

ILLINOIS POLLUTION CONTROL BOARD

May 29, 1980

IN THE MATTER OF:)
SULFUR DIOXIDE AND PARTICULATES) R77-15
AIR POLLUTION CONTROL REGULATIONS.)

ORDER OF THE BOARD (by I. Goodman):

Celotex Corporation's May 2, 1980 motion for discovery pursuant to the Hearing Officer's Order of March 26, 1980 is denied.

1. The Board's Procedural Rule 313 applies in enforcement proceedings before the Board. It does not apply in regulatory proceedings. The Board's regulatory proceedings are in the nature of legislative rather than adjudicative proceedings. (Procedural Rule 201.)

2. The Hearing Officer Order dated March 26, 1980 granted Celotex, which is not a proponent of the regulations under consideration but rather an interested participant, "leave to conduct and complete any discovery desired and to have submitted to the hearing officer on or before June 13, 1980 any responses which it feels will clarify its position with regard to data concerning its Peoria plant [such responses to have weight equal to that of testimony at hearing if they are averred to]."

3. The Hearing Officer was without authority to grant "discovery" to Celotex as that term is understood in true judicial proceedings. Not only is "discovery" not part of the process of law due either proponents or participants at the Board's regulatory, quasi-legislative proceedings, but it was granted exclusively to Celotex and not to any of the other proponents or participants. Procedural Rule 207, addressing discovery in regulatory proceedings, refers to discovery initiated by the Board. There are no provisions for discovery initiated by either proponents or participants.

The discovery Celotex desires would necessitate further State expenditures not only by the Illinois Pollution Control Board but by the Illinois Institute of Natural Resources where its contract seems to have been fully performed, for purposes of hearings before the Board, upon conclusion of the hearing of January 30, 1980. As stated by the Hearing Officer, Celotex' request on February 13, 1980 for an additional hearing was not timely made.

IT IS SO ORDERED.

Mr. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of May, 1980 by a vote of 3-0.



Christan L. Moffett Clerk
Illinois Pollution Control Board