

ILLINOIS POLLUTION CONTROL BOARD
August 6, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) FCB 85-176
)
CONTINENTAL GRAIN COMPANY)
(Lacon),)
)
Respondent.)

ROY HARSCH, ESQ. OF MARTIN, CRAIG, CHESTER AND SCHEIN, APPEARED ON BEHALF OF RESPONDENT.

JOSEPH F. MALONIA, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board on a December 2, 1985 complaint filed by the Illinois Environmental Protection Agency against Continental Grain Company (Continental). The Complaint alleges that Continental at its Lacon, IL grain loading facility caused, threatened, or allowed violations of Section 9(a) of the Illinois Environmental Protection Act (Act) and 35 Ill. Adm. Code Sections 212.462(d)(3)(A) and 212.462(e) beginning at least on June 6, 1980 and continuing up to the filing of the Complaint. The Complaint also alleges violations of Section 9(b) of the Act and 35 Ill. Adm. Code Section 201.144 since at least June 3, 1981 and continuing until the filing of the Complaint.

Hearing on this matter was held on June 24, 1987 in Lacon, IL. At hearing, the parties submitted a Stipulation and Proposal for Settlement (Stipulation). The Stipulation is attached and adequately addresses the facts in this matter. Accordingly, this opinion will not contain the customary discussion of the issues.

The Board notes, though, that according to the Stipulation, Continental "is not admitting its liability for violations alleged in the Complaint". Also, the Stipulation states that Continental has received a permit to operate a barge loading spout tip aspiration system and is currently in compliance with the regulations.

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act and finds the Stipulation and Proposal for Settlement acceptable under 35 Ill. Adm. Code

103.180. Accordingly, the Board orders Continental to comply with the Order set forth herein.

This Opinion and Order constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

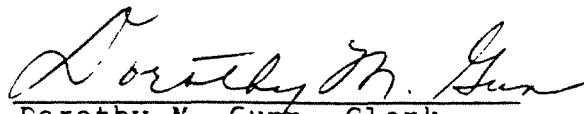
- 1) The Board hereby accepts the Stipulation and Proposal for Settlement executed by Continental Grain Company and the Illinois Environmental Protection Agency concerning Continental's Lacon facility and filed with the Board on July 10, 1987. The Stipulation and the Proposal for Settlement is attached hereto.
- 2) Continental shall, by certified check or money order payable to the State of Illinois and designated for deposit into the Environmental Protection Trust Fund, pay the sum of \$10,000 (Ten Thousand Dollars). The sum shall be paid within 60 days of the date it receives notice of this order. The payment shall be mailed to:

Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706

- 3) Continental waives its right to have any unused portion of said payment returned to Continental.
- 4) The terms and conditions of the Stipulation and Proposed Settlement are incorporated into and made a part of this Order.

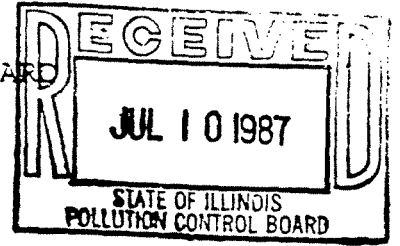
IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 6th day of August, 1987, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
MARSHALL COUNTY



ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Complainant,

v.

PCB 85-176

CONTINENTAL GRAIN COMPANY
(Lacon),

Respondent.

STIPULATION AND PROPOSAL FOR SETTLEMENT

The parties in the above-styled case, believing that litigation of the matter would be neither in their best interests nor in the best interests of the public, have agreed to a settlement under the terms and conditions set forth below. This Stipulation and Proposal for Settlement is made and agreed upon and submitted to the Illinois Pollution Control Board ("Board") for the purposes of settlement only, upon the condition that the Board approve it in its entirety. The terms of this Stipulation and Proposal for Settlement shall be binding upon the Complainant and Respondent, and their assigns and all successors in interest. In the event that the Board does not approve this Stipulation and Proposal for Settlement in its entirety, it shall be null and void and of no effect in this or any other proceeding. In entering into this Stipulation and Proposal for Settlement, Respondent is not admitting its liability for the violations alleged in the Complaint, nor any of the allegations of fact made in that complaint, except to the extent those allegations are

stipulated to below. Further, this Stipulation and Proposal for Settlement is not to be used for any other purpose or proceeding, is not an admission of wrongdoing on Respondent's part and is not admissible by any party.

