

ILLINOIS POLLUTION CONTROL BOARD  
February 7, 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 January 29, 1985, Celotex filed a Motion for Continuance of Hearing, with supplement on January 31. That motion is denied. This case is six years old and the Board intends that it proceed expeditiously.

Celotex's February 5, 1985 motion for leave to file depositions is granted.

On January 31, 1985, Celotex filed a Motion to Require Hearing Officer to Disclose Ex Parte Communications. That motion is denied. First, the Board notes that Hearing Officer's have no authority to decide the merits of pending cases; that obligation, by statute, remains with the Board. Second, the Board notes that most hearing officer cases have statutory deadlines for decision which require the hearing officer to actively and diligently pursue the parties attorneys for rapid scheduling of hearing and pre-hearing matters. Third, Board Hearing Officers are part-time employees with no "court room" or clerk; Hearing Officers are required to hold hearings in locations throughout the state and may need to contact the local attorney to find what facilities are available in the area. Most importantly, the Celotex motion neither claims nor provides factual support for any ex parte communications by the Hearing Officer concerning the merits of this case.

On January 30, 1985, Celotex filed a Motion to Stay Certain Sections of Hearing Officer Orders. Celotex asserts that the hearing officer orders provide inadequate protection from public disclosure of the discovery document in question. That motion is denied; the Board reviewed the Hearing Officer's protective orders and found them adequate in its January 24, 1985 Order. The Board notes that the document in question has been ordered produced by the Board in Orders of November 8, 1984 and December 6, 1984. The present Celotex motion implies that the document in question has not yet been

produced. If true, Celotex is in violation of two Board Orders, and the appropriate remedy is sanctions.

The Board notes that Celotex has improperly described the present situation. Celotex states at paragraph 12, "As the matter now stands, the public has no right of access to the Celotex report in question...." This is incorrect.

In its November 8, 1984 Order, the Board stated, "the Clerk of the Board is directed to release the material to the Board's public files, after 35 days." Upon reconsideration the Board again ordered disclosure, but provided "The Board's November 8 Order was a Final Order on the issue of non-disclosure under Section 7 of the Act and the 35 day time clock runs from that date. However, under Section 103.240, Celotex's 35 day clock starts anew as of today's Order." The 35 day clock has run, the Clerk has been directed to disclose the material. No motion for stay of the final order was filed by Celotex; no order staying that command was received from an appellate court. To the extent Celotex's present motion may be construed as a request for stay of disclosure it is denied. The Board has previously held that the Act requires disclosure, any stay would frustrate that legislative command. Celotex's relief, if any, must come from the appellate courts.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 7th day of February, 1985, by a vote of 5-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board