

ILLINOIS POLLUTION CONTROL BOARD
September 4, 1997

ILLINOIS LANDFILL, INC.,)	
)	
Petitioner,)	
)	PCB 97-205
v.)	(Variance - Land)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On May 16, 1997, Illinois Landfill, Inc. (ILI) filed a petition for variance (Pet.). ILI is seeking a one-year variance from the Board's landfill regulations at 35 Ill. Adm. Code 814.301 and 35 Ill. Adm. Code 814.Subparts C and D. The Illinois Environmental Protection Agency (Agency) on June 13, 1997, recommended that the variance be granted. On June 6, 1997, the Board received an objection to the variance, and a hearing was thereafter scheduled.

On July 25, 1997, a hearing was held before Board Hearing Officer Deborah Frank. At that hearing, comments were provided by members of the public as well as the Agency and ILI. The Board appreciates the comments at hearing and has considered those comments. However, the Board finds that Section 814.301 does not currently apply to petitioner, so no variance is necessary. Therefore, the Board denies the petition for variance.

REGULATORY BACKGROUND

In 1990, the Board updated and replaced the existing landfill regulations with Parts 810-815. See Development, Operating and Reporting Requirements for Non-Hazardous Waste Landfills (August 17, 1990), R88-7, slip op. at 2. Under the new regulations at 35 Ill. Adm. Code 814, the Board set forth procedures for the upgrade or closure of existing landfills. Those procedures include a requirement that exiting landfills notify the Agency of estimated closure dates as well as notifying the Agency which Subpart of the new regulations apply to the facility. 35 Ill. Adm. Code 814.103. The procedures also include a requirement that an application for a significant modification to permits be filed within 48 months of the effective date of the rules. 35 Ill. Adm. Code 814.104. Thus, in order to remain open and accept waste, a facility which was in existence in 1990 would be required to file an application for significant modification by September 18, 1994.

The 1990 amendments also provided that existing landfills can remain open for an "indefinite period of time beyond seven years" if the standards of 35 Ill. Adm. Code 814.Subpart C are met. 35 Ill. Adm. Code 814.301(a).

FACTS

ILI owns and operates a non-hazardous solid waste landfill in Hoopeston, Vermilion County, Illinois. Pet. at 3. On November 25, 1992, ILI submitted an application to the city of Hoopeston for the expansion of the existing landfill. Pet. at 3. The expansion was finally approved on November 7, 1995. ILI received two variances from the Board which extended the September 18, 1994 deadline for submission of the application for significant modification to September 18, 1996. See Illinois Landfill Inc. v. IEPA (December 1, 1994), PCB 94-200; Illinois Landfill Inc. v. IEPA (September 19, 1996), PCB 95-162. ILI applied for a significant modification to its permit on September 11, 1996. Pet at 4. At this time ILI is responding to the Agency's technical review of the application. Pet. at 4.

On April 24, 1997, the Agency sent a letter to petitioner stating that if the facility had not received a significant modification permit by September 18, 1997, Section 814.301 required the facility to stop accepting waste. Pet. at Exh A. The Agency stated in part:

Our files indicate that your facility has not yet received its first significant modification of permit.

35 Ill Admin [sic] Code Section 814.301 requires closure pursuant to 35 Ill. Admin [sic] Code Part 814.Subpart D. . . for those non-hazardous waste landfills that cannot demonstrate, through a significant modification permit application and Illinois EPA inspection, compliance with the more stringent requirements of 35 Ill. Admin [sic] Code Part 814.Subpart C . . . Further, Subpart D requires Subpart D landfills to stop accepting waste by September 18, 1997. Therefore if you landfill facility has not received its first significant modification of permit before September 18, 1997, you must stop accepting waste and comply with applicable regulations. Pet. at Exh. A.

DISCUSSION

The Board finds that 35 Ill. Adm. Code 814.301 does not currently apply to petitioner. Therefore, ILI need not stop accepting waste at this time pursuant to that Section. As Section 814.301 does not apply to ILI, no variance is necessary and the Board denies the petition for variance.

The Board's decision that Section 814.301 does not apply to ILI is based on an August 7, 1997 Board decision in Land and Lakes Company v. IEPA, (Land and Lakes) PCB 97-209. In Land and Lakes, the Board found that petitioner did not need a variance from Section 814.301 as Section 814.301 did not apply to petitioner. The Board noted that it was premature for the Agency to determine the facility does not comply with 35 Ill. Adm. Code 814.Subpart C. Land and Lakes at 4. The Board stated:

Until the Agency completes its evaluation of petitioner's significant modification application, it is not clear under which subpart the facility will be regulated. Therefore, the Agency has no basis for ordering petitioner to cease accepting

waste at the facility and that order is therefore void. As a result, Section 814.301 does not currently apply to petitioner and no variance is necessary. Land and Lakes at 4.

The Board also found that Section 814.105(b) does apply to Land and Lakes and would allow petitioner to continue to operate. Land and Lakes at 4-5. Section 814.105(b) provides:

An owner or operator who has timely filed a notification pursuant to Section 814.103 and an application for significant permit modification pursuant to Section 814.104 shall continue operation under the terms of its existing permits until final determination by the Agency on its application and any subsequent appeal to the Board pursuant to Section 40 of the Act. During this time, the owner or operator will be deemed to be in compliance with all requirements of this Part. 35 Ill. Adm. Code 814.105(b).

The facts surrounding the Board's decision in Land and Lakes and the facts in this proceeding are substantially the same. In both cases the Agency mailed a letter on April 24, 1997, informing the petitioner that the facility would have to close pursuant to Section 814.301 if a significant modification was not issued by September 18, 1997. In both cases the application for the permit had been filed and the Agency's review was continuing. The Agency had not denied either significant modification application. Thus, the Board finds that the facts of these two proceedings are sufficiently similar to require the same outcome. Therefore, the Board denies the petition for variance requested by ILI as the variance is not necessary.

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

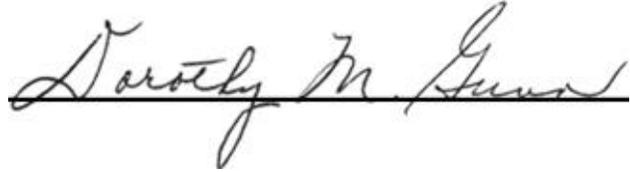
ORDER

1. The Board denies the petition for variance and dismisses this case.
2. The docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; 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 4th day of September 1997, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board