

ILLINOIS POLLUTION CONTROL BOARD  
November 8, 1984

CONTINENTAL GRAIN COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 84-95 through
	)	PCB 84-104
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

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

On October 21, 1984 Petitioner in this matter filed a motion asking the Board to reconsider those parts of the orders requesting more information which were issued in each of these cases on September 20, 1984. Those orders, which also denied the Respondent's Motions to Dismiss, required Petitioner to comply with 35 Ill. Adm. Code 104.121 by October 22, 1984. The Agency filed its Responses to the Motion for Reconsideration on November 7, 1984.

Petitioner argues that the Petitions for Variance establish that the requests for relief are not "frivolous", and adequately give notice to the Board and the Agency of "the claim for purposes of discovery and hearing." Petitioner also argues that 35 Ill. Adm. Code 104.180 "is intended to protect the Petitioner by allowing it to avoid a burdensome adversary hearing where it is readily apparent that a variance should be granted." Petitioner further argues that it is irrelevant that the Agency have sufficient information to make a Recommendation, and that the Agency may "decline to make a Recommendation or recommend to deny the Petitions." Continuing, Petitioner alleges that it is unnecessary to force Continental Grain Company to amend its petitions to include detailed factual information when "such an action will have absolutely no effect whatsoever on the Agency's obvious pre-disposition to contest the petitions." Finally, Petitioner claims that it would be irrational and unduly burdensome to require Petitioner to include the detailed information contained in permit applications for each elevator at issue, since the Agency already has the same.

First, whether a Petition for Variance is "frivolous" is irrelevant in a variance proceeding. When the Board initially reviews petitions filed, it is to ascertain whether they contain sufficient information for the Board to make a decision whether and on what terms to grant variance from its regulations. Aided by the Respondent's Motions to Dismiss these matters, it decided that more information was needed for the Board, as well as for the Agency, "to be reasonably informed about Petitioner's cir-

cumstances...," and, therefore, on September 20, 1984 issued the orders requesting the information required under 35 Ill. Adm. Code 104.121 for each of these Petitions.

Secondly, Petitioner states that it need not provide the entirety of its case at this time because discovery, the hearing and post-hearing arguments will "flesh out" the details. Petitions for Variance are not so that the Petitioner can establish "a claim" to be elaborated on through discovery and hearing. The Board reminds Petitioner that statutorily it must decide whether to grant relief within ninety (90) days from the date a complete petition is filed, and any waiver of that time frame is at Petitioner's discretion only. There are sufficient difficulties presented when this Board must make complex decisions on adequate information in the 90-day time period. To allow Petitioner to withhold relevant information until late in the process, at hearing, would frustrate informed decision making by the Board. For these reasons, among others, the Board's Procedural Rules require that the "details" be "fleshed out" in the Petition, and if the necessary information is not contained in the original filing, the Board orders that the Petition be amended, as it did in these matters, rather than dismissing the petitions for lack of information. Contrary to Petitioner's argument, 35 Ill. Adm. Code 104.180 is not to protect Petitioner from providing sufficient information to substantiate its request for relief from the Board's regulations, but to insure that the Board has sufficient information from the Agency, as well as from the Petitioner, to make a decision. Finally, without this information it is not "readily apparent" to the Board that Variance should be granted for each of these petitions, as alleged by Petitioner in its Motion.

As for Petitioner's arguments that it is irrelevant for the Agency to have the information requested, the Board reminds Petitioner that it is relevant given Section 37(a) of the Act which provides in pertinent part that "[t]he Agency shall make a recommendation to the Board as to the disposition of the petition." (Ill. Rev. Stat. 1983, ch. 111½, par. 1037). Section 104.180 of the Board's procedural rules requires that the Agency file the statutorily mandated Recommendation within thirty (30) days after a complete petition is filed. This is to allow Petitioner the opportunity to review the same and address any issues it raises at hearing, as necessary. Again, the information requested is relevant and important to the Board's decision making. It does not matter whether Petitioner believes the Agency predisposed, or that the Agency has information not contained in the petitions. The Board does not have this information, and it is the Board which the Petitioner must persuade that the requested relief is necessary.

Petitioner's arguments indicate that it has confused the requests for variance from existing Board regulations with enforcement proceedings. For that reason, the Board has granted the motion for reconsideration and delineated the reasons and purpose for the more information orders. However, the Board

denies Petitioner's request to modify its September 20th order, except to allow Petitioner until December 7, 1984 to amend its petition as already ordered.

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 8<sup>th</sup> day of November, 1984 by a vote of 6-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board