

ILLINOIS POLLUTION CONTROL BOARD
July 21, 1994

USA WASTE SERVICES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 94-92
)	(Variance)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by M. McFawn):

On March 18, 1994 USA Waste Services, Inc. (USA Waste) filed a petition for a variance for its Countryside Landfill. By order dated March 31, 1994, this petition was found to be deficient, since it failed to include a request for hearing or a statement waiving hearing with supporting affidavits. (35 Ill. Adm. Code 104.124.) Petitioner filed an amended petition on April 6, 1994 which provided a waiver of hearing and supporting affidavit. As set forth in our March 31, 1994 order, the filing of this amended petition restarted the Board's decision timeclock under Section 38 of the Environmental Protection Act (Act) (415 ILCS 5/38 (1992).) The Illinois Environmental Protection Agency filed its recommendation and response to the petition for variance on May 10, 1994, recommending that the variance be granted, subject to certain conditions.

In its petition for variance, USA Waste seeks a six-month variance from the requirements of 35 Ill. Adm. Code 814.104(c). Section 814.104 requires owners or operators of all landfills permitted pursuant to Section 21(d) of the Act to file an application for significant modification of existing municipal solid waste landfill units. This application must demonstrate how the facility will comply with the operating requirements set forth in Part 814. Section 814.104(c) requires that the application be filed within 48 months of the September 1990 effective date of Part 814 of the Illinois Administrative Code, i.e. by September 18, 1994. USA Waste seeks a six-month extension of this deadline. For the reasons set forth below, we grant the requested variance.

BACKGROUND

According to its petition, USA Waste is the owner of the Countryside Landfill, which is located on an approximately 80-acre site 0.5 miles south of Illinois Route 137, between Illinois Route 83 and the Wisconsin Central Railroad, in Lake County. The site is located on property owned by Countryside Landfill, Inc., and/or Lakeland Properties, Inc, both of which are wholly owned

by USA Waste.

Formerly known as the A.R.F. Landfill, the facility began operations in 1976. The landfill was purchased by USA Waste on June 30, 1991, and was renamed the Countryside Landfill. The landfill is currently designed and permitted to contain approximately 12,000,000 compacted cubic yards of waste, and is expected to reach capacity by October 1997.

The Countryside Landfill is a "Subpart C facility," subject to the rules set forth in Subpart C of 35 Ill. Adm. Code 814. (Petitioner's Br. at 5; Agency's Br. at 2.) This subpart applies to all existing units accepting chemical and putrescible wastes that may remain open for more than seven years beyond September 18, 1990, the effective date of Part 814 of the Board's regulations.

USA Waste intends to seek both a horizontal and vertical expansion of the landfill. The expansion will be designed to provide a capacity of 14,400,000 compacted cubic yards of waste, which USA Waste estimates will provide a minimum of twenty-one additional years of waste disposal capacity. In its variance petition, USA Waste indicates that it will file a petition for siting approval for this expansion on or around April 8, 1994, and will apply for a permit from the Agency as soon as siting approval is obtained.

STATUTORY FRAMEWORK

In determining whether any variance is to be granted, the Act requires the Board to determine whether a petitioner has presented adequate proof that immediate compliance with the Board regulation at issue would pose an arbitrary or unreasonable hardship. (415 ILCS 5/35(a) (1992).) Furthermore, the burden is on petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. (Willowbrook Motel v. Pollution Control Board (1st Dist. 1977), 135 Ill.App.3d 343, 481 N.E.2d 1032). Only with such showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship. (We Shred It, Inc. v. Illinois Environmental Protection Agency (November 18, 1993) PCB 92-180 at 3.)

A further feature of a variance is that it is, by its nature, a temporary reprieve from compliance with the Board's regulations, and compliance is to be sought regardless of the hardship which the task of eventual compliance presents an individual polluter. (Monsanto Co. v. Pollution Control Board (1977), 67 Ill.2d 276, 367 N.E.2d 684.) Accordingly, except in certain special circumstances, a variance petitioner is required as a condition to the grant of a variance, to commit to a plan which is reasonably calculated to achieve compliance within the

term of the variance.

