

ILLINOIS POLLUTION CONTROL BOARD
November 21, 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):

On October 31, 1985, the Celotex Corporation ("Celotex") moved to dismiss the Philip Carey Company ("Carey") for failure of service. In support of that motion, Celotex states that the Fourth Request for Admission of Facts contained:

30. The Complaint herein has not been served upon named Respondent PHILIP CAREY COMPANY.
31. Proof of service of the Complaint herein upon named Respondent PHILIP CAREY COMPANY has not been filed with the Clerk of the Pollution Control Board.
32. No Appearance has been entered in this proceeding on behalf of named Respondent PHILIP CAREY COMPANY.

Celotex asserts that "all requests have been admitted." To date, the Agency has failed to reply to this Motion to Dismiss.

This motion presents several problems for the Board:

1. On August 2, 1979, the Agency filed proof of service on Philip Carey Company, including a signed return receipt, certified mail. This service appears facially valid.
2. Celotex's motion is based on a "request" to admit, and an unverified assertion that the request was admitted. There is no reference to a pleading admitting the request, nor is there a statement under oath that no response to the request was made in a timely manner. In fact, the Board is completely in the dark as to the theory of this admission.

3. Celotex has presented neither facts nor theory to support standing by Celotex to assert rights held by Carey or the Agency regarding dismissal. Nor has Celotex asserted any concrete harm to Celotex (aside from vague assertion of confusion) relating to Carey's continuation as a party-respondent.

Consequently, the Board must deny the motion to dismiss. Also that portion of the October 31, 1985, motion for partial revision which requests deletion of the sentence indicating Carey had filed a response is granted. The Board is now fully aware that counsel for Celotex speaks only for Celotex.

Celotex's October 31, Motion for partial revision also sought to delete the sentence:

"As Celotex has already responded to the merits of the above motions, no further response is necessary."

The motion to delete is denied. Celotex had in fact responded to the merits of the motions to overrule the hearing officer. Celotex did not have a response on file to the Supplemental Motion to Overrule the Hearing Officer (which sought the same relief as the original motion and for the same reasons). The quantity of motions and responses filed in this case to date is excessive. While many of those pleadings have merit, a significant and growing number are frivolous or poorly supported. The Board reserves the right to determine when an issue has been sufficiently briefed or pleaded and rule accordingly.

On October 25, 1985, Celotex filed a motion directed to "...the Board or the Hearing Officer" seeking sanctions. On November 15 Celotex filed a Motion to Board to Rule on the October 25 Motion. The Board will not rule on these filings.

On January 10, 1985, the Board responded in frustration to the parties reluctance to articulate to whom their motions were directed:

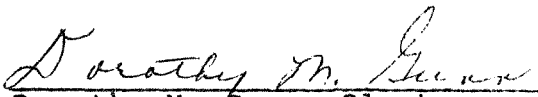
The Board notes that its December 6, 1984, Order encouraged the parties "to clearly delineate whether a motion is directed to the Board or to the hearing officer to aid in proper docketing of motions." Since that date, Celotex has filed four motions or requests on December 19, December 20, and January 3 that either contained no such delineation or specifically include both the Board and its hearing officer. To facilitate operations in the Clerk's office and in aid of docketing the parties are hereby ordered to clearly state in any motion or request for

action whether such pleading is directed to the Board or to the hearing officer. (Order of January 10, 1985)

As the October 25, Celotex Motion is in clear violation of the January 10 Order, the Board will not consider it. Celotex is free to refile this motion or to file any other motion clearly directed to the Board and seek appropriate relief.

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 21st day of November, 1985, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

