

ILLINOIS POLLUTION CONTROL BOARD  
November 20, 1986

SOURS GRAIN COMPANY, )  
 )  
 Petitioner, )  
 )  
 v. ) PCB 85-190  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. D. Dumelle):

This matter comes before the Board upon two filings dated November 12, 1986, on behalf of Sours Grain Company (Sours): one requesting that certain documents be treated as confidential pursuant to 35 Ill. Adm. Code 101.107, the other requesting an emergency continuance of hearing. The Illinois Environmental Protection Agency (Agency) has filed no response. On November 20, 1986, Sours filed a Supplemental Memorandum in support of the continuance and a letter clarifying that in its confidentiality motion, it is not at present requesting that any determination be made. Therefore, no action other than the protection of the documents need be taken at this time.

The motion for continuance is hereby denied. Sours argues that the "Agency's refusal to respond to discovery, the Hearing Officer's attempt to rush to hearing, the large volume of business handled by Sours during January and February, and the inability of Sours' counsel to attend the hearing now scheduled" requires continuance.

First, discovery commenced in this matter no later than January 27, 1986, and, therefore, has been ongoing for a period of nearly 10 months at a minimum in a case which was intended to be decided in three months. A cut-off date for discovery has been established and remaining problems can be dealt with by appropriate motions.

Second, at hearing, or thereafter, the allegation that the hearing officer is rushing this matter to hearing is difficult to accept. The variance petition was filed on November 7, 1985, over a year ago in a case with a 90-day decision deadline. That deadline evidences legislative intent not only to assure a timely decision for the petitioner, but also for an expeditious decision to protect the environment. Hearing was originally scheduled for April 7, 1986, and again for September 10, 1986, and several pre-hearing conferences have been held. A December, 1986, hearing

date hardly appears to demonstrate that Sours has been "rushed" to hearing.

Third, while it may be unfortunate that hearing is scheduled during Sours' busy season, that is not a sufficient reason for delaying hearing for an additional two months. Sours has come before this Board asking to be allowed to remain in noncompliance with the air pollution regulations, presumably a substantial benefit to it. The Board does not find it unreasonable that Sours may suffer some inconvenience in attempting to gain this benefit.

Fourth, while the Board does make substantial attempts to accommodate the schedules of the parties, it cannot reschedule hearings whenever a conflict arises. It is a fact of an attorney's life that conflicts arise and accommodations must be made. With respect to the one date on which there is a direct conflict, December 9, 1986, the R86-36 hearing was scheduled prior to hearing in this matter and Sours should have been prepared at the October 27, 1986, pre-hearing conference to inform the hearing officer that such a conflict existed. Sours should have realized that the scheduling of a hearing date might well be a subject at that pre-hearing conference. Furthermore, the Agency alleges in its November 12, 1986, Response to motion for continuance, accompanied by a supporting affidavit, that the hearing dates "were chosen by agreement between this hearing officer, Agency counsel and counsel for Petitioner during a telephone conference on a date sometime around the first of September, 1986," that several attempts were made to consult Sour's attorney regarding hearing dates for R86-36, and that confirmation of the acceptability of those dates was obtained from a member of the firm representing Sours Grain. The Board cannot find that the hearing officer acted improperly in imposing the hearing schedule.

Fifth, some deference is due the hearing officer in matters such as this. The hearing officer has been actively involved in the discovery disputes and in establishing the schedule for this proceeding. The Board has not. Presumably, the hearing officer has considered all of the matters which have now been brought before the Board for resolution in the overall context of his familiarity with the overall proceeding. The Board will not lightly disturb his ruling and Sours has not presented sufficiently compelling arguments in this case to do so.


Finally, the Board notes that this ruling may depart to some degree from its historical practice of more freely granting continuances. However, there is good reason for doing so. The Board has found that proceedings before it have become increasingly prolonged, especially during the discovery phase, and that cancellations of hearing have become increasingly expensive since the Board determined that rescheduled hearings

must have public notice republished. Thus, the Board has determined that it must maintain tighter control over the progress of its proceedings.

IT IS SO ORDERED.

Board Member J. Anderson dissents.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20~~th~~ day of November, 1986, by a vote of 5-1.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board