

ILLINOIS POLLUTION CONTROL BOARD
January 26, 1987

JOLIET SAND AND GRAVEL COMPANY,)
)
 Petitioner,)
)
 v.) PCB 86-159
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On January 22, 1987, Joliet filed a renewed emergency motion to permit additional hearings in this matter. The motion was accompanied by a waiver of the decision date until February 12. The Agency filed a response in opposition on January 23.

On January 26, 1987, approximately four hours before today's scheduled Board meeting, Joliet filed a supplement to its January 22 motion. The supplement was accompanied by a waiver until March 5. The Agency filed a response to this supplement.

Joliet's motion is denied. In support of its motion, Joliet asserts that the waiver until March 5:

"will provide the Board with 38 additional days, beyond today when the Board meets to consider this matter. Petitioner believes this additional time should be more than enough to accomodate the additional 21-day notice that the Board apparently feeld (sic) is necessary, time for several days of additional hearings as requested by Petitioner, and time for the Board to decide this matter."

The Board strongly disagrees with this statement; the time available is barely sufficient, even if no major delays occur beyond the Board's ability to control. Based on the Board's general experience, as well as its experience in this case, the only days on which hearing could be held would be Monday and Tuesday, February 23-24. These dates are premised upon the time needed for preparation of the notice by the Board, receipt of the notice by a Joliet newspaper, and insertion of the notice into the paper. The Board has no direct control over the latter two events. Assuming no, or at best minimal, hitches, and that notice is published on Saturday, January 31, the earliest hearing could commence would be Saturday, February 21. As most of the persons required to attend hearing are state employees, weekend

hearings are not feasible, thus pushing the hearings to Monday and Tuesday. Were the Board to order expedited transcripts (at its own expense), the Board would not anticipate that all Board Members would receive transcripts before Friday, February 27; any minor delay could push that date to Monday, March 2. This would leave the Board at best 3 to 4 working days to review the transcripts, to deliberate the case, and to draft an opinion and order for entry at its March 5 meeting.

The prejudice to the Board's ability to deliberate the merits of this case are obvious. The prejudice to the Agency and its counsel, the Attorney General, is also obvious: in the event that the schedules of counsel and of necessary witnesses (most of whom would be present at Joliet's request) cannot accommodate the only feasible hearing days, the state could be argued to be in "default" of its obligations to Joliet in this litigation, and could, as well, be deprived of its ability to adequately defend its permitting decisions in this matter.

Given the practical realities of this situation, the Board cannot and will not grant a motion which will cause the integrity of its processes to be so abused. The matter is scheduled for disposition at the Board's February 5, 1987 regularly scheduled Board meeting.


However, the waiver until February 12 will allow the Board to establish a short, simultaneous briefing schedule; the Hearing Officer had previously required all arguments to be made on the Hearing record in light of the time constraints posed by the previous January 28 due date. The parties may file briefs in this matter on or before February 2. While this, again, leaves the Board only three working days to consider this component of the case, this is "do-able" given the prior availability of the transcripts.

IT IS SO ORDERED.

J. D. Dumelle and B. Forcade concurred.

J. T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 5th day of January, 1987 by a vote of 5-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board