

ILLINOIS POLLUTION CONTROL BOARD  
October 25, 1990

GALLATIN NATIONAL COMPANY,            )  
  )  
                  Petitioner,            )  
  )  
                  v.                    )     PCB 90-183  
  )     (Variance)  
  )  
ILLINOIS ENVIRONMENTAL                )  
PROTECTION AGENCY,                    )  
  )  
                  Respondent.         )

ORDER OF THE BOARD (by J. Anderson):

In this variance petition, filed October 9, 1990, Gallatin National Company seeks variance from "the regulations contained in 35 Ill. Adm. Code §812 (sic) until October, 1991", which rules became effective September 18, 1990. Gallatin seeks to avoid "retroactive" application by the Agency of the new Part 812 landfill rules to Gallatin's request, which has been filed and pending since April 23, 1990, for a development permit for a balefill to be located in Fairview, Illinois. Gallatin asserts that it "now substantially complies with all the new regulations and will be in complete compliance by October, 1991, or before any waste is accepted at the site, whichever is sooner". (Pet. , p. 11).

Gallatin's petition was accompanied by a request for hearing, a motion for stay, and a motion to file a single copy of Exhibit B to the petition. The matter was accepted for hearing by the Board's Order of October 11, which noted that the Board declined to rule on the pending motions until it had received the Agency's response. On October 17, 1990 Gallatin filed a motion for clarification of the Board October 11 Order. On October 23, 1990, the Agency filed a response in opposition to the motion and a response neither opposing nor denying the motion to file a single copy of Exhibit B, both accompanied by a motion for leave to file instanter. The Agency also filed a motion for expedited hearing and decision in this matter, noting that it is presently required, pursuant to Section 39(a) of the Act as waived by Gallatin, to make its decision concerning Gallatin's permit application on or before December 19, 1990 to avoid issuance of a permit by operation of law.

The Agency's motion for leave to file is granted.  
Gallatin's motion to file a single copy of the voluminous Exhibit

B is granted. This leaves for resolution the more troublesome stay issue.

As Gallatin points out, Section 38(b) of the Act provides in pertinent part that:

If any person files a petition for a variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition...

The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter.

Gallatin's petition was timely filed on October 9 (see 35 Ill. Adm. Code 101.109). The Agency asserts that a Section 38(b) stay should not apply in a case such as this, where Gallatin currently holds no permits and where the status quo is accordingly not disturbed by the lack of a stay. (Motion, p. 2). However, the Board notes that the Agency has failed to cite any authority for the proposition that the clear language of the statute can be ignored to reach this result.

Accordingly, the Board finds that the application of Part 812 to Gallatin is stayed pursuant to Section 38(b). The Board acknowledges, however, that if Section 38(b) is read as precluding the applicability of Part 812 prior to the outcome of this case, while at the same time Section 39(a) is read as requiring an Agency permit decision based on questions relating to the same issue prior to the Board's decision on the merits, that an absurd result is reached. In order to avoid an absurd application of the decision deadline of Section 39(a) the Board finds that the Agency's decision deadline is tolled during the pendency of the stay. This is consistent with the result in People v. Pollution Control Board et al., 113 Ill. App. 3d 282, 300-01, 446 N.E. 2d 915 (3d Dist. 1983), rev'd on other grounds sub. nom., Pioneer Processing, Inc. v. IEPA, 102 Ill. 2d 119, 464 N.E. 2d 238 (1984). In that case the court found that the Board's decision deadline pursuant to Section 40 was tolled during the pendency of an injunction against the Board's proceeding with the case.

Ruling is reserved on the Agency's motion for expedited hearing and decision. However, given the nature of this case, the Board would prefer to decide this motion at a special meeting to be held early in the week of October 29, 1990 rather than at its next regular meeting on November 8. Gallatin is accordingly directed to file any response it may have to the Agency's motion

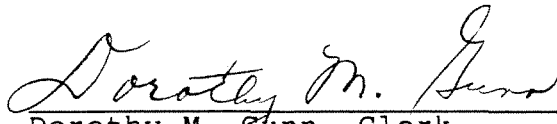
in such manner that it is received in the Board's Chicago office before 4:30 p.m. on Monday, October 29, 1990.

IT IS SO ORDERED.

B. Forcade dissented.

J.D. Dumelle abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 25<sup>th</sup> day of October, 1990, by a vote of 5-1.



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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