Subject to the foregoing understanding and agreement, the parties stipulate as follows:

1. Continental Grain Company ("Continental"), a Delaware corporation licensed to do business in Illinois, operates a grain loading facility on the Illinois River in Lacon, Marshall County, Illinois, at which grain from the surrounding area is loaded into barges.

2. Construction of this facility was commenced prior to April 14, 1972.

3. On June 8, 1977, the Illinois Environmental Protection Agency ("IEPA") issued an operating permit for this facility, said permit to expire June 2, 1981.

4. This permit was issued on the basis that the facility had an annual grain through-put ("AGT") of 6,500,000 bushels.

5. On or about June 6, 1980, Continental advised IEPA that its AGT had increased to 10,809,000 bushels.

6. Continental, prior to the commencement of this suit, had not installed equipment on the loading spout used to load barges at the facility capable of capturing particulate matter emissions generated in the course of loading said barges in an induced air draft stream, which stream was ducted through air pollution control equipment that has a rated and actual particulate removal efficiency of not less than 90% by weight.

7. The operating permit for this facility expired on June 2, 1981. Continental sought renewal of this permit on April 29, 1981. IEPA denied renewal on June 18, 1981, because the IEPA believed that the AGT at the Lacon facility exceeded the 30% rule and that the Lacon facility was subject to the barge loading spout tip aspiration requirement in 35 Ill. Adm. Code Sec. 212.462(d)(3)(A).

8. On July 20, 1984, Continental filed a variance petition (PCB 84-99) in which it asked the Board to find that the tip aspiration requirement contained in 35 Ill. Adm. Code Sec. 212.462(d)(3)(A) was invalid as applied to the Lacon facility, find that the Lacon facility was in compliance with the rule or, in the alternative, to grant Continental a five year variance from the rule.

9. In the meantime on April 30, 1985, Continental applied for an operating permit for the Lacon facility except for barge loading spout equipment. The IEPA, on May 31, 1985, granted this permit (Application No. 76050070, I.D. No. 123010AAD).

10. As of the filing of this enforcement case, the Lacon facility was in compliance with all provisions of Title II of the Environmental Protection Act and the Board's Air Regulations relating to grain handling operations except those alleged in the complaint. As to these, Continental had, prior to the initiation of this enforcement action, filed the petition for variance described above.

11. On August 16, 1985, as part of an agreement to settle this enforcement case and Continental's variance petition,

Continental applied to the IEPA for a permit to construct a barge loading spout tip aspiration system at the Lacon facility which would bring Continental into unquestioned compliance with 35 Ill. Adm. Code Sec. 212.462(d)(3)(A). The IEPA granted this permit on September 26, 1985 (Application No. 8508044, I.D. No. 123010AAD).

12. On December 20, 1985, the Board, on the IEPA's motion and over Continental's objection, dismissed Continental's variance petition because it found that construction of the tip aspiration system would result in compliance with 35 Ill. Adm. Code Sec. 212.462(d)(3)(A) and, as a result, a variance would be unnecessary.

13. Continental installed the tip aspiration system and on March 19, 1986, applied for an operating permit for its barge loading operations. The IEPA issued this permit on April 10, 1986 (Application No. 760550070, I.D. No. 123010AAD).

PROPOSAL FOR SETTLEMENT

Continental agrees to pay \$10,000 to Environmental Protection Trust Fund within 60 days of the date the Board approves this Stipulation and Proposal for Settlement. Said payment shall be made by certified check or money order, payable to the Environmental Protection Trust Fund, and mailed to:

Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706

Continental waives its right to have any unused portion of said payment returned to Continental.

WHEREFORE, Complainant and Respondent jointly request that the Board accept and adopt this Stipulation and Proposal for Settlement.

DATED: June 15, 1987

CONTINENTAL GRAIN COMPANY

By: [Signature]

DATED: 6/29/87

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: [Signature]

Joseph E. Svoboda
Manager of Enforcement

DATED: 7-7-87

ILLINOIS ATTORNEY GENERAL

By: [Signature]

Robert V. Shuff, Jr.
First Assistant Attorney General

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