

ILLINOIS POLLUTION CONTROL BOARD
August 26, 1993

R. LAVIN & SONS, INC.,)
)
Petitioner,)
)
v.) PCB 93-148
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by R.C. Flemal):

On August 10, 1993 R. Lavin & Sons, Inc. (Lavin), filed a petition for hearing to review certain conditions imposed by the Illinois Environmental Protection Agency in its RCRA closure plan permit. This matter is accepted for hearing.

This matter concerns closure and post-closure care issues, and the parties are particularly directed to Board opinions and orders in Browning-Ferris Industries v. EPA, PCB 84-136, May 5, 1988, aff'd, 179 Ill. App. 3d 598, 534 N.E.2d 616 (2d Dist. 1989); Marley-Ingrid (USA), Inc. v. EPA, PCB 88-17, January 19, 1989; and Testor Corp. v. EPA, PCB 88-191, November 2, 1989 for discussions of standards of review and burdens of proof. The only issues before the Board are whether correct permitting procedures were followed and whether the application demonstrates that the Environmental Protection Act and Board regulations will or will not be violated.

For each contested condition, the Board expects, and strongly encourages the parties to state the applicable regulatory law and relevant facts, with appropriate record citations, which demonstrate that a violation is likely or unlikely to occur. The parties are urged to focus on RCRA Update, USEPA Regulations, R87-39, February 25, 1988 and June 16, 1988 and R87-26, December 3, 1987.

The parties are ordered to file status reports to keep the Board informed of any change in the status of this case. The parties shall file a status report with the Board on or before December 30, 1993. Subsequent status reports should be filed every three months thereafter or sooner if circumstances warrant. Based on the status reports the Board will set this matter for hearing or take other appropriate action.

Along with the petition, Lavin filed a waiver of the decision deadline until September 1, 1994. Considering this decision due date, hearing must be completed by June 30, 1994. The hearing officer shall inform the Clerk of the Board of the

time and location of the hearing as expeditiously as possible but at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, and all actual exhibits to the Board within 5 days of the hearing. Any briefing schedule shall provide for final filings as expeditiously as possible and in no event later than 30 days from the date of the hearing.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. This schedule will only provide the Board a very short time period to deliberate and reach a decision before the due date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

At least 40 days prior to hearing, the Hearing Officer shall enter a Hearing Officer Scheduling order governing completion of the record. That order shall set a date certain for each aspect of the case including: briefing schedule, hearing date(s), completion of discovery (if necessary) and pre-hearing conference (if necessary). The Hearing Officer Scheduling order may be modified by entry of a complete new scheduling order conforming with the time requirements below.

The hearing officer may extend this schedule only on a waiver of the decision deadline by the petitioner and only for the equivalent or fewer number of days that the decision deadline is waived. Such waivers must be provided in writing to the Clerk of the Board. Any waiver must be an "open waiver" or a waiver of decision until a date certain.

Because of requirements regarding the publication of notice of hearing, no scheduled hearing may be canceled unless the petitioner provides an open waiver or a waiver to a date at least 120 days beyond the date of the motion to cancel hearing. This should allow ample time for the Board to republish notice of hearing and receive transcripts from the hearing before the due date. Any order by the hearing officer granting cancellation of hearing shall include a complete new scheduling order with a new hearing date at least 40 days in the future and at least 30 days prior to the new due date and the Clerk of the Board shall be promptly informed of the new schedule.

Because this proceeding is the type for which the Illinois Environmental Protection Act sets a very short statutory deadline for making a decision, absent a waiver, the Board will grant extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no

such motion shall negate the obligation of the hearing officer to establish a Scheduling order pursuant to the requirements of this order, and to adhere to that order until modified.

IT IS SO ORDERED.

Board Member B. Forcade abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 26th day of August, 1993, by a vote of 5-0.

Dorothy M. Gunn
Dorothy M. Gunn, Clerk
Illinois Pollution Control Board