

ILLINOIS POLLUTION CONTROL BOARD
March 2, 1978

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 77-157
)
)
 DECATUR SANITARY DISTRICT,)
 A.E. STALEY MANUFACTURING COMPANY, a)
 Delaware corporation, and)
 ARCHER-DANIELS-MIDLAND COMPANY, a)
 Delaware corporation,)
)
 Respondents.)

INTERIM OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

On November 23, 1977, the Board granted the Illinois Environmental Protection Agency (Agency) leave to file an Interlocutory Appeal regarding two Orders of the Hearing Officer herein. On September 19, 1977, the Hearing Officer ordered the Agency to answer the Interrogatories filed by Respondent Archer-Daniels-Midland Company (ADM), and on September 29, 1977, the Hearing Officer ordered the Agency to completely answer Interrogatories 2 through 8 of those propounded by A.E. Staley Manufacturing Company (Staley). The Board has received and considered briefs on the issues submitted by the Agency, Staley, and ADM.

In its November 23, 1977 Order granting the Agency leave to file the Interlocutory Appeal, the Board ordered the Agency to specify the issues upon which its appeal was based. In response, the Agency presented the following issues: (1) whether Respondent Staley's interrogatory #2 is beyond the scope of discovery, (2) whether the documents submitted by the Agency properly answer Respondent Staley's interrogatories 3 through 8, (3) whether Respondent Staley's interrogatories must be answered under oath by an officer or employee of the Agency, and (4) whether Respondent ADM's interrogatories 2, 3, 4, 7, 8, 11, 15, and 16 are beyond the scope of discovery.

With regard to issue 3, the Agency states in its brief that it has no objection to verifying its answers to Staley's interrogatories by an authorized officer/employee of the Agency. Since there is no longer a controversy concerning this issue, the Board finds it moot and will therefore consider it no further.

Staley's Interrogatory #2 states:

- "2. For each expert witness identified in answer to interrogatory #1, state in detail each and every opinion the expert will advance on behalf of the Agency and state in detail all facts upon which the opinion is based."

The Agency responded to the second part of the question by submitting a mass of documents to Staley and objected to the first part of the question as being beyond the scope of discovery. As authority for its objection, the Agency cites the Second District Appellate Court decision in Illinois Building Authority v. Dembinsky, 90 Ill.App.2d 451 (1967). In Dembinsky, the Court held that a condemning body was not entitled to discover during a deposition the landowner's opinion testimony as to the highest and best use of the land. The Agency suggests that this case stands for the proposition that discovery of expert opinion testimony is beyond the allowable scope of discovery. The Agency furthermore contends that the interrogatory in dispute does not call for the discovery of information already reduced to writing and would require the Agency to prepare and submit its expert testimony far in advance of hearing. The Agency suggests that Staley depose the experts identified in the answer to the first interrogatory rather than seek the information through this broad interrogatory.

In response, Staley contends that Dembinsky not only turns on a unique fact situation but is no longer the law in the State of Illinois. Staley cites the decision of the Illinois Supreme Court in Department of Transportation v. Western National Bank of Cicero, 63 Ill.2d 179 (1976), in which the Court upheld the trial court's determination that an appraisal report detailing the appraiser's opinions was discoverable in an eminent domain proceeding. Staley furthermore alleges that the direct deposition of Agency experts is unreasonably burdensome and unnecessary.

It is the Board's policy that, provided it is not being pursued in order to cause unnecessary delay, discovery in enforcement cases should be as wide as possible with respect to the facts

of the case in order to allow the issues to be developed as fully as possible by the parties. This policy is consistent with that of the Illinois courts. Monier v. Chamberlain, 35 Ill.2d 351 (1966). The Board, therefore, finds that it is reasonable to require the Agency to reveal the opinions of its expert witnesses and submit the factual bases for those opinions without requiring Respondent to depose each expert separately. Furthermore, as will be discussed below, we find that, if documents are produced as part of the answer to an interrogatory, it is reasonable to expect the Agency to specify which document is presented in substantiation of a particular opinion.

In answer to Staley's Interrogatories 3 through 8, the Agency has presented some 400 pages of documents, referring in addition to the list of experts produced in answer to Interrogatory #1. Staley objects to this form of answer arguing that supplying a mass of documents in lieu of a specific answer is not responsive to the discovery request. The Agency points to Supreme Court Rule 213(d), which states, in effect, that if an answer to an interrogatory may be obtained from documents, it is sufficient answer to specify those documents and to afford the party serving the interrogatory reasonable opportunity to inspect the documents. Staley argues the rule is limited to instances where an answer may be obtained from the documents and the answering party specifies which documents are responsive to the particular interrogatory. The Board finds that the Agency's production of an incoherent mass of documents as its answer to Interrogatories 3 through 8 is not responsive. If an answer to an interrogatory is clearly contained in a document, either totally or partially, there can be no objection to the use of the document in the answer. The key word here is "clearly". If the Agency is going to use documents in its answer, it must indicate which document is responsive to a particular interrogatory. In addition, if the answer to the interrogatory is not obvious upon a reading of the document, it is reasonable to expect that the document will be accompanied by an explanatory statement. It is the Board's intention to make a determination based upon the fully developed facts of the case. It cannot do so unless both parties are fully informed as to these facts.

Having disposed of the third issue, above, the Board now considers ADM's Interrogatories 2, 3, 4, 7, 8, 15 and 16. The Agency objected to all of the above listed interrogatories as being beyond the scope of discovery in that they called for legal conclusions or opinions. The Board agrees. The Board finds that the interrogatories in question either call for legal conclusions or are irrelevant. Listing of statutes or Board Rules and

Regulations not involved in the complaint adds nothing to this proceeding. The Board will therefore overrule the Hearing Officer's Order of September 19, 1977 insofar as it requires the Agency to answer Interrogatories number 2, 3, 4, 7, 8, 11, 15 and 16, as propounded by ADM on August 24, 1977.


ORDER

1. The Order of the Hearing Officer of September 27, 1977 is hereby affirmed, and the Illinois Environmental Protection Agency shall answer the Interrogatories filed by A.E. Staley Manufacturing Company consistent with the Opinion herein.

2. The Order of the Hearing Officer of September 19, 1977 is hereby overruled to the extent that it orders the Illinois Environmental Protection Agency to answer Interrogatories numbers 2, 3, 4, 7, 8, 11, 15 and 16 as propounded by Archer-Daniels-Midland Company on August 24, 1977.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Interim Opinion and Order were adopted on the 2ND day of March, 1978 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board