ILLINOIS POLLUTION CONTROL BOARD
August 6, 1987

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Complainant,	)	
v.	)	PCB 85-102
CONTINENTAL GRAIN COMPANY (Beardstown),	)	
Respondent.	)	

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

JOSEPH F. MADONIA, 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 July 10, 1985 complaint filed by the Illinois Environmental Protection Agency against Continental Grain Company (Continental). The Complaint alleges that Continental at its Beardstown, IL grain loading facility caused, threatened, or allowed violations of Section 9(a) of the Illinois Environmental Protection Act (Act) and 35 Ill. Adm. Code Sections 212.462(d)(3)(A) and 212.462(e) beginning at least on July 1, 1983 and continuing up to the filing of the Complaint. The Complaint also alleges violation of Section 9(b) of the Act and 35 Ill. Adm. Code Section 201.144 since at least June 22, 1984 and continuing until the filing of the Complaint.

Hearing in this matter was scheduled for July 2, 1987 at 10:00 a.m. The hearing officer, counsel for the parties, and representative of the Agency were present. The court reporter did not show up. The parties filed the stipulation. No members of the public attended, although a news reporter appeared at about 11:15 a.m. and examined the memorandum and stipulation. (Hearing Officer letter of July 3, 1987).

The Board finds that in this particular instance the described proceeding substantially complies with the requirement that a hearing be held. This matter is essentially identical to four other proceedings involving the same parties and settlement agreements. Although the hearing was properly noticed, no members of the public attended. There were no unresolved issues to argue. In this instance, to require the parties to meet again in the presence of a court reporter to present the stipulation would expend considerable time and money and serve no necessary public or private purpose.

On July 2, 1987, 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 Beardstown 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.

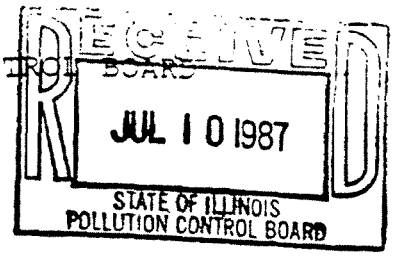
IT IS SO ORDERED.

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

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
CASS COUNTY



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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 liability for the violations alleged in the Complaint, nor any of the allegations of fact made in the

complaint, except as 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.

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 Beardstown, Cass 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 June 29, 1979, the Illinois Environmental Protection Agency ("IEPA") issued an operating permit for this facility, said permit to expire June 21, 1984.

4. This permit was issued on the basis that the facility had an annual grain through-put ("AGT") of 9,727,000 bushels.

5. The facility had an AGT for Fiscal Year 1983/1984 of 15,518,667 bushels.

6. Continental, prior to August, 1985, 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 June 21, 1984. Continental sought renewal of this permit on April 9, 1984. IEPA denied renewal of this permit on May 22, 1984, because it believed that the AGT at the Beardstown 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 (PCB 84-101) 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 Beardstown 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, Continental applied for and on May 31, 1985, the IEPA granted an operating permit for the Beardstown facility except for the barge loading spout equipment. (Application No. 74080042, I.D. No. 017802AAC).

10. At the time this enforcement action was commenced, Continental 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 the enforcement action, filed the petition for variance described above.

11. On August 16, 1985, as part of an agreement to settle this enforcement case and the variance petition, Continental applied to the IEPA for a permit to construct a barge loading spout tip aspiration system for the Beardstown facility and thus bring the facility into unquestioned compliance with 35 Ill. Adm. Code Sec. 212.46(d)(3)(A). The IEPA granted this permit on September 26, 1985.

12. On December 20, 1985, the Board, on the IEPA's motion and over Continental's objection, dismissed Continental's variance petition because it found that construction of the tip aspiration system would result in compliance with 35 Ill. Adm. Code Sec. 212.462(d)(3)(A) and, as a result, a variance would be unnecessary.

13. Continental installed the tip aspiration system and on March 19, 1986, applied for an operating permit for its barge loading operations. The IEPA issued this permit on April 10, 1986.

PROPOSAL FOR SETTLEMENT

Continental agrees to pay $10,000 to Environmental Protection Trust Fund within 60 days of the date the Board approves 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 3 '87 By: _____

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

DATED: 6/29/87 By: _____
Joseph E. Svoboda
Manager of Enforcement

ILLINOIS ATTORNEY GENERAL

DATED: 7-7-87 By: _____
Robert V. Shuff, Jr.
First Assistant Attorney General

(GRAIN3.doc)