HARDSHIP

Under Section 814.104(c), USA Waste is required to file an application for significant modification by September 18, 1994. Upon completion of the siting process for the proposed expansion, if the expansion is approved, USA Waste will be required to re-file its application for significant modification, incorporating the changes resulting from the expansion. USA Waste seeks a six-month variance from the September 18, 1994 filing deadline in order to allow it to complete the siting process for the proposed expansion prior to filing its application for significant modification, thus avoiding the duplicative efforts of filing a second application. USA Waste asserts that the variance would also avoid wasting the Agency's resources and time in needlessly reviewing a second application that would soon become obsolete. The Agency acknowledges that requiring petitioner to prepare and the Agency to review an unnecessary second application would needlessly waste the time and resources of both parties. (Agency's Br. at 4.)

COMPLIANCE WITH OTHER REGULATIONS; ENVIRONMENTAL IMPACT

Petitioner asserts that it is in compliance with all federal and state requirements, and that it has also already met or exceeded several of the requirements set forth for existing landfills under Section 814.302. These include the installation of a final cover system on the east slope of the landfill, installation of an intermediate cover system with vegetation on the west slope of the landfill, installation of an intermediate gas collection system on the east and west slopes of the landfill, and extensive landscaping of perimeter berms and landfill slopes. (Petitioner's Br. at 5.) Additionally, USA Waste asserts that the variance will have no environmental impact, since it will only extend the filing deadline set forth in 814.104(c). The Agency agrees that USA Waste is in compliance with all federal requirements, but as set forth in greater detail below, the Agency believes the variance may affect petitioner's compliance with other regulations, and therefore its potential to impact the environment.

AGENCY RECOMMENDATION

The Agency recommends that the variance be granted, but requests that the variance be conditioned upon compliance with the requirements in Section 814.302 and the incorporated provisions of Part 811. The Agency asserts that, since USA Waste is only seeking a variance from the requirements of Section 814.104(c), the requirements of Section 814.302 should be applied to USA Waste during the period of the variance. The Agency recommends that this be accomplished by requiring USA Waste to

file an application for permit modification pursuant to Section 807.210, demonstrating how it will comply with the requirements of Section 814.302 during the 6-month period of the variance.

CONCLUSION

The Board acknowledges the Agency's concerns. However, requiring petitioner to file a supplemental permit application during the term of the variance demonstrating how it will comply with the requirements of Section 814.302 would defeat the purpose of the variance. Petitioner is seeking the variance precisely to avoid filing an application making this demonstration until such time as it has obtained siting approval for its proposed expansion and can submit a permit application demonstrating compliance with Section 814.302 at both the existing and expanded landfill areas. The conditions proposed by the Agency would result in the very waste and duplication of effort that petitioner seeks to avoid.

Based upon the record, the Board finds that requiring USA Waste to comply with the Section 814.104(c) deadline for filing its application for significant modification of the Countryside Landfill would impose an arbitrary and unreasonable hardship on USA Waste. As discussed above, a variance is a temporary reprieve from the Board's regulations for which a petitioner agrees to commit to a plan to achieve compliance within the term of the variance. USA Waste has agreed to submit a complete permit application, known as an application for significant permit modification, satisfying Section 830.104, thereby demonstrating compliance with Section 830.302 upon expiration of the variance.

Requiring USA Waste to file an application prior to completion of the siting process for its proposed expansion would result in USA Waste subsequently filing a second, largely duplicative application, and would unnecessarily waste the time and resources of USA Waste and the Agency. We therefore grant USA Waste the requested six-month variance from the deadline set forth in 35 Ill. Adm. Code 814.104(c). USA Waste is now given until March 18, 1995 to file its application for significant modification, at which time it must demonstrate facility-wide compliance with Section 814.302.

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

ORDER

USA Waste Services (USA Waste) is hereby granted a variance from 35 Ill. Adm. Code 814.104(c) to terminate on March 18, 1995. Within forty-five days of the date of this order, USA Waste shall execute and forward to:

John Burds
Division of Legal Counsel
Illinois Environmental Protection Agency
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

a certificate of acceptance and agreement to be bound by all the terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

I (We), _____,
hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 94-92, dated July 21, 1994.

Petitioner

Authorized Agent

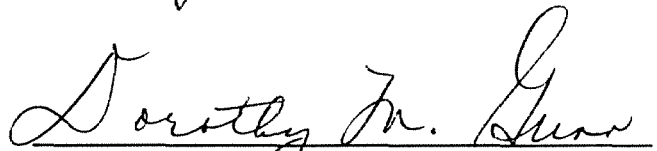
Title

Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1992)) provides for the appeal of final Board orders within 35 days of the date of service of this order. The Rules of the Supreme Court of Illinois establish filing requirements. (See also 35 Ill. Adm. Code 101.246. "Motions for Reconsideration".)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of July 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board