

ILLINOIS POLLUTION CONTROL BOARD
August 1, 1985

CONTINENTAL GRAIN COMPANY)
(Seneca))
)
Petitioner,)
)
v.) PCB 84-96
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

CONTINENTAL GRAIN COMPANY)
(Havana))
)
Petitioner,)
)
v.) PCB 84-104
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.

ORDER OF THE BOARD (by J. Anderson):

On July 24, 1985 the Agency moved the Board to reinstate motions to dismiss in this matter which had previously been considered by the Board at its April 18, 1985 meeting. No action was taken by the Board at that time due to a deadlock among the five Board Members present. The motion to reinstate is granted.

As to the motions to dismiss, the pleadings before the Board for consideration are the Agency's motions of March 22, 1985, Continental's April 8 responses and the Agency's April 15 replies thereto. The parties agree that Continental's Seneca and Havana grain handling facilities currently are not subject to the Watercraft Loading Rule of 35 Ill. Adm. Code 212.462(d) (3); since the annual grain through-put at each facility has not exceeded a 30% increase over the amount for which the facility was originally permitted, Continental has an exemption under Section 212.461(c). Continental nonetheless seeks variance from the watercraft loading rule on the grounds that if its through-put should increase by more than 30%, it will lose the exemptions

for these two facilities, noting that it has already lost the exemptions for seven of its nine elevators.

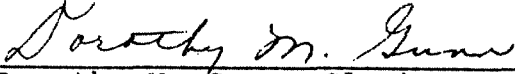
The Agency moves to dismiss on the grounds that no variance is currently necessary, and that Continental has not predicted when a violation will exist. Continental characterizes the condition of the grain market as one of "abject unpredictability" due to various political, economic, and weather factors, and asserts that it should not be forced to lose the exemption for these two facilities before seeking variance relief. While the Agency is correct that the Board has dismissed actions for failure to prove that variance is necessary, based on the history of exemption loss for the Continental facilities the Board finds sufficient possibility of violations to allow these actions to proceed. The Agency's motions to dismiss are denied.

Having determined that these two actions may proceed, the Board notes that these, as well as the other seven related year-old variance petitions (PCB84-95, 97, 99, 100, 101, 102, 103), must proceed to hearing: the Board does not view with pleasure the long lingering on its docket of actions whose conclusion the Act contemplates should be achieved in 90 days. The Hearing Officer is requested to expedite the discovery in these actions so that they may proceed to hearing in the reasonably near future.

IT IS SO ORDERED.

J. D. Dumelle, B. Forcade and J. Marlin dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 1st day of August, 1985, by a vote of 4-3.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board