ILLINOIS POLLUTION CONTROL BOARD September 6 , 1979

ENVIRONMENTAL PROTECTION AGENCY,)
Complainant,	, ,
V•) PCB 79-26
CONTINENTAL GRAIN COMPANY, a Delaware corporation,))
Respondent.	Ś

ORDER OF THE BOARD (by Dr. Satchell):

This matter comes before the Board upon a motion to strike and dismiss filed by Respondent on July 26, 1979. The amended complaint alleges a violation of Rule 203(d)(9)(B)(iv)(c)(2) of Chapter 2: Air Pollution. This rule applies only to grain handling facilities located in a major population area, which, according to Rule 201, includes the townships of Stites, Canteen, Centreville, Caseyville, St. Clair, Sugarloaf and Stookey in St. Clair County. Respondent has presented an affidavit and exhibits purporting to show that for tax purposes the subject grain elevator is located in East St. Louis Township which is not one of the listed townships. The Environmental Protection Agency in response refers to the testimony and exhibits in R72-18, the proceeding in which the instant rule was adopted, and also to an Atlas and Plat Book of St. Clair Co., Ill., published by the Rockford Map Publishers. This plat book does not show an East St. Louis Township. Apparently a portion of Canteen Township has been excised and a new "co-terminus" township created pursuant to Ill. Rev. Stat. (1977), ch. 139, §127.

East St. Louis Township is a densely populated area surrounded by the named townships and the Mississippi River. The testimony and exhibits in R72-18 show that it was intended to have been included in the major population area. 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.

Chapter 2 does not define township. There are at least three meanings of the word "township" shown in the exhibits. There are congressional townships, local government townships created under Ill. Rev. Stat., ch. 139, §6 and co-terminus townships created under ch. 139, §127. There is nothing in the Environmental Protection Act, Chapter 2: Air Pollution or in Chapter 139: Townships

that requires the Board to specify major population areas according to any one of these schemes. If Chapter 2 contained a delegation of jurisdictional authority to township government, then it would be necessary to be more specific to avoid overlapping jurisdictions. Such is not the case. The intent of the Board was to designate a certain area of high population density in an understandable manner. The question is simply whether the regulation reasonably informed Respondent that it was in a major population area.

Respondent must know that the rule is intended to regulate elevators in regions of high population density and that its elevator is in such a region. Furthermore, Respondent was represented at the hearing through the Grain and Feed Association and is properly chargeable with knowledge of the exhibits and testimony. Moreover, Respondent's application for an operating permit was denied by the Agency on October 21, 1976. Respondent apparently did not raise this issue before the Agency and did not appeal. (Since this case was docketed, Respondent has reapplied for a permit and appealed the denial in PCB 79-167). Respondent waited four months after the original complaint was filed in this proceeding to raise the issue by a motion to dismiss. Respondent has proceeded on the assumption that the elevator was located in a major population area. The regulation was therefore sufficient to actually inform Respondent of the intent.

The motion is denied.

IT IS SO ORDERED.

Mr. Young concurs.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the day of 1979 by a vote of 3-0.

Christan L. Moffet**t./Cle**rk Illinois Pollution **Cont**rol Board