusions presented by the applicant are inaccurate or incomplete, the Agency must disclose such information in writing during the statutory permit review period or in the detailed written statement of the reasons for denial required by Section 39 of the Act. The Agency may not at hearing assert reliance on any material not included in the record and disclosed to the applicant in the manner described above, as the basis for Agency denial of the permit, any more than the applicant may introduce new material in support of the application that was not before the Agency at the time of denial.

The Board, having reviewed the Order of the Hearing Officer entered January 13, 1978, sustains the action of the Hearing Officer in Paragraph II(c) of the Order. The Board reverses the decision of the Hearing Officer in Paragraph II(b); Agency policy in the granting of other permits is not properly at issue and the discovery sought is not relevant. Paragraph II(a) of the Order will be sustained but only if limited to insuring that the record filed by the Agency is complete and that no material outside of the record was relied upon in support of the decision to deny the permit.

The matter is remanded to the Hearing Officer for revision of his Order of January 13, 1978, consistent with the foregoing.

IT IS SO ORDERED.

Mr. Nels Werner dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 2ND day of February, 1978 by a vote of 4-1.


Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board