

ILLINOIS POLLUTION CONTROL BOARD
December 17, 1992

OHIO GRAIN COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 90-143
)	(Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent,)	

ORDER OF THE BOARD (by G. T. Girard):

On October 16, 1992, the Board affirmed the June 27, 1990, denial of an air operating permit by the Illinois Environmental Protection Agency (IEPA) for Ohio Grain Company's (Ohio Grain) facilities in Ohio, Illinois. Ohio Grain had filed a petition for review pursuant to 35 Ill. Adm. Code 105.102(a) and Section 40(a) of The Illinois Environmental Protection Act (Act) contesting the IEPA's permit denial. On November 20, 1992, Ohio Grain filed a motion for reconsideration of the Board's October 16, 1992, Opinion and Order pursuant to 35 Ill. Adm. Code 101.246 and 101.300. Also, on November 20, 1992, the Grain and Feed Association of Illinois filed a motion for intervention. The Board considers these two motions in this order and for the following reasons denies both motions.

On December 7, 1992, the IEPA filed a response to the motion to reconsider. On the same date, the IEPA filed a motion for leave to file a response to the motion to intervene and the response. The Board grants the IEPA's motion to file a response to intervene. On December 16, 1992, the Grain and Feed Association of Illinois filed a reply to the IEPA's response. Pursuant to Section 101.242(c) of the Board's procedural rules the moving person shall not have the right to reply except as permitted by the Board to prevent material prejudice. The Board will not consider the reply as the filing is not necessary to prevent material prejudice.¹

Detailed procedural history and facts in this case can be found in the Board Opinion and Order of October 16, 1992. (PCB 90-143, Ohio Grain v. IEPA, _____ PCB _____, (October 16,

¹ The Board notes that the cases cited by the Association in which the Board has allowed intervention are a landfill siting appeal and an enforcement case. Both of those types of cases allow for intervention; however, as stated later in this order, permit appeals do not.

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1992).)

MOTION FOR RECONSIDERATION

According to 35 Ill. Adm. Code 101.246 and 101.300, motions for reconsideration of a final Board Order shall be filed within 35 days of the adoption of the order. Ohio Grain's November 20, 1992, filing for reconsideration was therefore timely. In ruling upon a motion under this Section, the Board is instructed to "consider factors including, but not limited to, error in the decision and facts in the record which are overlooked". (Section 101.246(d).)

After careful review of the record in this case, the Board does not find that Ohio Grain's motion for reconsideration points to any error in decision. Furthermore, Ohio Grain's motion for reconsideration does not indicate any facts in the record that were overlooked, or any other reason for the Board to reverse its decision of October 16, 1992. Therefore, the Board denies Ohio Grain's motion for reconsideration.

MOTION TO INTERVENE

On November 20, 1992, the Grain and Feed Association of Illinois (Association) filed a motion to intervene in the case. The Association suggested several reasons for intervention:

1. Mr. William Lemon, Executive Vice-President of the Association testified on behalf of Ohio Grain in the hearing in PCB 90-143 which was held on March 25, 1992.
2. Mr. Lemon did not present testimony regarding the impact on Association members of the interpretation of one-turn storage which the Board adopted in its October 16, 1992, Opinion and Order.
3. When the Board interpreted the exemption for one-turn storage it was lacking key information regarding the impact on Association members that could have been supplied by Mr. Lemon, and therefore, the Board could not fully evaluate the consequences of its interpretation of one-turn storage. (Motion for reconsideration at 1 to 2.)

The Board notes that it has previously held that intervention is not allowed in permit appeals. (County of LaSalle v. Illinois Pollution Control Board, 146 Ill. App. 3d 603, 497 N.E.2d 164, 100 Ill. Dec. 284.) However, even if intervention were allowed, in reviewing the record of this case, the Board does not find compelling reasons to adopt the Association's motion for intervention. Mr. Lemon's testimony at the hearing in PCB 90-143 covered 25 pages in the transcript

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(pages 46-70). Mr. Lemon had ample opportunity to present the concerns of the Association in this proceeding. The Board recognized that Mr. Lemon's Association included about 92% of the approximately 1,100 grain elevators in the state (Tr. at 48). Therefore, Mr. Lemon's testimony was seriously considered by the Board in rendering the Opinion and Order of October 16, 1992.

The Board also is not compelled by the Association's pleading that "Mr. Lemon had no reason to present testimony regarding the impact the present interpretation of the exemption that one-turn storage would have upon members of the Association". (Motion for Reconsideration at 2.) At several points in the hearing, it was apparent Mr. Lemon had adequate prior knowledge that the definition of one-turn storage was the key issue in this case (see Tr. at 49, 55, 67). In addition, the Board researched the Opinion of June 13, 1975 (docket number R72-18), establishing the current grain-handling and grain-drying air regulations, as well as the hearing transcript in R72-18. The Association was a party in those proceedings and presented public testimony about the impact on its members in those proceedings which led to the present regulations. Further as the IEPA points out, the Association and Mr. Lemmon have been aware of the IEPA's interpretation of the regulations. Therefore, the Association's motion for intervention is denied.

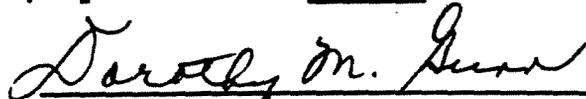
ORDER

The Board denies the November 20, 1992, motion for reconsideration filed by Ohio Grain Company. Ohio Grain's motion was filed in response to the Board's October 16, 1992, affirmation of the June 27, 1990, denial of an air operating permit by the Illinois Environmental Protection Agency for Ohio Grain Company's facilities in Ohio, Illinois.

The Board also denies the November 20, 1992, motion for intervention filed by the Grain and Feed Association of Illinois in this case.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 17th day of December, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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