

ILLINOIS POLLUTION CONTROL BOARD
August 21, 1980

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

ORDER OF THE BOARD (by I. Goodman):

Petitioner on July 2, 1980 filed this motion to allow appeal of the hearing officer's Orders of November 20, 1979 and December 10, 1979. On July 10, 1980 the Board allowed the appeal. The orders are hereby affirmed.

Petitioner specifically seeks to overturn two of the hearing officer's discovery-related Orders. The first, dated November 20, 1979, regulated the course of discovery and ordered that certain discovery and responses thereto conclude by given dates. Such Order was issued in response to a motion by Respondent to close discovery and to set a hearing date. The Board finds that whatever material prejudice to Petitioner which could have arisen from the Order closing discovery and setting a hearing date was waived knowingly and voluntarily by Petitioner when six days later (November 26, 1979) it complied with that very Order without appealing same to the Board pursuant to Procedural Rule 308(f).

On November 26, 1979 Petitioner also filed a motion to compel certain Agency witnesses to answer questions posed at depositions and to compel Agency witness Zamco to appear at and submit to a deposition. The hearing officer on December 10, 1979 denied this motion, and Petitioner now appeals his rulings pursuant to Procedural Rule 308(f). All rulings are affirmed. Applicable discovery-related standards have not changed since the Board's Order of July 7, 1979 affirming the hearing officer's original May 17, 1979 rulings. Specifically:

1. The ruling denying Petitioner's motion "to compel Agency witnesses King, Telford and Miller to answer the deposition questions identified in Appendix 1 hereto, and other related questions," and "to compel Agency witness Zamco to submit to the taking of his deposition" is affirmed. (Hearing Officer Order of December 10, 1979, Paragraph 1.) These depositions were taken on April 23, 1979. Although Petitioner filed a motion on April 26, 1979 to compel answers to questions posed at that deposition, this motion was denied by the hearing officer on May 17, 1979, which Order was on July 7, 1979 affirmed by the Board.