

ILLINOIS POLLUTION CONTROL BOARD

June 12, 1980

MISSISSIPPI RIVER GRAIN ELEVATOR, INC.,)
)
) Petitioner,)
)
) v.) PCB 80-19
)
) ENVIRONMENTAL PROTECTION AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by D. Satchell):

On May 29, 1980 the Environmental Protection Agency (Agency) filed, apparently pursuant to Procedural Rule 333, a motion for reconsideration of the Board's Opinion and Order of May 1, 1980 which granted Mississippi River Grain Elevator, Inc. (Petitioner) a variance. The Agency recommended denial of the petition but did not request a hearing. It now contends that the Board erred by failing to set a hearing upon receipt of the recommendation to deny. However, the Agency had ample opportunity under Procedural Rules 404 and 407 to file, within twenty-one days of the filing of the petition, an objection and request for hearing. Where no hearing is requested it is the Board's long established practice to decide variances on the basis of the facts alleged in the pleadings.

On page three of the recommendation of March 28, 1980 the Agency discusses air quality. Nine numbers are given, apparently total suspended particulate (TSP) concentrations, although this is not stated. Four numbers are given for 1978 and four for 1979. It is not clear what these numbers represent. They could be quarterly averages, annual means from four sampling machines or four representative 24-hour averages. The mean of the 1978 numbers is obviously not the average of the four numbers given. The mean for 1979 is "N.A." Assuming this means "not applicable," there is no explanation of why it is not. The Board assumes the standards given are in micrograms per cubic meter, although this is again not stated. The recommendation gives no indication of whether the primary or secondary TSP standard is applicable or whether the data given show air quality violations. It is not possible for the Board to determine this, based on the information in the recommendation. Assuming the data are representative 24-hour samples, they are well within the primary standard and in the neighborhood of the secondary. The Agency offered no basis for its estimate of Petitioner's emissions. In the absence of any evidence to the contrary, the Board was forced to accept

Petitioner's conclusion that the facility was not causing any air quality problems.

The Agency argues that the grant of the variance was inconsistent with the Clean Air Act. It had an ample opportunity to establish this prior to expiration of the ninety day decision period provided by Section 38 of the Environmental Protection Act. The motion to reconsider is denied.

On May 30, 1980 Petitioner in a letter asked the Board to strike from its Order language to the effect that it not remix grain dust with grain. Petitioner's motion is granted and No. 2 of the Order of May 1, 1980 shall now read: "Petitioner shall take all reasonable measures with its existing equipment to minimize its particulate emissions."

IT IS SO ORDERED.

Mrs. Anderson and Mr. Goodman concur.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 12th day of June, 1980 by a vote of 5-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board