

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1985

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|----------------------------|---|----------------------|
| CONTINENTAL GRAIN COMPANY, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 84-95, 84-96, |
| |) | 84-97, 84-99, 84-100 |
| ILLINOIS ENVIRONMENTAL |) | 84-101, 84-102, |
| PROTECTION AGENCY, |) | 84-103, 84-104 |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon a November 12, 1985 motion to dismiss the nine above-captioned variance matters filed on behalf of the Illinois Environmental Protection Agency (Agency) to which the Continental Grain Company responded on November 20, 1985. Continental's response was accompanied by a motion to file instanter which is hereby granted. The Agency contends that since each of the affected facilities has obtained a permit for the construction of barge spout aspiration systems which should result in compliance with applicable regulations, variance is no longer needed. Continental disagrees with the conclusion only, stating that it

still seeks variances to show the validity of its request for relief with respect to the enforcement proceedings which are still pending against it. Furthermore, as to those elevators which have not yet exceeded the Thirty Percent Rule, the variances will be needed to prevent any future enforcement actions. Also, Continental has sought additional relief in its variance petitions, that is, a ruling that these regulations are specifically inapplicable as applied to these particular facilities.

Continental asserts that if these variance petitions must be dismissed, then the enforcement complaints brought in 85-53, 85-54 and 102 must also be dismissed by the Board.

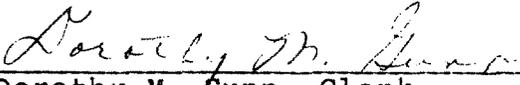
The "validity of its request for relief with respect to the enforcement proceeding" and the question of the applicability of the regulation to the particular facilities are both matters which are properly considered in an enforcement action. Therefore, administrative convenience is best served by proceeding with only the enforcement action which can completely

dispose of these matters, regardless of which way the Board should rule.

Therefore, the Agency's motion to dismiss is hereby granted.

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 four day of December, 1985 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board