

ILLINOIS POLLUTION CONTROL BOARD  
August 1, 1985

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

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

DISSENTING STATEMENT (by J.D. Dumelle):

Today's denial of the IEPA's Motion to Dismiss by a bare 4-3 vote erases 15 years of Board precedent.

The Board has always held that a source must be in violation of Board rules or of the Act or about to be in violation because of necessary repair work or other certain events such as major reconstruction or a lagoon about to overtop.

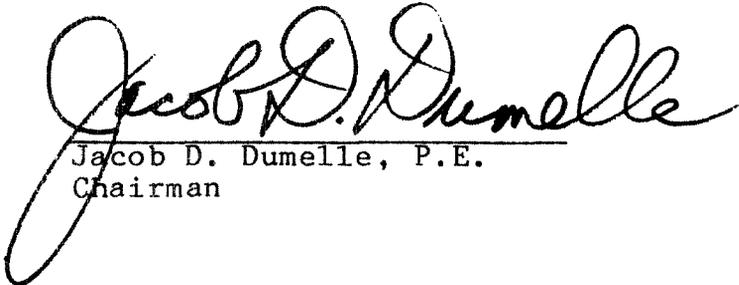
Here the Petitioner characterizes its situation as one of "abject unpredictability". But are not all other dischargers to air or water or land in a similar situation? If a transformer burns out, an electrostatic precipitator may not work. If a chlorine shipment is delayed, then disinfection of a public water supply or of an effluent will cease. If a bulldozer breaks down, daily cover on a landfill cannot be spread.

One can construct all sorts of "what ifs" and seek to obtain variance protection from them. But the Board has to set some threshold condition of eligibility. If Continental Grain does increase its throughput so as to be in violation it can then

petition for a variance. Until then, the situation is highly speculative and, in fact, eliminates the statutory need to prove that an arbitrary or unreasonable hardship exists or will exist shortly.

See Stein, Hall and Company v. IEPA, PCB 73-561, January 3, 1974, 10PCB579; State of Illinois v. IEPA, PCB 74-352, December 19, 1974, 14PCB757; City of Mascoutah v. IEPA, PCB 75-295, August 7, 1975, 18PCB333; and City of Breese v. IEPA, PCB 77-200, August 4, 1977, 27PCB207, and September 15, 1977, 27PCB467.

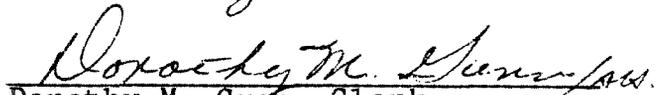
Administrative agencies and boards are not legally bound by precedent. Each case is unique and may be decided in a different manner from others. But precedent gives guidance to the public and enables them to forecast the likely decision of the Board and thus be guided in advance. From early on in its existence the Board has tried to follow its own precedents. Here the majority has adopted "abject unpredictability" as a threshold standard for a variance. That is a standard which can apply to anyone and thus is not a standard.



Jacob D. Dumelle, P.E.  
Chairman

Dissenting Statement

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Statement was submitted on the 26<sup>th</sup> day of August, 1985.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board