

ILLINOIS POLLUTION CONTROL BOARD  
October 2, 1980

CELOTEX CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 78-177
	)	
ILLINOIS ENVIRONMENTAL PROTECTION	)	
AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by I. Goodman):

Celotex' September 23, 1980 motion to reconsider the Board's Order of August 21, 1980 is granted.

The Order of August 21, 1980 is amended to read "June 7, 1979" wherever the date "July 7, 1979" appears. This amendment is necessary because of typographical error in that August 21, 1980 Order.

In reconsidering the substance of Celotex' latest arguments to the Board and the Respondent Illinois Environmental Protection Agency in this matter (see also Celotex v. IEPA, PCB 79-145), the Board finds them to be totally without merit.

Celotex is incorrect when it states that the Board never reviewed the May 17, 1979 Order of the Hearing Officer. (See the Board Order of June 7, 1979.)

Celotex is incorrect in its assertion that a July 2, 1980 motion to appeal a December 10, 1979 Order of the hearing officer was a timely protest.

Celotex' plea that the Board erroneously affirmed the hearing officer's December 10, 1979 denials of discovery depositions of some 12 Agency witnesses is of no merit. The Board found that the hearing officer did not abuse his discretion nor visit material prejudice upon Petitioner in denying these depositions and ordering the submittal of affidavits in lieu thereof.

Celotex' last argument, that the Board did not address the hearing officer's rulings made during depositions or his rulings denying the discovery of all "but the last in a series of permit applications ... (all of [which] having been included by the Agency in the record ... in this proceeding)," is without merit.

As to the former ruling, Celotex' July 2, 1980 motion, par.15, reads in part: "Celotex requests that the Board, in reversing the Hearing Officer's Orders dated November 20, 1979 and December 10, 1979, thereby also undo the additional mischief done by the Hearing Officer's many erroneous rulings made during the aforesaid Miller and Telford depositions ... [which mischief, the pleading continues] "constitutes a denial of important Celotex discovery rights," e.g., "discovery into what information the Agency relied upon in its consideration of a series of "Celotex permit applications [1973-1978]" (see par.16). The Hearing Officer found that the 1973 and 1974 Agency proceedings were not pertinent to this proceeding, which proceeding "would have to rise or fall on [its] own facts" (see par.16). This finding was neither unreasonable nor an abuse of discretion, nor did it materially prejudice Celotex. As the August 21, 1980 Order found, the previous permit proceedings can be, at most, only circumstantially relevant to the 1978 facts and circumstances.

As to the latter (discovery of any but the last of the 1973-1978 permit applications), Celotex itself states that "all of the applications [were] included by the Agency in the record ... in this proceeding." Discovery of documents in the record is unnecessary; inasmuch as Celotex seeks "the information the Agency relied upon in its consideration of [these] applications," the previous paragraph herein addresses that matter.

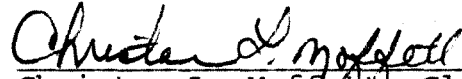
Finally, the Board addresses the "vexaciousness" of "the lip service given by the Board in its August 21, 1980 Order to complying with the law, viz [Oscar Mayer & Co. v. IEPA, PCB 78-14; Fox Valley Grease Co., Inc. v. PCB, et al., 76 Ill.App.3d 188 (2d Dist.1979); §§ 5,32, and 40 of the Illinois Environmental Protection Act; and Amendments 5 and 14 of the U. S. Constitution]." (Paragraph D.) Whether Oscar Mayer is "tested in the Illinois Court system" or not, it remains Board policy. The Board did not act "in derogation" of Fox Valley by upholding the findings of the hearing officer. The Board did not act "contrary to the [5th and 14th Amendment] mandates of due process by upholding the findings of the hearing officer" (Celotex' original July 2, 1980 plea being that these amendments "provide due process guarantees for persons threatened by administrative action").

Celotex is ordered to comply with the August 21, 1980 Order of the Board mandating the completion of all hearings by October 10, 1980. The Board's findings in that Order that both parties are fully able to prove their respective cases is reiterated.

IT IS SO ORDERED.

Mr. Werner abstains.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 2<sup>ND</sup> day of October, 1980 by a vote of 4-0.



---

Christan L. Moffett, Clerk  
Illinois Pollution Control Board