

ILLINOIS POLLUTION CONTROL BOARD
December 2, 1982

UNITY VENTURES,)
)
) Petitioner,)
)
) v.) PCB 80-175
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY, and COUNTY OF DU PAGE,)
)
) Respondents.)

ORDER OF THE BOARD (by I. Goodman):

On October 5, 1982 the Board ordered Unity Ventures (Unity) to respond to long outstanding discovery requests no later than October 12, 1982 and that any additional discovery was to be completed within forty-five days of that Order. On November 12, 1982 subsequent to pleadings filed by both parties, the Board issued an Order resolving which responses to the Illinois Environmental Protection Agency's (Agency) discovery requests were required from Unity. The Board further ordered that Unity's responses be provided no later than November 19, 1982, the above mentioned forty-fifth day. If Unity failed to comply, that Order stated that sanctions would be imposed. On November 24, 1982 the Agency moved that sanctions be imposed, Unity having failed to comply with the November 12, 1982 Board Order. An affidavit attesting to the same was filed on December 1, 1982.

On December 1, 1982 Unity filed a combined Motion for Reconsideration of the Board's November 12, 1982 Order and a Response in Opposition to the Agency's Motion for Sanction. Unity reiterated therein that the discovery motions are more properly before the Board's hearing officer. This is not a new argument and was adequately addressed by the Board in its November 12th Order. Unity further argues that insufficient time was allowed for compliance with the Board's Order. Although possibly persuasive, three factors counteract that argument: Unity's requests for additional time came after twelve days had elapsed from the date compliance was required and then only after the Motion for Sanctions had been filed; Unity requests two months to comply due to the holidays; and the attached addendum which lists numerous pleadings, time extensions and Board orders which were intended to lead finally to a decision on the variance petition. The Board can only interpret Unity's actions as intentionally dilatorious.

Pursuant to Section 37 of the Environmental Protection Act (Ill. Rev. Stat. 1982, ch. 111½, §1037) (Act) the Agency has a duty to investigate variance petitions and make a recommendation as to the disposition of the petition to the Board. Pursuant to Section 35 of the Act (Ill. Rev. Stat. 1982, ch. 111½, §1035) variance can only be granted upon an adequate showing of arbitrary or unreasonable hardship should Petitioner have to comply with Board regulations or Order. The Agency's discovery requests inquire about this issue, so that it can make an informed recommendation to the Board and representation of its position at hearing. Unity's continued refusal to respond to the Agency's discovery requests and Board Orders interferes with the Agency's ability to fulfill its statutory duty. Unity's right to petition for variance cannot take precedence over the statutory obligation of the Agency. The Agency's Motion is granted.

The following sanctions are imposed pursuant to 35 Ill. Adm. Code 107.101(c):

a) No issues involving ownership of the property as alleged in the petition may be raised by Unity at hearing. Unity shall be barred from making any claim as to the ownership of the property and all reference to ownership of the property shall be stricken from Unity's Petition for Variance.

b) No issues involving expenditure of funds for land development costs, land improvements costs, interest and real estate taxes for Hobson Green Units One, Two or Three may be raised by Unity at the Hearing. Unity shall be barred from making any claim concerning any expenditure of funds for such items and all references to such expenditures shall be stricken from Unity's Petition for Variance.

c) No issues involving the past or present holder of the permit which is the subject of this petition may be raised by Unity at the hearing. Unity shall be barred from making any claim as to the ownership of that permit and all references to such permit shall be stricken from Unity's Petition for Variance.

d) No issues concerning Unity's plans for development of the property may be raised by Unity at the hearing. Unity shall be barred from making any claim concerning the presence of any plans for development and all references to such plans for development shall be stricken from Unity's Petition for Variance.

It is noted that on November 18, 1982, prior to filing the Motion for Sanctions, the Agency filed a Motion to Modify the Board's November 12, 1982 Order in this matter. The pleading filed on December 1, 1982 by Unity included a Response to this motion. With today's ruling, both are mooted.

IT IS SO ORDERED.

ADDENDUM

<u>Date</u>	<u>Pleading</u>	<u>Party</u>
06/03/82	Remand Mandate	
06/04/82	Motion for Order	Respondent
06/09/82	Addendum to Motion for Order	Respondent
06/10/82	Board Order to Set Hearing	
06/11/82	Interrogatories, First Set	Respondent
	Request to Produce Documents	Respondent
	Request for Admissions	Respondent
	Request for Admissions of Genuineness of Documents	Respondent
06/16/82	Motion for Additional Time	Petitioner
06/17/82	Response to Motion for Additional Time	Respondent
06/25/82*	Responses due to Requests filed 06/11/82 Additional time granted by hearing officer.	
06/28/82	Agency's Recommendation	
07/01/82	Board Order (Denying 06/04/82 Motion for Order)	
07/21/82*	Responses due to Requests filed 06/11/82	
07/22/82*	Additional time granted by hearing officer pursuant to Petitioner's Oral Motion at pre-hearing conference.	
07/22/82	Request for Witness List	Respondent
08/09/82	Hearing Officer Order Setting Hearing	
08/10/82*	Responses due to Requests filed 06/11/82	
08/10/82	Response to Request for Admissions and Genuineness of Documents	Petitioner
08/10/82*	Additional Time to Respond to Remaining Requests granted by hearing officer	
08/20/82	Leave to File and Motion to Strike	Respondent
08/25/82*	Request for Additional Time to Respond until 08/31/82--granted by hearing officer until 09/17/82	
08/31/82	Response to Motion to Strike	Petitioner
09/02/82	Board Order denying Motion to Strike	
09/13/82	Affidavit accompanying Response to Request for Admissions filed 08/10/82 (as ordered by Board Order of 09/02/82)	
09/16/82*	Motion for Additional Time to Respond	Petitioner
09/17/82*	Responses due	
09/21/82	Response in Opposition of Additional Time	Respondent
09/21/82	Motion for Reconsideration of 09/02/82 Board Order	Respondent
09/23/82	Response in Opposition to Motion for Reconsideration	Petitioner
10/05/82	Board Order reaffirming 09/02/82 denial of Motion to Strike; Order responses by 10/12/82 and hearing to be set	

<u>Date</u>	<u>Pleading</u>	<u>Party</u>
10/12/82	Motion to Strike Interrogatories	Petitioner
10/12/82	Motion to Strike Production of Documents	Petitioner
10/12/82	Response to Request for Witness List	Petitioner
10/18/82	Response to Motions to Strike	Respondent
10/18/82	Motion to Complete Discovery and Motion for Sanctions	Respondent
10/18/82	Motion to Set Hearing Date	Respondent
10/22/82	Motion to Compel Responses	Respondent
11/03/82	Motion for Leave to File	Petitioner
11/03/82	Responses in Opposition to Motion to Compel Discovery	Petitioner
11/12/82	Board Order ordering Responses by 11/19/82	
11/18/82	Motion to Modify	Respondent
11/19/82	Board's due date	
11/24/82	Motion for Sanctions	Respondent
12/1/82	Motion for Reconsideration, Response to Motion for Reconsideration and in Opposition to Motion for Sanctions	Petitioner
12/2/82	Board Order imposing Sanctions	

*See September 21, 1982 Motion in Opposition to Request for Additional Time

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2nd day of December, 1982 by a vote of 4-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board