

ILLINOIS POLLUTION CONTROL BOARD
November 3, 1983

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| ILLINOIS ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 82-154 |
| |) | |
| CITY OF MOLINE, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by J. Anderson):


On October 14, 1983, the Attorney General, on behalf of the Agency, moved for interlocutory review of Hearing Officer Orders 1) granting Respondent's late-filed discovery requests designed to probe the dealings between the Agency and the City during a period of alleged non-compliance prior to the filing of this action, 2) denying the Agency's motion in limine concerning evidence relating to a state-funded grant to address sludge-handling deficiencies at the City's treatment plant, and 3) the Hearing Officer's denial of the Agency's motion that each of these motions be referred to the Board for its determination of these matters.

The motion for interlocutory appeal is granted. The Hearing Officer acted quite properly in handling each of these matters himself. The Board affirms the denial of the motion in limine, agreeing with the Agency that its advisement of availability of a grant does not constitute a defense to a finding of violation; but, as the City also correctly notes information concerning its grant application is relevant to the issue of good faith in efforts towards compliance.

The Hearing Officer's Order allowing late discovery relating to dealings between the Agency and the City in the period between the alleged non-compliance and the filing of this action is reversed. Any product of the requested discovery would be irrelevant to the Board's finding of compliance or non-compliance, and questions as to when and how the Agency and/or the Attorney General choose to take enforcement action would also be irrelevant. This Order should not, however, be construed as limiting the City's ability to present mitigating evidence that it has worked "hand-in-hand [with the Agency] to attempt to resolve any problems that may have existed" (City's Response at p. 2).

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 3rd day of November, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board