

ILLINOIS POLLUTION CONTROL BOARD  
August 10, 1989

KATHY WESTERN AND )  
JEFFREY WESTERN, )  
 )  
Complainants )  
v. ) PCB 89-44  
 )  
 )  
MOLINE CORPORATION, )  
 )  
Respondent )

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ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
v. ) PCB 89-87  
 )  
 )  
MOLINE CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before upon a Motion to Impose Costs and to Bar Testimony of Kathy Western and Jeffrey Western filed on July 19, 1989 by respondent Moline Corporation (Moline). The Western's response was filed on August 4, 1989.

Moline moves the Board to impose sanctions upon the Westerns for their alleged willful failure to appear for depositions in accordance with subpoenas issued by the Hearing Officer. On July 7, 1989, the Hearing Officer issued a subpoena against Kathy Western ordering her to appear at the Chicago Office of Moline's legal counsel on July 13, 1989 and a subpoena against Jeffrey Western ordering him to appear in Chicago for a deposition on July 14, 1989. Pursuant to the Western's Motion to Modify Subpoenas, the Hearing Officer entered an order requiring both Kathy Western and Jeffrey Western to appear in Chicago for depositions on July 14, 1989. The Western's request to change the location of the depositions to St. Charles was denied. The Board notes that, under its new Procedural Rules effective July 11, 1989, a witness subpoenaed for a deposition may be required to attend only in the county in which he or she resides or maintains an office address unless otherwise ordered by the Board (35 Ill. Adm. Code 101.260(h).) The Hearing Officer should be aware of this rule in considering the location of any rescheduled

depositions.


At approximately 5:00 p.m. on July 13, 1989, Jeffrey Western telephoned Moline's counsel to let him know that he and Kathy would be unable to attend the depositions on July 14, 1989 and asking that the depositions be rescheduled. This information was left with counsel's receptionist. At 5:14 p.m. that same day, Jeffrey Western left a message on counsel's answering machine that the Westerns were unable to attend the deposition the next day. On the morning of July 14, 1989, Jeffrey Western spoke with Moline's Counsel stating that neither he nor Kathy would attend the deposition and suggesting that a new date be set.

The procedural rules of the Board provide that "[i]f a party unreasonably refuses to \* \* \* comply with any order entered by the Board or the hearing officer, including any subpoena issued by the Board or hearing officer, the Board will order sanctions." (35 Ill. Adm. Code 101.280(a).) Furthermore, the Board has the authority to impose costs upon any noncomplying party. (Adopted Rule: Final Order R88-5(A), June 8, 1989.) Motions to Impose Sanctions are properly directed to the Board only.

Initially, the Board notes that Moline incorrectly interprets the language in Section 101.280(a) providing that "the Board will impose sanctions" as depriving the Board of its discretion in imposing sanctions upon a noncomplying party. Moline ignores the language in the rule that sanctions will be imposed where a party "unreasonably" refuses to comply. The Board finds that the Western's failure to appear at the scheduled deposition is not unreasonable, as they made a reasonable attempt to notify Moline of their work-related scheduling conflict and their desire to reschedule. Therefore, no sanctions will be imposed. Respondents Motion to Impose Costs and to Bar Testimony is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 10<sup>th</sup> day of August, 1989, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board