

ILLINOIS POLLUTION CONTROL BOARD
October 5, 1995

JACK PEASE, d/b/a)	
GLACIER LAKE EXTRACTION,)	
)	
Petitioner,)	
)	
v.)	PCB 95-118
)	(Permit Appeal-Mining)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by C.A. Manning):

This matter is before the Board on two motions for reconsideration and/or clarification of the Board's opinion and order that was issued on July 21, 1995. In that order we found that the Agency's denial of a permit to Glacier Lake Extraction (GLE) was inappropriate, and we accordingly ordered that the Agency issue the permit in question.

The first motion, filed on July 22 by GLE, originally requested that our order be amended to require that the Agency backdate the permit to the date the permit was denied so that GLE would be protected against a pending enforcement charging that it was operating without a permit. Later filings reflect that GLE is no longer concerned with the retroactive permit date issue and, it appears, GLE believes that the Board's order is "moot".¹ This latter conclusion arises from the fact that, pursuant to a renewal permit application that was filed independent of the permit in dispute, a permit was issued to GLE on July 31 which apparently allows GLE to operate in the same manner as would the permit in dispute, and resolves all issues.

The Agency's motion for reconsideration, filed on August 24, alleges a litany of caselaw which it would have applied differently than the Board and accordingly requests that the Board reconsider and reverse our final decision based on alleged errors in our application of the law. Alternatively, the Agency asks that we vacate our order since a permit was in fact issued to GLE on July 31.

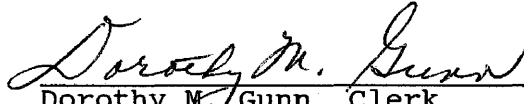
¹Apparently the Board's determination on July 21, 1995 that GLE had a right to a permit, (and the effective date of the permit), had a bearing on the outcome of three related criminal cases pending before the circuit court in McHenry County regarding GLE's operating its mine without a proper permit. As of GLE's most recent filing on September 20, 1995, the circuit court had dismissed these actions concluding that even though a partnership between Jack Pease and James Tonyan dissolved, GLE still had an effective permit until August of 1995.

Based upon the standards for granting motions for reconsideration found at 35 Ill. Adm. Code Sections 101.246 and 101.300, we deny both motions for reconsideration. There is no new evidence which was not available at the time of the Board's consideration of this matter, and no changes in the law or errors in our application thereof which would change the outcome of our opinion and order in this matter. The Board's order to issue the permit, which resulted based upon the Board's best judgement of all of the facts and law before it at the time, was correctly entered. Accordingly, the Board denies both motions for reconsideration. However, since both parties indicate that the permit issued on July 31, independent of this proceeding, is satisfactory and that this matter is resolved, the Board hereby grants the Agency's motion to vacate that portion of our order of July 21, 1995, directing the Agency to issue a permit in accordance with the opinion of the same date.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41) provides for the appeal of final Board orders within 35 days of the date of service of this order. (See also 35 Ill. Adm. Code 101.246, Motion for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 5th day of October, 1995, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board