

ILLINOIS POLLUTION CONTROL BOARD
May 6, 1976

THE CELOTEX CORPORATION,)
)
) Petitioner,)
)
)
) v.) PCB 76-93
)
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter comes before the Pollution Control Board (Board) upon the April 5, 1976 Petition of the Celotex Corporation (Celotex) appealing the July 18, 1975, denial of an operating permit by the Environmental Protection Agency (Agency). The Agency filed a motion to dismiss on April 12, 1976, and Celotex filed its motion in opposition to the Agency's motion on April 19, 1976.

The Permit Appeal is based upon the January 20, 1976, invalidation by the Supreme Court of Air Rule 204(c)(1)(A) (Commonwealth Edison v. Pollution Control Board, No. 47352, 8 ERC 1531). Celotex contends that as the permit denial was based solely upon the failure of Celotex to comply with the now invalid rule, said denial was erroneous. Celotex admits that it did not comply with Rule 204(c)(1)(A) on July 18, 1975. The Agency contends that the sole issue before the Board is whether, on July 18, 1975, the Agency correctly denied Petitioner's operating permit. Celotex counters that there is no provision for a motion to dismiss a permit appeal in the Procedural Rules and that rule 204(c)(1)(A) was unenforceable ab initio.


As to Petitioner's first contention, i.e., that the Board's Procedural Rules do not provide for the instant motion, the Board refers Petitioner to Procedural Rule 503 which incorporates Part III of the Procedural Rules to govern permit appeals. Rule 308 provides that motions to dismiss must be filed within 15 days of commencement of the action.

The Board is of the opinion that it may only review the Agency's denial based upon the facts and Regulations which were before the Agency on July 18, 1975. As of that date, the Agency acted properly in the denial of Celotex's permit. Celotex admits that it was in violation of Rule 204(c)(1)(A). The Agency may not grant a permit which would result in violation of the Environmental Protection Act (Act) or Board Rules [Section 39(a)]. Therefore, if the Agency had granted the instant permit, it would have violated Section 39(a) of the Act. Petitioner's remedy is to reapply for a permit.

Respondent's Motion to dismiss is granted.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 6th day of May, 1976 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board