

ILLINOIS POLLUTION CONTROL BOARD
October 24, 1991

R. LAVIN & SONS, INC.,)
)
Petitioner,)
)
v.) PCB 91-139
) (Permit Appeal)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

ORDER OF THE BOARD (by J. C. Marlin):

On September 23, 1991, R. Lavin & Sons ("Lavin") filed an Amended Petition in this proceeding. On September 24, 1991 the Illinois Environmental Protection Agency ("Agency") filed a "Memorandum in Response to the Illinois Pollution Control Board's Order of August 22, 1991". Within that memorandum is a Motion for Summary Judgement. On October 7, 1991, the Board received a response to the Motion from Lavin.

The Agency states that the Lake County Circuit Court entered a consent order on October 12, 1990, which sets forth interim and final compliance limits. Further, the Agency asserts that the Circuit Court has jurisdiction over "the terms and conditions of Defendant's NPDES permit renewals or amendments or modifications to said Permit" under the conditions set forth in the consent decree. Therefore, the Agency asserts that the court is the proper venue for dealing with the issues in this permit appeal. The Agency also asserts that there are not material issue of fact involved.

Lavin asserts that there are issues to be decided which are beyond the scope of the consent decree. Lavin cites to specific issues which Lavin believes the Board must decide. Lavin also asserts that the motion should be stricken because it was not properly filed with the Board.

The Board does not dispute that the Circuit Court has sole jurisdiction over the terms of the consent decree. The filings received by the Board on the Motion indicate that there are questions of material fact and may be questions of law which are better resolved after a hearing has been held in this proceeding. Therefore, the Motion for Summary Judgement is denied.

On September 23, 1991, R. Lavin & Sons, Inc. filed an amended petition for permit review. This matter is accepted for hearing. The Board notes that the filing of the amended petition restarts the time for Board decision pursuant to Section 40 of the Act.

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 parties, the hearing officer shall unilaterally set a hearing 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 date(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

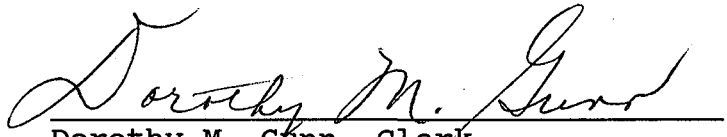
extensions or modifications only in unusual circumstances. Any such motion must set forth an alternative schedule for notice, hearing, and final submissions, as well as the deadline for decision, including response time to such a motion. However, no such motion shall negate the obligation of the hearing officer to establish a Scheduling Order pursuant to the requirements of this Order, and to adhere to that Order until modified.

This Order will not appear in the Board's Opinion Volumes.

IT IS SO ORDERED.

Board Member B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above Order was adopted on the 24th day of October, 1991, by a vote of 6-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board