

ILLINOIS POLLUTION CONTROL BOARD  
February 26, 1985

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 79-145  
 )  
THE CELOTEX CORPORATION )  
and PHILIP CAREY COMPANY, )  
 )  
Respondents. )

ORDER OF THE BOARD (By B. Forcade):

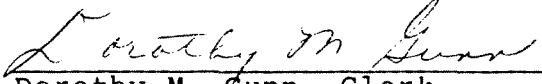
This matter comes before the Board on a February 7, 1986, Celotex Corporation ("Celotex") Motion for Sanctions and a February 24, 1986, Illinois Environmental Protection Agency ("Agency") Motion for Interlocutory Appeal, Motion to Overrule the Hearing Officer and Motion to Deny Sanctions. The Celotex motion requests sanctions based on its assertion that the Agency has "not supplied Celotex with the information required by" a November 11, 1985, Hearing Officer Order. The Agency's "motion," which the Board construes as a response, argues that the October 7, 1985, Hearing Officer Order (which presumably deals with the same "information" request as the November 11, 1985, Hearing Officer Order) should be overruled and, alternatively, that the Agency has in fact made the "information" available to Celotex. On February 26, 1986, Celotex filed a letter requesting the Board not to rule on the Agency's motions until Celotex had an opportunity to respond.

The Board denies Celotex's motion for sanctions. In this case, the most appropriate basis for the Board imposing sanctions would be a factual determination by the Hearing Officer that the terms of his November 11, 1985, order had been violated: the Hearing Officer is in a far better position to make such a determination considering the complex nature of discovery in this proceeding. Absent the Hearing Officer's determination that his discovery order has been violated, the Board will deny the motion for sanctions as being inadequate to support such a remedy.

The Board denies the Agency's Motion to Overrule the Hearing Officer. The Agency has failed to demonstrate any error in the Hearing Officer's October 7, 1985, Order to produce documents. The Board cannot overrule a Hearing Officer Order to produce documents on groundwater flow based on an unsworn and unexpert factual assertion relating to actual groundwater flow.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 26<sup>th</sup> day of February, 1986, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board