

ILLINOIS POLLUTION CONTROL BOARD  
August 6, 1987

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 85-53  
 )  
CONTINENTAL GRAIN COMPANY )  
(Hennepin), )  
 )  
Respondent. )

ROY HARSCH, ESQ. OF MARTIN, CRAIG, CHESTER AND SCHEINER,  
APPEARED ON BEHALF OF RESPONDENT.

JOSEPH F. MALONIA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF  
OF COMPLAINANT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a April 19, 1985 complaint filed by the Illinois Environmental Protection Agency against Continental Grain Company (Continental). The Complaint alleges that Continental at its Hennepin, IL grain loading facility caused, threatened, or allowed violations of Sections 9(a) and (b) of the Illinois Environmental Protection Act (Act) and 35 Ill. Adm. Code 201.143 beginning at least on March 6, 1980 and continuing up to the filing of the Complaint. The Complaint also alleges violations of Section 9(a) of the Act and 35 Ill. Adm. Code Section 212.462(d)(3)(A) since at least August 31, 1979 and continuing until the filing of the Complaint.

Hearing on this matter was held on June 24, 1987 in Hennepin, IL. At hearing, the parties submitted a Stipulation and Proposal for Settlement (Stipulation). The Stipulation is attached and adequately addresses the facts in this matter. Accordingly, this opinion will not contain the customary discussion of the issues.

The Board notes, though, that according to the Stipulation, Continental "is not admitting its liability for violations alleged in the Complaint". Also, the Stipulation states that Continental has received a permit to operate a barge loading spout tip aspiration system and is currently in compliance with the regulations.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the Stipulation and Proposal for Settlement acceptable under 35 Ill. Adm. Code

103.180. Accordingly, the Board orders Continental to comply with the Order set forth herein.

This Opinion and Order constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

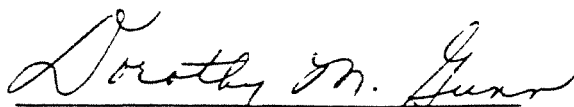
- 1) The Board hereby accepts the Stipulation and Proposal for Settlement executed by Continental Grain Company and the Illinois Environmental Protection Agency concerning Continental's Hennepin facility and filed with the Board on July 10, 1987. The Stipulation and the Proposal for Settlement is attached hereto.
- 2) Continental shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the sum of \$10,000 (Ten Thousand Dollars). The sum shall be paid within 60 days of the date it receives notice of this order. The payment shall be mailed to:

Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, IL 62706

- 3) Continental waives its right to have any unused portion of said payment returned to Continental.
- 4) The terms and conditions of the Stipulation and Proposed Settlement are incorporated into and made a part of this Order.

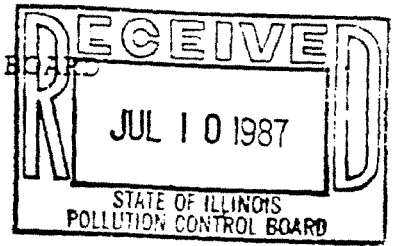
IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6<sup>th</sup> day of August, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
PUTNAM COUNTY



ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
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Complainant, )  
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v. ) PCB 85-53  
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CONTINENTAL GRAIN COMPANY )  
(Hennepin), )  
 )  
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STIPULATION AND PROPOSAL FOR SETTLEMENT

The parties in the above-styled case, believing that litigation of the matter would be neither in their best interests nor in the best interests of the public, have agreed to a settlement under the terms and conditions set forth below. This Stipulation and Proposal for Settlement is made and agreed upon and submitted to the Illinois Pollution Control Board ("Board") for the purposes of settlement only, upon the condition that the Board approve it in its entirety. The terms of this Stipulation and Proposal for Settlement shall be binding upon the Complainant and Respondent, and their assigns and all successors in interest. In the event that the Board does not approve this Stipulation and Proposal for Settlement in its entirety, it shall be null and void and of no effect in this or any other proceeding. In entering into this Stipulation and Proposal for Settlement, Respondent is not admitting its liability for the violations alleged in the Complaint, nor any of the allegations of fact made in that Complaint, except to the extent those allegations of fact

are stipulated to below. Further, this Stipulation and Proposal for Settlement is not to be used for any other purpose or in any other proceeding, is not an admission of wrongdoing on Respondent's part and is not admissible by any party in any other proceeding.

