

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1982

SOURS GRAIN COMPANY,)
)
) Petitioner,)
)
) v.) PCB 79-210
)
) ILLINOIS ENVIRONMENTAL PROTECTION)
) AGENCY,)
)
) Respondent.)

ORDER OF THE BOARD (by I. Goodman):

Petitioner, Sours Grain Company, made an oral Motion to Dismiss without prejudice this variance petition at the Board's regular meeting of January 21, 1982. Pursuant to Procedural Rule 308(a), the Board instructed Petitioner to submit such motion in writing and to serve the proper parties. Petitioner did so on the afternoon of January 21, 1982 and Respondent, the Illinois Environmental Protection Agency, filed an objection the same day. The Board considered Petitioner's motion after receiving the pleadings, since this matter was scheduled for hearing on January 25, 1982, or before the Board's next regularly scheduled hearing. Legal counsel for both parties was present at the Board's meeting.


At the January 12, 1982 prehearing conference in this matter, the hearing officer had denied Petitioner's oral Motion for Continuance and ordered the hearing on the merits to go forward as scheduled. Petitioner filed a Motion for Continuance with the Board on January 13, 1982, which the Respondent filed objections to. The Board construed Petitioner's Motion as an interlocutory appeal of the hearing officer's order pursuant to Procedural Rule 308(f). At its January 21, 1982 meeting the Board voted to deny Petitioner's appeal. Thereupon Petitioner's Counsel made the oral Motion to Dismiss without prejudice. Respondent's counsel immediately objected.

Three possible resolutions are posed by Petitioner's Motion to Dismiss. The Board could deny the Motion to Dismiss. This would be futile since it was Petitioner who originally brought this variance proceeding before the Board. The Board could dismiss without prejudice, which would allow Petitioner to reinstate this matter subsequent to the already scheduled hearing dates; which in effect would grant Petitioner the continuance previously sought and denied by the hearing officer, appealed and denied by the Board. Lastly, pursuant to Procedural Rule 308(e), the Board could dismiss this matter with prejudice, if justice so demands.

The Board finds that by its Motion to Dismiss without prejudice Petitioner abuses the Board's procedures in an effort to circumvent the Board's ruling on the Motion to Continue, to the possible prejudice of Respondent. Therefore, this matter is dismissed with prejudice.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 21st day of January, 1982 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board