ILLINOIS POLLUTION CONTROL BOARD
September 20, 1984

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

ORDER OF THE BOARD (by J. Anderson):

On August 29, 1984, Respondent filed two motions in this matter. The first requested that this Petition for Variance be dismissed. The second motion requested additional time to file its Recommendation should the Motion to Dismiss not be granted. Petitioner, Continential Grain Company, filed a Motion for Leave to File Instanter and its Response to the Motion to Dismiss on September 18, 1984. Leave to file is granted.

In requesting that the Variance Petition be dismissed, Respondent argued that the Petitioner failed to: provide a feasible compliance plan; provide sufficient specific information and contained false statements pertaining to the facility under review; distinguish why the regulations are allegedly inapplicable due to the uniqueness of the facility; and provide an air quality study to substantiate allegations of minimal environmental harm should Variance be granted. Citing Unity Ventures-v. Illinois Environmental Protection Agency, et al., Ill. App. Ct., 2nd District, No. 81-59 (February 21, 1982) unpublished, Petitioner responded that the Motion to Dismiss is in actuality a Recommendation to Deny since the Respondent relied on factual arguments, and, therefore, a hearing is now mandatory under Section 37 of the Environmental Protection Act (Ill. Rev. Stat., 1983, ch. 111½, par. 1037).

Notwithstanding that a hearing is mandatory under the Clean Air Act should the Variance Petition not be dismissed, Respondent's motion does contain factual agruments which are best resolved at hearing. The Motion to Dismiss is denied.

However, Respondent's motion does accurately delineate deficiencies in the Petition that render Respondent unable to make an informed Recommendation to the Board. Therefore, Petitioner is directed to amend its Petition to satisfy the requirements of 35 Ill. Adm. Code 104.121. Most specifically,

the facility which is the subject of the petition must be described to satisfy subparagraphs (b), (c) and (d) of that rule; the past and future efforts and costs incurred at this facility in order to come into compliance with the applicable regulation must be delineated in accordance with subparagraphs (f), (h) and (i); and the environmental consequences should Variance be granted must be addressed, including, if necessary, an air quality study in accordance with subparagraph (g). Petitioner is directed to so amend its Petition no later than October 22, 1984 so that the Agency can file a Recommendation and so that these questions can be properly addressed at hearing. Should Petitioner fail to do so, the Petition will be subject to dismissal pursuant to 35 Ill. Adm. Code 104.125.

Since the Board, as well as the Agency, requires more infotmation in order to be reasonably informed about Petitioner's circumstances, necessitating an Amended Petition, Respondent's Motion for Additional Time to file a Recommendation is mooted. Respondent is directed to file its Recommendation in accordance with 35 Ill. Adm. Code 104.180.

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 20th day of September, 1984 by a vote of 6-0.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board