Subject to the foregoing understanding and agreement, the parties stipulate as follows:

1. Continental Grain Company ("Continental"), a Delaware corporation licensed to do business in Illinois, operates a grain loading facility on the Illinois River in Hennepin, Putnam County, Illinois, at which grain from the surrounding area is loaded into barges.

2. Construction of this facility was commenced prior to April 14, 1972.

3. On December 7, 1976, Illinois Environmental Protection Agency ("IEPA") issued an operating permit for this facility. This permit was to expire on November 30, 1979.

4. This permit was issued on the basis that the facility had an annual grain through-put ("AGT") of 5,000,000 bushels.

5. On August 31, 1979, Continental sought a renewal of its operating permit and indicated an increase in AGT to 8,580,000 bushels.

6. Continental, prior to the commencement of this suit, had not installed equipment on the loading spout used to load barges at the facility which was capable of capturing particulate matter emissions generated in the course of loading said barges in an induced air draft stream, which stream was ducted through

air pollution control equipment that had a rated and actual particulate removal efficiency of not less than 90% by weight.

7. The operating permit for this facility expired on November 30, 1979. Continental applied for renewal of the operating permit on August 31, 1979, and again on December 17, 1979. The IEPA denied these applications on November 27, 1979, and March 6, 1980, respectively because the IEPA believed that the AGT at the Hennepin facility exceeded the 30% rule, and that, therefore, the facility was subject to the barge loading spout tip aspiration requirement contained in 35 Ill. Adm. Code Sec. 212.462(d)(3)(A).

8. On July 20, 1984, Continental filed a variance petition in which it asked the Board to find that the tip aspiration requirement contained in 35 Ill. Adm. Code Sec. 212.462(d)(3)(A) was invalid as applied to the Hennepin facility, find that Continental was in compliance with the rule or, in the alternative, grant Continental a five year variance from the rule.

9. In the meantime, on April 30, 1985, Continental applied for an operating permit for the Hennepin facility except for the barge loading spout equipment. The IEPA granted this permit on May 31, 1985 (Application No. 76050007, I.D. No. 155010AAH).

10. As of the time this enforcement case was filed, the Hennepin facility was in compliance with all provisions of Title II of the Environmental Protection Act and the Board's air regulations relating to grain handling operations except those alleged in the complaint. As to these, Continental had, prior to

the initiation of this enforcement action, filed the petition for variance described above.

11. As part of an agreement to settle this enforcement case and Continental's variance petition, Continental, on August 16, 1985, filed an application to construct a barge loading spout tip aspiration system and thereby bring the Hennepin facility into unquestioned compliance with 35 Ill. Adm. Code Sec. 212.462(d)(3)(A).

12. The IEPA granted this permit (Application No. 85080041, I.D. No. 155010AAH) on September 26, 1985, and on November 11, 1985, the State moved to dismiss Continental's variance petition. The Board, on December 20, 1985, granted the State's motion over Continental's objection because it found that installation of the tip aspiration system would bring the Hennepin facility into compliance with 35 Ill. Adm. Code Sec. 212.462(d)(3)(A) and that, therefore, a variance was unnecessary.

13. Continental installed the tip aspiration system and, on March 19, 1986, again applied for renewal of its operating permit. The IEPA granted this permit (Application No. 76050007, I.D. No. 155010AAH) on April 10, 1986.

#### PROPOSAL FOR SETTLEMENT

Continental agrees to pay \$10,000 to Environmental Protection Trust Fund within 60 days of the date it receives notice that the Board has approved this Stipulation and Proposal for Settlement. Said payment shall be made by certified check or money order, payable to the Environmental Protection Trust Fund, and mailed to:

Fiscal Services Division  
Illinois Environmental Protection Agency  
2200 Churchill Road  
Springfield, Illinois 62706

Continental waives its right to have any unused portion of said payment returned to Continental.

WHEREFORE, Complainant and Respondent jointly request that the Board accept and adopt this Stipulation and Proposal for Settlement.

CONTINENTAL GRAIN COMPANY  
DATED: June 8 1977 BY: [Signature]

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
DATED: 6/20/77 BY: [Signature]  
Joseph E. Svoboda  
Manager of Enforcement

ILLINOIS ATTORNEY GENERAL  
DATED: 7-7-87 BY: [Signature]  
Robert V. Shuff, Jr.  
First Assistant Attorney General

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