

ILLINOIS POLLUTION CONTROL BOARD  
April 8, 1976

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 75-190  
 )  
 GRIFFITH LABORATORIES, )  
 )  
 Respondent. )

INTERIM ORDER OF THE BOARD (by Mr. Zeitlin):

Pursuant to Motion in Complainant's Brief, the Board finds the record in this matter inadequate, and remands the matter to the Hearing Officer for further proceedings on the merits.

The record in the matter is neither clear nor correct. We find that:

1. The Hearing Officer committed serious error in his dismissal of Count II of the Complaint. Such dismissal is wholly outside the Hearing Officer's authority. Involuntary dismissal authority, as to either parties or Complaint pleadings, lies only with the Board. At further hearing, the Hearing Officer shall decide whether the allegations of Count II are now proved by sanction, or otherwise on the pleadings. If so, relevant evidence may be admitted as regards §§ 31(c), 33(c) of the Environmental Protection Act, or otherwise in mitigation or aggravation. If not, relevant evidence may be admitted on the merits as well.

2. In light of the sanctions imposed by the Hearing Officer concerning Requests for Admission and Interrogatories by Complainant, it is not clear whether the hearing Officer's admission into the record of Answers to Requests for Admission and Answers to Interrogatories (including those filed after hearing) by Respondent were for purposes of our consideration on the merits, for use in aggravation or mitigation, or our consideration under § 33(c) of the Act, (R. 223). This needs clarification.

3. The exact nature of the sanctions which were imposed by the Hearing Officer pursuant to our Interim Order of Dec. 4, 1975, is not clear. It is clear that, vis-a-vis the Requests for Admission, Count I of the Complaint stands admitted by sanctions, (letter, filed Jan. 22, 1976 by Hearing Officer). How the sanctions extend, or do not extend, into matters raised by Complainant's Interrogatories, and hence affect our consideration of § 33(c) in light of such admission, is not clear. The same clarification is needed for Count III.

4. The Hearing Officer's statement that "Count III stands admitted in fact," (letter, filed Jan. 22, 1976 by Hearing Officer), appears to be an improper judgement on the merits of the case.

5. The Hearing Officer's various statements on the quality of Complainant's evidence are improper findings on the merits.

At further hearing, the Hearing Officer will clearly delineate on the record the full and final extent of the sanctions thus far imposed. He shall additionally show the extent to which he has admitted to the Record Respondent's Answers to Requests for Admission and Answers to Interrogatories. Additional testimony or other evidence shall be admitted on those remaining issues not foreclosed by sanction. The Hearing Officer shall require briefs on the issue of the effect of sanctions on our consideration of the factors in §33(c) of the Act.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Order was adopted on the 8<sup>th</sup> day of April, 1976, by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board