

ILLINOIS POLLUTION CONTROL BOARD
December 4, 1990

GSF ENERGY, INC., a)
subsidiary of Air)
Products and Chemical,)
Inc. and WASTE MANAGEMENT)
OF ILLINOIS, INC.,)
)
Petitioners,) PCB 90-219
) (Permit Appeal)
)
v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On November 16, 1990, GSF Energy, Inc. ("GSF") and Waste Management of Illinois, Inc. ("WMI") filed a Petition for Hearing and a Motion for Stay or Provisional Variance or Expedited Hearing and Decision. On November 26, 1990, the Illinois Environmental Protection Agency filed its Response to GSF's motion.

GSF and WMI state that they are appealing the Agency's denial of their Special Waste Stream Permit Application. GSF and WMI sought the permit in order to allow for the disposal of contaminated soil from GSF's methane gas recovery facility as a non-hazardous waste at WMI's CID Landfill #2. The Agency denied the permit on the grounds that the applicants failed to demonstrate that the waste stream was not a RCRA hazardous waste pursuant to 35 Ill. Adm. Code 721.103(a)(2)(D) and 721.130. The purpose of the motion is to preserve GSF's and WMI's opportunity for further discussion with the Agency without jeopardizing their effort to comply with the 90-day RCRA rule under which a generator who accumulates hazardous waste for more than 90 days is regarded as an operator of a storage facility. (see 35 Ill. Adm. Code 722.134(b)).

In response, the Agency states that it takes no position regarding the motion for a stay from 35 Ill. Adm. Code 722.134(b) until resolution of the permit denial, but agrees that an expedited hearing and briefing schedule is necessary regardless of whether the Board grants the motion for stay. With regard to GSF's and WMI's provisional variance request, the Agency notes that it received the provisional variance request on November 19, 1990, and that it will recommend denial of the request via an Agency recommendation to be filed with the Board no later than November 30, 1990. The Agency filed its recommendation for denial with the Board on December 4, 1990.

GSF's and WMI's motion is hereby denied. First, GSF and WMI have not convinced the Board that it is within its statutory or regulatory authority to grant a stay of a RCRA regulation. Second, the Board notes that a hearing has already been scheduled for January 2, 1991, and that it appears from the facts presented in the Agency's variance recommendation that the waste has already been held on site longer than 90 days. We will make every effort, however, to issue our decision as expeditiously as possible.

Hearing must be scheduled within 14 days of the date of this Order and completed within 60 days of the date of this Order. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing 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 70 days from the date of this Order.

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 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.

Within 10 days of accepting this case, 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 dates(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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 4th day of December, 1990, by a vote of 6-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board