

ILLINOIS POLLUTION CONTROL BOARD

October 19, 1983

CONTINENTAL GRAIN COMPANY,)
)
) Petitioner.)
)
) v.) PCB 79-167
)
) ILLINOIS ENVIRONMENTAL)
) PROTECTION AGENCY,)
)
) Respondent.)

MR. GREIG R. SIEDOR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY;

MR. ROY M. HARSCH, MARTIN, CRAIG, CHESTER & SONNENSCHNEIN, APPEARED ON BEHALF OF THE CONTINENTAL GRAIN COMPANY.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle)

This matter comes before the Board upon an August 17, 1979 operating permit appeal filed on behalf of the Continental Grain Company (Continental). On June 5, 1979, Continental requested that the Illinois Environmental Protection Agency (Agency) issue a permit to operate a grain elevator located in St. Clair County. The Agency denied that request on July 3, 1979. It is that denial which is at issue here. Hearing was held on January 13, 1983, at which the parties, but no members of the public, appeared. Continental presented only one witness, Richard Kobetz, and the Agency presented none.

Continental owns and operates a grain elevator located in the City of East St. Louis for which the operating permit at issue here was requested. The Agency denied that permit on the basis that Continental failed to demonstrate compliance with Section 9(a) of the Illinois Environmental Protection Act (Act) and Rules 203(d)(8)(C)(i)(c), 203(d)(8)(C)(ii)(a)(3), 203(d)(8)(C)(iii)(c) and 203(d)(8)(C)(iv)(c)(2) of Chapter 2 - Air Pollution. Continental argues, however, that Rule 203(d)(8)(D) exempts its East St. Louis facility from those rules since they apply only to grain handling facilities located in Major Population Areas (MPAs).

According to Rule 201, the following townships located in St. Clair county are in an MPA: Stites, Canteen, Centreville, Caseville, St. Clair, Sugarloaf and Stookey. Continental contends that the site is located in East St. Louis Township and is exempt. The Board's decision rests on the single legal issue of whether Continental's facility is located within an MPA.

The Board has previously considered this identical issue in an associated enforcement case (PCB 79-26, 35 PCB 319, September 6, 1979) and Continental has presented nothing to justify reaching a contrary result here. It argues that several rules of statutory construction serve to exclude East St. Louis Township from any MPA and that any attempt by the Board to include it absent a new regulatory proceeding would be a void act.

The Board agrees with the Agency, however, that the rules of construction have been developed so as to discern the intent of the law-making body. The Board holds that its intent in Rule 201 was to include East St. Louis Township as part on an MPA. That such was the intent is made clear from the discussion in the original opinion in support of the grain-handling and grain-drying rules (R72-18, 17 PCB 335, June 13, 1975). There, the Board discusses the need for stringent grain-handling regulations "in areas where the air quality is of concern and where the population is most dense." The Board also discusses the percentage of the population in major metropolitan areas which are also in MPAs. Those discussions and the figures presented only make sense if East St. Louis Township is included in an MPA and was intended to be so included. Further, East St. Louis is completely surrounded by the listed MPA townships (except for that side which borders the Mississippi River) and, apparently, was inadvertently omitted from plat books upon which the Agency relied in proposing these rules (see Cont. Ex. 7). As stated in the PCB 79-26 Opinion, "it would be contrary to the intent of the rule to exclude a region of high population density from the center of the major population area."

The use of township names to denote areas of applicability is perhaps not the best technique. Township boundaries, and even names, can change. There are congressional or survey townships, political townships, and school townships which are often distinct from one another. Despite its shortcomings, the Board in R72-18 determined that a township listing should be used in order to assist in demarcating the affected area. That some difficulty in interpretation has arisen is unfortunate, but for the reasons stated in the Board's PCB 79-26 Order as well as those advanced by the Agency, East St. Louis Township must be considered part of the MPA and Continental must, therefore, show compliance with the grain-handling rules applicable to MPAs in order to be issued an operating permit. It has not done so, and the Agency properly denied such a permit.


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

ORDER

The Illinois Environmental Protection Agency's July 3, 1979 denial of an operating permit applied for by the Continental Grain Company is hereby affirmed.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of October, 1983 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board