

ILLINOIS POLLUTION CONTROL BOARD
May 10, 1990

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.) PCB 88-199
) (Enforcement)
SEEGERS GRAIN, INC.)
an Illinois Corporation,)
)
 Respondent.)

DISSENTING OPINION (by J. Anderson):

I believe that the Board should have ordered that this case go to hearing. I believe that such action would be consistent with the Board's desire to "move cases along" and also that such action would not prejudice the interests of either party.

It appears, at this juncture, that either a) the stipulated settlement earlier presented at hearing has already been altered and is likely to be further altered by the parties during post-hearing negotiations or b) no new settlement will be forthcoming at all.

In either case, another hearing will have to be held before the Board can decide this matter. I do not see how the Board's procedural rules regarding enforcement proceedings, more particularly the Settlement Procedure at 35 Ill. Adm. Code 103.180, allow otherwise.


That procedure requires the parties proposing a settlement to file with the hearing officer a signed, written statement essentially containing full details, including the penalty. Then the hearing officer is to conduct a hearing at which all interested persons can testify on the violations and the proposed settlement. It is that settlement and hearing record which the hearing officer is to submit to the Board for its consideration.

It is true that after hearing and prior to its consideration, the Board has accepted post-hearing signatures, but only to the settlement as presented at hearing. However, the whole purpose of requiring presentation of a settlement at hearing would be thwarted if the parties initiate afterwards a renegotiated new settlement for direct presentation to the Board. We should require the parties to go to another hearing, since the settlement as earlier presented is, for all practical

purposes, withdrawn. Whether or not the parties present to the hearing officer a new settlement or instead contest the issues at hearing is for them to decide. In the event that the parties decide to go back to the settlement as presented at the earlier hearing, they can request that the new hearing be cancelled.

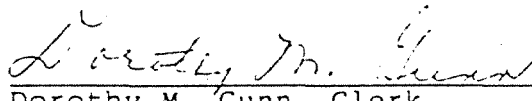
I believe that the action of the majority simply to grant the motion to defer decision for 30 days to allow for renegotiation is ill-advised, and is particularly so when considering the "turn" this case has taken.

It is for these reasons that I respectfully dissent.



Joan G. Anderson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 21st day of May, 1990.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board