

ILLINOIS POLLUTION CONTROL BOARD
May 18, 1984

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

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

This matter comes before the Board upon an April 12, 1984, motion for reconsideration of the Board's March 8, 1984, Opinion and Order and motion to reopen record filed on behalf of the Illinois Environmental Protection Agency (Agency) to which Sours Grain responded in opposition on April 25, 1984. The Agency replied to Sours' response on May 2, 1984.

In its motion to reconsider the Agency contends that the variance gives Sours Grain an unfair competitive advantage, that "all grain elevators must control the air pollution . . . problems they cause, alone or in combination," and that Sours has not presented an adequate compliance plan. Sours responds that the Agency presents no new evidence to support reconsideration, that the Board fully considered the evidence, that competitive advantage is irrelevant, and that the Board "has never dogmatically required a formal compliance plan."

The Board concludes that reconsideration should be denied. The question of competitive advantage is at best tangentially related to the question of variance. The question is whether denial of variance would impose an arbitrary or unreasonable hardship upon Sours, and the Board has fully considered that question. The Board has also fully considered the questions of environmental impact and a compliance plan. While the Board is troubled by the lack of a definite compliance plan, the grant of variance was conditioned to minimize that shortcoming as reasonably as the record supported. In its reply the Agency contends that Sours "concedes that variance should not have been granted." In so doing, however, the Agency misconstrues Sours' somewhat inartfully drafted language.

The Agency's motion to reopen the record is based solely upon the bald assertion that the Agency "has learned that FGIS has decided that it will not approve Anderson water spray systems." In its reply, the Agency amends its statement to read: "FGIS does not approve or disapprove such grain handling facilities" and that its concerns "are expressed in ways other than approval or disapproval." Sours properly points out that there is no proof of that assertion and that the variance grant was structured to allow for that possibility in any case [see 35 Ill. Adm. Code 103.241(c)(1)].

The motions to reconsider and to reopen the record are, therefore, hereby denied.

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 12th day of May, 1984 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board